

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

**MOTION FOR (I) THE EXTENSION OF THE STAY OF PROCEEDINGS, AND (II) THE
APPROVAL OF AMENDED INTERIM FINANCING AND AN INCREASED INTERIM
LENDER CHARGE**

(Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("**CCAA**")

**TO THE HONOURABLE JUSTICE PETER KALICHMAN, 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. INTRODUCTION AND REQUESTED RELIEF

1. On October 8, 2019, KPMG Inc. ("**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.

2. 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 copy of the Motion for an Initial Order communicated for convenience herewith as Exhibit **R-1**.
3. 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 (Exhibit R-1).
4. 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 “**Corrected Second Amended and Restated Initial Order**”),² 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-2**.
5. On January 30, 2020, this Honourable Court issued a Second Amended and Restated Initial Order, *inter alia*, authorizing 9227 to obtain interim financing (the “**DIP Loan**”) of up to a maximum principal amount of \$3,300,000 (the “**Credit Limit**”) from Caisse Desjardins de Terrebonne (“**Desjardins**”), secured by a priority charge of \$5,000,000 on the Property of 9227, subject to certain defined exceptions (the “**DIP Charge**”), as appears from the Court record and from the Corrected Second Amended and Restated Initial Order (Exhibit R-2).
6. On April 24, 2020, this Honourable Court issued an Order (the “**April 24 Order**”), *inter alia*, amending the Corrected Second Amended and Restated Initial Order (Exhibit R-2) and further extending the Stay Period thereunder under to June 30, 2020, as appears from the Court record and from the April 24 Order communicated for convenience herewith as Exhibit **R-3**.
7. 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 and from the Claims Procedure Order communicated for convenience herewith as Exhibit **R-4**.
8. KPMG hereby seeks the issuance of a draft order substantially in the form of the draft order communicated herewith as Exhibit **R-5** (the “**Draft Order**”), providing for the

¹ CQLR c. S-31.1, ss. 450 and 451.

² 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-2).

amendment of the Corrected Second Amended and Restated Initial Order (Exhibit R-2) to:

- a) extend the Stay Period to **September 30, 2020** pursuant to sections 11.02 and 11.03 of the CCAA; and
 - b) increase the Credit Limit under the DIP Loan to \$4,300,000 and increase the DIP Charge to \$6,515,000.
9. KPMG has prepared a Fifth Report supporting the relief sought herein, a copy of which is communicated herewith as Exhibit **R-6**.

2. CASH FLOW FORECAST

10. KPMG has prepared a cash flow forecast for the period ending October 3, 2020 (the "**Cash Flow Forecast**"), a copy of which is attached as Appendix D to its Fifth Report (Exhibit R-6).
11. Based on the financial position of the Debtors and based on the assumptions set out in the Cash Flow Forecast, KPMG believes that the Cash Flow Forecast is fair and reasonable.
12. Based on the Cash Flow Forecast, the Debtors should be able to meet their post-filing obligations in the ordinary course until September 30, 2020.

3. EXTENSION OF THE STAY PERIOD

13. Since the issuance of the Initial Order, and in particular since the issuance of the April 24 Order, KPMG has acted and continues to act in good faith and with due diligence. Among other things, KPMG has:
- a) updated its website to include Orders issued by the Court and reports of the Monitor;
 - b) continued to manage and ensure the stability of the Debtors' business, as it has done since the issuance of the QBCA Order;
 - c) secured much-needed interim financing;
 - d) implemented procedures for the monitoring of the Debtors' business, operations and financial circumstances;
 - e) held meetings and discussions with the Debtors' principals, creditors, suppliers and other stakeholders—including many discussions and meetings with the principals of the Debtors' two undivided co-owners and with secured creditors—mainly for the purpose of gauging their respective visions and expectations for the restructuring, and to examine ways in which resolving the deadlock between the undivided co-owners can be accomplished;

