

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-057549-194

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PLAN OF
ARRANGEMENT OF:

9227-1584 QUÉBEC INC.

Debtor

-and-
KPMG

Monitor

-and-
MARC-ANDRÉ NADON
-and-
9325-7277 QUÉBEC INC.

Petitioners/Sponsors

-and-
110302 CANADA INC
-and-
MTRE ARTHUR H. STECKLER

Impleaded Parties

MOTION TO AUTHORIZE THE FILING OF A PLAN

(Sec. 4, 5, 6, 9, 11 and 22 of the *Companies' Creditors Arrangement Act*
R.S.C. 1985, c. C-36)

**TO THE HONOURABLE PETER KALICHMAN, J.S.C., SITTING IN AND FOR THE
COMMERCIAL DIVISION IN THE JUDICIAL DISTRICT OF MONTREAL, PETITIONERS
RESPECTFULLY SUBMIT AS FOLLOWS:**

I. ORDER SOUGHT

1. By the present motion (the "**Motion**"), the Petitioners, Marc-André Nadon ("**Mr. Nadon**") and 9325-7277 Quebec Inc. ("**9325**", collectively with Mr. Nadon, the "**Petitioners**"), seek the issuance of an order authorizing the filing of a plan of compromise and arrangement (the "**Nadon Plan**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), a copy of which is communicated as **Exhibit R-1**¹.

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Nadon Plan (R-1) or in the Initial Order.

II. BACKGROUND AND CONTEXT

A. Factual context and corporate history

2. 9227-1584 Québec Inc. (“**9227**” or the “**Debtor**”), was incorporated for the purposes of acting as a nominee (prête-nom or mandatary) for the beneficial interest of Canada Inc., represented by Steckler, and its other shareholder/undivided co-owner, 9325-7277 Québec Inc. (“**9325**”), represented by Nadon.
3. The Debtor’s mandate was to act as the nominee for 9325 and Canada Inc. for the purposes of the realisation of a complex and multifaceted, mixed-used construction and development project in the City of Candiac, Québec, commonly known as the Square Candiac Project (the “**Square Candiac Project**” or the “**Project**”), which is completed of five phases as follows:
 - a) Phase A (or Sector 5): detained by 9227 and subject to an Offer to Purchase, as discussed below (the April 7 Offer);
 - b) Phase B: detained by 9227 and subject to an Offer to Purchase by 9325;
 - c) Phase C: sold to a third party;
 - d) Phase D: to be sold imminently to a third party (see schedule B of the Tenth Monitor’s Report);
 - e) Phase E: to be sold imminently to a third party (see schedule A of the Tenth Monitor’s Report)
 - f) PUC Lots: partially detained by 9227 and subject to an Offer to Purchase by 9344-8181 Québec Inc. the Outstanding Litigation (as defined below) and the Settlement Offer (as defined below).

as appears from an extract of the Information Pamphlet (Schedule A of the Fourth Monitor’s Report), **Exhibit R-2**.

4. Canada Inc. is the undivided beneficial owner of 75% of the assets of 9227, while 9325, represented by Mr. Nadon, holds a 25% equity interest and undivided beneficial interest in and to the assets of 9227 (Canada Inc. and 9325 being together the “**Undivided Co-Owners**”): furthermore, Nadon was granted exclusive responsibility for and was to assume carriage of all aspects of the Project but was ultimately prevented to do so.
5. On October 8, 2019, the Honourable Justice Castonguay, J.S.C., granted Canada Inc.’s Motion for the Appointment of an Administrative Agent and Manager and for the Issuance of Other Orders for Redress and appointed KPMG as administrative agent and receiver in the Court file bearing number 500-11-057283-190².

² Although the Motion was not opposed by Nadon, it was done without admission.

