

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)*

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

**175413 CANADA INC.** (operating under the  
trade name M0851), legal person duly  
incorporated according to law having its  
principal place of business at 5555 avenue  
Casgrain, Suite 201, Montréal, Québec H2T  
1Y1;

**Debtor/Petitioner**

-and-

**KPMG INC.**, in its capacity as trustee to the  
foregoing Notice of Intention filing, having its  
principal place of business at 600  
Maisonneuve Blvd West, Suite 1500,  
Montréal, Québec H3A 0A3;

**Trustee**

-and-

THE PARTIES LISTED IN THE ATTACHED  
SERVICE LIST

**Mises-en-causes**

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**MOTION FOR THE AUTHORIZATION AND APPROVAL OF CERTAIN CHARGES,  
INTERIM FINANCING AND OTHER RELIEF**

**(Sections 50.6 and 64.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-  
3)**

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

## I. 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**") pursuant to the relevant provisions of the *Bankruptcy and Insolvency Act*, Canada (the "**BIA**"), and named KPMG Inc. (the "**Trustee**") as trustee thereto.
2. With the filing of the NOI, the Debtor, with the assistance of its counsel and the Trustee, will diligently and expeditiously carry out a formal restructuring process.
3. In order to properly embark on this restructuring process, by the present Motion, the Debtor seeks orders of this Honourable Court:
  - (a) authorizing Continental Capital Investments Inc. (the "**Interim Lender**") to provide interim credit facilities to the Debtor in order to execute its restructuring and operate the "Business" (hereinafter defined) (the "**Interim Financing**") in accordance with the terms and conditions of the commitment letter issued by the Interim Lender on October 2, 2017 (the "**Commitment Letter**"), a copy of which is produced herewith as **Exhibit P-1**, the whole pursuant to the provisions of the draft "Charge Order" produced herewith as **Exhibit P-2** (the "**Draft Charge Order**");
  - (b) granting the following charges (collectively the "**Charges**") which shall only become effective and attach unless and until a "Trustee's Certificate" in the form of the draft certificate annexed to the Draft Charge Order is filed with the Court confirming that The Toronto-Dominion Bank ("**TD Bank**") has granted the "Bank Release", as defined in the Commitment Letter, and that TD Bank has confirmed having obtained any and all necessary consents from Export Development Canada ("**EDC**") to the granting of such bank release (the "**Trustee's Certificate**"):
    - (i) charge in favour of the Interim Lender (the "**Interim Financing Charge**") ranking as set forth in the Draft Charge Order and in any event, in priority to the "Administration Charge" (hereinafter defined) and security interests currently held by the Debtor's secured lenders (the "**Security Interests**") namely, TD Bank, BDC Capital Inc. ("**BDC Capital**"), Business Development Bank of Canada ("**BDC**"), Investissement Québec ("**IQ**"), Thinking Capital Financial Corporation ("**Thinking Capital**"), Evolocity Financial Group Inc. ("**Evolocity**") and, except to the extent provided herein, Royal Bank of Canada ("**RBC**"); and
    - (ii) charge ranking as set forth in the Draft Charge Order and in any event, junior to and immediately after the Interim Financing Charge and in priority to all of the Security Interests (to the extent herein provided), in order to secure the fees of the Debtor's counsel, the Trustee and the Trustee's counsel (the "**Administration Charge**").

## II. THE DEBTOR'S BUSINESS AND OPERATIONS

4. The Debtor operates a vertically integrated Montreal based business which designs and manufactures high-quality and functional leather and fabric goods 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**").
5. The design, manufacturing, wholesale, warehousing and administrative divisions of the Business operate from the Debtor's leased head office premises in Montréal at 5555 avenue Casgrain, Suite 201.
6. The Debtor operates six (6) retail outlets in Canada with three (3) 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.
7. In addition to its own Canadian operations, the Debtor has entered into agreements whereby it licenses selling rights to parties operating retail outlets which exclusively offer the Debtor's products. In Canada, three (3) such outlets are located in the province of Québec and two (2) in the greater Vancouver area. In Japan, four (4) such outlets exist and the licensee thereof operates a distinct e-commerce site.
8. Additionally, the Debtor has two wholly owned subsidiaries, M0851 Products and Architectural Design Inc. and M0851 Trading (Beijing) Co. Ltd., which operate stores in the United States and Beijing (collectively the "**Subsidiaries**"). To the extent any party, including TD Bank, has security over assets of the Subsidiaries, the orders sought herein shall not affect such security nor the Subsidiaries.
9. In order to operate the Business, the Debtor has a workforce of 94 employees who work in various divisions of the Business.
10. As previously described, the Debtor has several secured creditors with TD Bank as its operating lender and the remainder of the Debtor's secured creditors providing various loan and credit facilities.
11. Additionally, the Debtor has several creditors who have registered ownership retention interests with respect to finance leases or leasing agreements. These security interests held by such parties shall not be affected by the orders sought herein and accordingly, such parties have not been served/notified with the present Motion.
12. Produced herewith *en liasse* as **Exhibit P-3** is a search summary (the "**Search Summary**") of: (a) registrations at the Bank of Canada, Montréal Branch; and (b) publications in the Register of Personal and Movable Real Rights of Québec (the "**RDPRM**"), in respect of hypothecs, security interests and other rights against the Debtor's present and future, corporeal and incorporeal, tangible and intangible, personal and movable property (the "**Property**").

