

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

N°: 500-11-057549-194

IN THE MATTER OF THE PLAN OF
ARRANGEMENT OF:

9227-1584 QUÉBEC INC.

and

9336-9262 QUÉBEC INC.

Debtors

and

KPMG INC.

Monitor

and

110302 CANADA INC.

and

ARTHUR H. STECKLER

Applicants/Plan Sponsors

and

9325-7277 QUÉBEC INC.

Mise en cause

APPLICATION FOR THE ISSUANCE OF A PLAN FILING AND MEETING ORDER
(Sections 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 MONTRÉAL, THE APPLICANTS
RESPECTFULLY SUBMIT AS FOLLOWS:**

A. ORDER SOUGHT

1. By the present application (the “**Application**”), the Applicants, 110302 Canada Inc. (“**Canada Inc.**”) and Arthur H. Steckler (“**Mr. Steckler**”, and, together with Canada Inc., the “**Applicants**” or the “**Plan Sponsors**”), seek the issuance of an order authorizing the Applicants to file a plan of compromise and arrangement under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”), and to convene and conduct a meeting of creditors for the purposes of voting on the Plan, the whole in accordance with the terms of the draft order communicated as **Exhibit R-1**.¹

B. BACKGROUND AND CONTEXT

2. After 18 months of protracted legal proceedings, including a complex restructuring process undertaken under the auspices of the CCAA in these judicial proceedings (the “**CCAA Proceedings**”), the Applicants submit that the time has come for the Debtor 9227-1584 Québec Inc. (“**9227**”, the “**Debtor**” of the “**Company**”) to emerge from these CCAA Proceedings and concentrate on the advancement of its core business activities, which is, and has always been, to develop and build the Square Candiac Project (as hereinafter defined).
3. The objectives which the Debtor and the court-appointed Monitor, KPMG Inc. (“**KPMG**” or the “**Monitor**”) set out to achieve in commencing these proceedings have been largely achieved, and the very *raison d’être* of these CCAA proceedings has been exhausted: operational problems have been corrected; significant pending transactions have been closed or settled; relations with many stakeholders have been normalized and creditors were appropriately secured; the immovable assets that could be readily sold have been sold; and the financial situation has been stabilized, and only its root causes—the deadlock between its shareholders—remains.
4. **With respect to 9336-9262 Québec Inc.**, Canada Inc. and 9325 have come to an agreement as to partition, which will enable 9336-9262 Québec Inc. (“**9336**”) to emerge from these CCAA Proceedings in a manner that will have no impact on the creditors.
5. **With respect to 9227**, the Applicants, in good faith and with diligence, and in consultation with the Monitor, have set out to prepare and propose a plan of arrangement to 9227’s creditors so as to allow it to pursue its business plan and core activities (as more fully described hereafter and communicated as **Exhibit R-2**, the “**Plan**”).
6. The Debtor and the Monitor have exhausted all reasonable options and avenues available to the Debtor in view of ensuring a comprehensive and long-term financial rehabilitation of 9227 and allowing it to emerge quickly and efficiently from these CCAA Proceedings, except through the filing of a plan. The Applicants have cooperated fully, diligently and in good faith with the Monitor in shepherding 9227 along these CCAA Proceedings, including

¹ All of the capitalized terms not otherwise defined herein have the meaning ascribed to them in the Plan or, otherwise, in the Initial Order (as amended and restated).

in the context of the sales and solicitation process undertaken by the Monitor and the brokers mandated by it, to maximize recovery for creditors and other stakeholders.

7. At this stage, following consultation with the Monitor and exchanges with various stakeholders, and after numerous attempts at settling outstanding matters with 9325-7277 Québec Inc. (“**9325**”) and Mr. Marc-André Nadon (“**Mr. Nadon**”), the Applicants have come to the conclusion, supported by the Monitor, that a comprehensive and holistic plan of arrangement aiming to acquit all of 9227’s debts and allow it to emerge from these CCAA proceedings as quickly and as efficiently as possible, is the optimal, if not indeed the only, viable course at the Debtor’s immediate disposal.
8. The Applicants, in consultation with the Monitor, are now in a position to propose the Plan with a view towards ensuring that:
 - a) 9227 may emerge from the CCAA proceedings as quickly and efficiently as possible;
 - b) the root causes of 9227’s insolvency, including the stalemate between its beneficial owners (9325 and Canada Inc.) and other principal litigation be resolved definitively, in a fair and equitable manner, in accordance of the recommendations of the Monitor, in keeping with existing contractual agreements governing the relationship between said beneficial owners, as well as in accordance with the *Civil Code of Québec* (articles 1030 *et seq.*) and the overriding principles of the CCAA;
 - c) the stakeholders, including all unsecured creditors, secured creditors and creditors holding a valid legal hypothec of construction (“**Construction Claims**”) receive payment of the Proven Claims to the maximum extent, as quickly as possible and with the fewest obstacles possible. In this case, the Plan as proposed by the Applicants contemplates payment of 100% of each Proven Claim— a rarity in the Canadian restructuring landscape.
 - d) the professional fees and restructuring costs associated with the CCAA proceedings be minimized and streamlined;
 - e) to the maximum extent possible, all outstanding issues, litigation, negotiations and other matters be resolved by the Debtor and/or the Monitor as quickly and efficiently, without hindering the advancement of the Project.
9. Achieving these objectives, and generally allowing 9227 to focus on the construction and development of the Square Candiac Project is that much more timely and necessary considering the advent of spring and the construction season, providing the Debtor with a limited window of opportunity to extract itself from the distractions, costs, diversion of resources and obstacles associated with these CCAA Proceedings, and instead focus on the operational and financial priorities pertaining the advancement and construction of the Project.

