

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTRÉAL**

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 THE ISSUANCE OF A CLAIMS PROCEDURE ORDER
(Sections 11 and 19ff. 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 MONTRÉAL, PETITIONER / MONITOR, KPMG INC., SUBMITS AS FOLLOWS:

1. RELIEF SOUGHT

1. The Petitioner / Monitor herein, KPMG Inc. ("**KPMG**"), hereby seeks the Court's approval of a claims procedure (the "**Claims Procedure**") for the filing, review, determination and adjudication of claims against the Debtors (as defined herein) and their respective directors and officers (collectively, the "**Directors and Offices**"), and the issuance of a Claims Procedure Order substantially in the form of the draft order communicated herewith as Exhibit R-1 (the "**Draft Claims Procedure Order**").

2. BACKGROUND

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 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 (Exhibit R-2).
5. 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-3**.
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-3) and further extending the Stay Period thereunder under to June 30, 2020, as appears from the Court record and from the Order communicated for convenience herewith as Exhibit **R-4**.
7. Since the commencement of these CCAA proceedings, KPMG has acted and continues to act in good faith and with due diligence to, among other things:
 - a) continue to manage and ensure the stability of the Debtors’ business, as it has done since the issuance of the QBCA Order;
 - b) secure an offer for much-needed interim financing;
 - c) implement procedures for the monitoring of the Debtors’ business, operations and financial circumstances;

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-3).

- d) hold 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;
- e) continue its analysis of the nature and status of the Debtors' operations, being the development of the Square Cadiac project;
- f) prepare all necessary financial projections, including cash flow projections;
- g) provide a weekly report to Caisse Desjardins de Terrebonne and its financial advisor Raymond Chabot Grant Thornton detailing the following:
 - i) changes in cash compared to Provisional Cash Flow; and
 - ii) updates on (A) sales of land in the ordinary course of business, and (B) indivision processes;
- h) coordinate and ensure the completion of infrastructure work including the creation of a joint ditch;
- i) supervise and assist the settlement process aimed at an acceptable division of property owned by the Debtors among the undivided co-owners; and
- j) pursue its efforts to sell land with the objective of concluding transactions in the ordinary course of business;

the whole as further detailed in KPMG's Third Report dated April 3, 2020 and filed at the request of this Court in the Court record. For ease of reference, a copy of the Third Report is communicated herewith as Exhibit **R-5**.

- 8. In order to advance the Debtors' restructuring with a view to maximizing the value of the heir business and property for benefit of all stakeholders and to provide the Debtors with the necessary stability to consider and review all available restructuring options, it is now necessary for KPMG to assess the Debtors' actual and contingent liabilities by way of the Claims Procedure.
- 9. In particular, in order to advance the possible sale of the Debtors' immovable property making up the Cadiac Square Project, KPMG must be able to arrive at a final determination of:
 - a) the validity of the secured claims asserted by various creditors—including the holders of legal hypothecs of construction;
 - b) the validity of the security asserted in such claims; and
 - c) the extent of the security respectively encumbering each lot of the Debtors' immovable property.

3. THE CLAIMS PROCEDURE³

10. In order to proceed with the review and determination of the number and quantum of all claims, actual and contingent, against the Debtors and the Directors and Officers, KPMG seeks the approval of the Claims Procedure as set out in the Draft Claims Procedure Order (Exhibit R-1), the terms of which are summarized below.
11. KPMG submits that the proposed Claims Procedure is fair and reasonable and that its approval is appropriate in the circumstances to allow KPMG to better assess the number, nature and quantum of claims against the Debtors and their Directors and Officers, all with a view to advancing the Debtors' restructuring process in an informed manner, for the benefit of all stakeholders.

3.1 Issuance of a Claims Package

12. Pursuant to the Draft Claims Procedure Order (Exhibit R-1), KPMG shall send a Claims Package to each known creditor of the Debtors as soon as possible following the issuance of the Claims Procedure Order, informing them of their rights to file a claim against the Debtors and the Directors and Officers by no later than the Claims Bar Date of June 18, 2020.
13. More specifically, the Claims Package will include the following:
 - a) a copy of the Newspaper Notice to be issued by KPMG (Schedule "A" to the Draft Claims Procedure Order (Exhibit R-1));
 - b) a copy of the Proof of Claim form (Schedule "B" to the Draft Claims Procedure Order (Exhibit R-1));
 - c) a copy of the Instruction Letter to the Debtors' creditors (Schedule "C" to the Draft Claims Procedure Order (Exhibit R-1)); and
 - d) a copy of the form of Notice of Revision or Disallowance (Schedule "D" to the Draft Claims Procedure Order (Exhibit R-1)).
14. In addition, the mailing of the Claims Package to known creditors of the Debtors will be supplemented by the placement, in widely distributed newspapers, of the Notice of the Claims Procedure, as well as the posting of the Claims Package on KPMG's website.

