

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-11-053292-179
ESTATE NO.: 41- 2297864

SUPERIOR COURT
(Commercial Division)

(Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3)

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

175413 CANADA INC. (operating under the
trade name M0851);

Debtor/Petitioner

-and-

KPMG INC.;

Trustee

MOTION TO EXTEND THE DELAY TO MAKE A PROPOSAL
(Section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING
IN THE COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTREAL, OR
TO ONE OF ITS REGISTRARS, PETITIONER RESPECTFULLY SUBMITS:

INTRODUCTION

1. On September 27, 2017, 175413 Canada Inc. (operating under the trade name M0851) (the “**Debtor**”), filed a Notice of Intention to Make a Proposal (the “**NOI**”) under the relevant provisions of the *Bankruptcy and Insolvency Act*, Canada (the “**BIA**”) and named KPMG Inc. (the “**Trustee**”) as trustee thereto, the whole as appears of record herein.
2. On October 6, 2017, the Debtor sought, and this Honourable Court issued, an order (the “**Charge Order**”):
 - (i) authorizing and ratifying a commitment letter whereby Continental Capital Investments Inc. (“**Continental**”) agreed to provide interim financing to the Debtor pursuant to the terms and conditions set out therein (the “**Interim Financing**”);

- (ii) creating a senior ranking interim financing charge in favour of Continental, subject to the trustee's filing of a certificate with the Court (the "**Trustee's Certificate**"); and
- (iii) creating a senior ranking administrative charge in favour of the Trustee and the Debtor's legal counsel, subject to the filing of the Trustee's Certificate,

the whole as appears of record herein.

3. On October 12, 2017, the Trustee's Certificate was filed into the Court record thereby rendering the above described charges effective.
4. On October 26, 2017 (the "**Extension Judgment**"), this Honourable Court rendered a judgment extending the delay under the NOI until December 11, 2017 (the "**NOI Delay**"). This Motion seeks the extension of the NOI Delay until January 25, 2018.
5. The present Motion is to be presented concurrently with a Motion seeking the Court's authorization of the sale of the Debtor's assets (the "**Transaction**") pursuant to Section 65.13 *BIA* (the "**Motion for Authorization to Sell**") to 10498700 Canada Inc. (the "**Proposed Purchaser**").
6. The Debtor operates a vertically integrated Montreal based business which designs and manufactures high-quality and functional unique leather and fabric goods under the brand name "m0851" including outerwear, bags and accessories and sells the products at a wholesale level, to franchised stores internationally, at its own retail stores in Canada and through its e-commerce site (the "**Business**").
7. The Debtor operates seven (7) retail outlets in Canada with four (4) in the province of Québec and three (3) in Ontario. Each such store is the object of a lease between the Debtor and the respective landlord.
8. The distressed North American retail market and the fierce competition in the niche market of exclusive leather and lifestyle goods caused the Debtor to experience a great degree of difficulty.
9. As a result of the above, the Business was negatively impacted and its performance decreased to the point of insolvency.
10. Consequently, on September 12, 2017, the Debtor's then operating lender, The Toronto-Dominion Bank ("**TD Bank**") issued a notice pursuant to Section 244 *BIA* of its intention to enforce its security on all or substantially all of the Debtor's property. Given its defaults under the TD Bank credit facilities and its insolvency,

it was determined that it was in the best interests of the Debtor to file the NOI and enter into a restructuring process.

RESTRUCTURING EFFORTS AND EXTENSION SOUGHT

11. Since this Honourable Court's issuance of the Extension Order, the Debtor has continued its pursuit of a formal restructuring which has consisted of the following:
 - (a) given the Interim Financing, the Debtor has continued to operate the Business as a going concern including the sale of its merchandise throughout the crucial holiday selling season, the continued receipt of inventory from its suppliers and the design, manufacturing and bookings for new merchandise;
 - (b) the Debtor sent notices of disclaimer of lease to two (2) landlords of leased store premises. As a result of such disclaimers, the Debtor negotiated more favourable lease terms with such landlords. In addition, the Debtor has negotiated more favorable lease terms with certain of the landlords for its other store premises; and
 - (c) the pursuit by the Debtor, with the assistance and management of the Trustee, of a sale and solicitation process in order to market the Business and related assets to one or more potential acquirers, investors or strategic partners (the "**SSP**"), the whole as is more fully described in the Motion for Authorization to Sell.

In summary, pursuant to the SSP, over 40 parties who were identified as potentially interested in the Business were solicited by the Trustee. Parties were invited to request more information from the Trustee upon signing a non-disclosure agreement. Information relating to the Debtor's Business was made available to such parties and the Trustee and Debtor's management were available to discuss the Business. Ultimately, following a process that lasted nearly four (4) weeks, one offer was received for the purchase of the majority of the Debtor's assets (the "**Purchased Assets**"), which offer is the subject of the Transaction.

