

N°: 500-11-059024-204

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

KPMG INC.

Applicant / Trustee

- and -

MODASUITE INC.

Debtor

APPLICATION TO APPOINT A RECEIVER
(section 243 of the *Bankruptcy and Insolvency Act*)

TO ONE OF THE HONOURABLE JUDGES OR REGISTRARS OF THE SUPERIOR COURT
SITTING IN COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE
APPLICANT RESPECTFULLY STATES AS FOLLOWS:

I. INTRODUCTION

1. By the present application (this “**Application**”), the Applicant / Trustee, KMPG Inc. (the “**Trustee**”), seeks its appointment as receiver (in that capacity, the “**Proposed Receiver**”) under section 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”) to certain limited property of the Debtor and for the sole purpose of triggering the entitlement of certain of the Debtor’s employees to benefits under the *Wage Earner Protection Program Act* (“**WEPPA**”), the whole in accordance with the draft order (the “**Proposed Order**”), communicated herewith as **Exhibit A-1**.
2. It is respectfully submitted that the appointment contemplated in the Proposed Order is just and convenient in the circumstances as it would provide a significant benefit to the Debtor’s employees without impairing or otherwise affecting the Debtor’s restructuring efforts.
3. Indeed, appointments of this nature have been authorized in various recent insolvency cases, including for the purpose of assisting individuals that have lost their employment following the onset of the COVID-19 pandemic.

II. BACKGROUND

4. On March 18, 2020, the Debtor, Modasuite inc., was forced to close its stores in the context of collective efforts to help limit the spread of COVID-19 and in an effort to protect the health and well-being of its employees and customers. Its online sales continued to operate without interruption through the crisis period.

5. As a result of the foregoing, the Debtor had no alternative but to temporarily lay off certain of its employees working at its retail stores or at its head office.
6. On June 22, 2020, the Debtor filed a Notice of intention to make a proposal under the BIA (the “**NOI**”), commencing these proceedings under the BIA (the “**NOI Proceedings**”), and the Trustee was appointed as trustee to the NOI, the whole as appears from the Court record.
7. At the time of the NOI, the Debtor employed approximately 350 full-time and part-time employees, including those laid off as a consequence of the pandemic. These employees are not party to any collective agreements and the Debtor does not maintain a pension plan for their benefit.
8. On June 26, 2020, this Court rendered an *Order Approving an Administration Charge, a D&O Charge, Sale Guidelines and Granting Ancillary Relief*, as appears from the Court record, with a view to facilitating the implementation of the restructuring efforts contemplated in the NOI Proceedings.
9. On July 10, 2020, as part of these restructuring efforts, a sale and investment solicitation process was deployed in respect of the Debtor and its property (the “**SISP**”).
10. On July 21 and September 2, 2020, this Court rendered orders extending the time limit to file a proposal pursuant to the BIA, as appears from the Court record.
11. On October 6, 2020, this Court issued an *Approval, Vesting and Assignment Order*, approving a transaction developed through the SISP, and extended the delay for the Debtor to file a proposal until December 3, 2020, as appears from the Court record.

III. THE PROPOSED RECEIVER SHOULD BE APPOINTED

12. 72 of the Debtor’s employees have been permanently laid off since the onset of the COVID-19 pandemic and over the course of the NOI Proceedings (the “**Subject Employees**”).
13. Under WEPPA, eligible individuals are entitled to receive certain payments in respect of “*eligible wages*”, including termination and severance pay, in certain circumstances where such individual’s former employer is subject to a bankruptcy or a receivership.
14. Because of the nature of the NOI Proceedings, any employees of the Debtor that have been laid-off are currently not eligible to receive benefit payments under WEPPA since the Debtor is not subject to a bankruptcy or a receivership.
15. In such circumstances, the Trustee respectfully submits that it is just and convenient for it to be appointed receiver under section 243 BIA, without security, to cash in the amount of \$100.00 – to be transferred by the Debtor to the Proposed Receiver – and no other property of the Debtor, in order to allow the Subject Employees to receive certain payments under WEPPA.
16. The appointment of the Proposed Receiver would not result in any disruptions to the NOI Proceedings, or cause any material prejudice to any stakeholder of the Debtor. On the

other hand, the proposed appointment would provide a significant benefit to the Subject Employees that have, like many others, been negatively impacted by the pandemic.

