

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUEBEC
DISTRICT OF GATINEAU

IN THE MATTER OF THE
RECEIVERSHIP OF:

N°: 550-11-018614-231

9249206 CANADA INC.

Debtor

-and-

KPMG INC.

Receiver

-and-

THE OTHER PARTIES NAMED IN THE
SERVICE LIST

Impleaded Parties

RECEIVER'S MOTION FOR DIRECTIONS
(s. 249 of the *Bankruptcy and Insolvency Act*)
(Relating to Proceeding No. 9)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF GATINEAU, IN SUPPORT
OF ITS MOTION, YOUR RECEIVER RESPECTFULLY SUBMITS AS FOLLOWS:

A. The Parties:

1. The Debtor is a single purpose corporation created in order to acquire vacant land and develop a real estate project in the City of Gatineau, Province of Quebec, the whole as evidenced from extracts of the Debtor's entries in the Quebec Enterprise Registry, communicated herewith **Exhibit R-1**.
2. On July 21st, 2023, and rectified on July 26th, 2023, this Honourable Court granted Maynbridge Capital Inc.'s ("**Maynbridge**") Motion and issued an Order Appointing a Receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "**BIA**"), and thereby appointed your Receiver as receiver to the Property (as defined therein) of the Debtor (the "**Receivership Order**"), the whole

as appears from a copy of the Receivership Order, communicated herewith as **Exhibit R-2**, the original of which is duly filed in the present Court Record.

3. The Impleaded Parties are the entities that submitted an Offer (as defined herein) to the Receiver in the context of its prior sales process.

B. Facts Underlying Need for Directions:

4. As appears from the Receivership Order, Exhibit R-2, this Honourable Court ordered, *inter alia*, the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property (as defined therein), to the place of business and to the premises of the Debtor, as well as to the Records (as defined therein), and for same to also cooperate with the Receiver in the exercise of the powers granted pursuant to the terms of the said Receivership Order.
5. Given the foregoing, on or around July 24th, 2023, one of the Receiver's agents, Ms. Jacqueline Shellon, wrote to Mr. Pascal Proulx, sole director, officer and shareholder of the Debtor herein, to provide same with a copy of the Receivership Order (although same was represented by counsel, Me Anthony Robert, who received a copy of the Receivership Order directly from this Honourable Court), and further requested that same provide the Receiver with the Records, the whole as evidenced from a copy of an email, dated July 24th, 2023, communicated herewith as **Exhibit R-3**.
6. On or around July 25th, 2023, given the failure to receive a reply – and any of the Records referred to in the Receivership Order – Ms. Shellon once again wrote the Debtor's Mr. Proulx to follow-up on the transmission of the Records, reminding the latter therein of the tenets of the obligations imposed by this Honourable Court in paragraphs 19 – 21 of the Receivership Order, the whole as evidenced from a copy of an email, dated July 25th, 2023, communicated herewith as **Exhibit R-4**.
7. On or around August 10th, 2023, given the fact that the Debtor still had not furnished the Records nor complied with other access requirements imposed by this Honourable Court under the provisions of the Receivership Order, Ms. Shellon once again wrote the Debtor's Mr. Proulx to again follow-up on the foregoing requests, but your Receiver did not receive a response from the Debtor, the whole as evidenced from a copy of an email, dated August 10th, 2023, communicated herewith as **Exhibit R-5**.
8. On or around August 25th, 2023, given the foregoing impasse, the Receiver, acting through your undersigned attorneys, served the Debtor with a formal Demand Letter that included a copy of the Receivership Order – with the Debtor's attorney in carbon copy thereto – summoning the latter to immediately comply with all obligations imposed by this Honourable Court under the provisions of the Receivership Order, including without limitation, to furnish to the Records to the

Receiver, provide all requisite access to the Debtor's place of business, cooperate in all aspects with the Receiver and confirm compliance of same in writing within twenty-four (24) hours of reception thereof, failing which, further proceedings would ensue, the whole as evidenced from copies of the Demand Letter, the bailiff's minutes of service and the email transmission of same to Debtor's attorney, communicated herewith as **Exhibit R-6 (en liasse)**.