13. As appears from the Search Summary, the following are the Debtor's creditors who have published or registered security interests with respect to the Property in the province of Québec:
- (a) at the Bank of Canada, Montreal Branch, TD Bank registered a notice of intention on May 8, 2014 under no. 01292349 in virtue of Section 427 of the *Bank Act*, Canada, charging the Debtor's inventory throughout Canada and all accounts receivable resulting from the sale thereof.
  - (b) in the RDPRM:
    - (i) RBC has published a movable hypothec in the RDPRM under no. 08-0477528-0001 charging the Debtor's tax credits (the "**RBC Tax Credits**") and the Property (the "**RBC Tax Credit Hypothec**"). The Debtor has indicated that this security no longer serves any purpose. However, for the purposes of the Draft Charge Order sought herein, the Charges will rank junior to this security interest exclusively with respect to the RBC Tax Credits;
    - (ii) RBC has published a movable hypothec in the RDPRM under no. 11-0624842-0008 charging the specific equipment and machinery described therein for specific financing. For the purposes of the Charge Order sought herein, the Charges will rank junior to this security interest exclusively with respect to such specific equipment and machinery;
    - (iii) IQ has published a movable hypothec in the RDPRM under no. 11-0923977-0001 charging the Property;
    - (iv) RBC has published a movable hypothec in the RDPRM under no. 13-0417365-0002 charging the specific equipment and machinery described therein for specific financing. For the purposes of the Charge Order sought herein, the Charges will rank junior to this security interest exclusively with respect to such specific equipment and machinery;
    - (v) BDC has published a movable hypothec in the RDPRM under no. 14-0461539-0001 charging the property (the "**BDC Hypothec**"). This hypothec was granted on a *pari passu* basis with the IQ hypothec described below;
    - (vi) IQ has published a movable hypothec in the RDPRM under no. 14-0461539-0003 charging the Property. This hypothec was granted on a *pari passu* basis with the BDC Hypothec;

- (vii) TD Bank has published a movable hypothec in the RDPRM under no. 16-0824961-0001 charging the Property (the "**TD Security**");
  - (viii) BDC Capital has published a movable hypothec in the RDPRM under no. 16-0870209-0001 charging the Property;
  - (ix) Evolocity has published a movable hypothec in the RDPRM under no. 17-0761911-0002 charging the Property;
  - (x) BDC Capital has published a movable hypothec in the RDPRM under no. 17-0775540-0001 charging sums payable and rights in respect of a life insurance policy over the life of the President of the Debtor, Frederic Mamarbachi; and
  - (xi) Thinking Capital has published a movable hypothec in the RDPRM under no. 17-0900621-0001 charging the Property.
13. In summary, in virtue of: (a) the terms of various registrations and cessions of rank agreements published in the RDPRM and the registration at the Bank of Canada, as appears from the Search Summary; and (b) the Debtor's contention that the RBC Tax Credit Hypothec no longer serves any purpose, the first ranking creditors with respect to the following chief classes of Property are as follows:
- (a) Inventory: TD Bank;
  - (b) Claims: TD Bank; and
  - (c) Incorporeal/intangible property other than claims: BDC Capital.

### **III. DEBTOR'S FINANCIAL SITUATION**

14. The distressed North American retail market and the fierce competition in the niche market of exclusive leather and lifestyle goods has caused the Debtor to experience a great degree of difficulty.
15. As a result of the above, the Business has been negatively impacted and its performance has decreased to the point of insolvency.
16. Consequently, on September 12, 2017, TD Bank issued a notice pursuant to Section 244 *BIA* of its intention to enforce its security on all or substantially all of the Property. Given the Debtor's insolvency, the Debtor's loan account with TD Bank has been transferred to its special loans division, which has demanded repayment of such loans and has agreed to forbear, for a limited period of time, from exercising its rights under the TD Security.
17. 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 formal restructuring process.

