

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 EXTENSION OF THE STAY OF PROCEEDINGS
(Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("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 MONTRÉAL, 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.
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 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.
6. 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;
7. The Stay Period has been extended from time to time and more recently by an order issued by this Honourable Court on June 30, 2021, amending the Corrected Second Amended and Restated Initial Order (Exhibit R-2) and further extending the Stay Period to September 30, 2021, as appears from the June 30, 2021 Order communicated herewith for convenience as Exhibit **R-3**.
8. 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

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).

- 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 inc., Groupe Pessoa, Mr. Jean Pessoa and Groupe Trudeau was homologated by the Court;
- 9. KPMG hereby seeks the issuance of an order substantially in the form of the draft order communicated herewith as Exhibit **R-4** (the “**Draft Order**”) to, *inter alia*, amend the Corrected Second Amended and Restated Initial Order (Exhibit R-2) to extend the Stay Period to **November 30, 2021** pursuant to sections 11.02 and 11.03 of the CCAA;
- 10. KPMG has prepared a Twelfth Report supporting the relief sought herein, a copy of which will be further communicated as Exhibit **R-5**.

2. CASH FLOW FORECAST

- 11. KPMG has prepared a revised cash flow forecast for the period ending November 30, 2021 (the “**Cash Flow Forecast**”), a copy of which is attached as Appendices *under seal* to its Twelfth Report (Exhibit R-5).
- 12. 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.

3. EXTENSION OF THE STAY PERIOD

- 13. Since the issuance of the Initial Order, and in particular since the issuance of the June 30, 2021 Order (Exhibit R-3), 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 and extended 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 Candiac 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) pursued its efforts to sell land with the objective of concluding transactions in the ordinary course of business;
- l) implemented the Claims Procedure pursuant to the terms of the Claims Procedure Order;
- m) prepared and filed its various reports to the Court;
- n) obtained payment of the balance owing from 9361-4048 Québec Inc. for the sale of certain lots;
- o) continued proceedings for recovery of unpaid rent from Groupe Xpansion Québec Inc.;
- p) continued proceedings for a declaratory judgement, a safeguard order, a Paulian action and other relief in relation to the preservation of 9227's beneficial interest in the "Pür Urbain" project undertaken by 9344-8181 Québec Inc. and in the "Liberty Triplex" project undertaken by 9361-4048 Québec Inc., and exercised its investigative powers in relation thereto;
- q) continued discussion with companies controlled by Mr. Jean Pessoa and concluded a global settlement of all pending issues with the latter;
- r) protected the interests of the Debtors in the proceedings commenced against 9227 and others by Gerpro Construction inc. regarding its claim; and
- s) been involved in discussions concerning an eventual sale of the building located at 170 de L'Industrie, Candiac which may entail the end of the restructuring process for 9336;
- t) obtained an Approval and Vesting Order from the Court for the sale of certain lots to 9325-7277 Québec Inc. and 9344-8181 Québec Inc.;
- u) took all steps and actions necessary or appropriate to implement the Plan;
- v) completed the various steps described in the transaction which was sanctioned by the Court on July 13th, 2021

14. It is respectfully submitted that the extension of the Stay Period to November 30, 2021 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) complete and finalize the infrastructure works which still need to be realized;
 - d) complete and finalize the implementation of the Plan, and;
 - e) such other matters that may arise throughout the process.

4. PROCEDURAL MATTERS

4.1 Confidentiality

15. KPMG submits that, regardless of the outcome of the present Motion, the Cash Flow Forecast filed *under seal* to KPMG's Twelfth Report (Exhibit R-5) should be kept strictly confidential and shall be filed under seal.
16. Such information will be made available to creditors of the Debtors who execute a confidentiality agreement.
17. 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.
18. 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.

4.2 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.

4.3 Service

20. 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.
21. 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**").

22. Pursuant to the Order of June 26, 2020, paragraph 67a) of the Corrected Second Amended was amended to ensure that the Objection Deadline will never be less than three (3) business days following service of a motion.
23. Paragraph 67c) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), as amended on April 24, 2020, 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**").
24. 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.
25. Paragraph 67e) of the Corrected Second Amended and Restated Initial Order (Exhibit R-2), as amended on April 24, 2020, 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

26. 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.
27. 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 Extension of the Stay of Proceedings*;

ISSUE an Order in the form of the Draft Order communicated in support hereof as Exhibit R-4;

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

Montréal, September 24, 2021

Blake, Cassels & Graydon L.L.P.

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioner / Monitor

(Court Code: BB-8098)

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AFFIDAVIT

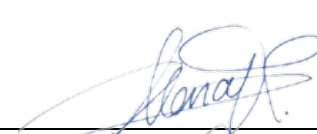
I, the undersigned, **Dev Coossa**, LIT, CIRP, practicing my profession at KPMG Inc., having a place of business at 1500-600 De Maisonneuve Blvd. West, in the city of Montréal, Québec, solemnly affirm that all the facts alleged in the present *Motion for the Extension of the Stay of Proceedings* are true.

AND I HAVE SIGNED:



DEV COOSSA

SOLEMNLY DECLARED before me
at Montréal, Québec
this 24th day of September, 2021



Commissioner of Oaths for the Province of
Québec



NOTICE OF PRESENTATION

To: SERVICE LIST

TAKE NOTICE that the present *Motion for the Extension of the Stay of Proceedings* 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 **Wednesday, September 29, 2021** 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, September 24, 2021

Blake, Cassels & Graydon L.L.P.

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Attorneys for the Petitioner / Monitor

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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)

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Debtors

-and-

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9325-7277 QUÉBEC INC.**

Mises en cause

LIST OF EXHIBITS

(in support of the *Motion for the Extension of the Stay of Proceedings*)

-
- | | |
|------------|---|
| R-1 | Motion for an Initial Order |
| R-2 | Corrected Second Amended and Restated Initial Order |
| R-3 | June 30, 2021 Order |
| R-4 | Draft Order |
| R-5 | KPMG's Twelfth Report |

Montréal, September 24, 2021

Blake, Cassels & Graydon L.L.P.

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

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SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

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Mises en cause

**MOTION FOR THE EXTENSION OF THE STAY OF
PROCEEDINGS, AFFIDAVIT AND NOTICE OF
PRESENTATION**

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