

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-060843-220

SUPERIOR COURT
(Commercial Division)

In the matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36

9186-9297 QUÉBEC INC.

Applicant

and

10542113 CANADA INC.

Debtor

and

FLORA I LIMITED PARTNERSHIP

Mise-en-cause

and

RAYMOND CHABOT INC.

Proposed Monitor

and

ROMSPEN INVESTMENT CORPORATION, a
legal person having its head office at 300-162
Cumberland Street, Toronto, Ontario M5R 3N5

Contesting Secured Creditor

**In the matter of the *Bankruptcy and Insolvency Act*,
RSC 1985, c B-3**

ROMSPEN INVESTMENT CORPORATION, a
legal person having its head office at 300-162
Cumberland Street, Toronto, Ontario M5R 3N5

Petitioner

10542113 CANADA INC.

and

FLORA I LIMITED PARTNERSHIP

Debtor

and

MNP LTD.

Proposed Receiver

**ROMSPEN INVESTMENT CORPORATION'S
MOTION TO APPOINT A RECEIVER**

(s. 31(1) and 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3)

and

CONTESTATION OF THE APPLICANT'S REQUEST FOR AN INITIAL ORDER

(seq. 1)

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IN SUPPORT OF ITS MOTION AND CONTESTATION, ROMSPEN INVESTMENT CORPORATION RESPECTFULLY STATES:

I. INTRODUCTION

1. Romspen Investment Corporation (“**Romspen**”) hereby seeks the appointment of a receiver to the property of 10542113 Canada Inc. (“**105**”) and Flora I Limited Partnership (“**Flora**” and together with 105, the “**Debtors**”), considering their insolvency and that it is just and convenient to appoint a receiver, in that:
 - a. Romspen has the contractual right to appoint a receiver;
 - b. although a receivership involves costs that Romspen would have preferred to avoid, it will address the single-proceeding concerns raised by this Court during the March 16, 2022 hearing;
 - c. a receivership would result in a fuller, faster, more efficient and far less costly recovery for Romspen and other secured stakeholders than the CCAA proceeding proposed by 9186-9297 Québec Inc. (“**Upbrella**”);
 - d. Romspen is prepared to fund the cost of the receivership and the receiver’s borrowing charge that it will seek in respect of such financing will not prime the secured claims of holders of legal hypothecs; and
 - e. the hierarchy of security and creditor priorities is simple and straightforward, and favours the preference of Romspen as the senior secured creditor who will effectively assume all of the risks and consequences associated with the costs of any single-proceeding collective process.
2. Romspen contests the *Demande pour l’émission d’une Ordonnance Initiale du Premier Jour et d’une Ordonnance Initiale Amendée et Reformulée* (the “**CCAA Application**”) brought by Upbrella on the grounds, *inter alia*, that:
 - a. Upbrella has proposed no details of any possible restructuring of the project (the “**Project**”) on lot 5 599 420 of the cadastre of Québec, land registration division of Montréal (the “**Flora Property**”), which would only be made more difficult by the cost of the proposed CCAA process, and Romspen (the major senior secured creditor) will not approve a plan that compromises its claims, such that there is no likelihood that a successful plan could possibly emerge from the proposed CCAA process;
 - b. the proposed CCAA proceeding is nothing more than a costly liquidation, involving no evidence of any relevant policy considerations, such as employees, other determinative stakeholder interests or a going concern business;
 - c. it prejudices Romspen by seeking to prime Romspen’s security with super-priority charges in favour of an interim lender related to Upbrella, for substantial professional fees, including without justification those of Upbrella’s counsel, thus forcing Romspen