6. On July 15, 2019, Canada Inc. sent to 9335 its sixty day notice pursuant to Article 7 of the Indivision Agreement (Convention d'indivision) entered into on July 24, 2015 between Canada Inc., 9325 and 9227 to end the indivision and seek the partition of the Project.
7. On or around October 7, 2019, Canada Inc. filed a *Demande de partage de biens indivis* (the "**Partition Motion**") in the Court file bearing number: 500-17-109853-195, in order to proceed to the partition of the Debtor's assets (the "**Partition Process**").
8. By judgment rendered on October 23, 2019, the Honourable Justice Chantal Corriveau transferred the said partition proceedings to the Commercial Division, and joined them with the aforementioned proceedings bearing number 500-11-057083-190.
9. On November 22, 2019, the Honourable Peter Kalichman, J.C.S., issued an Initial Order at request of KPMG pursuant to the CCAA (as rectified on November 25, 2019, amended and restated on December 22, 2019 and January 20, 2020, and corrected on March 20, 2020, the "**Initial Order**").
10. Pursuant to the Initial Order, KPMG was appointed Monitor of both 9227 and 9336-9262 Québec Inc. ("**9336**").
11. On January 30, 2020, this Court authorized 9227 to borrow from Caisse Desjardins de Terrebonne (the "**Caisse**") up to \$3.3 million (the "**DIP Loan**") on an interim basis secured by a superiority charge of \$5 million (the "**DIP Charge**"), which is currently repaid in full and unused (Monitor's Tenth Report dated March 25, 2021).
12. On or about March 10, 2020, the Monitor retained the services of NAI Terramont Commercial ("**NAI**"), in order to implement a sale and solicitation process pertaining to the assets of 9227 (Monitor's Third Report dated April 3, 2020).
13. On May 21, 2020, this Court issued a Claims Procedure Order, inter alia, approving a claims procedure for the filing, review, termination and adjudication of claims against the Debtors and their respective directors and officers (the "**Claims Procedural Order**").
14. On August 11, 2020, the Monitor, on behalf of 9227 and pursuant to its powers under the Initial Order, filed a motion for declaratory judgment, safeguard order, and Paulian action, wherein, inter alia, the Monitor seeks the nullity of various transactions concluded between Mr. Nadon and his companies (including 9325 and 9345-7406 Québec Inc.), on one hand, and 9361-4048 Québec Inc. ("**JMJ Immobilier**"), PUC, and 9173-5670 Québec Inc., and that certain assets, including share capital and moneys, be repatriated into the patrimony of 9227 ("**Motion for Declaratory Judgment**"), which proceedings are contested and pending.
15. On August 28, 2020, the Monitor, on behalf of 9227 and pursuant to its powers under the Initial Order, filed a Motion for Directions in respect of the interpretation

to be made of certain contracts concluded with PUC, including in respect of contracts affecting the Disclaimed Lots, wherein the Monitor is seeking, inter alia, a declaration that PUC is indebted towards 9227 in the approximate amount of \$490,130, plus interest at the rate of 4% per annum (the “**Motion for Directions**”), which proceedings are contested and pending.

16. On September 4, 2020, the Monitor, on behalf of 9227 and pursuant to its powers under the Initial Order, filed a motion for payment of overdue rent and in respect of other rights and obligations relating to contract of lease entered into with Groupe XPansion Inc. wherein the Monitor, on behalf of 9227, is claiming the payment of the approximate sum of \$648,097 (the “**Motion for Unpaid Rent**”, and, together with the Motion for Declaratory Judgment and the Motion for Directions, the “**9227 Retained Claims**”), which proceedings are contested and pending.
17. On November 2, 2020, the Monitor issued a Notice of Disclaimer pursuant to subsection 32(1) CCAA (“**Notice of Disclaimer**”) in respect of a certain offer to purchase entered into on or around August 17, 2016 (the “**Disclaimed Offer to Purchase**”), between 9227, on one hand, and 9344-8181 Québec Inc. (“PUC”), in respect of lots 6 073 693 (Lot L), 6 073 665 (Lot J), and 6 073 694 (Lot M), (together the “Disclaimed Lots”).
18. On or around November 26, 2020, PUC filed a contestation of the Monitor’s Notice of Disclaimer in respect of the Disclaimed Offer to Purchase, and on January 27, 2021, filed an amended contestation (the “**Disclaimer Contestation**” and, together with the Partition Motion, the “**Outstanding Litigation**”). These proceedings are contested and pending.
19. Petitioners understand that the Debtor/Monitor requested an extension of the Stay of Proceedings as regards to 9336 for the sole purpose of enabling the parties to conclude and execute the necessary documentation to give effect to the agreement in principle and to terminate the present CCAA proceedings with respect to 9336.
20. On March 31, 2021, the Honourable Peter Kalichman, J.C.S., issued a Plan Filing and Meeting Order as amended on April 14, 2021 authorizing the filing by Canada Inc. and Steckler of a plan of arrangement and compromise dated March 25, 2021 (as amended on March 31, 2021, the “**Steckler Plan**”).
21. On that same date, the Honourable Peter Kalichman, J.C.S. also reserved the right of Mr. Nadon to communicate a competing plan on or before April 15, 2021, the filing of which is to be authorized by the Court on April 19, 2021.

