CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: **500-11-062928-235**
500-11-062927-237
500-11-062929-233

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE RECEIVERSHIP OF:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

LXR PRODUITS DE LUXE INTERNATIONAL INC.

LXR CANADA INC.

GROUPE GLOBAL LXR INC.

Debtors

-and-

KPMG INC.

Receiver

APPLICATION TO DISCHARGE THE RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

TO A JUDGE OR A REGISTRAR OF THE SUPERIOR COURT, SITTING IN AND FOR THE COMMERCIAL DIVISION IN THE DISTRICT OF MONTRÉAL, THE PETITIONER RESPECTFULLY STATES AS FOLLOWS:

I. INTRODUCTION

1. By the present application (this **Application**), the Petitioner, Canadian Imperial Bank of Commerce (**CIBC**) seeks the issuance of an order substantially in the form communicated herewith as Exhibit R-1 (the **Proposed Discharge Order**), providing for:

   a) the discharge and release of KPMG Inc., as receiver, (**KPMG** or the **Receiver**) from its duties and obligations in relation to the present receivership proceedings (the **Receivership**) under the *Bankruptcy and Insolvency Act* (the **BIA**);

   b) the approval of the conduct of the Receiver as well as the distributions effected and to be effected in the Receivership;

c) certain ancillary relief.

2. The Debtors' having completed the sale of its assets as authorized by this Court and the Receiver having fully performed its duties under the BIA and the orders of this Court, it is respectfully submitted that the relief contemplated in the Proposed Discharge Order is necessary and appropriate in the circumstances.

II. BACKGROUND

3. The Petitioner refers to the factual background as stated in both the Receiver's First and Final Report dated September 3, 2024, (the **Report**) and the *Application to Appoint a Receiver and the Approve and Implement a Transaction*, dated October 30, 2023. The Report is communicated herewith as Exhibit R-2.

4. CIBC, the Debtors' first ranking secured creditor, is financing the Receivership and is to receive the proceeds realized pursuant thereto.

5. On November 3, 2023, KPMG was appointed as Receiver to the assets of the Debtors pursuant to section 243 of the BIA.

6. On the same day, the Court issued an order (the **Approval and Vesting Order**) authorizing the disposition of certain of the Debtors' assets outside the ordinary course of business (the **Transaction**) to Fashionphile Group, LLC, (the **Purchaser**).

7. It is important to note that despite the implementation of the Transaction and the realization on certain other property of the Debtors in the Receivership, CIBC will suffer a shortfall on its senior secured position such that no recovery is contemplated for any of the Debtors' unsecured creditors.

III. DEVELOPMENTS SINCE THE APPROVAL OF THE TRANSACTION

8. On November 8, 2023, the parties closed the Transaction.

9. Upon execution of the asset purchase agreement (**APA**) as approved by the Court by the Approval and Vesting Order, the Receiver received the $1.2M, representing the purchase price to be held in trust, subject to a final statement of adjustments (the **Statement of Adjustments**) pending the conclusion of a final inventory count (the **Inventory Count**) of assets located in both Canada and in the United States.

10. As further described in the Report, several issues arose in the course of performing the Inventory Count, namely that:

    a) the Debtors' Canadian Inventory Count did not match what the Debtors reported as current inventory in their records, which formed the basis of the APA;

b) specific items listed as in good form on the inventory asset listing were in fact largely damaged; and

c) errors in shipping documentation caused unnecessary delays in the shipping and receipt, of the Canadian inventory to the Debtors' inventory location in the United States.

11. Following various attempts to resolve these issues, negotiations took place between the Receiver and the Purchaser, in consultation with CIBC, which ultimately resulted in an agreement to refund approximately $75,000 to the Purchaser pursuant to the Statement of Adjustments.

12. On February 16, 2024, the Inventory Count was effectively completed as a consequence of the aforementioned agreement and the conditions for distributing the purchase price under the APA and the Approval and Vesting Order were satisfied.

13. Shortly thereafter, the Receiver, which had already obtained an independent opinion from its legal counsel confirming the validity and opposability of CIBC's security, determined that CIBC was entitled to receive the net proceeds of the transaction.

14. Therefore, on March 18, 2024, and April 16, 2024, the Receiver proceeded with two separate initial distributions in a total amount of $632,500 to CIBC in the context of the Receivership (the **Interim Distribution**)

15. Following the Interim Distribution, the Receiver continued its efforts to realize on the Debtors' remaining assets in the context of the Receivership, including by collecting certain of the Debtors' remaining receivables.

16. KPMG, which is also acting as the trustee in bankruptcy of the Debtors, also worked towards completing the remaining steps required as part of the administration of the bankruptcies of the Debtors.

17. As further described in the Receiver's Report, the Receiver estimates that there is approximately $428,000 remaining in the Receiver's trust account to be distributed to the CIBC from the realization on the Debtors' property in the Receivership.

