



ENTERED
10/29/2020

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: Q'MAX SOLUTIONS INC., Debtor in a Foreign Proceeding.	§ § § § § § § § §	Chapter 15 Case No. 20-34791 (MI)
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**ORDER GRANTING RECEIVER'S EMERGENCY VERIFIED PETITION FOR
(I) RECOGNITION OF FOREIGN MAIN PROCEEDING, (II) RECOGNITION OF
FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF
UNDER CHAPTER 15 OF THE BANKRUPTCY CODE
[Relates to Dkt. No. 3]**

KPMG Inc. ("KPMG"), solely in its capacity as court appointed receiver and manager ("Receiver" or "Foreign Representative") of Q'Max Solutions Inc. ("QSI" or the "Debtor"), and certain other related Canadian entities, pursuant to the *Consent Receivership Order* dated May 28, 2020 (the "Receivership Order"), entered by the Court of Queen's Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2001-06722 (the "Canadian Court" and the "Canadian Proceeding") pending under Canada's Bankruptcy and Insolvency Act ("BIA"), and as authorized foreign representative of the above captioned Debtor, filed its *Emergency Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Petition")¹ [Dkt. No. 3], in this chapter 15 proceeding.

¹ Capitalized terms not defined herein shall have the meaning ascribed in the Petition.

The Court finds that notice was proper, and that one objection was filed at Dkt. No. 46 and is denied except as set forth herein, for the reasons stated on the record, and that the relief requested in the Petition should be GRANTED.

This Court has considered the evidence admitted on the record, as well as all matters for which judicial notice was taken, and based on this Court's powers and discretion under sections 105, 1507, 1515, 1517, 1520, 1521, and 1524 of the Bankruptcy Code, and based on the evidence presented and arguments of counsel, and sufficient cause appearing therefor, the Court **FINDS AND CONCLUDES** as follows:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- B. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
- C. Venue is proper pursuant to 28 U.S.C. § 1410. This Court has the authority to enter a final order consistent with Article III of the United States Constitution.
- D. The Debtor is Q'Max Solutions Inc.
- E. On May 27, 2020, HSBC Bank Canada, as administrative agent ("HSBC" or the "Agent") for certain Lenders, filed an *Application for Appointment of a Receiver* seeking the appointment of KPMG as receiver under section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c, B-3, section 13(2) of the Judicature Act, R.S.A. 2000 c J-2 (the "Judicature Act"), and 65(7) of the Personal Property Security Act, R.S.A. 2000, c P-7.
- F. On May 28, 2020, the Honorable Justice Grosse for the Canadian Court entered the Receivership Order pursuant to section 243 of the BIA and section 13(2) of the Judicature Act.
- G. The Receiver is a "person" within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.
- H. This Court has constitutional authority to enter final orders in these cases under *Stern v. Marshall*, 564 U.S. 462 (2011), or, in the alternative, by consent of the parties. See *Executive Benefits Ins. Agency v. Arkinson*, 573 U.S. 25 (2014).
- I. The Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.

- J. As and to the extent set forth in this Order, the Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.
- K. As and to the extent set forth in this Order, the Canadian Proceeding is entitled to recognition as a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and section 1517(b)(1) of the Bankruptcy Code with respect to the Debtor. The Debtor's center of main interests is in Canada.
- L. The Receiver is entitled to relief afforded under section 1520 of the Bankruptcy Code.
- M. The Receiver, in its role as foreign representative of the Debtor, and the Debtor, is entitled to the full protections and rights available pursuant to section 1521 of the Bankruptcy Code.
- N. As and to the extent set forth in this Order, the relief granted is necessary and appropriate, in the interest of the public and international comity, consistent with the United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief.
- O. Permitting the Debtor's current cash management system to continue pursuant to existing agreements between the Debtor and its existing depository and disbursement banks (collectively, the "Banks") will facilitate the continued operations of the Debtor while the Canadian Proceeding and this proceeding are ongoing.
- P. In the Receivership Order, the Canadian Court granted the Receiver a charge (the "Receiver's Charge") on all of the Canadian Debtor's current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the "Property") to secure payment of the reasonable fees and expenses of the Receiver and its counsel, not to exceed CAD \$1,000,000 (or such greater amount as the Canadian Court may by further order authorize). The Receiver's Charge has the priority set forth in paragraph 18 of the Receivership Order.
- Q. In the Receivership Order, the Canadian Court also authorizes the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$8,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms set forth in paragraph 21 of the Receivership Order. The Canadian Court granted a charge (the "Receiver's Borrowings Charge") on the Property to secure payment of the monies borrowed, together with interest and charges thereon, by the Receiver pursuant to the Receivership Order.
- R. Consistent with section 14.06(1.2) of the BIA, the Receivership Order provides that "[t]he Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities . . . , other than such amounts as the Receiver

may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act . . .*” (the “Receiver’s Protections”).