10. The Debtor cannot afford to wait any longer to undertake the next steps of the Project, which have been stalled for too long; neither 9227 nor its stakeholders can afford to allow another spring, summer and fall season to lapse, as this would set the Project back exponentially.
11. Despite the Applicants' diligence and good faith, all of the overtures and offers made by Canada Inc. to 9325 and Mr. Nadon were declined. It should be noted that the Monitor and its counsel were consulted by Canada Inc. and its counsel prior to making any offers of settlement or proposing any solutions to Mr. Nadon, whether in respect of the partition process, exit strategies, or day-to-day dealings with various stakeholders.
12. It has become increasingly obvious to Applicants that Mr. Nadon harbours expectations that are unacceptable and unrealistic for the Applicants as to the true value of the Project, the costs required to bring it to fruition, including infrastructure costs and the costs and opportunity of litigating Outstanding Litigation.² It has been simply impossible for Canada Inc. and Mr. Nadon to agree on the merits of the various offers made, the value of 9227's assets, and of the Project's potential and risks as a whole.
13. In light of the foregoing, after extensive consultation with the Monitor and its counsel, the Applicants have come to the inevitable conclusion that the fate of 9227 should be put to a vote by 9227's stakeholders and creditors, in accordance with the recommendations of the Monitor, and to ultimately enforce same through a Sanction Order, in a manner that ensures the most beneficial outcome for all stakeholders, including 9227's creditors and its shareholders/beneficial owners, hence the present Application and the plan submitted in support hereof.

I. **Factual context and corporate history**

14. As already appears from the Court record herein, 9227 was incorporated for the purposes of acting as a nominee (*prête-nom* or mandatary) for the beneficial interest of Canada Inc., represented by Mr. Steckler, and its other shareholder, 9325, represented by Mr. Nadon.
15. The Debtor's *raison d'être* 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**").
16. Canada Inc. is the undivided beneficial owner of 75% of the assets of 9227 and the sole equity investor. It has invested well over eight million dollars (\$8,000,000) in the Project, over its lifetime.
17. 9325, represented by Mr. Nadon, was granted a 25% undivided beneficial interest in and to the assets of 9227, in consideration for the so-called "sweat equity" that was to be

² Mr. Nadon is a business partner of Mr. Pessoa's and an non-arm's length stakeholder in many of Mr. Pessoa's ventures.

contributed by Mr. Nadon, who was granted exclusive responsibility for and was to assume carriage of all aspects of the project, including ensuring that it be properly financed, planned, built, developed, sold and ultimately brought to its complete fruition, after which profits would be shared between Canada Inc. and 9325 according to their respective 75% / 25% proportions.

18. Accordingly, neither Mr. Nadon nor 9325 have invested any actual financial equity in the Project. In fact, 9227 had advanced sums to Mr. Nadon over time, such that Mr. Nadon is personally indebted towards 9227 for an approximate sum of \$354,000.
19. At the outset, based on representations made by Mr. Nadon as to his expertise and capabilities, this 25% beneficial interest was attributed in consideration for his contribution from inception to completion, including overseeing construction and sales. Neither 9325 nor Mr. Nadon were to receive any other form of remuneration.
20. As already exposed in the context of these and other judicial proceedings, a stalemate developed between Mr. Steckler and Mr. Nadon, which stalemate paralyzed 9227 and prevented it from properly conducting its business. This in turn, and combined with shortcomings in the Project's management, resulted in the financial difficulties which led to the commencement of these CCAA Proceedings.
21. Rather than embroil 9227 and its stakeholders in acrimonious and protracted litigation, Canada Inc. instead petitioned this Court, in October 2019, to appoint KPMG as administrative agent and manager of 9227 and of the Project generally, the whole as appears from the Court record herein.
22. Additional background as to the history between the parties, the corporate structure and other factors leading to the insolvency of 9227 are more fully chronicled in the *Originating Motion for the Appointment of an Administrative Agent and Manager and for the Issuance of Other Orders for Redress* filed on or around October 8, 2019 in the Court file bearing number 500-11-057283-190, communicated as **Exhibit R-3** (the "**Originating Motion**"), which Originating Motion was granted as per its conclusions by the Honourable Justice Castonguay, J.S.C., on October 8, 2019, a copy of which is communicated *en liasse* with Exhibit R-3.
23. On July 15, 2019, further to the discovery of these actions and omissions, as a result of the paralysis of 9227's operations as well its financial troubles, and prior to the filing of the Originating Motion, Exhibit R-3, Canada Inc. availed itself of Article 7 of the Indivision Agreement (*Convention d'indivision*) entered into on July 24, 2015 between Canada Inc., 9325 and 9227.
24. Article 7 of the said Indivision Agreement contemplates the mechanism for an organized and fair termination of the situation of indivision that still prevails; the partition mechanism is in keeping with articles 1030 *et seq.* CCQ. Article 1030 CCQ provides, as a matter of public order, that "*nul n'est tenu de demeurer dans l'indivision*":

