

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
NO.: 550-11-018614-231  
ESTATE NO.: 41-344833

SUPERIOR COURT  
(Commercial Division)

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

IN THE MATTER OF THE RECEIVERSHIP OF:

9249206 CANADA INC., a corporation duly constituted and subsisting under the *Canada Business Corporations Act*, having its registered office at 148, rue de Maremme, Gatineau, Québec J9J 0R4;

Debtor

-and-

MAYNBRIDGE CAPITAL INC., a corporation duly constituted and subsisting under the *Business Corporations Act* (British Columbia), having a place of business at 388-1111 West Hastings St., Vancouver, British Columbia V6E 2J3;

Petitioner/Secured Creditor

-and-

KPMG INC., in its capacity as proposed receiver in respect of the property of the above listed Debtor pursuant to the *Bankruptcy and Insolvency Act*, Canada, having a place of business at 600 Boul. de Maisonneuve O, Suite 1500, Montréal, Québec H3A 0A3;

Proposed Receiver

MOTION TO APPOINT A RECEIVER  
(Section 243 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 A REGISTRAR THEREOF, THE PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. Maynbridge Capital Inc. (the "**Creditor**") holds a first ranking immovable hypothec over vacant land owned by 9249206 Canada Inc. (the "**Debtor**") more fully described herein, the whole as appears from the search summary produced herewith as Exhibit P-1 (the "**Search Summary**").

2. This Motion seeks to appoint KPMG Inc. (David Malin, CPA, CIRP, LIT) as a receiver (the “**Receiver**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, Canada (the “**BIA**”) to exercise the powers included in the draft Order Appointing a Receiver produced herewith as **Exhibit P-2** (the “**Draft Order**”).
3. The Debtor has committed multiple defaults under the hereinafter defined “Credit Agreement” and “Forbearance Agreement”, the whole as more fully explained herein.
4. At the outset, it is important to note that:
  - (a) under Section 2.4 of the Forbearance Agreement, the Debtor has consented to the appointment of a receiver, the whole as more fully explained herein; and
  - (b) under Section 2.5 of the Forbearance Agreement, the Debtor has agreed that any proceedings relating to the Creditor’s rights under its security and other agreements, including the right to name a receiver, are to be brought before the judicial district of Montreal.
5. As at June 22, 2023, the indebtedness owing by the Debtor to the Creditor was \$5,411,988.77, the whole as appears from the Creditor’s statement produced herewith as **Exhibit P-3**.

## **II. BACKGROUND AND INITIAL DEFAULTS**

6. The Debtor is a single purpose corporation created in order to acquire vacant land and develop a real estate project in Gatineau, Québec. A copy of the Debtor’s information statements from the Quebec enterprise register and Corporations Canada are produced herewith *en liasse* as **Exhibit P-4**.
7. The Creditor, as lender, and the Debtor together with a number of other borrowers (collectively, the “**Borrowers**”) entered into a Credit Agreement (the “**Credit Agreement**”) on December 21, 2021, pursuant to which a credit facility in the maximum amount of \$5,186,478.35 was made available to the Borrowers with a maturity date of December 22, 2022, being twelve months from the date of the Loan’s disbursement (the “**Loan**”), a copy of which is produced herewith *under seal* as **Exhibit P-5**.
8. As appears from the Credit Agreement, the Loan was made for the sole purpose of financing the acquisition of the immovable property bearing lot numbers 5 397 010, 5 397 011 and 5 397 012 of the Cadastre of Québec, Land Registry Division of Hull (the “**Property**”), which was and still consists of vacant land.
9. As appears from a copy of the hypothec and the Search Summary, the Creditor holds a first ranking immovable hypothec charging the Property in order to secure

the Loan. A copy of such hypothec is produced herewith as **Exhibit P-6** (the "**Hypothec**").

10. In order to further secure the Loan, the Creditor also holds a second ranking immovable hypothec granted by one of the Borrowers, 3969631 Canada Inc. ("**396**"), on another property located in the Gatineau region (the "**Secondary Hypothec**"), which hypothec is subject to an intercreditor agreement with Centurion Mortgage Corporation ("**Centurion**").
11. In May 2022, the Creditor received a partial payment of the Loan in the amount of \$1,000,000 thereby reducing the then current indebtedness under the Loan from \$5,186,478.35 to \$4,186,478.35 (however, as discussed below, the Loan was thereafter increased under the Forbearance Agreement).
12. Under the Credit Agreement, the Debtor agreed that it would be in default upon the occurrence of *inter alia* the following (collectively, the "**Initial Defaults**"):
  - (a) the occurrence of a default under any credit, loan or security agreement to which any Borrower is a party (a "**Cross-Default**"); and
  - (b) failure to pay the Loan in full when due on December 22, 2022 ("**Initial Payment Default**").
13. On December 12, 2022, the Creditor was advised by Centurion that 396 committed a default under its commitment letter with Centurion, thereby causing a Cross-Default.