B. Recent events leading to the filing of the Nadon Plan

22. Notwithstanding the fact that an agreement in principle has been reached more than a month ago with respect to 9336 as mentioned above, it shall be noted that Mr. Steckler still neglects or refuses to fulfill his obligations regarding that settlement.

23. Petitioners have made with prejudice offers on March 30, April 8 and April 9, 2021 to Mr. Steckler, with a copy to the Monitor, that would have allowed for the resolution of the Partition Motion and of the deadlock that has and continues to delay the payment by 9227 of its creditors. Said offers were turned down as Mr. Steckler insists instead on the terms of its Plan.
24. Creditors should also be made aware that the Monitor has recently received different offers that would allow for the prompt repayment of all creditors instead of allowing Mr. Steckler to continue proceedings with no clear end in sight and unduly delaying creditor recoveries without any potential upside for them, which offers form part of the Nadon Plan described below.

III. OVERVIEW OF THE COMPETING PLANS

A. The Steckler Plan

25. Petitioners submits that the Steckler Plan is both highly conditional, thus offering little or no certainty to the Affected Creditors as to when they will be paid, and aims at pursuing different litigious claims under the CCAA, while 9227 shall no longer be considered as insolvent and there exists no valid reason to further delay the repayment of the Affected Creditors in capital and interest.
26. The implementation of the Steckler Plan is conditional upon the satisfaction of many conditions some of which may well take very long to be fulfilled or which may well never be fulfilled, satisfied, or waived, including the:
 - a) Final Order of the Court granting the Partition Motion strictly in accordance with its terms or settlement of the Partition Motion on terms satisfactory to the Steckler Sponsors in their sole discretion;
 - b) Closing of the Financing in accordance with a Letter of Intent which expires on June 30, 2021 unless the Financing is advanced by that date - said Letter of Intent has not been shared with the Court or with the creditors – however, the Steckler Sponsors mention that intrinsic to the terms of the Financing is the condition that the Partition Process will have been completed and that the Notice of Disclaimer issued by the Monitor be upheld by the Court by that same date;
 - c) Completion at the sole discretion of the Steckler Sponsors of a Reorganization in accordance with a Reorganization Step Notice, which has not been provided to the Court or to the creditors and which may be amended at all times by the Steckler Sponsors.
27. The Steckler Plan provides a June 21, 2021 outside date, which outside date may be extended at will by the Steckler Sponsors in their sole and absolute discretion.
28. Considering the above, Petitioners respectfully submit that the Steckler Plan constitutes an attempt by Steckler to control and subvert the CCAA process at the

expense of 9227 and its creditors to fuel litigation, which may only at best serve to satisfy Steckler's litigious and quarrelsome instincts.

29. Irrespective of their own plan, Petitioners are of the view that creditors should vote against the Steckler Plan and insist instead on the sale of the remaining assets of 9227 on the basis of offers received by the Monitor, the whole as described below in connection with the Nadon Plan.