#### IV. ADMINISTRATION CHARGE AND INTERIM FINANCING CHARGE

18. The Debtor's operating lender, TD Bank, has indicated that it is not prepared to remain the Debtor's operating lender, leaving the Debtor with no operating credit facility to proceed with its restructuring. As a result, in order for the Debtor to pursue and execute its restructuring process and operate the Business during the restructuring period, the Debtor desperately requires the Interim Financing.
19. Without the Interim Financing, the Debtor will have no ability to restructure the Business which will precipitate the liquidation of its assets, the dismissal of 94 employees and its ultimate bankruptcy.
20. The Interim Lender is a party unrelated to the Debtor who has extensive experience lending to retailers in distressed situations, restructurings and insolvency proceedings.
21. Pursuant to the Commitment Letter, the Interim Financing to be provided thereunder is conditional upon, *inter alia*, the issuance by this Court of the Interim Lender Charge ranking pursuant to the provisions of the Draft Charge Order.
22. Accordingly, the Debtor seeks an order of this Honourable Court ordering that its assets be subject to a charge, ranking as set forth in the Draft Charge Order and in any event, ahead of and senior to the Security Interests, to the extent provided herein, and the Administration Charge, in favour of the Interim Lender in the amount of \$2,400,000 (plus interest at the rate of 17% *per annum*) in order to secure the Interim Financing.
23. The Commitment Letter provides that the initial advance under the Interim Financing is to be made in order to obtain the therein defined "Bank Releases" from TD Bank. As previously indicated, the Draft Charge Order provides that the Charges will only take effect and attach to the Property unless and until the Trustee's Certificate is filed with the Court confirming that TD Bank has granted the "Bank Release", as defined in the Commitment Letter, and that TD Bank has confirmed having obtained any and all necessary consents from EDC to the granting of such bank release.
24. The Debtor is seeking an order of this Honourable Court ordering that its assets be subject to a charge, ranking as set forth in the Draft Charge Order and in any event, ahead of and senior to the Security Interests, to the extent provided herein, but junior to the Interim Financing Charge, as security for payment of the fees and disbursements of the parties who have played and will continue to play a critical role in the Debtor's restructuring, namely the Trustee, the Trustee's counsel (if so required) and the Debtor's counsel.
25. The Administration Charge sought is in the amount of \$100,000, as appears from the Draft Charge Order (Exhibit P-2), and is based on an estimation of such fees.
26. As appears above and from the Search Summary (Exhibit P-3), RBC holds security over specific machinery and equipment of the Debtor as well as its tax

credits. Pursuant to the Draft Charge Order (Exhibit P-2), RBC's security interests over such property will not be primed by the Charges.

27. In light of the foregoing and in order for the Debtor to continue its formal restructuring process, the Debtor requires this Honourable Court's authorization of the Interim Financing and granting of the Charges.
28. The shortening of the delays to notify/serve and present the present Motion is required in order to be in a position to obtain interim financing to allow the Debtor to immediately proceed with its restructuring.
29. 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) **ISSUING** an order substantially in the form of the Draft Charge Order communicated herewith as Exhibit P-2 in support of the present Motion (the "Order");
- (D) **ORDERING** the provisional execution of the Order notwithstanding appeal;
- (E) **ISSUING** any other order(s) the Court deems appropriate.

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

**MONTREAL**, October 3, 2017

(SGD.) Kugler Kandestin LLP

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**KUGLER KANDESTIN LLP**  
Attorneys for Debtor/Petitioner

Me Gerald F. Kandestin / Me Jeremy Cuttler  
1 Place Ville Marie, Suite 1170  
Montréal, Québec H3B 2A7  
Tel.: 514 878-2861 / Fax: 514 875-8424  
gkandestin@kklex.com/jcuttler@kklex.com

**TRUE COPY**

Kugler Kandestin LLP  
**KUGLER KANDESTIN LLP**

**A F F I D A V I T**

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 for the Authorization and Approval of Certain Charges, Interim Financing and Other Relief" 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 3<sup>rd</sup> day of October, 2017.

(SGD.) Clancy Gray # 182276

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Commissioner for Oaths for Québec

**TRUE COPY**

Kugler Kandestin LLP.  
**KUGLER KANDESTIN LLP**