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceeding is hereby recognized as foreign main proceeding pursuant to section 1517 of the Bankruptcy Code with respect to the Debtor.

2. The Receivership Order is consistent with the public policy of the United States and is, therefore, entitled to and hereby granted comity. The terms of the Receivership Order entered in the Canadian Proceeding under the BIA on May 28, 2020, are given full force and effect in the United States.

3. The Receiver is granted all of the relief afforded under section 1520 of the Bankruptcy Code, including the following:

- A. sections 361 and 362 apply with respect to the Debtor and the property of the Debtor that is within the territorial jurisdiction of the United States;
- B. sections 363, 549, and 552 apply to a transfer of an interest of the Debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- C. unless the court orders otherwise, the Receiver, as foreign representative, may operate the Debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
- D. section 552 applies to property of the Debtor that is within the territorial jurisdiction of the United States.

4. Pursuant to section 1524 of the Bankruptcy Code, the Receiver may intervene in any proceeding in a State or Federal court in the United States in which the Debtor is a party.

5. Pursuant to section 1523(a) of the Bankruptcy Code, the Receiver has standing in a case concerning the Debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553 and 724(a) of the Bankruptcy Code.

6. The following additional relief is granted pursuant to section 1521 of the Bankruptcy Code:

- A. The commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtor, including any action or proceeding against KPMG in its capacity as Receiver, to the extent not stayed under section 1520(a) of the Bankruptcy Code, is hereby stayed;
- B. Execution against the assets of the Debtor to the extent not stayed under section 1520(a) of the Bankruptcy Code is hereby stayed;
- C. The administration or realization of all or part of the assets of the Debtor within the territorial jurisdiction of the United States is hereby entrusted to the Receiver, and the terms of the Receivership Order shall apply to the Debtor, its creditors, the Receiver, and any other parties-in-interest, and the Receiver is authorized to implement the Receivership Order;
- D. The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtor to the extent not suspended under section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the Receiver or by Order of this Court;
- E. The Receiver's Charge, the Receiver's Borrowing Charge, and the Receiver's Protections are granted comity and are given full force and effect in the United States on a final basis;
- F. The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtor; and
- G. Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and, upon its entry, shall become final and appealable.

7. All prior relief granted in the *Order Granting Receiver's Request for Provisional Relief Pursuant to 11 U.S.C. § 1519* [Dkt. No. 52] is hereby extended on a final basis, to the extent not inconsistent with the relief granted under this Order

8. This Court shall retain exclusive jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through this chapter 15 proceeding, and any request by an entity for

relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

9. Notwithstanding anything to the contrary herein, this Court retains exclusive jurisdiction to determine the actual ownership of MAXSITE, including whether M-I has any ownership interest in, or is entitled to any injunctive or other equitable relief with respect to, MAXSITE. For the avoidance of doubt, the Court's retention of jurisdiction is not intended to affect the Canadian Court's ability to enter all necessary and appropriate orders in connection with the Canadian Proceeding, including with respect to the disposition or sale of QSI's equity interests or other assets, licensing of MAXSITE to the extent of QSI's ownership interest therein, and granting stay relief for this Court to determine whether M-I has any interest in MAXSITE. Moreover, nothing herein is intended to foreclose communications between this Court and the Canadian Court pursuant to 11 U.S.C. § 1525 and the Court's Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters, General Order 2019-2, and reconsideration of the jurisdiction retention set forth in this paragraph to the extent that this Court determines that the Canadian Court can and should determine ownership interests in MAXSITE, consistent with applicable U.S. and Canadian law, including 11 U.S.C. § 1506.

10. The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in these cases and is, therefore, waived.

11. This Order applies to all parties in interest in this chapter 15 proceeding and all of their agents, employees, and representatives, and all those who act in concert with them or who receive notice of this Order.

Signed: October 29, 2020

A handwritten signature in black ink, consisting of a stylized 'M' followed by a wavy line and the initials 'Isgur'.

Marvin Isgur
United States Bankruptcy Judge