- to effectively assume all of the costs of a process that will manifestly impair its security position and which it is opposed to;
- d. it prejudices Romspen by forcing an artificial extension of Romspen's loan terms with the Debtors for the duration of a CCAA process that Romspen does not support, which will not yield a better result than a sale by a receiver, and risks further deteriorating Romspen's security in the meantime;
 - e. the proposed CCAA process affords no benefit to Romspen, which had contracted for its secured position and lent funds in reliance on its priority; and
 - f. the work on the Project by Upbrella is the subject of serious allegations of mismanagement and absence of transparency, and no material progress appears to have been made since Upbrella's contract was terminated.
3. Courts consistently deny CCAA protection to single purpose real estate entities on the above-mentioned grounds. Debtors are not entitled to erode the financial position of their secured creditors in the hopes of making a more profitable deal.
 4. It is exceptional that in this case a contingent creditor is seeking to force CCAA protection on a single purpose real estate entity against its wishes. If the Debtors would not succeed in requesting that protection, there is no reason to grant it at the request of a holder of a contested legal hypothec of construction.
 5. In addition to the above factors, Upbrella has no standing or interest to seek CCAA protection or interim financing for the Debtors, as:
 - a. its purported status as a creditor of the Debtors is vigorously disputed, with Flora alleging that Upbrella should be condemned to pay it over \$13,000,000; and
 - b. even if Upbrella was assumed to be a creditor of the Debtors benefitting from a legal hypothec of construction (which is not a reasonable assumption), its financial interests are fully protected, and there is no justification for it to be allowed to direct any insolvency process or operations of the Debtors or cause them to increase their indebtedness by interim financing that would prime Romspen. Upbrella's proposed interim financing is also unfounded in law.
 6. Furthermore, the purpose of Upbrella's proposed CCAA proceeding is improper as:
 - a. the proposed interim lender, HRM Inc., is an indirect shareholder of Upbrella and is controlled by Philip Kerub, a guarantor of the indebtedness owed by the Debtors to Romspen; and
 - b. Upbrella, who allegedly threatened to file for CCAA protection on its own behalf (see paragraph 65g hereof), appears to be seeking to use the proposed CCAA proceedings to shield itself from Flora's claims, and to use Flora Property as collateral to secure the costs of that process, to the detriment of Romspen.

7. For these reasons, Upbrella’s CCAA Application should be dismissed and a receiver should be appointed to the property of the Debtors in accordance with the order sought herein.

II. FLORA, 105 AND RELATED PARTIES

8. Flora, having its head office in Montreal, is a partnership constituted under Quebec law for the purpose of acquiring the Flora Property and developing residential properties thereon, as appears from a report of the Quebec Enterprise Registry, R-11.
9. 105 is a legal person constituted under the *Canada Business Corporations Act*, RSC 1985, c C-44, and is the general partner of Flora, as appears from a report of the Quebec Enterprise Registry, R-10.
10. Développement Lachine Est Inc. (“**DLE**”) is a limited partner of Flora and principal shareholder of 105, as appears from R-10 and R-11.
11. Paolo Catania is an officer and director of 105 and DLE.

III. ROMSPEN AS SECURED CREDITOR

A. Commitment and Security

12. Romspen is the first-ranking conventional hypothecary creditor of the Debtors.
13. Romspen made available credit facilities to the Debtors pursuant to a Commitment letter dated May 30, 2019, as amended, modified or restated from time to time, in particular by Supplement No. 1 dated September 11, 2019 (R-14) and Supplement No. 2 dated November 29, 2019, among Romspen, as lender, the Debtors, as borrower, and Catania, DLE, Kerub and HRM Projet Villanova Inc. (“**HRM Projet**”) as guarantors (collectively, the “**Guarantors**”) (R-15, and together with R-14, the “**Commitment**”).
14. According to the pre-filing report of the proposed Monitor dated March 14, 2022 (the “**Report**”), HRM Projet was Kerub’s means of participating in Flora. HRM Projet filed declarations with the Enterprise Register initially listing Kerub and then HRM Inc. as a shareholder of HRM Projet, as appears from copies of the declarations communicated herewith *en liasse* as **Exhibit RIC-1**.
15. As appears from the Commitment, the financing provided by Romspen was to be used to develop the Flora Property.
16. The Debtors’ obligations to Romspen under the Commitment are secured by hypothecs contained in:
 - a. a Deed of Loan and Immovable and Movable Hypothecs and Cession of Rank (in R-16), published at the land registry, registration division of Montreal (the “**Land Registry**”) on June 20, 2019 under number 24 698 738 and at the Register of Personal

and Movable Real Rights of the Province of Quebec (the “RPMRR”), on June 25, 2019, under numbers 19-0688250-0001 and 19-0688250-0002;

- b. as amended by a Deed of Amendment and Cession of Rank (in R-16), published at the Land Registry on January 21, 2020 under number 25 163 909, and at the RPMRR on January 22, 2020 under number 20-0066096-0001;

(collectively referred to herein as the “**Deed of Loan and Hypothecs**”), the whole as also appears from the index of immovables in respect of the Flora Property (R-13) and the RPMRR search results filed by Upbrella (R-17).