- f) continued its analysis of the nature and status of the Debtors' operations, being the development of the Square Cadiac project;
 - g) prepared all necessary financial projections, including cash flow projections;
 - h) provided a weekly report to Desjardins and its financial advisor Raymond Chabot Grant Thornton detailing the following:
 - i) changes in cash compared to projected cash flow; and
 - ii) updates on (A) sales of land in the ordinary course of business, and (B) indivision proceedings;
 - i) coordinated and ensured the completion of infrastructure works including the creation of a joint ditch;
 - j) supervised and assisted the settlement process aimed at an acceptable split among the undivided co-owners of property owned by the Debtors;
 - k) coordinated efforts to extend the term of the DIP Loan and to increase the Credit Limit thereof;
 - l) pursued its efforts to sell land with the objective of concluding transactions in the ordinary course of business;
 - m) developed and elaborated the Claims Procedure, obtained Court approval of the Claims Procedure by way of the Claims Procedure Order, and commenced implementation of the Claims Procedure pursuant to the terms of the Claims Procedure Order; and
 - n) protected the interests of the Debtors in the proceedings commenced by Mr. Daniel Abandonato against 9227 and others by Mr. Daniel Abandonato (the "**Abandonato Proceedings**").
14. In light of the current COVID-19 pandemic, it is respectfully submitted that the extension of the Stay Period to September 30, 2020 is required to provide the KPMG and the Debtors with sufficient time to, *inter alia*:
- a) continue to manage and ensure the stability of the Debtors' business;
 - b) continue its analysis of the nature and status of the Debtors' operations;
 - c) interface with various stakeholders, including, *inter alia*, the City of Cadiac, the Mises en cause and their principals, as well as secured creditors, prospective purchasers, and counterparties to various contracts (including deeds of sale and offers to purchase), in order to, *inter alia*, better understand and circumscribe their respective positions and potential claims;
 - d) analyze the existence, validity and quantum of various claims against the Debtors and their Property pursuant to the Claims Procedure, and pursue the payment of any sums due to the Debtors;

- e) generally oversee and, if it considers advisable, provide assistance in relation to Debtors' involvement in the proceedings for a partition of the respective beneficial interests of the undivided co-owners in the property of 9227;
- f) continue to defend 9227's interests in the Abandonato Proceedings;
- g) pursue opportunities for selling certain property of the Debtors; and
- h) such other matters that may arise throughout the process.

4. INCREASE OF THE CREDIT LIMIT UNDER THE DIP LOAN AND OF THE DIP CHARGE

- 15. As of June 13, 2020, 9227 has borrowed \$1,418,000 under the DIP Loan, which has been used to maximize the value of the Debtors' Property, notably as working capital and for urgent infrastructure investments.
- 16. The term of the DIP Loan expires on June 30, 2020; however, the COVID-19 pandemic and related economic slowdown have slowed the restructuring of the Debtors, such that KPMG has made a request to Desjardins to extend the term of the DIP Loan to September 30, 2020 in order to continue to finance the restructuring.
- 17. Additionally, because the majority of infrastructure work must be done during the summer period, KPMG is seeking to increase the Credit Limit under the DIP Loan to \$4,300,000. This will require that the DIP Charge be increased to \$6,515,000 to reflect approximately the same DIP Loan / DIP Charge ratio as is currently in place.
- 18. Negotiations are currently underway between KPMG and Desjardins, and KPMG expects to present a new or amended interim financing agreement for Court approval at the hearing of the present Motion.

5. PROCEDURAL MATTERS

5.1 Confidentiality

- 19. KPMG submits that, regardless of the outcome of the present Motion, Appendices A, C and D to KPMG's Fifth Report, produced and/or communicated in the context of the present proceedings as Exhibit R-6, should be kept strictly confidential and shall be filed under seal, pending the issuance of an order approving the extension of the Stay Period.
- 20. Such information will be made available to creditors of the Debtors who execute a confidentiality agreement.
- 21. It is submitted that public disclosure of such sensitive financial information and documentation would be very prejudicial to the Petitioners, notably due to the potential use of this information by potential purchasers or competitors.
- 22. At the same time, the proposed measure would cause no prejudice to creditors, as the information would nevertheless be filed with this Honourable Court and could be made available to certain creditors upon signature of a confidentiality agreement.

5.2 Execution Notwithstanding Appeal

23. In view of the urgency and severity of the circumstances confronting the Debtors, it is essential that execution of the order requested be granted notwithstanding appeal.

