

CANADA  
PROVINCE OF NEW BRUNSWICK  
DISTRICT OF MONCTON  
DIVISION NO.: 04 - Moncton  
COURT NO.: 25597  
ESTATE NO.: 51-2772665

IN THE COURT OF QUEEN'S BENCH OF NEW  
BRUNSWICK  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF: **TOMAVO INC.**

*Debtor*

- and -

**KPMG INC.**

*Licensed Insolvency Trustee*

### **TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS**

The purpose of this Report is to apprise the creditors as to the affairs of the bankrupt, Tomavo Inc. (the "**Debtor**", the "**Company**" or "**Tomavo**") as well as to the current status of the administration of the bankrupt estate. We caution readers that certain information contained in this Report is based upon management representations as well as the data reflected in the unaudited books and records of the Debtor. The Trustee has not conducted an audit and has not reviewed in detail the books and records of the Debtor. Consequently, the Trustee expresses no opinion whatsoever with respect to the reliability or completeness of such information.

#### **BACKGROUND**

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1. Founded in 2017, Tomavo is a privately owned retailer in the fresh fruits & vegetables market. The Company's corporate office were in Dartmouth, Nova Scotia.
2. Prior to the filing of a Notice of Intention to make a proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**"), Tomavo carried on business from six (6) leased premises in Fredericton (NB), Moncton (NB), Shediac (NB), Dartmouth (NS), Bedford (NS) and Halifax (NS).
3. Per the Company, the primary causes of its financial difficulties are summarized as follows:
  - In the end of 2018, the Moncton store faced significant setbacks resulting from municipal infrastructure improvements being undertaken on the roadway, which negatively impacted business due to the partial or, at times, total closure of the store to vehicular traffic, over the course of roughly six months; and
  - COVID-19 pandemic and the resulting lockdowns and other restrictions imposed by local governments resulted in an initial sharp 80% reduction in revenues. While large grocery store chains had been deemed "essential" by local governments, Tomavo was recognized as a specialty store and was therefore subject to restrictive customer capacity limitations. This also increased the Company's overhead as the Company was required to employ additional staff to manage outside line-ups.
4. On October 7, 2021, Tomavo initiated a restructuring process by filing a NOI under the BIA as the Company was unable to meet its obligations as they arise and could not resupply its stores in products. KPMG agreed to act as Trustee under the NOI.
5. During the NOI, the Company obtained one extension of the stay period on the 25<sup>th</sup> day of November 2021, granted by the Court of the Queen's bench of New Brunswick. The extension of the stay period was set to expire on December 21, 2021.

**Tomavo Inc.**

## Trustee's Report to the First Meeting of Creditors

6. During the NOI, the Company implemented restructuring measures by, among other things, disclaiming three (3) leases, one (1) commercial contract and terminating excess employees and implemented cost reductions measures.
7. However, these measures proved insufficient. The Company was still not able to meet its obligations and was no longer getting the financial support from its main supplier.
8. As a result, on December 21, 2021, Tomavo made an assignment under section 49 of the BIA to file for bankruptcy.

**ASSETS**

9. The table below summarizes the assets and their value as disclosed in the Form 78 sent to creditors:

<b>TOMAVO INC.</b>		
<b>Stament of Affairs - Assets</b>	<b>Balance sheet</b>	<b>Estimated Realization</b>
<b>As at December 21<sup>st</sup>, 2021</b>	<b>value</b>	<b>value</b>
Cash	Note 1	Note 1
Inventory	Note 2	Note 2
Equipment	Note 2	Note 2
Leasehold improvements	Note 3	Note 3
Intangible assets	Note 3	Note 3
<b>Total</b>	<b>-</b>	<b>-</b>

**Note 1: Cash**

10. The Trustee has communicated with HSBC Bank to obtain a confirmation of the cash balance at the date of the bankruptcy and to receive these funds. HSBC confirmed the cash balance at the date of the bankruptcy is nil due to payments made prior to the bankruptcy and bank charges.

**Note 2: Inventory and Equipment**

11. The Trustee did not take possession of the inventory and equipment of the Company due to their estimated negative net realizable value. Their realizable value is estimated to be lower than the costs associated with implementing the conservatory measures and the sale process.

**Note 3: Leasehold improvements and Intangible assets**

12. The Trustee has received an offer to purchase its rights, titles and interest in the trademark Tomavo, website (tomavo.ca), phone number, social media platforms and CRM from a Company related to the shareholder of Tomavo Inc. The Trustee will review the offer and obtain instructions from the inspectors to be appointed.

**Other**

13. The Trustee was recently informed by the Company that an account receivable of approximately \$15,000 was still owed by a client who was a purchaser in a wholesale transaction. The Trustee will send a letter to collect this amount. As of the date of this Report, the Trustee is not in the position to assess the likelihood of the collection of this account receivable.