END OF INDIVISION AND PARTITION

1030. No one is bound to remain in indivision. Partition may be demanded at any time unless it has been postponed by an agreement, a testamentary provision or a judgment, or by operation of law, or unless it has become impossible because the property has been appropriated to a lasting purpose.

25. As a result of the parties' inability to put an end to the indivision and to proceed to the termination of the Indivision Agreement, and concurrently with the filing of the Originating Motion, Exhibit P-3, Canada Inc. also filed, on or around October 7, 2019, a *Demande de partage de biens indivis* in the Court file bearing number: 500-17-109853-195, a copy of which is communicated as **Exhibit R-4** (the "**Partition Motion**"), in order to proceed to the partition of the Debtor's assets (the "**Partition Process**"). 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, as appears from a copy of the procès-verbal d'audience of October 23, 2019, communicated *en liasse* with the Partition Motion as Exhibit R-4.
26. On or around November 20, 2019, after having properly analysed the Debtor's state of affairs, as well as that of 9336, KPMG petitioned this Court for the issuance of an initial order pursuant to the CCAA.
27. Indeed, in the context of its mandate as administrative agent and manager of 9227, KPMG informed the parties and the Court that 9227 was in fact insolvent within the meaning of the CCAA, and that the best avenue for the stabilization of 9227's affairs, the resolution of disputes and the restructuring of 9227's affairs was through a formal restructuring process under the auspices of the CCAA.
28. As appears from the Court record herein, namely from many of the reports filed by the Monitor throughout these proceedings, Canada Inc. and 9325, through their respective principals and counsel and with the assistance of the Monitor, engaged in several discussions and exchanges in view of attempting to terminate the Agreement of Indivision, implement a partition process and resolve the other claims asserted by Canada Inc. against Mr. Nadon and 9325 in the context of the *Partition Motion* and the *Originating Motion for the Appointment of an Administrative Agent and Manager*.
29. The Plan contemplates the partition of 9227's assets amongst Canada Inc. and 9325 as a condition precedent to its implementation. However, the modalities of the partition *per se* will be subsumed to the specific provisions of the Plan. Accordingly, the Plan contemplates a partition of 9227's assets among the beneficial owners on the basis of values which themselves contemplate a distribution that will serve to acquit 100% of all secured and unsecured claims as allowed by the Monitor (the Proven Claims).

II. Overview of the CCAA proceedings and restructuring efforts to date

a) Judicial Proceedings

30. For the purposes hereof, Applicants allege and refer the Court to each of the Monitor's Reports and to each of the proceedings, motion materials and Orders that appear on the

Monitor's website at <https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/quebec-inc-9227-1584-and-9336-9262.html> and/or that appear on the *plumitif* (court docket) in respect of these proceedings bearing number 500-11-057549-194 communicated herewith as Exhibit R-5, as if herein recited and communicated at length. Any specific document requested by any Party will be communicated upon request.

31. On October 22, 2019, this Court, per the Honourable Peter Kalichman, J.C.S., issued an Initial Order 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**"), as appears from the Court record herein.
32. Pursuant to the Initial Order, KPMG was appointed Monitor of both 9227 and 9336, the whole as appears from the Court record herein.
33. 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**") as appears from the Court record.
34. It is worth noting that in its *Motion for the Approval of Interim Financing and the Creation of an Interim Financing Charge, for the Extension of the Stay of Proceedings and for the Issuance of a Second Amended and Restated Initial Order*, dated January 23, 2020, the Monitor/Debtor indicated in its proceedings and reported in its Second Report to the Court, that the interim financing was required, *inter alia* because:
 - a) KPMG expected that the Debtor's restructuring will "take several months;"
 - b) That the DIP Loan will enhance the prospect of a viable compromise or arrangement, in that it will serve to pay for continuing construction of infrastructure, ensure maintenance of the site, pay for taxes, permits and insurance costs, as well as the site manager's fees, the whole in order to maximize the value of the Property and Business;
 - c) In accomplishing these goals, the DIP Loan was going to serve to "enhance the value that the Debtor can expect to receive for its assets, thereby increasing the possibility that the proceeds of an eventual sale will be sufficient to pay secured creditors with an additional amount available for unsecured creditors by way of an eventual plan of arrangement or compromise."
35. Moreover, in its Second Report to the Court dated January 20, 2020, the Monitor asserted that the DIP Loan and the requested stay extension would be conducive to advancing the "*processus de règlement entre les actionnaires*"; and ensure that the "*démarches pour effectuer la vente des terrains*" would be properly implemented.
36. In that regard, in its Second Report, the Monitor reported that it intended to retain the services of a professional real estate broker by no later than February 27, 2020, in order to commence the process of the sale of the various lots comprising the Project.

