

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-11-063165-233

SUPERIOR COURT
(Commercial Division)
Companies' Creditors Arrangement Act,
R.S.C. (1985), c. C-36

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

15695651 CANADA INC.
15695724 CANADA INC.

Debtors

-and-

KPMG INC.

Monitor

-and-

FTI CONSULTING CANADA INC., in its
capacity as receiver and manager of the
assets and undertakings of **TRADE X
GROUP OF COMPANIES INC.**

Mise-en-cause

JOINT COMPENDIUM – JULY 16, 2024 HEARING

**MONITOR'S APPLICATION FOR (I) ADVICE AND DIRECTIONS AND (II) TO VOID A
TRANSFER AT UNDERVALUE**

TAB	DOCUMENT	
<i>Documents in support of the Monitor's Application</i>		
1.	Application for (i) Advice and Directions and (ii) to Void a Transfer at Undervalue	
2.	Exhibit R-1	<i>Assignment of Credit made as of October 24, 2023 between 13517985 Canada Inc. (the "Former Debtor") and the Mise-en-cause, TradeX Group of Companies Inc.</i>

TAB	DOCUMENT	
3.	Exhibit R-2	<i>Demande introductive d'instance and Exhibits P-1 to P-7 (en liasse)</i>
4.	Exhibit R-3	<i>Case Protocol</i>
5.	Exhibit R-4	<i>Email from Brent Sawadsky dated October 24, 2023</i>
<i>Documents in support of FTI Consulting Canada Inc.'s Contestation</i>		
6.	FTI Consulting Canada Inc.'s Contestation of the Monitor's Application for (i) Advice and Directions and (ii) to Void a Transfer at Undervalue	
7.	Affidavit of Ryan Davidson	
8.	Exhibit C-1	<i>Trade X Receivership Order dated December 22, 2023</i>
9.	Exhibit C-2	<i>Transcript of examination under oath of Ryan Davidson dated June 28, 2024</i>
10.	Exhibit C-3	<i>Journal Entries dated February 1, March 1 and March 31, 2022</i>
11.	Exhibit C-4	<i>Email from Monitor to Receiver dated June 4, 2024, confirming transfer of funds</i>
12.	Exhibit C-5	<i>Correspondence exchanged between Trade X and the Former Debtor between June 27, 2023, and July 5, 2023</i>

Tab 1

C A N A D A

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

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

No: 500-11-063165-233

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

KPMG INC.

Monitor

- and -

15695651 CANADA INC.

-and-

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TRADEX GROUP OF COMPANIES INC.

-and-

FTI CONSULTING CANADA INC. in its capacity as receiver and manager of the assets and undertakings of TradeX Groupe of Companies Inc.

Mises-en-cause

**APPLICATION FOR (I) ADVICE AND DIRECTIONS AND (II) TO VOID A TRANSFER
AT UNDERVALUE**

(Sections 11 and 36.1 *Companies Creditors Arrangement Act* and Section 96
Bankruptcy and Insolvency Act)

**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 :
 - a) An order declaring that the Assignment of Credit made as of October 24, 2023 between 13517985 Canada Inc. (doing business as Wholesale Express, the “**Former Debtor**” or “**Wholesale Express**”) and the Mise-en-cause, TradeX Group of Companies Inc. (“**TradeX**”), filed herewith as **Exhibit R-1** (the “**Gregor Assignment**”), is null and void and may not be set up against the Monitor; and
 - b) Advice and directions from this honourable Court in the form of an order declaring that any right or claim held by the Former Debtor against Groupe Grégor Inc. (“**Gregor**”), including the claim in the amount of \$7,920,118 referred to in the Gregor Assignment as the “**Credit**”, is the property of ResidualCo 2.

I. PROCEDURAL BACKGROUND

2. On November 20, 2023, Highcrest Lending Corporation 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 the Former Debtor.
3. On December 20, 2023, following a series of interim measures, the Court granted the Initial Application and issued a first day initial order (the “**First Day Order**”).
4. On December 28, 2023, the Court issued an Amended and Restated Order extending the Stay Period until February 28, 2024 (the “**ARIO**”).
5. On January 9, 2023, the Monitor notified an *Application for an Approval and Reverse Vesting Order* (the “**Approval Application**”).
6. 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 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.