- 17. By the Deed of Loan and Hypothecs, the Debtors hypothecated in favour of Romspen as first-ranking secured creditor, for the amount of \$52,325,000:
 - a. the Flora Property, including the building thereon presently under construction and with all that is or will be incorporated into, united with, or attached or otherwise joined to that immovable, by accession or otherwise, and is or will be considered immovable by law;
 - b. all rents, present and future, payable under all leases, offers to lease or other occupancy agreements, now or hereafter affecting the Flora Property or any part thereof, and all other revenues present and future deriving from the Flora Property, and all insurance policies and all insurance, indemnities payable under all insurance policies contracted for the purposes of providing coverage against loss of the said rents or other revenues deriving from the Flora Property; and
 - c. all movable property belonging to the Debtors, present and future.
- 18. Romspen’s security ranks ahead of the security published earlier by:
 - a. Aviva Insurance Company of Canada, pursuant to assignments of rank published at the Land Registry on September 19, 2019 under number 24 906 044 and on January 27, 2020 under number 25 174 901, and at the RPMRR on September 18, 2019 under number 19-1050219-0001 and on January 24, 2020 under number 20-0072587-0001, as appears from a copy of those deeds communicated herewith, *en liasse*, as **Exhibit RIC-2**; and
 - b. DLE, pursuant to assignments of rank contained in the Deed of Loan and Hypothecs, R-16;

as also appears from the index of immovables, R-13.

B. Refusal by Kerub to sign Loan Extension

- 19. The Debtors failed to reimburse their indebtedness to Romspen by the loan maturity date of March 31, 2021.
- 20. Romspen offered to extend the maturity date under the Commitment and the Deed of Loan and Hypothecs if the Debtors and Guarantors agreed to a draft Mortgage Loan Extension

Agreement (the “**Loan Extension**”) that was circulated by Romspen on April 21, 2021, as appears from a copy thereof, communicated herewith as **Exhibit RIC-3**.

21. By May 14, 2021, essential conditions of the Loan Extension had not been satisfied, including:
 - a. obtaining the signature of all Guarantors on the Loan Extension;
 - b. evidence of an additional equity investment of \$1 million; and
 - c. payment of a renewal fee;

such that Romspen placed the Debtors and Catania on notice that the Loan Extension offer would become null and void if the above conditions were not met by 5 pm on May 19, 2021, as appears from a letter dated May 14, 2021, communicated herewith as **Exhibit RIC-4**.

22. The conditions were not satisfied by May 19, 2021, and Romspen was advised by the Debtors that Guarantors HRM Projet and Kerub had refused to sign the Loan Extension.

C. Notice under subsection 244(1) BIA and Prior Notice

23. On May 28, 2021, Romspen served upon the Debtors and the Guarantors:
 - a. a Notice of Intention to Enforce a Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as appears from a copy thereof and service reports communicated herewith as **Exhibit RIC-5**; and
 - b. a Prior Notice of the Exercise of a Hypothecary Right (sale under judicial authority) (the “**Prior Notice**”), published at the Land Registry on June 9, 2021 under number 26 385 983, and at the RPMRR on June 1, 2021 under numbers 21-0593920-0001 and 21-0593920-0002, as appears from a copy thereof and service reports communicated herewith as **Exhibit RIC-6** and from the index of immovables, R-13.
24. The Prior Notice advised the Debtors that they were indebted to the Creditor in the amount of \$14,436,900.94, in principal, interest and costs, calculated as at May 25, 2021, subject to adjustment, plus interest accrued and to accrue thereon and costs incurred or to be incurred by Romspen, pursuant to the Commitment and the Deed of Loan and Hypothecs.