37. In its Third Report to the Court, dated April 3, 2020, the Monitor reported having mandated NAI Terramont Commercial (“**NAI**”), on March 10, 2020, in order to implement a sale and solicitation process pertaining to the assets of 9227, namely the lot comprising of the Project, the whole as appears from the Court record herein. In its Report, KPMG indicated that the delay between the projected date and the actual date of the execution of the said mandate with NAI was explained in part by the complexity of the negotiations and by the fact that the Monitor sought the formal approval of the both beneficial owners (represented by Mr. Steckler and Mr. Nadon), in order to grant the mandate in accordance with terms and conditions agreeable to all (the “**Sales Process**”). NAI officially launched the Sales Process and the marketing of the lots in question on March 15, 2020.
38. 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**”), as appears from the Court record.
39. 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.
40. 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.
41. 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.
42. 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**”).

43. 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.
44. The Sponsors, in consultation with the Monitor, have determined that an adjudication or a fair and reasonable resolution to the Outstanding Litigation is a prerequisite to 9227's ability to restructure itself and emerge from these CCAA Proceedings.

b) Restructuring Efforts

45. In the course of these CCAA Proceedings, the Debtor has concluded and/or is on the verge of concluding (closing) several transactions, whether as a direct result of the Sales Process, or pursuant to the normal terms and conditions of pre-existing offers to purchase, to wit:
 - a) Lots 6 022 113 and 6 022 115 (lots G and H) have been sold and the proceeds distributed to 9227's creditors, including the DIP Lender;
 - b) Lot 2 184 000 (Lot I) is the object of an accepted offer to purchase, the conditions for which have been waived or satisfied and the closing for which is slated to occur in the coming days and no later than March 31, 2021;
 - c) Lot 6 022 112 (Lot N) is the object of an accepted offer to purchase, the conditions for which have been waived or satisfied and the closing for which is slated to occur in the coming days and no later than April 23, 2021.
46. As has been reported to the Court, the sale of the property commonly designated as Sector 5, i.e. Lots 6 022 119 and 6 022 120 (Lots A and B respectively), in addition to Lots 6 022 122 (Lot C) and 6 022 121 (Lot D) were the object of an accepted offer to purchase concluded with Immobilier Carbonleo Inc. ("**Carbonleo**"). The transaction was slated to close in the late Fall 2020. However, following a due diligence review conducted by Carbonleo, certain conditions pertaining to the offer could not be satisfied or waived, such that, since November 2020, NAI has continued to market Sector 5.
47. While the success of the restructuring process as regards the Sale Process *per se* has been mitigated, the Monitor and the Applicants consider that the restructuring process as a whole has been successful in achieving its objectives and that it has, *inter alia*:
 - a) stabilized the operational affairs of the Company;
 - b) stabilized the financial affairs of the Company;
 - c) reassured the various stakeholders and shareholders, including the City of Candiac, various creditors, including the creditors holding Construction Claims; reengaged with all of the said stakeholders; and generally ensured that the stay of proceedings would ultimately benefit all of the stakeholders;

- d) ensured that all taxes, financial and other contractual obligations of the Debtor are acquitted in due course;
 - e) allowed the Monitor and its counsel, through extensive exchanges, discussions and meetings with various stakeholders, including principally Canada Inc. and 9325, that all possible avenues for a fair and equitable partition of 9227's assets could be explored. Whereas this has resulted in a satisfactory result as regards 9336 in that the Canada Inc. and 9325 have recently concluded an agreement in principle on the terms and conditions pertaining to the partition of 9336's assets, these efforts have not yielded an agreement as regards 9227;
 - f) ensured the progress and proper implementation of construction of infrastructure works and continuation of all urgent or necessary facets of construction for the Project;
 - g) safeguarded or otherwise prosecuted 9227's rights and claims, namely as regards various litigious situations with—and potentially prejudicial positions, actions and omissions undertaken by—Mr. Pessoa, namely through his companies who are counter-parties to various impugned offers to purchase or who have previously purchased lots from 9227.
48. As mentioned above, most recently, 9325 and Canada Inc. have concluded an agreement pertaining to the termination of the 9336 Indivision Agreement. This will put an end to the situation of indivision between the beneficial owners and allow 9336's business operations to continue.
49. Generally, the terms of the agreement are as follows:
- a) 9325 will be assigning to Canada Inc. all of its rights, title and interest in and to the assets of 9336;
 - b) Canada Inc. will be assuming the hypothecs and other obligations of 9336, including the hypothec currently held by the Business Development Bank of Canada;
 - c) Canada Inc. will terminate the 9336 indivision agreement in consideration of certain sums to Mr. Nadon;
 - d) Canada Inc. and 9325 will grant each other mutual and reciprocal releases and discharge of all claims, actions and allegations as they pertain to the contractual agreements and as they pertain to 9336; and
50. The Applicants understand that the Debtor/Monitor will be requesting an extension of the Stay of Proceedings as regards 9336 for the sole purpose of enabling the parties to conclude and execute the necessary documentation to give effect to the agreement in principle.