9. On or around September 22nd, 2023, independent of the Debtor's aforesaid lack of collaboration herein, the Receiver sent the Debtor another letter seeking, *inter alia*, that the latter confirm and undertake to fully acquit any and all costs necessitated to complete and obtain a Phase II environmental report and biogas study required for same, as same would aid the Receiver likely maximizing any realization of the Property, the whole as evidenced from copies of a letter, dated September 22nd, 2023, the bailiff's minutes of service and the email transmission of same to Debtor's attorney, communicated herewith as **Exhibit R-7 (en liasse)**.
10. It bears noting that the Receiver obtained no response from the Debtor nor its then-attorney in respect of the prior letters issued.
11. On or around December 11th, 2023, as contemplated in the Receivership Order, the Receiver proceeded to mandate Mr. Richard Sauvé, of NAI Terramont Commercial ("**NAI**"), to market and obtain offers for the sale of the Property.
12. On or around December 21st, 2023, NAI formally marketed and publicly listed the Property and began to canvas the market for potential interested buyers, the whole as evidenced from a copy of the Listing Brochure for the Property, communicated herewith as **Exhibit R-8**.
13. Initially, NAI advised the Receiver that it would require approximately two (2) months to properly canvass the market, and as such, that the latter should provide for a late-February 2024 deadline for the reception of offers from any interested third parties, with any offers to be submitted on the template offer form provided (the "**Offer Template**"), the whole as evidenced from a copy of the Offer Template, communicated herewith as **Exhibit R-9**.
14. In this regard, it is to be noted that NAI explicitly advised the Receiver that the conditions for any contemplated sale should include a due diligence period in order to maximize the quantum of any offer, given the fact that the Property was contaminated and the latter did not possess a completed Phase II environmental report nor a biogas study related to same.
15. Upon this premise, the Receiver instructed NAI to inform any interested third parties that the deadline to submit offers would be February 23rd, 2024.

16. On or around February 1st, 2024, the secured creditor that obtained the Receivership Order herein, Maynbridge, assigned its secured claim to 8944989 Canada Inc. (“894”), who thereafter notified, *inter alia*, the Debtor and the Receiver herein, the whole as evidenced from copies of the Deed of Assignment of Secured Claims, dated February 1st, 2024, and the Notice of Assignment of a Secured Claim, dated February 5th, 2024, communicated herewith as **Exhibit R-10 (en liasse)**.
17. On or around February 9th, 2024, the Receiver obtained information that the Debtor’s prior attorney of record, Me Anthony Robert, ceased representing the latter herein, the whole as evidenced from an email exchange between Me Robert and Me Alexandre Forest, dated February 9th, 2024, communicated herewith as **Exhibit R-11**.
18. On or around February 15th, 2024, the Receiver was surprised to learn from Me Forest, the attorney for 894, that a notary, Me John Lapierre, had informed the latter that the Property – which was and still is encompassed by the Receivership Order – was slated to be sold by the Debtor to an unknown third party, and this, without the knowledge of consent of the Receiver, prompting the latter to inform Notary Lapierre of same and seeking, *inter alia*, that same furnish any and all documentary information concerning the envisioned sale without delay, the whole as evidenced from copies of a letter from Me Chine to Me Lapierre, dated February 15th, 2024, and an email exchange between Me Forest and Me Lapierre, communicated herewith as **Exhibit R-12 (en liasse)**.
19. To wit, as appears from Exhibit R-12, the Receiver explicitly requested the following information:
 - a. The fully executed promise to purchase and any annexes thereto;
 - b. A draft deed of sale;
 - c. All demographic contact information on the envisioned purchaser;
 - d. Any prior offers and counter-offers; and
 - e. Any relevant correspondences exchanged between the envisioned purchaser and the Debtor.

(collectively, the “**Desired Information**”).
20. On or around February 21st, 2024, despite an acknowledgement of receipt of the aforementioned letter from Notary Lapierre, no subsequent answer was provided thereto, including any transmission of the Desired Information sought, and as such, a follow-up email was sent by your undersigned counsel to Notary Lapierre, the

whole as evidenced from a copy of an email from Me Chine, dated February 21st, 2024, communicated herewith as **Exhibit R-13**.