3.2 Claims Bar Date

15. As mentioned above, the Draft Claims Procedure Order (Exhibit R-1) outlines a procedure for the filing of claims against the Debtors and the Directors and Officers and establishes a Claims Bar Date of June 18, 2020, as well as subsequent bar dates for claims arising after the issuance of the Claims Procedure Order, as further detailed therein.

³ All capitalized terms in Section 3 of the present Motion not otherwise defined herein shall have the meaning ascribed to them in the Draft Claims Procedure Order (Exhibit R-1).

16. The Claims Bar Date will not apply to certain claims designated as Excluded Claims, which:
 - a) cannot be compromised under the CCAA;
 - b) relate to the sale of goods or the rendering of services after the filing of these CCAA proceedings; or
 - c) are secured by Court-authorized superpriority charges.

3.3 Review and Determination of Claims

17. Pursuant to the Draft Claims Procedure Order (Exhibit R-1), KPMG shall review all claims against the Debtors and the Directors and Officers and proceed with the determination thereof.
18. KPMG shall, where applicable, send a Notice of Revision or Disallowance to the creditors whose claims are disallowed in whole or in part. Upon receiving a Notice of Revision or Disallowance, a creditor whose claim has been disallowed in whole or in part will have the opportunity to file, within ten (10) calendar days from the receipt of the Notice of Revision or Disallowance, a motion before this Court to appeal said Notice of Revision or Disallowance, failing which, the creditor will be deemed to have accepted KPMG's determination of its claim.

4. PROCEDURAL MATTERS

4.1 Execution Notwithstanding Appeal

19. 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.

4.2 Service

20. The Petitioners submit that the notices given of the presentation of the present Motion are proper and sufficient.
21. Pursuant to paragraph 67a) of the Corrected Second Amended and Restated Initial Order (Exhibit R-3), 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.
22. The service of the present Motion serves as notice pursuant paragraph 67a) of the Corrected Second Amended and Restated Initial Order (Exhibit R-3).
23. Paragraph 67b) of the Corrected Second Amended and Restated Initial Order (Exhibit R-3) requires that a 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 May 18, 2020.

24. Paragraph 67c) of the Corrected Second Amended and Restated Initial Order (Exhibit R-3), as amended by the April 24 Order (Exhibit R-4), 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**").
25. Paragraph 67d) of the Corrected Restated Initial Order (Exhibit R-3) provides that KPMG shall communicate with the Judge and the service list with respect to the Hearing Details.
26. Paragraph 67e) of the Corrected Second Amended and Restated Initial Order (Exhibit R-3), as amended by the April 24 Order (Exhibit R-4), 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.

5. CONCLUSIONS

27. Given the reasons set forth above, KPMG believes that it is both appropriate and necessary that the Claims Procedure be approved and a Claims Procedure Order substantially in the form of the Draft Claims Procedure Order (Exhibit R-1) be granted. With such relief, KPMG and the Debtors will be able to advance the restructuring process in order to maximize the value of the Debtors' business and assets for the benefit of their stakeholders.
28. 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.
29. 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 the Issuance of a Claims Procedure Order*,

ISSUE an Order in the form of the Draft Claims Procedure Order communicated in support hereof as Exhibit R-1;

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

Montréal, May 15, 2020

Blake, Cassels & Graydon LLP

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Attorneys for the Petitioner / Monitor

(Court Code: BB-8098)

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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 *Motion for the Issuance of a Claims Procedure Order* are true.

AND I HAVE SIGNED:



DEV COOSSA

SOLEMNLY DECLARED before me
at Montréal, Québec
this 15th day of May, 2020

Commissioner of Oaths for the Province of
Québec



NOTICE OF PRESENTATION

To: SERVICE LIST

TAKE NOTICE that the present *Motion for the Issuance of a Claims Procedure Order* 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 **May 21, 2020** or so soon thereafter as counsel may be heard, at a time and in a forum to be further announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, May 15, 2020

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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°: **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 the Issuance of a Claims Procedure Order*)

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- | | |
|------------|---|
| R-1 | Draft Claims Procedure Order |
| R-2 | Motion for an Initial Order |
| R-3 | Corrected Second Amended and Restated Initial Order |
| R-4 | April 24 Order |
| R-5 | KPMG's Third Report, dated April 3, 2020 |

The exhibits can be downloaded at the following link:

<https://blakes.sharefile.com/d-s9c1bc1a6fda4552a>

Montréal, May 15, 2020

Blake, Cassels & Graydon LLP

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.
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Mises en cause

**MOTION FOR THE ISSUANCE OF A CLAIMS
PROCEDURE ORDER, AFFIDAVIT, NOTICE OF
PRESENTATION AND EXHIBITS R-1 TO R-5**

ORIGINAL

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

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BB-8098

Our File: 72396-22