51. In light of the foregoing, after consultation with the Monitor and its counsel, and when considering the primary objectives of these restructuring proceedings and the current status of the judicial, operational, financial and legal affairs of 9227, it is clear that 9227 has either achieved all of its objectives or has otherwise exhausted all avenues towards achieving those objectives that have not been attained.
52. More specifically, as has been repeatedly reported by the Monitor to the Court and alleged in the proceedings filed by the Debtor, considering the deadlock between 9325 and Canada Inc. and the ongoing state of indivision, a complete and successful restructuring of 9227 in a manner that would ensure its long-term viability necessarily requires a resolution of the situation of indivision.
53. Most recently, at paragraph 38 of its Ninth Report to the Court dated January 26, 2021, the Monitor reported as follows:

Tel que mentionné par la Cour lors des auditions précédentes, nous sommes d'avis qu'un règlement entre les parties est nécessaire afin de permettre une sortie du processus de restructuration. À cet effet, le Contrôleur a soumis aux indivisaires au cours de la dernière semaine un tableau d'analyse de la valeur excédentaire projetée afin de les guider dans leur processus de règlement.

54. This assertion has been repeated from the outset and has constituted one of the building blocks of the present restructuring process.
55. As mentioned, notwithstanding the numerous offers and overtures made by Canada Inc., and despite certain purported offers made by 9325, the parties have been unable to reach an agreement on the terms of a fair and equitable partition of 9227's assets.

C. THE PLAN OF COMPROMISE OR ARRANGEMENT

56. As a result of its restructuring efforts, the Applicants, with the assistance of its advisors and the Monitor, have developed the Plan, Exhibit R-2.
57. As mentioned, following the withdrawal of Carbonleo's offer to purchase for Lots A, B, C and D, and seeing that the objectives set forth by the Monitor and the Company in respect of its restructuring were either attained or all avenues for their objectives had been substantially exhausted, the Applicants set out to concretely explore avenues for enabling 9227 to emerge from the CCAA proceedings in a manner that is both beneficial and equitable to all stakeholders.
58. The Plan that has been structured by the Applicants in consultation with the Monitor and the parties' respective professionals gives due consideration to the value attributed to the assets of 9227 and the aggregate debt load of the Company. The values retained by the Applicants derive solely from those provided by the professional appraisals commissioned by the Monitor or, where these provided more recent and reliable data as to the true market value, from actual offers received from the market.

59. The Plan gives due consideration to the interests and rights of all stakeholders as well as those of the beneficial owners.
60. It is important to note that Canada Inc., in addition to its status as 75% owner of the assets of 9227 *per se*, which is a nominee, Canada Inc. is, by far, the principal unsecured creditor of 9227, in addition to being a major secured creditor, making it a significant creditor among the mass of creditors.
61. The Monitor has allowed an unsecured proven claim of \$1,264,749 for Canada Inc.³ and a claim of \$1,562,691 as a Construction Claim.⁴
62. Accordingly, out of an estimated total of \$15,942,000 of Proven Claims, Canada Inc. holds Proven Claims admitted by the Monitor in the amount of \$2,827,440, not including contested accrued interest and its equity interests, representing nearly 18% of all debt. This proportion stands to increase as a portion of the secured debt (in favour of the Desjardins and Société Immobilière Gagné Inc.) is slated to be discharged further to impending closings with respect to Lots I and N.
63. Given the value of 9227's assets and its relative debt load, it became apparent that 9227 needed to find solutions that would allow for 9227 to both acquit all or substantially all of its debt, while also ensuring a permanent solution to the enduring situation of indivision between 9325 and Canada Inc. and, crucially, allowing the Square Candiac Project to continue free of the obstacles and root causes of its difficulties, as summarized above.
64. Considering the mitigated success of the Sales Process, the Applicants set out to mount a financial structure that would ensure the discharge of all outstanding debts as represented by the Proofs of Claim allowed by the Monitor pursuant to the Claims Process.
65. In that regard, in light of the longstanding relationship between the Applicants and the Caisse, substantial efforts and time were invested in attempting to reach an agreement with the Caisse in view of securing the financing required to fund the Plan.
66. However, in part due to the legal, factual and financial context involving 9227, the Applicants were ultimately unable to conclude an agreement for the implementation of a credit facility that would be conducive to the implementation of a rapid and efficient plan of compromise or arrangement.
67. Ultimately, further to additional efforts of the Applicants, the requisite financial arrangements were concluded pursuant to a binding Letter of Intent concluded between the Applicants and a financial institution, such that the Applicants are now in a position to sponsor the Plan and ensure the payment of all of 9227's outstanding debts as approved

³ With a balance of \$631,932 being under revision due to the uncertain treatment of interest accrued on such sums; Canada Inc. has filed a Proof of Claim in the amount of \$1,896,681.

