

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)
Companies' Creditors Arrangement

No: 500-11-063165-233

**IN THE MATTER OF THE COMPANIES
CREDITORS ARRANGEMENT ACT OF:**

KPMG INC.

Monitor

- and -

15695651 CANADA INC.

-and-

15695724 CANADA INC.

Debtors

APPLICATION FOR AN EXTENSION OF THE STAY PERIOD AND OTHER RELIEF¹

TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE
MONITOR RESPECTFULLY SUBMIT AS FOLLOWS:

1. By the present Application (the "**Application**"), KPMG Inc. (the "**Monitor**"), in its capacity as Monitor of the Debtors, 15695724 Canada Inc. ("**ResidualCo 1**") and 15695651 Canada Inc. ("**ResidualCo 2**", and together with ResidualCo 1, the "**Current Debtors**"), seeks the issuance of an order:
 - a) extending the Stay Period to September 20, 2024; and
 - b) authorizing the Monitor to pay professional fees from the proceeds of the sale of the transaction;substantially in the form of the draft order communicated herewith as **Exhibit R-1**.
2. The Monitor's report (the "**Monitor's Fourth Report**") in support of this Application is communicated herewith as **Exhibit R-2**.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated December 28, 2023.

I. PROCEDURAL BACKGROUND

3. On November 20, 2023, Highcrest Lending Corporation (“**HLC**”) filed an *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the “**Initial Application**”) in the present proceedings (the “**CCAA Proceedings**”) in respect of 13517985 Canada Inc. (doing business as Wholesale Express, the “**Former Debtor**”).
4. On November 22, 2023, the Court postponed the hearing of the Initial Application to November 29, 2023 and issued an order (the “**November 22 Order**”), *inter alia*:
 - a) staying any Proceeding, including the exercise of any right or remedy against the Former Debtor, its Business or its Property (as such terms are defined in the November 22 Order); and
 - b) appointing KPMG Inc. as the Information Officer of the Former Debtor with the powers set forth in the November 22 Order, namely powers akin to those of an interim receiver under the *Bankruptcy and Insolvency Act*.
5. On November 28, 2023, the Former Debtor filed a contestation pursuant to which it sought to have the Initial Application dismissed or, in the alternative, adjourned.
6. On November 29, 2023, the Court postponed the hearing of the Initial Application to December 20, 2023 and renewed the November 22 Order until December 20, 2023.
7. On December 20, 2023, the Court granted the Initial Application and issued a first day initial order (the “**First Day Order**”).
8. On December 28, 2023, the Court issued an Amended and Restated Order extending the Stay Period until February 28, 2024 (the “**ARIO**”).
9. On January 9, 2023, the Monitor notified an *Application for an Approval and Reverse Vesting Order* (the “**Approval Application**”).
10. On January 12, 2023, the Court issued an *Approval and Reverse Vesting Order* (the “**RVO**”) ”) *inter alia*:
 - a) authorizing a series of transactions whereby a new investor, 15449189 Canada Inc. (the “**Investor**”), would become the sole shareholder of the Former Debtor, thereby preserving its business as a going concern;
 - b) vesting of all Excluded Assets and Excluded Contracts in ResidualCo 1, and all of the Excluded Liabilities in ResidualCo 2; and
 - c) declaring that, upon closing, the Former Debtor would cease to be a debtor in these CCAA Proceedings, and would be replaced by the Current Debtors.

11. The transactions described more fully in the RVO (collectively the “**Transactions**”) closed on January 23, 2023, as appears from a copy of the Monitor’s certificate filed in the Court record.
12. As a result of the Transactions:
 - a) the balance of the cash purchase price, net of the distributions authorized in the RVO, is currently held by the Monitor for and on behalf of ResidualCo 2;
 - b) any eventual recoveries and other funds that may become available for distribution to creditors is held by the Monitor for and on behalf of ResidualCo 2; and
 - c) all of the Former Debtor’s liabilities were transferred to ResidualCo 2.
13. On February 23, 2024, the Court issued:
 - a) an order extending the Stay Period to June 13, 2024 (the “**Stay Extension Order**”); and
 - b) a Claims Process Order pursuant to which creditors of the Former Debtor were required to file proofs of claim by March 25, 2024 and providing for a process for the review and treatment of those claims.