7. The transactions described more fully in the RVO (collectively the “**RVO Transactions**”) closed on January 23, 2023, as appears from a copy of the Monitor’s certificate filed in the Court record.
8. As a result of the RVO 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 will be 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.

II. THE GREGOR LITIGATION

9. The Former Debtor acquired the business of Wholesale Express from Gregor through an asset purchase transaction. Based on the information available to the Monitor, it appears an Asset Purchase Agreement was entered into in December 2021 and the transaction closed on or around June 1, 2022.
10. On or around October 13, 2023, Gregor filed legal proceedings against the Former Debtor and TadeX to claim what may be summarized as follows, the whole as appears from the *Demande introductive d’instance* and its Exhibits P-1 to P-7 filed herewith as **Exhibit R-2** (the “**Gregor Statement of Claim**”):
 - a) \$767,210 stemming from an alleged change to closing date;
 - b) plus \$2,250,748 in working capital adjustments;
 - c) minus \$658,944.38 referred to in the Gregor Statement of Claim as a “**True-up Payment**”.
11. As appears from the Gregor Statement of Claim, Gregor operated Wholesale Express for a period of time while the Former Debtor obtained the necessary licenses and permits. The amounts collected by Gregor over the course of that period were to be remitted to the Former Debtor in the form of the True-up Payment.
12. Whereas Gregor alleges that the True-up Payment should be \$658,944.38, the Former Debtor alleged in response to the Gregor Statement of Claim that it was, in fact, owed \$7,920,118 plus applicable interest (i.e. the Credit).
13. The Former Debtor stated as follows in the case protocol filed in connection with the Gregor Statement of Claim (and filed herewith as **Exhibit R-3**) : “*Les défenderesses ont une demande reconventionnelle à faire valoir au montant de 7 920 118 \$ dû par la demanderesse à la défenderesse 13517985 Canada inc. à*

titre de sommes collectées par la demanderesse pour et au nom de la défenderesse 13517985 Canada inc. mais non remis à cette dernière à la suite de la transaction de vente des éléments d'actif intervenue entre les parties."

14. These CCAA proceedings were initiated before the Former Debtor could file its cross-demand.
15. If the claims of both sides are taken at face value, there is a net positive in favour of the Former Debtor in an amount of approximately \$5 million.

III. THE ASSIGNMENT OF CREDIT

16. Pursuant to the RVO Transactions, any rights and interests of the Former Debtor in the Credit and as against Gregor were transferred to ResidualCo 2.
17. That said, the existence of the Gregor Assignment has raised a question as to whether the Credit continues to be the property of Wholesale Express, or whether it was validly assigned to its parent company, TradeX.
18. For the following reasons, the Monitor submits that the Credit was not validly assigned and that, in any event, it may not be set up against the Monitor:
 - a) Wholesale Express was a wholly owned subsidiary of TradeX and the parties to the Gregor Assignment were clearly not dealing at arm's length;
 - b) The purported assignment occurred only weeks prior to the filing of the Initial Application and the issuance of the First Day Order. Note that the Gregor Assignment is dated as of October 24, 2023 and the Initial Application was filed on November 20, 2023;
 - c) While the Gregor Assignment states that it is made "for valuable consideration", it is the Monitor's understanding that no consideration was paid.

IV. IMPLICATIONS FOR CREDITORS

19. Concurrently with the filing of this Application, the Monitor filed an *Application (i) to Extend the Stay Period and (ii) for a Claims Process Order* in order to determine the validity and quantum of all claims against ResidualCo 2 (i.e. all remaining pre-filing claims against Wholesale Express following the RVO Transactions).
20. While the universe of claims is not yet known, it has become clear to the Monitor that the funds currently held on behalf of ResidualCo 2 will not suffice to satisfy all claims.
21. The order sought herein will allow the Monitor to seek instructions from creditors, possibly in the form of a plan of arrangement, to pursue the Credit and pursue litigation against Gregor.

V. CONCLUSION

22. For the reasons set out above, the Monitor submits that it is both necessary and appropriate to (i) declare that the Gregor Assignment is void and may not be set up against the Monitor, and (ii) provide the advice and directions sought herein, namely in the form of the conclusions set out below.
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;

DECLARE that the Assignment of Credit made as of October 24, 2023 between 13517985 Canada Inc. (the “**Former Debtor**”) and the Mise-en-cause, TradeX Group of Companies Inc. (Exhibit R-1), is null and void and may not be set up against the Monitor.