5.3 Service

24. The Petitioners submit that the notices given of the presentation of the present Motion are proper and sufficient.
25. Pursuant to paragraph 67a) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), all motions in these CCAA Proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list. Each Motion must specify a date (the "**Initial Return Date**") and time for the hearing.
26. The service of the present Motion serves as notice pursuant paragraph 67a) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2).
27. KPMG also hereby seeks to amend paragraph 67a) of the Corrected Second Amended and Restated Initial Order to ensure that the Objection Deadline will never be less than three (3) business days following service of a motion.
28. Paragraph 67b) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2) requires that an Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and ground for such objections (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, by no later than 5 p.m. Montréal time on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**"). Accordingly, any parties wishing to object to the relief sought on this Motion must serve responding motion materials or a Notice of Objection by no later than 5 p.m. Montréal Time on June 23, 2020.
29. Paragraph 67c) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), as amended by the April 24 Order (Exhibit R-3), further provides that if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion may determine whether a hearing is necessary, whether such hearing will be in person, by telephone, by videoconference or in writing and the parties from whom submissions are required (collectively, the "**Hearing Details**").
30. Paragraph 67d) of the Corrected Restated Initial Order (Exhibit R-2) provides that KPMG shall communicate with the Judge and the service list with respect to the Hearing Details.
31. Paragraph 67e) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), as amended by the April 24 Order (Exhibit R-3), provides that, if a Notice of Objection is served by the Objection Deadline, the Court will advise the parties if the hearing will be in person, by telephone, by videoconference or by written submissions only, and then the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time or such other time as may be directed by the Court, to either proceed with a hearing, or establish a schedule for delivery of materials, for a hearing and for other matters.

6. CONCLUSIONS

32. Given the present circumstances in which the COVID-19 pandemic has slowed or stalled ongoing sales of land as well as of the sale processes, and for the reasons set forth above, KPMG believes that it is both appropriate and necessary that the relief being sought herein be granted for the purposes of maximizing the restructuring and realization efforts of the Debtors for the benefit of their stakeholders, and that the requested extension of the Stay Period be granted.
33. KPMG respectfully submits that the notices given of the present motion are proper and sufficient and that this motion should be granted in accordance with its conclusions.
34. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Approval of Amended Interim Financing and an Increased Interim Lender Charge;*

ISSUE an Order in the form of the Draft Order communicated in support hereof as Exhibit R-5;

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

Montréal, June 17, 2020

Blake, Cassels & Graydon L.L.P.

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioner / Monitor

(Court Code: BB-8098)

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Our reference: 72396-22

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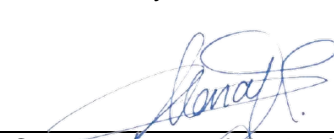
I, the undersigned, **Dev Coossa**, LIT, CIRP, practicing my profession at KPMG Inc., having a place of business at 1500-600 De Maisonneuve Blvd. West, in the city of Montréal, Québec, solemnly affirm that all the facts alleged in the present *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Approval of Amended Interim Financing and an Increased Interim Lender Charge* are true.

AND I HAVE SIGNED:



DEV COOSSA

SOLEMNLY DECLARED before me
at Montréal, Québec
this 17th day of June, 2020



Commissioner of Oaths for the Province of
Québec



NOTICE OF PRESENTATION

To: SERVICE LIST

TAKE NOTICE that the present *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Approval of Amended Interim Financing and an Increased Interim Lender Charge* will be presented for adjudication 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 **June 26, 2020 at 9:00 a.m.** or so soon thereafter as counsel may be heard, in a forum to be further announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, June 17, 2020

Blake, Cassels & Graydon L.L.P.

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C A N A D A

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 *Motion for (i) the Extension of the Stay of Proceedings, and (ii) the Approval of Amended Interim Financing and an Increased Interim Lender Charge*)

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- | | |
|------------|---|
| R-1 | Motion for an Initial Order |
| R-2 | Corrected Second Amended and Restated Initial Order |
| R-3 | April 24 Order |
| R-4 | Claims Procedure Order |
| R-5 | Draft Order |
| R-6 | Monitor's Fifth Report (Appendices A, C and D under seal) |

The exhibits, except for exhibit under seal, can be downloaded at the following link:

<https://blakes.sharefile.com/d-s447b4e8aebc431b9>

Montréal, June 17, 2020

Blake, Cassels & Graydon L.L.P.

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

N°: 500-11-057549-194

SUPERIOR COURT
(Commercial Division)
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AFFIDAVIT AND NOTICE OF PRESENTATION**

ORIGINAL

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script font.

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