21. On or around that same day, Notary Lapierre replied to your undersigned counsel, stating that the Debtor was informed of the foregoing request, but that same was consulting with legal counsel; however, same did not furnish any particulars as to the identity of the Debtor's new legal counsel, and this, despite an earlier request from Me Forest, the whole as evidenced from a copy of an email from Me Lapierre, dated February 21st, 2024, communicated herewith as **Exhibit R-14**.
22. On February 23rd, 2024, in accordance with the deadline to submit offers communicated by NAI, the Receiver, via NAI, received a number of offers for the Property; however, upon analysing same, discovered that some offerees had elected to strike the portions concerning any due diligence period, thereby equating an unconditional offer of purchase for the Property, but others that were subject to a due diligence period were higher in quantum (collectively, the "Offers" and each, an "Offer"), the whole as evidenced from copies of the Offers obtained, communicated herewith **under seal as Exhibit R-15 (en liasse)**.
23. On or around February 25th, 2024, given that no follow-up was received from Notary Lapierre, the Receiver, via its undersigned counsel, notified same with a further formal demand to obtain the Desired Information and following reception of an automated reply from Notary Lapierre, the formal demand was further notified to the individual stated in said reply, Me Isabelle Lanthier, the whole as evidenced from copies of a letter from Me Chine, dated February 25th, 2024, the automated email reply of Notary Lapierre and an email from Me Chine to Me Lanthier, dated February 26th, 2024, communicated herewith as **Exhibit R-16 (en liasse)**.
24. On or around February 28th, 2024, counsel for the Receiver was informed that the Debtor was represented anew by Me Robert, but that despite the intervention of the latter, the Receiver would still not obtain the collaboration of the Debtor, including without limitation, reception of the Desired Information, the whole as evidenced from a copy of an email from Me Robert, dated February 28th, 2024, communicated herewith as **Exhibit R-17**.
25. As of present date, the Receiver has not obtained the Desired Information.

C. Directions and Remedies Sought:

26. In light of the fact that the Offers are not all premised upon the same conditions of sale, the Receiver has decided, out of an abundance of caution and with the intention of maximizing the proceeds of sale of the Property, to reject all of the Offers and seek the directions of this Honourable Court as to the modalities of the sales process.

27. Namely, the Receiver is of the opinion that this Honourable Court should direct same to hold an auction that is to be held pursuant to the modalities enumerated in the document entitled 'Auction Rules' (the "**Auction Rules**"), which is communicated herewith as **Exhibit R-18**, in order to adjudicate/determine the entity that shall obtain the right to purchase the Property (collectively, the "**Auction**").
28. Additionally, given the persistent lack of collaboration of the Debtor in respecting the entirety of its obligations pursuant to the Receivership Order, including without limitation, to furnish forthwith to the Receiver any and all information concerning the Property, the Receiver respectfully submits that this Honourable Court should not hesitate to order the Debtor to furnish same without delay, the whole in order for the Receiver to be able to thereafter render same available for consultation via a virtual data room by the Qualified Bidders prior to the commencement of the Auction.
29. Lastly, given the additional work and costs occasioned by the obstructionism of the Debtor, the discovery of the extent of the biogas issue and the pending Auction process, the Receiver respectfully requests that this Honourable Court increases the Administration Charge (as defined at paragraph 30 of the Receivership Order) to the aggregate amount of One Hundred Fifty Thousand Dollars (\$150,000.00), representing a Fifty Thousand Dollar (\$50,000.00) increase.
30. Accordingly, the Receiver respectfully requests that this Honourable Court issue Directives in the form of the Draft Order communicated herewith as **Exhibit R-19**, ordering the Receiver to conduct an Auction for the sale of the Property in accordance with the Auction Rules enumerated herein.
31. Furthermore, given the time-sensitive nature of the envisioned relief sought herein, the Receiver respectfully submits that this Honourable Court, in issuing the Order sought herein by way of Directives, further order provisional execution notwithstanding any appeal and without the necessity to furnish any suretyship thereon.
32. The present Motion is well-founded in fact and in law.

WHEREFORE, BY JUDGMENT TO BE RENDERED HEREIN, THE RECEIVER PRAYS THIS HONOURABLE COURT TO:

33. **GRANT** the Receiver's Motion for Directions;
34. **SHORTEN** the delays for service and presentation of the present Motion, if necessary;

35. **ISSUE** an Order in the form of the Draft Order, communicated herewith as **Exhibit R-19**, directing the Receiver to conduct an Auction for the sale of the Property in accordance with the Auction Rules enumerated in **Exhibit R-18**;
36. **RENDER** any other remedies, directions or orders that this Honourable Court considers appropriate and necessary for the protection of the Receiver's rights under the *BIA*, at law or in equity;
37. **ORDER** the provisional execution of the Judgment to intervene herein notwithstanding any appeal and without the necessity to furnish any suretyship thereon;
38. **THE WHOLE** with costs against the mass, save in the event of any contestation, at which point, the whole with costs against any contesting party.