D. Forbearance Agreement

25. Notwithstanding the foregoing, Romspen agreed to tolerate the defaults set forth in the preceding paragraphs and in the Prior Notice, to extend the Loan Maturity Date and to extend additional credit to the Debtors and, on September 29, 2021, entered into the Flora I Forbearance Agreement, R-24.
26. The purpose of the additional credit was, *inter alia*, to enable Flora to settle claims made by holders of legal hypothecs on the Flora Property.

27. At sections 2 and 3 of the Forbearance Agreement, the Debtors, DLE and Catania:
- a. acknowledged and confirmed their indebtedness to Romspen and the defaults set out therein and in the Prior Notice;
 - b. represented and warranted the validity of Romspen's security, and the absence of any claims or defenses by them against Romspen; and
 - c. represented and warranted that any new equity in the Project would be used exclusively to settle the claims of holders of legal hypothecs against the Flora Property.

E. Acknowledgment of Debt by Kerub and exit of HRM Projet from Flora

28. On September 29, 2021, HRM Projet and Kerub signed an Acknowledgment of Debt agreement, communicated herewith as **Exhibit RIC-7**, wherein they each:
- a. acknowledged receipt of the Forbearance Agreement, R-24;
 - b. acknowledged the indebtedness owing by 105 and Flora to Romspen;
 - c. acknowledged that they are solidary debtors for 50% of the outstanding indebtedness owing by the Debtors to Romspen as well as 50% of all future advances; and
 - d. confirmed their agreement with the increase of the loan by Romspen pursuant to the Forbearance Agreement.
29. The same day, HRM Projet sold its interests in Flora, as appears from the Agreement of Purchase and Sale, R-22, such that it and Kerub had relinquished any control or influence over Flora.

F. Settlements with holders of legal hypothecs

30. Since the Forbearance Agreement was entered into, settlement discussions have taken place with, *inter alia*, the following holders of legal hypothecs who had asserted claims for an aggregate amount exceeding \$4.5 million.

Name of creditor

Acier Métaux-Spec Inc. (including subcontractor Groupe Canam Inc.)

Construction Altar (9412-8139 Quebec Inc.)

Construction Deric Inc.

Édouard Beauchesne (1985) Inc. (including subcontractor Électrimat Ltée)

Lavallée-Dufour Inc. (including subcontractor EMCO Corporation)

Le Groupe DR Électrique Inc.

Produits Métalliques Bailey Ltée

31. Romspen has funded settlement payments in order to obtain total releases of such claims, with credit notes for the full amount of such claims to be issued to Upbrella.

32. Discussions are currently ongoing with other holders of legal hypothecs in order to settle all of the valid claims made by holders of legal hypothecs on the Project.

G. Proceedings by Romspen

33. By December 22, 2021, the Debtors failed to meet and satisfy conditions referred to in paragraphs 4.1(b), 4.2, 4.2(d)(ii) and 5.1(d)(ii) of the Forbearance Agreement (equity injection, legal hypothecs, delays), such that Romspen formally put them on notice to cure such defaults within seven business days, the whole as appears from a copy of said notice of default communicated herewith as **Exhibit RIC-8**.
34. As at December 31, 2021, Flora was indebted to Romspen pursuant to the Commitment in the amount of \$21,682,685.87.
35. On January 24, 2022, Romspen filed its *Originating Application to Institute Proceedings for Forced Surrender and Sale under Judicial Authority*, seeking *inter alia* the sale under judicial authority of the Flora Property.
36. Despite the institution of such proceedings, Romspen maintains open lines of communication with the Debtors and other stakeholders in order to seek an efficient resolution of the issues associated with the Project and the repayment of amounts owed to Romspen. Furthermore, Romspen has continued to make protective advances to cover costs of maintenance, security and insurance in connection with the Project.

IV. INSOLVENCY OF THE DEBTORS

37. It is clear that the Debtors have not been able to pay their debts as they have become due, considering:
- a. their failure to repay their debt to Romspen upon maturity; and
 - b. the many legal hypothecs published at the land registry (R-13).