⁴ Subrogated to the rights of Gerpro Construction Inc.; this amounts represents amounts disbursed by Canada Inc. shortly prior to the CCAA Proceedings in order to ensure the completion of the Sector 5 foundation works prior to the 2020 winter season.

and allowed by the Monitor pursuant to the Claims Process, in a manner that is both cost-effective and timely.

68. The stated purpose of the financing commitments received by the Applicants (the “**Financing**”) is to fund the Plan, the implementation and sanction of which are crucial conditions precedent to the disbursement of the credit facility. The Financing also aims to fund the substantial infrastructure costs required to continue the Square Candiac Project.
69. Similarly, one of the conditions precedent of the Plan is that the said Financing be effectively disbursed and that all conditions related thereto be waived or satisfied.
70. 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.
71. The Letter of Intent expires on June 30, 2021 and provides that the Financing must be advanced by that date. Accordingly, the Outside Date for the Implementation of the Plan, has been set at June 21, 2021.
72. The Monitor has been provided with a copy of the contractual agreement concluded with the financial institution that has agreed to put in place the said Financing and has declared itself satisfied therewith.
73. Other than the essential condition that the Plan be approved by the requisite majority of creditors and ultimately sanctioned by this Court and the Outstanding Litigation be evacuated, there is no material condition that leads the Applicants or the Monitor to conclude that the financing would not be in place in time for the implementation of the Plan as per its terms and conditions.
74. The Plan provides, *inter alia*, for the following:
 - a) the contribution to the Plan of the total sum of \$7.5 million (the “**Contribution**”), to be funded by the Applicants, Canada Inc. and Mr. Steckler directly, acting as Sponsors of the Plan;
 - b) the distribution of the Sponsor’s Contribution to all Affected Creditors (in accordance with and up to the amounts allowed by the Monitor as Proven Claims), and pursuant to the terms of the Plan. As appears from the Plan, the Applicants intend to pay in full the entirety of all Proven Claims;
 - c) the creation of a Litigation Pool comprised of any award or settlement stemming from the 9227 Retained Claims currently pending between 9227 and Mr. Pessoa or companies controlled by him, namely Groupe Xpansion Inc., JMJ Immobilier and PUC (collectively, the “**Pessoa Companies**”) and 9345-7406 Québec Inc. The purpose of this Litigation Pool is to enable the Creditors to see a substantial portion of any post-filing interest accrued on the claims of the Creditors paid to the maximum extend allowable under the Plan.

Indeed, whereas post-interest filing is not payable in respect of Proven Claims, the mechanism set out in the Plan will, exceptionally, enable the Creditors to collect on post-filing interest accrued, while enabling the Company to pursue outstanding litigation against the Pessoa Companies.

- d) the release and discharge of all claims against the Company and its directors, officers and employees to the extent permitted under the CCAA; and
 - e) the release and discharge of all claims against the Plan Sponsors to the extent permitted under the CCAA.
75. Two essential features of the Plan, which are *sine qua non* conditions precedent to its implementation, are:
- a) the partition of the assets of 9227, accounting for and after payment of all debts and infrastructures and undertakings of 9227, as between 9325 and Canada Inc., in accordance with the conclusions of the Partition Motion (an amended version of which will be filed prior to the hearing hereof), or alternatively, in accordance with a settlement out of Court concluded by the beneficial owners in a manner that is agreeable to the Monitor and sanctioned by this Court; and
 - b) this Court upholding the Notice of Disclaimer in relation to the Disclaimed Lots.
76. Indeed, the Financing of the Plan Sponsors' Contribution is contingent upon the successor to the Debtor entity being able to leverage the Disclaimed Lots or apply the proceeds of the eventual sale of the Disclaimed Lots towards the payment in full of the Proven Claims.
77. 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 as the benefit derived from the Plan and their treatment relative to each other is identical, and there is no valid grounds for additional classification of creditors; they will each be paid 100% of their Proven Claims.
78. The distribution under the Plan will be as follows:
- a) First: to pay in full the government priority claims, if any; and
 - b) Second: to pay the Affected Creditors, to the exclusion of Canada Inc., a distribution equal to the balance of the Applicants' Contribution amount on a *pro rata* basis based on the Proven Claims;
79. Pursuant to the Plan, all of the Restructuring Claims will be compromised and released, whereas all of the Proven Claims will be paid in full and only released pursuant to and as a result of said payment;
80. The Plan provides for the constitution of a Reserve with regards to the Disputed Claims, pending final adjudication of such Disputed Claims.