PROVIDE ADVICE AND DIRECTIONS to the Monitor and **DECLARE** that any right or claim held by the Former Debtor against Groupe Grégor Inc., including but not limited to any right or claim in connection with the following agreements dated as of December 17, 2021 (respectively, Exhibits P-4 and P-6 to the *Demande Introductive d’Instance* filed in Québec Superior Court file number 500-1127280-231) is the Property of ResidualCo 2 (as the term Property is defined in the Amended and Restated Initial Order) : (i) the Asset Purchase Agreement between the Former Debtor, Groupe Grégor Inc. and others, and (ii) the Agency Agreement between the Former Debtor and Groupe Grégor Inc.

THE WHOLE without legal costs, except if contested.

Montreal, this February 15, 2024

Fasken Martineau DuMoulin LLP

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Attorneys for the Monitor

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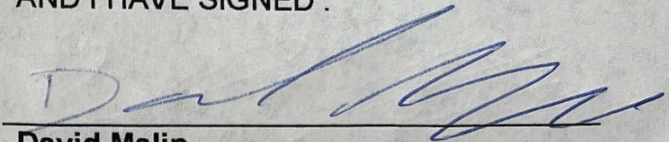
Email: edtremblay@fasken.com

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 partner at KPMG Inc.; and
2. All the facts alleged in the *Application for (i) Advice and Directions and (ii) To Void a Transfer at Undervalue* 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, February 15, 2024



Commissioner for Oaths for Québec

**NOTICE OF PRESENTATION
COMMERCIAL PRACTICE (COURTROOM 16.10)**

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for (i) Advice and Directions and (ii) To Void a Transfer at Undervalue* will be presented in the Commercial Practice Division of the Superior Court, in in a courtroom, and at a date and time to be determined and announced to the Service List.

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION

The contact information to join the calling of the roll of room 16.10 is as follows:

a) **using Teams:** click on the link available on the site <http://www.tribunaux.qc.ca/>;

You must then enter your name and click "Join Now". To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre name, Surname (name of the party represented)

Trustees: Name, Surname (Trustee)

Superintendent: Name, Surname (superintendent)

Parties non represented by an attorney: Name, Surname (specify : plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate "public".

b) **by telephone:**

Canada, Quebec (Charges will apply): +1 581-319-2194

Canada (Toll free): (833) 450-1741

Conference ID: 820 742 874#

c) **by videoconference:** teams@teams.justice.gouv.qc.ca

VTC Conference ID: 11973653703

d) **in person**, if and only if you do not have access to one of the above-mentioned technological means. You may then go to room 16.10 of the Montreal Courthouse, located at:

1 Notre-Dame St. East, Montréal, Québec

3. FAILURE TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTE that if you wish to contest the proceeding, you must inform in writing the party that initiated the proceeding at the contact information indicated in this notice of presentation at least 48 hours before the date of presentation of the proceeding and participate in the virtual calling of the roll. Otherwise, a judgment may be rendered against you during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution processes

TAKE NOTE that before referring your dispute to the Court, you must consider private dispute prevention and resolution processes, which consist of negotiation between the parties as well as mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 2).

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montreal, this February 15, 2024

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LOCALITY OF MONTRÉAL**

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-and-

FTI CONSULTING CANADA INC. in its capacity as receiver and manager of the assets and undertakings of TradeX Groupe of Companies Inc.

Mises-en-cause

LIST OF EXHIBITS

EXHIBIT R-1 : Assignment of Credit made as of October 24, 2023 between 13517985 Canada Inc. (the "**Former Debtor**") and the Mise-en-cause, TradeX Group of Companies Inc.

EXHIBIT R-2 : *Demande introductive d'instance* and its Exhibits P-1 to P-7.

EXHIBIT R-3 : Case Protocol.

Montreal, this February 15, 2024

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SUPERIOR COURT
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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

22456/296548.00012

BF1339

**APPLICATION FOR (I) ADVICE AND
DIRECTIONS AND (II) TO VOID A
TRANSFER AT UNDERVALUE, NOTICE OF
PRESENTATION, SWORN STATEMENT
AND LIST OF EXHIBITS**

ORIGINAL

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