### **III. FORBEARANCE AGREEMENT, LOAN INCREASE AND SUBSEQUENT DEFAULTS**

14. Accordingly, the Creditor had no choice but to issue a default and demand notice and a notice pursuant to Section 244 of the *BIA* on December 15, 2022, as well as a prior notice of the exercise of a hypothecary right under the *Civil Code of Québec* (collectively, the "**Notices**"), copies of which are produced herewith, *en liasse*, as **Exhibit P-7**.
15. On December 22, 2022, the Creditor did not receive payment of its Loan and accordingly, the Initial Payment Default was triggered.
16. Subsequent to the occurrence of the Initial Defaults, following numerous discussions and negotiations, the Debtor entered into a forbearance agreement with the Creditor (the "**Forbearance Agreement**") whereby the Creditor agreed not to exercise its rights against the Debtor and the Property upon the terms and conditions therein, a copy of which is produced herewith as **Exhibit P-8**.

17. As appears from the Forbearance Agreement, such agreement provides the Debtor with:
  - (a) an increase of the Loan in the amount of \$1,225,510.42; and
  - (b) a confirmed extension under the Credit Agreement for a 6-month period until June 22, 2023,the whole in order to provide the Debtor with additional time to find a solution to fully repay the Creditor.
18. Additionally, as appears from the Forbearance Agreement, the Debtor acknowledged the Initial Defaults, the Notices and the indebtedness described therein.
19. Under the Forbearance Agreement, the Debtor agreed that it would be in further default upon the occurrence of *inter alia* any of the following (the “**Forbearance Defaults**”):
  - (a) failure to pay all unpaid property taxes in respect of the Property (the “**Property Taxes**”); and
  - (b) failure to pay the full amount of indebtedness owing to the Creditor on June 22, 2023.
20. Additionally, pursuant to section 2.4 of the Forbearance Agreement, the Debtor has consented to the appointment of a receiver with respect to the Property once a default under the Forbearance Agreement occurs or the Creditor is unpaid on June 22, 2023:
  - 2.4 Each of the Obligors waives and renounces to all defenses to Maynbridge’s exercise of the Default Rights in accordance with applicable law. In particular, given that all of the delays to exercise rights under or pursuant to the Default Notices have passed, each of the Obligors consents to Maynbridge’s appointment of a receiver with respect to the Atawe Property pursuant to the *BIA*, the whole subject to the expiry of the Forbearance Period.
21. On June 13, 2023, the Debtor’s principal, Pascal Proulx, confirmed to the Creditor that the Property Taxes had not been paid within the prescribed period under the Forbearance Agreement thereby causing a default thereunder.
22. On June 22, 2023, the Creditor did not receive payment of the Loan thereby causing a further default under the Forbearance Agreement.

23. Accordingly, as early as May 6, 2023 (being 10 days following execution of the Forbearance Agreement), one of the Forbearance Defaults occurred and the Creditor became entitled to exercise its rights under the Notices, including the right to name a receiver pursuant to the *BIA*, the whole in accordance with the Forbearance Agreement, in general, and section 2.4 thereof, in particular.
24. On June 27, 2023, the Debtor was formally advised of such defaults, a copy of such notice is produced herewith as **Exhibit P-9**.
25. All delays under the Notices have lapsed (being the 60-day delay under the prior notice with respect to the Property and the 10-day delay under the 244 *BIA* notice).
26. Given the foregoing, it is appropriate and necessary for a receiver to be appointed by this Court, the whole pursuant to Section 243 of the *BIA*.

#### IV. THE PROPOSED RECEIVERSHIP

27. It is clear that the Debtor is in default of its obligations toward the Creditor, in general, and under the Credit Agreement and the Forbearance Agreement, in particular. Accordingly, the Creditor is entitled to seek the appointment of a receiver under the *BIA*.
28. It is to be noted that the Debtor has no operations and simply owns vacant land. Accordingly, the receivership would be a single purpose receivership with the objective of achieving realization.
29. The receivership sought by the Draft Order provides for the powers necessary in order to control and sell the Property in order to achieve realization.
30. The Creditor is prepared to have the Receiver engage professionals, such as brokers or agents, in order to properly canvass the market and maximize realization. Accordingly, the Draft Order includes modifications providing for the Receiver's ability to engage any necessary brokers or agents in this respect.
31. Additionally, given the fact that a contamination notice is registered against the Property, the Draft Order clarifies that Section 14.06(2) *BIA* applies to the receivership.
32. The Draft Order also provides for an administration charge, ranking ahead of all security published against the Property, in favour of the Receiver and its counsel and advisors (if any), in the amount of \$100,000. This amount is based on an estimate of the fees which will be incurred by the Receiver in the execution of its mandate and that of its attorneys and any advisors or agents.

**V. CONCLUSION**

33. Without the appointment of a receiver, the Creditor will continue to be unpaid and at the mercy of the Borrower's ability to find financing which, after a year and a half, has not materialized and is not expected to materialize in the foreseeable future.
34. The Receiver is a licensed trustee and has agreed to act as receiver with the powers set forth in the Draft Order.
35. The present Application has been notified to the Debtor's creditors who hold hypothecs over the Debtor's property which have been published at the land register (with respect to the Property) and at the register of personal and movable real rights (with respect to the Debtor).
36. Accordingly, it is just for this Honourable Court to grant a receivership and issue an order substantially in the form of the order produced as **Exhibit P-2**. The Draft Order is based on the Montreal Bar Association's model order appointing a receiver and a compared version outlining the changes thereto is produced herewith as **Exhibit P-10**.
37. The present Motion is well founded in fact and in law.

