

CANADA

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 (I) AN ORDER EXTENDING THE STAY PERIOD AND (II) THE
ISSUANCE OF A CLAIMS PROCESS ORDER¹**

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:
 - a) An order extending the Stay Period to May 31, 2024, substantially in the form of the draft order communicated herewith as **Exhibit R-1**; and
 - b) A claims process order (the “**Order**”) substantially in the form of the draft order communicated herewith as **Exhibit R-2**;
2. The Monitor’s report (the “**Monitor’s Second Report**”) in support of this Application is communicated herewith as **Exhibit R-3**.

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**”):
 - a) appointing KPMG Inc. as the Monitor of the Former Debtor in these CCAA Proceedings;
 - b) providing for the extension of the Stay Period until December 29, 2023;
 - c) approving interim financing to be provided by HLC in an amount of up to \$2 million;
 - d) granting an Administration Charge and a Director’s Charge; and
 - e) ordering the sealing of certain confidential exhibits.
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 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 Stay Period must be Extended

13. The Monitor seeks an order extending the Stay Period until May 31, 2024, as reflected in the draft order communicated herewith as **Exhibit R-1**.
14. Since the issuance of the ARIO, the Monitor has:
- a) Facilitated and finalized the negotiation between the various stakeholders for the sale of the Former Debtor’s business to the Investor, presented the Approval Application with respect to the Transactions and obtained the RVO;
 - b) Closed the Transactions contemplated in the RVO;
 - c) Prior to the closing of the Transactions, continued to manage the receipts and disbursements and monitor the Former Debtor’s bank accounts; and
 - d) Following the closing of the Transactions, attended to the various post-closing items;
 - e) Reviewed the available documentation related to the litigation with Groupe Gregor Inc. which may be a potential source of recovery for creditors of the Current Debtors and which is subject to an *Application for (i) Advice and*

Directions and (ii) To Void a Transfer at Undervalue (the “**Gregor Application**”) that will be heard in due course;

15. The Monitor seeks an extension of the Stay Period to May 31, 2024 in order to provide enough time to:
 - a) Finalize the various post-closing items;
 - b) Implement the claims process detailed below and submitted to the Court for approval, and review and analyse the claims filed as part of that process;
 - 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.
16. The Monitor is of the view that the requested extension of the Stay Period is necessary and reasonable in the circumstances.
17. 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. The Claims Process Must be Approved

18. The Monitor hereby seeks the approval of a claims process as further detailed in the Claims Process Order, Exhibit R-2, approving the form, manner of notice and filing procedure for proofs of claims against ResidualCo 2 and setting the claims bar date to 5:00 p.m. (Montreal), on March 25, 2024 (the “**Claims Process**”)
19. The draft Claims Process Order provides, inter alia, for the following components and features. Capitalized terms in the following subparagraphs have the meaning ascribed to them in the Claims Process Order:
 - a) the Claims Process Order will be published on the Monitor’s website, in Designated Newspapers and sent to all Known Creditors, along with a Claims Package;
 - b) the Determination Date will be December 20, 2023, being the date of the Initial Order;
 - c) the Claims Bar Date for filing a Proof of Claim will be March 25, 2024;
 - d) following receipt of all Proofs of Claim, the Monitor will examine them in order to determine their validity and quantum, and, where applicable, will send the Creditor a Notice of Revision or Disallowance;
 - e) Creditors who wish to dispute a Notice of Revision or Disallowance shall, within fifteen (15) days of receipt of the Notice of Revision or Disallowance,

file an appeal motion with the Court and serve such appeal motion on the Monitor;

- f) Disputed Claims will be settled before this Court;
- 20. The Claims Process will allow, in a fair and efficient way, to determine definitively the validity and quantum of all claims against ResidualCo 2, and allow the certainty necessary for ResidualCo 2 to either propose an arrangement, or distribute the balance of the cash proceeds to its creditors.

IV. Conclusion

- 21. 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, along with a Claims Process Order, substantially in the form of Exhibit R-2.
- 22. 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

ISSUE the Claims Process Order in the form of the draft Claim Process Order communicated herewith as Exhibit R-2;

THE WHOLE without legal costs.

Montreal, this February 15, 2024

Fasken Martineau DuMoulin LLP

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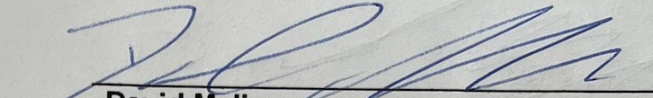
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SWORN STATEMENT

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 partner at KPMG Inc.; and
2. All the facts alleged in the *Application for (i) an Order Extending the Stay Period and (ii) a Claims Process Order* 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**

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for (i) an Order Extending the Stay Period and (ii) a Claims Process Order* will be adjudicated by the Honourable Louis H. Gouin, j.c.s., on February 23, 2024, at a time and room to be determined.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montreal, this February 15, 2024

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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 (I) AN ORDER
EXTENDING THE STAY PERIOD AND (II)
THE ISSUANCE OF A CLAIMS PROCESS
ORDER, SWORN STATEMENT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS AND
EXHIBITS R-1 TO R-3**

ORIGINAL

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