B. The Nadon Plan

30. The Nadon Plan is based on the fact that the actual realization value of the assets of 9227 currently estimated at a gross amount of \$29,795,000 is more than sufficient to repay in full the creditors of 9227.
31. The Nadon Plan is fairly simple:
- a) sell the remaining assets of 9227 based on existing offers;
 - b) repay in full the Affected Creditors in capital together with pre-filing interest and post filing interest calculated at the legal rate of 5% per annum and a maximum amount of \$25,000 per Affected Creditor with respect to legal fees, if any, incurred since November 22, 2019 in connection with the CCAA Proceedings or the repayment of its Claim, upon providing satisfactory invoices and proofs of payment.
32. Moreover, since the Nadon Plan is based on the closing of sale transactions for all the remaining properties of the Project, the partition process could simply be resolved by the sharing of the surplus or the remaining equity between the Undivided Co-Owners on a 75% - 25% basis, rendering the Partition Motion and the need for further litigation moot.
33. The Nadon Plan is supported by offers to purchase that were presented to the Monitor, *en liasse*, as **Exhibit R-3** and **R-4**³.
34. The Nadon Plan further provides for the full settlement of the 9227 Retained Claims and Outstanding Litigation, which shall serve not as an excuse or a shield to delay creditor repayment.
35. As explained above the Nadon Plan also offers an efficient process to end the Partition Motion, which should be used as an excuse, a shield or sword by Mr. Steckler in its attempts to exhaust financially Mr. Nadon.
36. The interests of the Affected Creditors are clearly aligned with those of Mr. Nadon: sell the remaining assets of 9227, repay in full the creditors and repay Mr. Nadon's equity interest as soon as possible, the whole without further litigation.

³ Copy of which are to be filed under seal.

37. In consideration for the settlement of the 9227 Retained Claims and Outstanding Litigation, 9344-8181 Quebec Inc. has presented to the Monitor a settlement offer in the amount of \$1,000,000, which amount is to be contributed under the Nadon Plan in exchange for third party releases in its favour, which offers form part of the Nadon Plan.
38. Pursuant to the Plan, all of the Company's Affected Creditors are included in one class of creditors for the purpose of considering and voting on the Plan, seeing they will each be paid 100% of their Proven Claims, including interest, such that the validity of any construction hypothec is irrelevant.
39. Once duly approved by the Affected Creditors and sanctioned by the Court, the Nadon Plan provides that the Monitor should pay forthwith in full the government priority claims, if any.
40. Furthermore, once the sale of Phase A (also referred to as Sector 5), Phase B and the PUC lots have been completed, Affected Creditors will be paid in full in capital, interest and legal fees (up to a \$25,000 limit subject to providing proper invoices and proofs of payment), the whole as provided by the Nadon Plan.
41. The Nadon Plan contains a prohibition against the assignment or division of claims for purposes of voting is especially warranted in the circumstances, where the numerous overlapping interests, non-arms length's relationships, outstanding litigation and other extenuating circumstances justify precluding the assignment, division or disposition of claims for the purposes of the vote at the Meeting.

IV. MEETING OF CREDITORS

42. The Court has already issued on March 31, 2021 a Plan Filing and Meeting Order concerning the Steckler Plan.
43. Petitioners submit that there should only be a single meeting of creditors to deal with the Steckler Plan and the Nadon Plan, and that to avoid confusion the Monitor should prepare a single mailing with both plans and proper instructions to the Affected Creditors inviting them to accept only one plan or to reject both plans.
44. Petitioners submit that the Monitor should prepare in conjunction with counsel for the Petitioners and Mis en Cause revised forms and mailing materials.
45. In light of the foregoing, Petitioners respectfully prays this Court to grant this Motion in accordance with its conclusions.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [A] GRANT** the present Motion.
- [B] AUTHORIZE** the filing of the plan of compromise and arrangement dated April 15, 2021 filed as Exhibit R-1 (the "**Nadon Plan**").

- [C] ORDER** the Monitor in conjunction with Petitioners and Mis en Cause to prepare revised forms and mailing materials to be sent in conjunction of a single meeting of creditors to vote on the Nadon Plan and the plan of compromise and arrangement dated March 25, 2021, as amended March 31, 2021.
- [D] AMEND** the Plan Filing and Meeting Order previously rendered on March 31, 2021 (as amended on April 14, 2021), as may be required by Petitioners, Mis en Cause and the Monitor should the Court authorize the filing of the Nadon Plan.
- [E] THE WHOLE** without judicial costs.