12. The Motion for Authorization to Sell and the draft Order contemplated thereby provide that the Purchased Assets, including certain of the store premises leases, the Debtor's inventory, license agreements and furniture and equipment, will only vest and transfer in and to the Proposed Purchaser once a trustee's certificate is issued by the Trustee. Such certificate will only be issued once, *inter alia*, the Transaction closes and the indebtedness owed by the Debtor pursuant to the Interim Financing has been fully repaid (the "**Interim Financing Indebtedness**").

13. The Proposed Purchaser has secured the working capital necessary in order to obtain one or more commitments from lenders in order to support the Proposed Purchaser and repay the Interim Financing Indebtedness (the "**Interim Financing Payout**"). The Proposed Purchaser expects to obtain such commitments imminently.
14. Accordingly, given that the Purchased Assets will not vest and transfer in and to the Proposed Purchaser until the occurrence of, *inter alia*, the Interim Financing Payout, the bankruptcy of the Debtor intervening prior to the Interim Financing Payout will result in the Transaction being compromised. The extension sought herein until January 25, 2018 should provide for the time required in order for the Proposed Purchaser to obtain a commitment from a lender and as such, for the Interim Financing Payout to occur.
15. Additionally, given the focus of the Debtor and the Trustee on the SSP and the impending Transaction, the Debtor has not yet had the opportunity to assess the prospects of a proposal to be made to its creditors. There is a possibility that the Debtor has accumulated tax losses which can be the subject of a proposal however, only an additional period of time will allow for such assessments to be made.
16. No prejudice would be caused to the Debtor's creditors generally by the extension of the NOI Delay sought herein. On the contrary, should the Transaction be approved by the Court, not extending the NOI Delay would result in:
 - (i) the Debtor's immediate bankruptcy and liquidation of the Debtor's assets;
 - (ii) compromising the Transaction; and
 - (iii) a loss of opportunity for the Debtor to assess the prospects of making a proposal.
17. The Debtor has acted, is acting and will continue to act in good faith and with due diligence.
18. The Trustee's report on the state of the Debtor's business and financial affairs will be produced in support of the present Motion.
19. The present Motion will be served/notified on all parties who have requested service/notification thereof.
20. Given all of the foregoing, the Debtor is entitled to seek the extension of the delay to make a proposal until January 25, 2018.
21. The present Motion is well founded in fact and in law.

WHEREFORE, PETITIONER PRAYS FOR JUDGMENT OF THIS HONOURABLE COURT:

- (A) **SHORTENING** the delays to notify/serve and present the present Motion;
- (B) **GRANTING** the present Motion;
- (C) **EXTENDING** the delay for the Debtor/Petitioner, 175413 Canada Inc., to make a proposal until January 25, 2018;
- (D) **ISSUING** any other order(s) the Court deems appropriate;

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

MONTREAL, December 5, 2017

(SGD.) Kugler Kandestin LLP

KUGLER KANDESTIN LLP
Attorneys for Debtor/Petitioner

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Kugler Kandestin LLP.

KUGLER KANDESTIN LLP

AFFIDAVIT

I, the undersigned Daniel Becker, domiciled for the purposes hereof at 5555 avenue Casgrain, Suite 201, Montréal, Québec H2T 1Y1, solemnly affirm the following:

1. I am the VP of Finance of the Debtor, 175413 Canada Inc.;
2. I have knowledge of all the facts alleged in the annexed "Motion to Extend the Delay to Make a Proposal" and all the facts alleged therein are true.

And I have signed, in Montréal, Québec

(SGD.) Daniel Becker

Daniel Becker

Solemnly affirmed before me, in Montréal, Québec
this 5th day of December, 2017.

(SGD.) Leslie Schiller # 129 687

Commissioner for Oaths for Québec

TRUE COPY

Kugler Kandestin LLP
KUGLER KANDESTIN LLP

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Debtor/Petitioner

-and-

KPMG INC.;

Trustee

NOTICE OF PRESENTATION

TO:

THE PARTIES LISTED IN THE SERVICE LIST

AND TO:

KPMG INC.
Trustee
Attention : Stéphane De Broux
600 Boulevard de Maisonneuve O.
Suite 1500
Montréal, QC

THE SUPERINTENDENT OF BANKRUPTCY
Sun Life Building
1155 Metcalfe Street
Suite 950
Montréal, QC
F: 514-283-9795

TAKE NOTICE that the "Motion to Extend the Delay to Make a Proposal" will be presented for adjudication to a Judge of the Superior Court, of the Province of Québec, of the District of Montréal, or to the Registrar thereof, on December 6, 2017 at 8:45 a.m. in room 16.10 of the Montréal Court House, 1 Notre Dame East, Montréal, Québec or so soon thereafter as counsel may be heard.

Montréal, December 5, 2017

(SGD.) Kugler Kandestin LLP
KUGLER KANDESTIN LLP
Attorneys for Debtor/Petitioner

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Trustee

-and-

THE PARTIES LISTED IN THE
ATTACHED SERVICE LIST

Mises-en-causes

SERVICE LIST

PARTY:

The Toronto Dominion Bank

COORDINATES:

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Bank*

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