## LIABILITIES

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14. The table below summarizes the liabilities and their value as disclosed in the Form 78 sent to creditors:

<b>TOMAVO INC.</b>	
<b>Stament of Affairs - Liabilities</b>	
<b>As at December 21<sup>st</sup>, 2021</b>	
<b>Creditors</b>	<b>Amount (\$)</b>
<b>Preferred</b>	
Employees	54 000
	<b>54 000</b>
<b>Secured</b>	
Vault Credit Corporation	29 400
Courchesne Larose LTD	1 616 122
	<b>1 645 522</b>
<b>Unsecured</b>	
Trade payables including Employees compensation	2 064 732
CEBA RBC Loan	60 000
	<b>2 124 732</b>
<b>Total</b>	<b>3 824 254</b>

### Preferred Creditors

15. The books and records of Tomavo reflect amounts owing to 40 employees totaling approximately \$54,000 to be considered to preferred creditors pursuant to 136(1)d) of the *BIA*. The Trustee did not record these potential claims under section 81.3 of the *BIA* because, at the date of this Report, the Trustee does not expect any realization on short term assets.

### Secured Creditors

16. Per the New Brunswick Personal Property Registry:

- Vault Credit Corporation have a collateral over all present and future movable/personal property, books, assets and undertakings, both corporeal and incorporeal now owned or hereinafter acquired by the borrower and guarantor; and
- Courchesne Larose LTD have a security interest in all the debtor's present and after-acquired personal property.

17. As of the date of this Report, the Trustee has not obtained a legal opinion on the validity of the security interests held by the secured creditors. The Trustee will obtain a legal opinion on the validity and perfection of the security interests held by the secured creditors only if it becomes necessary during the course of the administration of the file and following the approval of the inspectors to be appointed.

### Unsecured Creditors

18. The unsecured liabilities consist primarily of:

- \$60,000 from the Canadian Emergency Business Account (CEBA)
- Accounts payable for services, including rent arrears and purchases of inventory sold in the normal course of business; and
- Compensation to employees in lieu of notice.

**Tomavo Inc.**

Trustee's Report to the First Meeting of Creditors

**Wage Earner Protection Program ("WEPP")**

19. The Trustee is currently completing its compilation and review of the amounts owed by the Company to the employees and will send in the next few days a letter to the employees detailing the amounts owed individually and the details on how to file a claim with the Trustee and WEPP.

**BOOKS AND RECORDS**

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20. The Trustee has received and has taken possession of a portion of the books and records of the Company and is expecting to receive the balance soon.

**CONSERVATORY MEASURES**

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21. To date, the Trustee has implemented the following conservatory and protection measures:

- Sending by regular mail and email, to all the Debtor's known creditors, the notice of bankruptcy and of the first meeting of creditors, the statement of affairs, list of known creditors and a proof of claim form (the "**Creditor Package**");
- Posting the Creditor Package on the Trustee's website;
- Sent a letter to the HSBC Bank for confirming the funds available in the bank account;
- Opening a trust account; and
- Publishing the Notice of Bankruptcy in the daily newspaper Times & Transcript.

22. As previously stated in this Report, The Trustee did not take possession of the inventory and equipment of the Company due to their estimated negative net realizable value.

**PROVABLE CLAIMS**

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23. At the date of this Report, there were a few significant differences between the claims received and those reported in the statutory balance sheet. Creditors that have filed a proof of claim have claimed an amount of approximately \$369,000, in excess of the amount reported in the statutory balance sheet. The Trustee will conduct the variance analysis at a later date, if necessary.

24. A few creditors also filed proofs of claim with the Trustee pursuant to section 81.2(1) of the *BIA* (claims by a farmer, fisherman or aquaculturist). The Trustee has determined that these claims were not meeting the criteria of 81.2(1) b) (i) as the products were not delivered to the Company within the fifteen day period preceding the date on which Tomavo became bankrupt.

**REVIEWABLE TRANSACTIONS AND PREFERENTIAL PAYMENTS**

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25. At the creditors' request, the Trustee will carry out an in-depth review of the Debtor Company's books and records in order to determine whether there are any reviewable transactions and/or preferential payments and to report in this regard to the inspectors, if applicable.

**Tomavo Inc.**

Trustee's Report to the First Meeting of Creditors

**ANTICIPATED REALIZATION AND PROJECTED DISTRIBUTION**

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26. Given the absence of assets and the amount in the bank account is less than the secured claim, the Trustee does not anticipate the payment of a dividend to unsecured creditors.

**OTHER**

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27. The Trustee has obtained a commitment for the payment of its fees and disbursements from the Company's secured and main creditor, Courchesne Larose Ltd.

Dated in Montreal on this 11<sup>th</sup> day of January 2022.

**KPMG INC.**



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Maxime Codere, CPA, CA, CIRP, LIT