**WHEREFORE, THE 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 Order Appointing a Receiver communicated herewith as **Exhibit P-2** in support of the present Motion;

**THE WHOLE WITH COSTS**, including all costs of all experts and exhibits, etc.

Montreal, June 30, 2023

*Kugler Kandestin LLP*

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**KUGLER KANDESTIN LLP**

Attorneys for Petitioner, Maynbridge Capital Inc.

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**AFFIDAVIT**


I, the undersigned, Stephen J. Davies, having an office at 1111 West Hastings St, suite 388, Vancouver, British Columbia, V6E 2J3, solemnly affirm the following:

1. I am the head of portfolio management and capital markets of Maynbridge Capital Inc.;
2. All of the facts alleged in the *Motion to Appoint a Receiver* (the "**Motion**") of which I have personal knowledge are true; and
3. Where I have obtained facts alleged in the Motion from others, I believe them to be true.

And I have signed, in Ottawa, Ontario

DocuSigned by:  
 6/30/2023 | 12:07 PDT  
E6D6028D236F43E...  
Stephen J. Davies

Solemnly affirmed before me, by way of technological means, this 30<sup>th</sup> day of June, 2023.

DocuSigned by:  
 #212 605 6/30/2023 | 12:08 PDT  
C1C688864DC44DA...  
Commissioner for Oaths for Québec  
Name: Marilena Zeffiro  
Commission Number: #212 605

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
NO.: 500-11-062556-234  
ESTATE NO.: 41-

SUPERIOR COURT  
(Commercial Division)  
*(Bankruptcy and Insolvency Act, R.S.C. 1985,  
c. B-3, as amended)*

IN THE MATTER OF THE RECEIVERSHIP OF:

9249206 CANADA INC.;

Debtor

-and-

MAYNBRIDGE CAPITAL INC.;

Petitioner/Secured Creditor

-and-

KPMG INC.;

Proposed Receiver

NOTICE OF PRESENTATION

TO:

9249206 CANADA INC.

148, rue de Maremme  
Gatineau QC J9J 0R4

Attention: Mr Pascal Proulx  
[pascal@carrerfamilyoffice.com](mailto:pascal@carrerfamilyoffice.com)

MINISTRE DU REVENU DU QUÉBEC

(dossier CQ-392423-23)  
3800, rue de Marly, Secteur 5-2-8  
Québec, QC G1X 4A5

Attention: Louise Brochu (C65-7N)

THE SUPERINTENDENT OF  
BANKRUPTCY

[osbservice-bsfservice@ised-isde.gc.ca](mailto:osbservice-bsfservice@ised-isde.gc.ca)

**TAKE NOTICE** that the *Motion to Appoint a Receiver* shall be presented before the Commercial Division of the Superior Court of Québec in and for the district of Montréal, at the Montréal Courthouse situated at 1 Notre-Dame Street East, Montréal, on **July 11, 2023**, at **8:45 a.m.** in room 16.10.

MONTREAL, June 30, 2023



**KUGLER KANDESTIN LLP**

Attorneys for Petitioner

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CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
NO.: 500-11-062556-234  
ESTATE NO.: 41-

SUPERIOR COURT  
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(*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended)

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MAYNBRIDGE CAPITAL INC.;

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-and-

KPMG INC.;

Proposed Receiver

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LIST OF EXHIBITS IN SUPPORT OF THE MOTION TO APPOINT A RECEIVER

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|-----------------------------------|--|
| Exhibit P-1:                      | Search Summary;  |
| Exhibit P-2:                      | Draft Order;   |
| Exhibit P-3:                      | Statement of Account;                                      |
| Exhibit P-4 ( <i>en liasse</i> ): | Corporate Searches (information statements);               |
| Exhibit P-5 (under seal):         | Credit Agreement;  |
| Exhibit P-6:                      | Deed of Hypothec;  |
| Exhibit P-7 ( <i>en liasse</i> ): | Demand Notices, Prior Notice and s. 244 <i>BIA</i> Notice; |
| Exhibit P-8:                      | Forbearance Agreement;                                     |
| Exhibit P-9:                      | Notice of default under Forbearance Agreement;             |
| Exhibit P-10:                     | Draft Order compared to the template receivership order;   |

MONTREAL, June 30, 2023



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**KUGLER KANDESTIN LLP**

Attorneys for Petitioner

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**No.: 500-11-062556-234**

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**SUPERIOR COURT**  
(Commercial Division)  
District of Montreal

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

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Debtor

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**KPMG INC.**, in its capacity as proposed receiver pursuant to the  
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**MOTION TO APPOINT A RECEIVER**  
**(Section 243 of the *Bankruptcy and Insolvency***  
**Act, R.S.C. 1985, c. B-3)**

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**ORIGINAL**

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