Montréal, April 15, 2021

Montréal, April 15, 2021

Arnault Thibault Cléroux

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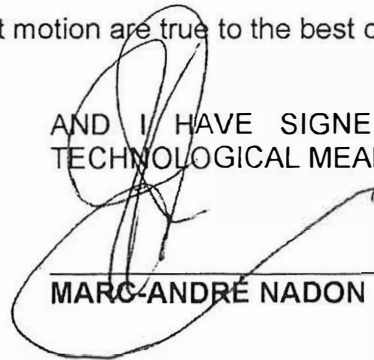
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SWORN AFFIDAVIT

I, the undersigned, **MARC-ANDRÉ NADON**, businessman, residing and domiciled at 51, Sauverny Street, in the city of Candiac, district of Montreal, province of Quebec, J5R 0B9, solemnly declare as follows:

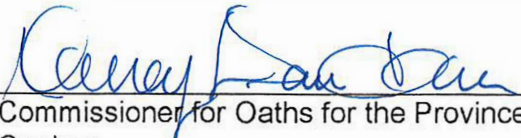
1. I am one of the Applicants and a duly authorized representative of 9325-7277 Québec Inc.;
2. All the facts alleged in the present motion are true to the best of my knowledge.

AND I HAVE SIGNED BY WAY OF
TECHNOLOGICAL MEANS IN MONTREAL



MARC-ANDRÉ NADON

Solemnly affirmed by way of technological means in Montreal on April 15th, 2021



Commissioner for Oaths for the Province of Quebec



NOTICE OF PRESENTATION

TO: SERVICE LIST

1. **TAKE NOTICE** that the present *Application for the issuance of a plan filing and meeting order* will be presented for adjudication **virtually** before the Honourable Peter Kalichman, J.S.C., or another Justice of the Superior Court of Québec, sitting in the commercial division for the district of Montréal on **April 20, 2021 at 9:15 a.m. in room 16.03** or so soon thereafter as counsel may be heard, in a forum to be further announced to the Service List.

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION

The coordinates to join the calling of the roll in room 16.03 are as follows:

a) **Using Teams:** to open the permanent link established for room 16.03, click [here](#)⁴;

You must then fill in your name and click “Join Now”. In order to facilitate the process and the identification of the parties, we invite you to fill in your name in the following manner:

Attorneys: Mtre. Name, Surname (name of the party being represented)

Parties not represented by an attorney: Name, Surname (specify: Plaintiff, Defendant or other)

For persons attending a public hearing: you can simply indicate “public”.

b) **By telephone:**

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

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

Conference ID: 470 980 973#

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

VTC Conference ID: 1197347661

⁴ The permanent links for the Montreal courthouse rooms can also be found in the document entitled *Liens TEAMS pour rejoindre les salles du Palais de justice de Montréal en matière commerciale, civile et familiale* under the heading *Audiences virtuelles* found on the Superior Court of Québec website at: <https://coursuperieureduquebec.ca/roles-de-la-cour/audiences-virtuelles>.

d) **In person**, if and only if the above-mentioned means are not available.

3. FAILURE TO ATTEND THE CALLING OF THE ROLL IN PRACTICE DIVISION

TAKE NOTICE that should you fail to attend the calling of the roll, a judgment by default could be rendered against you, without further notice or delay.

4. OBLIGATIONS

1.1 Duty of cooperation

TAKE NOTICE that you 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 to make sure that relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

1.2 Dispute prevention and resolution processes

TAKE NOTICE that before referring your dispute to the courts, you must consider private dispute prevention and resolution processes which are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 1 and 2).

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, April 15, 2021

Montréal, April 15, 2021

Arnauld Thibault Cléroux

ARNAULT THIBAUT CLÉROUX

AVOCATS S.E.N.C.

Me Stéphane Cléroux

Me Samuel Nadeau

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LIST OF EXHIBITS

- EXHIBIT R-1:** Nadon Plan;
- EXHIBIT R-2:** Extract of the Information Pamphlet (Schedule A of the Fourth Monitor's Report);
- EXHIBIT R-3:** *En liasse*, offers to purchase presented to the Monitor;
- EXHIBIT R-4:** Confidential offer to purchase presented to the Monitor (**under seal**);

Montréal, April 15, 2021

Montréal, April 15, 2021

Arnauld Thibault Cléroux

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SUPERIOR COURT
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M^{TRE} ARTHUR H. STECKLER

Impleaded Parties

MOTION TO AUTHORIZE THE FILING OF A
PLAN, NOTICE OF PRESENTATION AND
LIST OF EXHIBITS

ORIGINAL

Me Stéphane Cléroux
Me Samuel Nadeau
N/D : 3439-003



A R N A U L T T H I B A U L T C L É R O U X

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