81. With respect to the Litigation Pool comprised of the potential awards stemming from the adjudication of the 9227 Retained Claims or their settlement, it contains the following principal features:
- a) Considering that the Applicants will be effectively funding the prosecution of the 9227 Retained Claims by assuming the professional fees and costs associated therewith, the payment of Eligible Interest (as defined in the Plan) will be subject to the prior reimbursement of all such fees and expenses incurred,
 - b) The balance of the proceeds of the 9227 Retained Claims will be applied as follows: (i) towards the payment of all accrued Eligible Interest (which does not include the interest accrued on the Claim of Canada Inc.), up to the maximum amount representing 70% of the post-filing interest that will have accrued as at the time of the distribution of funds from the Litigation Pool, as determined by the Monitor; and (ii) the remaining 30% being contributed to the Sponsors in consideration for the assumption of risks and costs associated with the funding of the prosecution of the 9227 Retained Claims.
82. The typical 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.
83. The implementation of the Plan is subject to (i) its approval by the requisite majorities in number and value of Proven Claims; (ii) its subsequent sanction by the Court, and (iii) the issuance of a Monitor's certificate certifying that all of the Conditions Precedent and other terms to the Plan's implementation have been fulfilled or waived.
84. As will be demonstrated to the Court, and as described above, the proposed Plan, if approved, sanctioned and implemented, will provide a far greater benefit to the Company's stakeholders, as well as to its beneficial owners/shareholders, as compared to the liquidation of its assets in the bankruptcy scenario and even, indeed, as compared to the continuation of the CCAA process and the ongoing pursuit of a sale or solicitation process under the auspices of the Monitor and NAI.
85. The Plan as proposed is therefore the most beneficial avenue for the Company and its stakeholders, not only as to its financial terms and conditions, but also by virtue of the fact that it contemplates an emergence from the CCAA proceedings in a manner that addresses all of the root causes of the insolvency of 9227, resolves all outstanding litigation or otherwise ceases to subsume the payment to the Creditors to the satisfaction of outstanding litigations, and ensures the maximum recovery for all stakeholders.
86. It should be noted that in the days preceding this present Application, and immediately after having been informed of the impending filing of the said Plan, Mr. Nadon advised the Monitor of his intention to purchase Sector 5 of the Square Candiac Project, in accordance with terms and conditions which have yet to be fully delineated, but which have been taken

into account for the purposes of the Amended Partition Motion, and further confirm the reasonableness and effectiveness of the Plan, as proposed.

87. Indeed, the apparent offer to purchase that Mr. Nadon has suddenly purported to be in a position to convey, will lead to an exacerbation of the *status quo* and will substantially put at risk the ability of the Monitor and of the Company to maximise the recovery for all of 9227's stakeholders. It moreover seek to further delay 9227's ability to emerge from the CCAA proceedings.

D. MEETING OF CREDITORS

88. The CCAA claims procedure has been implemented by the Monitor further to, and in accordance with, the Claims Procedure Order. The Monitor and the Company have reviewed all of the proof of claims filed by the Creditors on or prior the Claims Bar Date. Certain claims, including a part of a substantial claim put forth by Canada Inc. remain to be adjudicated, and the Plan contemplates a reserve and other modalities in respect of the eventual adjudication of these claims.
89. Accordingly, the Applicants submit that the Company is in a position to convene a Creditors' Meeting for the purposes of voting on the Plan.
90. The Creditors' Meeting is proposed to be held on April 21, 2021, by videoconference. The Creditors' representatives who wish to attend the Creditors' Meeting will be required to complete and submit to the Monitor a Registration Form by no later than April 16, 2021.
91. The Affected Creditors will receive notice of the Creditors' Meeting by the following means:
- a) the Monitor will send the relevant notice and meeting materials in English and in French to the Affected Creditors by regular mail, messenger or email, on or before April 8, 2021; and
 - b) via the Monitor's website.
92. Should the Plan be approved by the Required Majority of the Affected Creditors, the Applicants intend to seek the issuance of Sanction Order by the Court. It is expected that the Monitor and the Company, who support the Plan and the present Application, will support the issuance of a Sanction Order by the Court.
93. In light of the foregoing, the Applicants respectfully request the issuance of the Order sought, which will allow it to file the Plan and hold a Creditors' Meeting in relation thereto, the whole in the best interests of the Company's stakeholders.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Application;

ISSUE and order substantially in the form of the draft Order communicated in support of the present Application under Exhibit R-1.

THE WHOLE with judicial costs, save and except in case of contestation, and in which case with judicial costs against the contesting party.