18. In addition, there is $240,000 in cash currently held in the Debtors' CIBC bank accounts that is to be distributed to the CIBC, which will result in a total payout to CIBC of $668,000.

19. CIBC is anticipating a shortfall on their senior secured claims such that the Receiver does not anticipate any distributions to any other creditors.

IV. THE RELIEF SOUGHT SHOULD BE GRANTED

20. As mentioned above, the Transaction has been fully implemented and the Receiver has already effected the Interim Distribution in accordance with the Approval and Vesting Order.

21. To the knowledge of CIBC and the Receiver, all matters to be attended to in connection with the Receivership have been completed.

22. Accordingly, CIBC now seeks the issuance of the Proposed Discharge Order which, if granted, would, *inter alia,* terminate the Receivership, approve conduct of the Receiver as well as the distributions effected in the Receivership and discharge KPMG in its capacity as Receiver.

23. The Proposed Discharge Order also contemplates that KPMG will continue to benefit from all protections afforded to it in its capacity as Receiver by, in particular, the BIA and the previous orders of this Court, and will also be released from all liability relating to, arising out of, or in respect of the Receivership, except for any liability arising from wilful misconduct or gross fault.

24. It is respectfully submitted that the Receiver has duly and properly discharged and performed its duties and obligations in the Receivership in accordance with the BIA and all of the orders of this Court rendered in the course of the Receivership,

25. In light of the foregoing, CIBC respectfully submits that the relief sought in this Application should be granted and that orders substantially in the form of the Proposed Discharge Order should be rendered.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present *Application to Terminate the Receivership Proceedings and Discharge of the Receiver*;

RENDER orders substantially in the form of the Proposed Discharge Order communicated in support of the Application as **Exhibit R-1**;

THE WHOLE without legal costs, save in the event of contestation.

Montréal, September 4, 2024

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA LLP
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Our reference: 1000305634

AFFIDAVIT

I, the undersigned, Sébastien Grenon, having my professional address at 1155 René-Lévesque Blvd West, Suite 1400, Montréal, Québec H3B 3Z4, district of Montreal, solemnly declare the following:

1. I am an authorized representative of the Petitioner Canadian Imperial Bank of Commerce (**CIBC**);

2. I have read the attached *Application to Discharge of the Receiver* and all of the facts contained therein that do not otherwise appear from the exhibits thereto or the Court record are true.

AND I HAVE SIGNED:

SÉBASTIEN GRENON

Solemnly affirmed before me by videoconference (Teams), in Montreal and in Montreal, on September 4, 2024 allowing me to recognize Sébastien Grenon, as well as to confirm that he has signed this Affidavit. The Affidavit sent by email is true.

Stéphanie Lavoie, 180,551
Commissioner of Oaths for the Province of Québec

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Debtors

-and-

KPMG INC.

Receiver

LIST OF EXHIBITS

EXHIBIT R-1: Proposed Discharge Order;

EXHIBIT R-2: Receiver's First and Final Report dated September 3, 2024.

Montréal, September 4, 2024

Norton Rose Fulbright Canada LLP

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M^tres^ Noah Zucker and Charlotte Dion
Attorneys for the Canadian Imperial Bank of Commerce

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NOTICE OF PRESENTATION
COMMERCIAL DIVISION (ROOM 16.10)

1. PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the *Application to Discharge of the Receiver* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in room 16.10, of the Montréal Courthouse, at the **virtual calling of the roll** on **September 19, 2024, at 8:45 a.m**., or so soon thereafter as counsel may be heard.

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL

The coordinates for you to join the virtual calling of the roll in room 16.10 are as follows:

a) **By Teams: via the Teams link** (available on the website http://www.tribunaux.qc.ca)

You must fill in your name and click on “Join now” (“*Rejoindre maintenant*”). To facilitate the process and identification of participants, we invite you to fill in your name as follows:

Attorneys: Mtre Name, Surname (Name of the party you represent)

Trustees: Name, Surname (Trustee)

Superintendent: Name, Surname (Superintendent)

Parties not represented by a lawyer: Name, Surname (specify : Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or Other)

Persons attending a public hearing may simply indicate “public”.

b) **By telephone:**

Canada, Québec (Charges may apply): +1 (581) 319-2194

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

Conference ID: 820 742 874#

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

VTC Conference ID: 1193653703

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

1, Notre-Dame Street East, Montréal, Québec.

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

TAKE NOTICE that if you wish to contest the proceeding, you must inform in writing the party that initiated the proceeding at the contact information mentioned in the present Notice of Presentation at least 48 hours before the date of presentation of the proceeding and participate at the virtual calling of the roll, failing which, 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 NOTICE that the parties 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 make sure that relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution processes

TAKE NOTICE hat 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).

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, September 4, 2024

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ORIGINAL

BO-0042 # 1000305634

Mtre. Noah Zucker, Mtre Charlotte Dion
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