

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

N^o: **500-11-057549-194**

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

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

Debtors

-and-

KPMG INC.

Petitioner / Monitor

-and-

110302 CANADA INC.

-and-

9325-7277 QUÉBEC INC.

Mises en cause

**APPLICATION FOR THE ISSUANCE OF AN ORDER TERMINATING THE CCAA
PROCEEDINGS WITH RESPECT TO 9336-9262 QUÉBEC INC., AND
DISCHARGING THE MONITOR**

(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36
("CCAA"))

**TO THE HONOURABLE JUSTICE PHILIPPE BÉLANGER, J.S.C., OR ANOTHER ONE
OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE
COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, PETITIONER /
MONITOR, KPMG INC., SUBMITS AS FOLLOWS:**

1. ORDERS SOUGHT

1. For the reasons set forth hereinafter, KPMG Inc. ("**KPMG**") hereby seeks the issuance by this Court of an order (the "**9336 CCAA Termination Order**") substantially in the form of the draft order communicated herewith as Exhibit **R-1**, *inter alia*:

- a) terminating the CCAA proceedings with respect to 9336-9262 Québec inc.; and
- b) discharging KPMG as Monitor.

2. INTRODUCTION

2. On October 8, 2019, KPMG was appointed as administrative agent and manager over the assets and property of the Debtors 9227-1584 Québec Inc. (“**9227**”) and 9336-9262 Québec Inc. (“**9336**”; collectively with 9227, the “**Debtors**”) with powers tantamount to those of a receiver pursuant to the applicable provisions of the *Business Corporations Act*¹ (“**QBCA**”), pursuant to an *Order Appointing an Administrative Agent and Manager and Issuing Other Orders for Redress*, as rectified on October 9, 2019 (the “**QBCA Order**”) in Superior Court file number 500-11-057283-190, the whole as appears from the Court record.
3. On November 20, 2019, KPMG, in its capacity as administrative agent and manager of the Debtors pursuant to the QBCA Order, filed a Motion for the Issuance of an Initial Order (the “**Motion for an Initial Order**”) pursuant to the CCAA, as appears from the Court record and from the copy of the Motion for an Initial Order communicated for convenience herewith as Exhibit **R-2**.
4. The Motion for an Initial Order provides a detailed description of the activities of the Debtors, their key stakeholders, and the circumstances surrounding the filing of the Motion for an Initial Order.
5. More particularly, 110302 Canada Inc., represented by Mr. Arthur Steckler (“**Mr. Steckler**”) and 9325-7277 Québec Inc. (“**9325**”; collectively with Canada Inc., the “**Shareholders**”),² represented by Mr. Marc-André Nadon (“**Mr. Nadon**”), are undivided co-owners of the beneficial ownership interests in and to the asset of the Debtors, as appears from the Court record.
6. As also appears from the Court record, 9336 acts as nominee for the beneficial interests of the Shareholders to hold title to an immovable adjacent to the Square Candiac Project, bearing civic address 170 de l’Industrie Boulevard in Candiac, and comprising lot number 2 094 091 at the Land Register. It was acquired for the purposes of serving, in the short term, as a sales office and to showcase model units of the Square Candiac Project, and to be subdivided and/or developed where necessary, including with the installation of infrastructure, for other commercial purposes in the long term and for the sale of building lots.
7. On November 22, 2019, the Honourable Peter Kalichman, J.S.C. issued an Initial Order herein (as rectified on November 25, 2019, amended and restated on December 2, 2019 and January 30, 2020, and corrected on March 20, 2020, the

¹ CQLR c. S-31.1, ss. 450 and 451.

² The term “Shareholders” is used for convenience; the relationship between the parties is in fact governed by an undivided co-ownership agreement, as discussed below.

“Corrected Second Amended and Restated Initial Order”),³ as appears from the Court record and from the copy of the Corrected Second Amended and Restated Initial Order communicated for convenience herewith as Exhibit **R-3**.

8. On May 21, 2020, this Honourable Court issued a Claims Procedure Order, *inter alia*, approving a claims procedure (the **“Claims Procedure”**) for the filing, review, determination and adjudication of claims against the Debtors and their respective directors and officers (the **“Claims Procedure Order”**), as appears from the Court record.
9. On April 28, 2021, this Honourable Court issued a Plan Filing and Creditors’ Meeting Procedure Order in connection with two Motions to authorize the filing of a plan filed on one hand by 110302 Canada Inc. and Arthur H. Steckler and, on the other hand by 9325-7277 Québec Inc. and Marc-André Nadon, as appears from the Court record.
10. On July 13, 2021, this Honourable Court issued a Sanction and Homologation Order whereby:
 - a) the *Re-Stated and Re-Amended Plan of Compromise and Arrangement* dated July 12, 2021 (the **“Plan”**) was sanctioned and approved by the Court; and
 - b) the Transaction Agreement entered into on June 30, 2021, by and between 110302 Canada inc., Mr. Arthur H. Steckler, Groupe Nadon, Mr. Marc-André Nadon, KPMG, Groupe Pessoa, Mr. Jean Pessoa and Groupe Trudeau was homologated by the Court.
11. The Stay Period has been extended from time to time and more recently by an order issued by this Honourable Court on November 29, 2021, amending the Corrected Second Amended and Restated Initial Order (Exhibit R-3) and further extending the Stay Period to January 31, 2022, as appears from the November 29, 2021 Order communicated herewith for convenience as Exhibit **R-4**.

3. GROUNDS FOR THIS APPLICATION

3.1 Termination of these CCAA Proceedings with respect to 9336 and discharge of KPMG as Monitor

12. On March 11, 2021, an agreement in principle was accepted by 110302 Canada Inc. for the transfer of the rights, titles, and interests of 9325 in 9336 (the **“9336 Agreement in Principle”**).
13. On August 5, 2021, the 9336 Agreement in Principle was formalized, as was the intention of 9325 and 110302 Canada Inc. to proceed on the chosen terms (the **“9336 Agreement”**).

³ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Corrected Second Amended and Restated Initial Order (Exhibit R-3).

14. As a result of the 9336 Agreement, 9336 entered discussions with its secured creditor, the Business Development Bank of Canada (the “**BDC**”), to reach an agreement to extend the terms of its real estate loan. 9336 and the BDC have confirmed to KPMG that an agreement has been concluded in this respect.
15. 9336 also paid a final dividend to the two unsecured creditors who submitted a claim pursuant to the Claims Process.
16. With respect to 9336’s other obligations, only the advances that have been made by 9227 since the appointment of KPMG as Monitor remain. These advances are not subject to a request for reimbursement by 9227.
17. In light of the foregoing, the 9336 Agreement, and the fact that 9227 and 110302 Canada Inc. agreed to continue to support the operations of 9336, KPMG is of the opinion that 9336 is no longer insolvent.
18. Thus, KPMG is now seeking the 9336 CCAA Termination Order, which would, if granted, terminate these CCAA Proceedings with respect to 9336 as of the date herein (the “**9336 CCAA Termination Time**”).
19. The 9336 CCAA Termination Order also contemplates that, effective as of the 9336 CCAA Termination Time, KPMG would be discharged from its capacity as Monitor to 9336, though it would continue to have the benefit of all previous Orders made and protections given to it in these proceedings. KPMG would also be fully released from any and all liability in any way relating to, arising out of, or in respect of 9336’s CCAA Proceedings. For the avoidance of doubt, KPMG respectfully submits that it shall not be liable for any act or omission pertaining to or in connection with the performance of its duties and obligations as monitor under 9336’s CCAA Proceedings unless such liability arises out of fraud or wilful misconduct on the part of KPMG.
20. KPMG has duly and properly discharged and performed its duties and obligations in these CCAA proceedings in compliance and in accordance with the CCAA and all Orders of this Court made in these CCAA proceedings.
21. KPMG also seeks a declaration that, upon filing the Monitor’s certificate substantially in the form of the draft certificate communicated herewith as Exhibit **R-5**, 9336’s CCAA Proceedings will be terminated without the need of any act or formality

4. CONCLUSION

22. The Debtors support this Application.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT this *Application for the Issuance of an Order Terminating the CCAA Proceedings with Respect to 9336-9262 Québec Inc., and Discharging the Monitor,*

ISSUE an order substantially in the form of the draft Order communicated as **Exhibit R-1**;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montréal, December 6, 2021

Blake, Cassels & Graydon L.L.P.

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioner / Monitor

(Court Code: BB-8098)

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Telephone: 514-982-4006

Our reference: 72396-22

AFFIDAVIT

I, the undersigned, **Dev Coossa**, LIT, CIRP, practicing my profession at KPMG Inc., having a place of business at 1500-600 De Maisonneuve Blvd. West, in the city of Montréal, Québec, solemnly affirm that all the facts alleged in the present *Application for the Issuance of an Order Terminating the CCAA Proceedings with Respect to 9336-9262 Québec Inc., and Discharging the Monitor*, are true.

AND I HAVE SIGNED:



DEV COOSSA

SOLEMNLY DECLARED before me
at Montréal, Québec
this 6th day of December, 2021



Commissioner of Oaths for the Province
of Québec



NOTICE OF PRESENTATION

To: SERVICE LIST

TAKE NOTICE that the present *Application for the Issuance of an Order Terminating the CCAA Proceedings with Respect to 9336-9262 Québec Inc., and Discharging the Monitor*, will be presented for adjudication **virtually** before the Honourable Philippe Bélanger, J.S.C., or another Justice of the Superior Court of Québec, sitting in the commercial division for the district of Montréal, at the Courthouse located at 1, Notre-Dame Street East, Montréal, Québec on **December 10, 2021, at 9:30 a.m., in room 15.11** or so soon thereafter as counsel may be heard.

How to join the virtual hearing:

15.11	<p>Join the hearing with Microsoft Teams +1 581-319-2194 Canada, Québec (833) 450-1741 Canada Conference ID : 508 117 984# Video-conference : teams@teams.justice.gouv.qc.ca Conférence ID VTC : 1115629941</p>
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DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, December 6, 2021

Blake, Cassels & Graydon L.L.P.

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioner / Monitor

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Our reference: 72396-22

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the CCAA)

N^o: **500-11-057549-194**

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

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

Debtors

-and-

KPMG INC.

Petitioner / Monitor

-and-

**110302 CANADA INC.
9325-7277 QUÉBEC INC.**

Mises en cause

LIST OF EXHIBITS

(in support of the Application for the Issuance of an Order Terminating the CCAA Proceedings with Respect to 9336-9262 Québec Inc., and Discharging the Monitor)

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- | | |
|------------|---|
| R-1 | 9336 CCAA Termination Order |
| R-2 | Motion for an Initial Order |
| R-3 | Corrected Second Amended and Restated Initial Order |
| R-4 | November 29, 2021 Order |
| R-5 | Monitor's certificate |

Montréal, December 6, 2021

Blake, Cassels & Graydon L.L.P.

BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Petitioner / Monitor

N°: 500-11-057549-194

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

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

Debtors

-and-
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**APPLICATION FOR THE ISSUANCE OF AN ORDER
TERMINATING THE CCAA PROCEEDINGS WITH
RESPECT TO 9336-9262 QUÉBEC INC., AND
DISCHARGING THE MONITOR, AFFIDAVIT AND
NOTICE OF PRESENTATION**

(Section 11 CCAA)

ORIGINAL



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