Montréal, March 25, 2021

Dentons Canada LLP

DENTONS CANADA LLP

Attorneys for the Applicants, 110302 Canada Inc.
and Arthur H. Steckler

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Telephone: 514 878 8883

Fax: 514 866 2241

Our reference: 579544-1

SWORN STATEMENT

I, the undersigned, **ARTHUR STECKLER**, lawyer and businessman, residing and domiciled at 3, Colchester street, in the city of Hampstead, district of Montreal, province of Quebec, H3X 3V9, solemnly declare as follows:

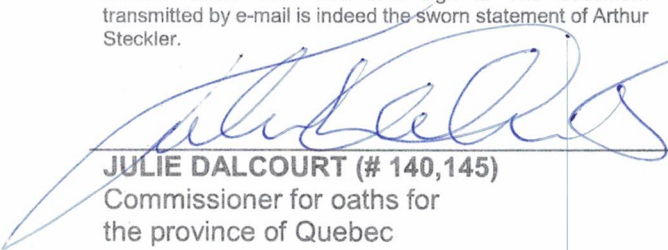
1. I am one of the Applicants and a duly authorized representative of 110302 Canada inc.;
2. All facts alleged in the present *Application for the Issuance of a Plan Filing and Meeting Order* are true.

AND I HAVE SIGNED:



ARTHUR STECKLER

SWORN this March 25, 2021,
Before me by Zoom videoconference, in Florida allowing me to recognize Mr. Arthur Steckler, to see him read the entire affidavit under oath and then sign it. The document transmitted by e-mail is indeed the sworn statement of Arthur Steckler.



JULIE DALCOURT (# 140,145)
Commissioner for oaths for
the province of Quebec



NOTICE OF PRESENTATION

To: SERVICE LIST

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 **March 31, 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.

HOW TO JOIN THE HEARING

The coordinates to join the hearing in room **16.03** are as follows:

A. Using Teams

To open the permanent link established for room **16.03** click [here](#)⁵.

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 as follows:

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

Trustees: “Name”, “Surname” (Trustee) **Superintendent :** Name”, “Surname” (Superintendent)

Parties not represented by an attorney: “Name”, “Surname” (specify: Petitioner, Respondent, creditor or other)

B. By telephone

Dial one of the following numbers and ID of the conference:

CANADA (toll-free): 1 (833) 450-1741

CANADA, QUÉBEC (charges will apply): +1 581-319-2194

Conference ID: : 520 962 034#

C. By videoconference

Email address: teams@teams.justice.gouv.qc.ca

VTC Conference ID: 1146970467

⁵ 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 Quebec website at :

<https://coursuperieureduquebec.ca/roles-de-la-cour/audiences-virtuelles>

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, March 25, 2021

Dentons Canada LLP

DENTONS CANADA LLP

Attorneys for the Applicants, 110302 Canada Inc.
and Arthur H. Steckler

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Our reference: 579544-1

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

N° : 500-11-057549-194

IN THE MATTER OF THE PLAN OF
ARRANGEMENT OF

9227-1584 QUÉBEC INC.
et
9336-9262 QUÉBEC INC.

Debtors

and

KPMG INC.

Monitor

and

110302 CANADA INC.
and
ARTHUR H. STECKLER

Applicants

and

9325-7277 QUÉBEC INC.

Mise en cause

LIST OF EXHIBITS

EXHIBIT R-1:	Draft Order;
EXHIBIT R-2:	Plan of compromise and arrangement;
EXHIBIT R-3:	<i>En liasse: Originating Motion for the Appointment of an Administrative Agent and Manager and for the Issuance of Other Orders for Redress</i> filed on or around October 8, 2019 in the Court file bearing number 500-11-057283-190, and Order of October 8, 2019 by the Honourable Justice Castonguay, J.S.C.;

EXHIBIT R-4:	<i>En liasse: Demande de partage de biens indivis</i> in the Court file bearing number: 500-17-109853-195, and Judgment rendered on October 23, 2019, the Honourable Justice Chantal Corriveau;
EXHIBIT R-5:	<i>En liasse</i> , all Monitor's Reports in this matter, and all proceedings, motion materials and Court orders, as they appear on the Monitor's Website and/or on the <i>plumitif</i> (court docket) in respect of these proceedings bearing number 500-11-057549-194. (AVAILABLE UPON REQUEST).

Montréal, March 25, 2021



DENTONS CANADA LLP

Attorneys for the Applicants

No. 500-11-057549-194

SUPERIOR COURT (Commercial Division)
DISTRICT OF **MONTRÉAL**

IN THE MATTER OF THE PLAN OF ARRANGEMENT OF:

9227-1584 QUÉBEC INC.

et

9336-9262 QUÉBEC INC.

Debtors

and

KPMG INC.

Monitor

and

110302 CANADA INC.

and

ARTHUR H. STECKLER

Applicants

and

9325-7277 QUÉBEC INC.

Mise en cause

Me Ari Y. Sorek

File : 579544-1

**APPLICATION FOR THE ISSUANCE OF A PLAN FILING
AND MEETING ORDER**
(Sections 4, 5, 6, 9, 11 and 22 of the *Companies'*
Creditors Arrangement Act
R.S.C. 1985, c. C-36)

ORIGINAL

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