II. The Stay Period must be Extended

14. The Monitor seeks an order extending the Stay Period until September 20, 2024, as reflected in the draft order communicated herewith as Exhibit R-1.
15. As more fully outlined in the Monitor’s Fourth Report, since the issuance of the Stay Extension Order, the Monitor has:
 - a) Received, reviewed and analyzed the proofs of claims filed as part of the claims process;
 - b) Issued notices of allowance, disallowance and revision in respect of all claims filed as part of the claims process;
 - c) Held discussions with various creditors having filed claims as part of the claims process;
 - d) Attended to the various outstanding post-closing items following the Transactions, including the issue of the working capital adjustment, which is still under review by the Monitor;
 - e) Held discussions with FTI Consulting Inc., receiver to TradeX Group of Companies Inc., with respect to their position on the *Application for (i) Advice and Directions and (ii) To Void a Transfer at Undervalue* (the

“**Gregor Application**”) which was filed by the Monitor on February 15, 2024;

16. The Monitor seeks an extension of the Stay Period to September 20, 2024 in order to provide enough time to:
 - a) Finalize its review of the working capital adjustment and provide the Investor with its position;
 - b) Receive any appeals from the Monitor’s decisions with respect to the proofs of claim and establish a timeline for the adjudication of such appeals, if any;
 - c) Present the Gregor Application;
 - d) Determine how to most appropriately proceed with distributions to creditors, which could entail the filing of a plan of arrangement.
17. The Monitor is of the view that the requested extension of the Stay Period is necessary and reasonable in the circumstances.
18. In the Monitor’s opinion, no parties will suffer any material prejudice from the extension of the Stay Period and the extension sought is appropriate under these circumstances.

III. Authorization to pay Professional fees

19. Pursuant to the terms of the RVO, the proceeds of sale from the closing of the Transactions are currently held by the Monitor in trust until further Order of this Court.
20. Pursuant to the terms of the ARIO, the Debtors are obliged to pay the reasonable fees and disbursements of the Monitor and its legal counsel relating to the CCAA Proceedings.
21. However, nothing in either the ARIO nor the RVO authorizes the Monitor to pay professional fees from the sale proceeds held in trust. As such, the Monitor therefore seeks an order authorizing it to pay its professional fees and those of its counsel.

IV. Conclusion

22. In light of the foregoing, the Monitor submits it is both appropriate and necessary that the relief being sought be granted and that an order extending the Stay Period, substantially in the form of Exhibit R-1 be issued.
23. The present Application is well-founded both in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Application;

ISSUE an order extending the Stay Period substantially in the form of the draft order communicated herewith as Exhibit R-1; and

THE WHOLE without legal costs.

Montreal, this June 7, 2024

Fasken Martineau DuMoulin LLP

Fasken Martineau DuMoulin LLP

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SWORN STATEMENT

I, the undersigned, David Malin, having my principal place of business at 600, boul. De Maisonneuve West, Suite 1500, in the city and district of Montreal, Province of Québec, H3C 0B4, solemnly declare the following:

1. I am a Senior Vice President at KPMG Inc.; and
2. All the facts alleged in the *Application for an extension of the stay period and other relief* are, to the best of my knowledge, true.

AND I HAVE SIGNED :



David Malin

Declared under oath before me, by
technological means (Microsoft TEAMS),
in Montreal, June 7, 2024



Commissioner for Oaths for Québec

**NOTICE OF PRESENTATION
COMMERCIAL PRACTICE**

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for an Extension of the Stay Period* will be adjudicated by the Honourable Louis H. Gouin, j.c.s., on June 13, 2024, at 9:30 in courtroom 16.04.

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| 16.04 | <p>Rejoindre la réunion Microsoft Teams +1 581-319-2194 Canada, Québec (Numéro payant) (833) 450-1741 Canada (Numéro gratuit) ID de conférence : 516 211 860# Numéros locaux Réinitialiser le code confidentiel En savoir plus sur Teams Options de réunion Rejoindre à l'aide d'un dispositif de vidéoconférence teams@teams.justice.gouv.qc.ca ID de la conférence VTC : 1149478699 Autres instructions relatives à la numérotation VTC</p> |
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PLEASE GOVERN YOURSELF ACCORDINGLY.

Montreal, this June 7, 2024

Fasken Martineau DuMoulin LLP

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C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL**

**SUPERIOR COURT
(Commercial Division)
*Companies' Creditors Arrangement***

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CREDITORS ARRANGEMENT ACT OF:**

KPMG INC.

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- and -

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Debtors

LIST OF EXHIBITS

EXHIBIT R-1: Draft order.

EXHIBIT R-2: Monitor's Fourth Report.

Montreal, this June 7, 2024

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SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

IN THE MATTER OF THE COMPANIES
CREDITORS ARRANGEMENT ACT OF:

KPMG INC.

Applicant / Monitor

-and-

13517985 CANADA INC.

Debtor

-and-

HIGHCREST LENDING CORPORATION

Secured Creditor

-and-

THE REGISTRAR FOR THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS
(QUÉBEC)

Mise-en-cause

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**APPLICATION FOR AN EXTENSION OF
THE STAY PERIOD AND OTHER RELIEF,
AFFIDAVIT, NOTICE OF PRESENTATION,
LIST OF EXHIBITS AND EXHIBITS R-1 AND
R-2**

ORIGINAL

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