17. The Proposed Receiver has the requisite capacity to act and has consented to act receiver in accordance with the Proposed Order.
18. As the Proposed Receiver is already acting as the Trustee and is subject to reporting obligations in that capacity, it is respectfully requested that it be relieved from compliance with sections 245(1), 245(2) and 246 BIA, in accordance with the Proposed Order.
19. The Debtor supports the relief sought in this Application.

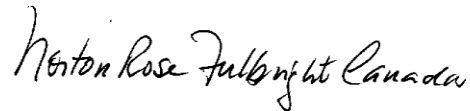
FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present *Application to Appoint a Receiver* (the “**Application**”);

RENDER an order substantially in the form of the draft *Order Appointing a Receiver* communicated in support of the Application as **Exhibit A-1**;

THE WHOLE, without costs, except in the case of contestation.

Montréal, November 24, 2020



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AFFIDAVIT

I, the undersigned, Stéphane De Broux, domiciled for the purpose hereof at 600, de Maisonneuve Blvd. West, Suite 1500, Montréal, Québec H3A 0A3, solemnly declare the following:

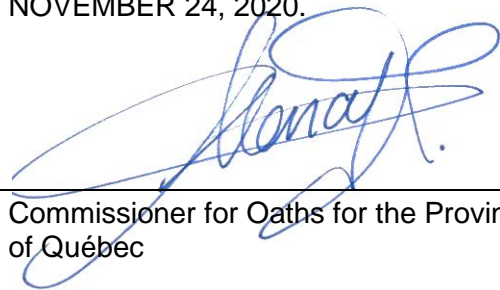
1. I am the representative of the Applicant, KPMG Inc.
2. I have taken cognizance of the attached *Application to Appoint a Receiver* (the "**Application**").
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where I have obtained facts alleged in the Application from others, I believe them to be true.

AND I HAVE SIGNED:



STÉPHANE DE BROUX

SOLEMNLY DECLARED BEFORE ME
BY TECHNOLOGICAL MEANS IN
MONTRÉAL, QUÉBEC, ON
NOVEMBER 24, 2020.



Commissioner for Oaths for the Province
of Québec



**NOTICE OF PRESENTATION
COMMERCIAL DIVISION (ROOM 16.10)**

TO:	THE SERVICE LIST (See attached)
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1. PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the *Application to Appoint a Receiver* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in room 16.10, of the Montréal Courthouse, at the **virtual calling of the roll** on December 1, 2020, at 8:45 a.m., or so soon thereafter as counsel may be heard.

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL

The coordinates for you to join the virtual calling of the roll in room 16.10 are as follows :

a) By Teams : via the Teams link (available on the website <http://www.tribunaux.qc.ca>);

You must fill in your name and click on « Join now » (« *Rejoindre maintenant* »). To facilitate the process, we invite you to fill in your name as follows :

Lawyers : M^e First Name, Name (Name of the party you represent)

Trustees : First Name, Name (Trustee)

Superintendent : First Name, Name (Superintendent)

Parties not represented by a lawyer : First Name, Name (specify : Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or Other)

For those participating at a public hearing : simply indicate : (public)

b) By telephone :

Canada, Québec (Charges may apply): +1 581-319-2194

Canada (Toll free) : (833) 450-1741

Conference ID : 820 742 874#

c) By VTC videoconference : teams@teams.justice.gouv.qc.ca

VTC Conference ID : 11973653703

d) In person :

If and only if you do not have access to one of the above mentioned technological means of connecting, you may then attend in room 16.10 of the Montreal Courthouse located at : 1, Notre-Dame Street East, Montréal, Québec.

3. DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that if you wish to contest the proceeding, you must inform the initiator of the said proceeding in writing at the coordinates mentioned in the present Notice of Presentation at least 48 hours before the date of presentation and participate at the virtual calling of the roll, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Collaboration

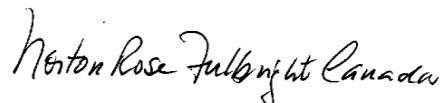
TAKE NOTICE that the parties are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution

TAKE NOTICE that the parties must consider private prevention and resolution processes before referring their dispute to the courts, which are namely negotiation, mediation or arbitration, for which the parties call on a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, November 24, 2020



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NO: 500-11-058403-201

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF:**

MODASUITE INC.

Applicant / Debtor

and

KPMG INC.

Trustee

APPLICATION TO APPOINT A RECEIVER
(s. 243 of the *Bankruptcy and Insolvency Act*)

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