Westmount, March 1st, 2024.



STEIN & STEIN INC.

Attorneys for the Receiver

Me Nicholas Chine

T: 514-866-9806

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AFFIDAVIT

I, the undersigned, **DAVID E. MALIN**, Receiver, having my professional domicile at 600, De Maisonneuve Boulevard West, Suite 1500, in the City of Montreal, District of Montreal, Province of Quebec, H3A 0A3, do solemnly affirm **THAT**:

- a. I am the duly appointed Receiver to the Property of the Debtor herein and am duly authorized for all purposes; and
- b. All the facts alleged in the foregoing *Receiver's Motion for Directions* are true and correct.

AND I HAVE SIGNED



DAVID E. MALIN

SOLEMNLY AFFIRMED before me this 1st day of March, 2024, by David E. Malin, whose oath was taken in the City of Montreal and received in the City of Westmount, Province of Quebec, the whole by technological means and in accordance with the memorandum of the Quebec Ministry of Justice dated March 20th, 2020.



Commissioner of Oaths for all the Judicial Districts of the Province of Quebec



NOTICE OF PRESENTATION

TO: Me Anthony Robert
Attorney for Debtor
768, Saint-Joseph Blvd., Suite 115
Gatineau (Quebec) J8Y 4B8
E: anthonyrobert@sympatico.ca

TO: THE OTHER PARTIES NAMED IN THE SERVICE LIST

1. PRESENTATION OF THE MOTION

TAKE NOTE that the *Receiver's Motion for Directions* will be presented in the Commercial Practice Division of the Superior Court, in **courtroom #11** at the Gatineau Courthouse, located at 17, Laurier Street, in the City of Gatineau, Province of Quebec, J8X 4C1, on **March 13th, 2024**, at **9:00 a.m.**, or as soon as counsel may be heard.

Take note that you may attend the calling of the practice roll by either attending the courtroom in person or virtually as per the instructions below.

2. HOW TO ATTEND THE VIRTUAL CALLING OF THE ROLL FOR THE PRACTICE DIVISION

To attend the virtual calling of the roll in courtroom # 11:

a) **By Teams:** click on the link below for courtroom #11¹ (copy/paste the Teams link (Word format)):

[Rejoindre la réunion Microsoft Teams - SALLE #11 - Gatineau](#)

Fill in your name and click "Join Now". To facilitate the process and identification of the parties, enter your name as follows:

- For Lawyers: Me Given Name, Surname (the name of the party represented);
- For parties unrepresented by counsel: Given Name, Surname (indicate: Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opposant or other);
- For persons attending a public audition: the inscription can be limited to: (public).

¹ The list of the Teams hyperlinks to the virtual courtrooms at the Gatineau Courthouse is published on the Superior Court of Québec website and on the Barreau de l'Outaouais website.

b) By telephone:

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

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

Conference ID: 312 121 807#

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

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

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTICE that you are duty-bound to cooperate with the other parties and, in particular, to keep one another informed at all times of the facts and elements conducive to a fair debate and to make sure that all relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

4.2 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).

4.3 Directives

TAKE NOTE that you must comply with the Directives specific to Commercial matters for the District of Gatineau found on the Superior Court website and on the Barreau de l'Outaouais website.

DO GOVERN YOURSELVES ACCORDINGLY.

Westmount, March 1st, 2024.



STEIN & STEIN INC.

Attorneys for the Receiver

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Impleaded Party

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Impleaded Party

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Impleaded Party

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TO: 8944989 CANADA INC.

Attn: Me Alexandre Forest

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N^o. 550-11-018614-231

SUPERIOR COURT
(Commercial Division)
PROVINCE OF QUEBEC
DISTRICT OF GATINEAU

IN THE MATTER OF THE RECEIVERSHIP OF:

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Debtor

-and-

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THE OTHER PARTIES NAMED IN THE SERVICE LIST

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RECEIVER'S MOTION FOR DIRECTIONS

(s. 249 of the BIA)

CODE NO. BS0327

FILE NO. 10593-6

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