V. RECEIVERSHIP VS. CCAA PROCEEDING

A. Romspen's contractual right to appoint a receiver

38. Paragraphs 5.5(b), 5.6 and 5.7 of the Forbearance Agreement provide that:
- a. Romspen has full and unfettered discretion to appoint a receiver of its choosing for the assets, property and undertaking of the Debtors; and
 - b. each of the Debtors consents to such appointment and has agreed to fully cooperate with the proposed receiver.
39. There is no reason to restrain the exercise of Romspen's contractual right as first-ranking conventional hypothecary creditor to appoint a receiver, considering that there are no

alleged employment concerns, no advantage to a CCAA proceeding over a receivership, and Romspen's opposition to a CCAA proceeding.

40. Any concerns with respect to protecting third-party rights can be addressed by a receiver as an officer or the Court; nothing can be done by the proposed Monitor that could not be done by a receiver.
41. Until now, Romspen had not exercised its right to appoint a receiver, due to the substantial costs associated with any such court-supervised process and the very real risk that such costs would result in further losses for Romspen.
42. Receivership is being requested now as an alternative to the unacceptable and improper CCAA process proposed by Upbrella.
43. MNP Ltd., via its representative Sheri L. Aberback, CIRP, LIT, CFE, has accepted to act as receiver to the property of the Debtors, if appointed by this Court, as appears from the confirmation communicated herewith as **Exhibit RIC-9**.
44. For these reasons, and considering all of the other facts alleged herein, it would be just and convenient to appoint a receiver to the property of the Debtors.

B. Liquidating CCAA without likelihood of a successful restructuring

45. As the Debtors were created for the sole purpose of acquiring and developing the Flora Property, there is no business to restructure; there is merely a partially constructed asset.
46. Upbrella's proposed CCAA proceeding amounts to no more than a liquidating CCAA, the whole at substantial cost. It has not established:
 - a. any details of a possible restructuring;
 - b. any issue of preservation of mass employment;
 - c. any economic benefits to be gained by the trades from the completion of the Project under a CCAA proceeding as opposed to the completion of the Project in any other context; or
 - d. any material going concern business.
47. Sections 28 to 32 of the model Initial Order, which allow a CCAA debtor to take steps to restructure, are deleted in Upbrella's proposed first-day order (R-1, R-1A). Although Upbrella's amended order (R-2, R-2A) provides that the proposed Monitor could present a plan to creditors, no kernel of a plan has yet been suggested.
48. In any event, Romspen has no intention to vote in favour of any plan that would compromise its claim and Upbrella has not alleged any plan that, after accounting for the costs of the CCAA proceeding, would pay Romspen in full.

- C. **Prejudice to Romspen resulting from the proposed super-priority interim financing**
49. CCAA proceedings are inherently expensive, requiring regular court attendance for extensions and other matters and costly reporting by the monitor with each such hearing.
50. Upbrella seeks a superpriority charge for interim financing in the amount of \$2,400,000. It also seeks a super-priority administration charge in the amount of \$250,000. Consequently, as a result of a process that the Debtors and Romspen oppose, Romspen's precarious security position would be impaired by at least \$2,650,000.
51. Virtually the entirety of the funds being sought by way of the proposed interim financing would be used to pay professional fees and the costs of the interim financing, including not only the fees of the Monitor and counsel for the Monitor, but also counsel for Upbrella. According to the Monitor's report, the professional fees are expected to reach approximately \$1.1 Million by October of 2022.
52. The proposed interim lender, HRM Inc., is an indirect shareholder of Upbrella and is controlled by Kerub, as appears from:
- a. a copy of the report of the Quebec Enterprise Register in respect of HRM Inc., communicated herewith as **Exhibit RIC-10**;
 - b. a copy of the report of the Quebec Enterprise Register in respect of 3L Innogénie Inc., communicated herewith as **Exhibit RIC-11**; and
 - c. a copy of the report of the Quebec Enterprise Register in respect of Upbrella (R-3).
53. Romspen vigorously opposes all such charges sought by Upbrella that would have priority over Romspen's existing first-ranking security, particularly considering the improper purpose of the CCAA Application and the absence of benefit to Romspen of such charges.
54. Upbrella does not meet the high bar necessary to justify priming a conventional first-ranking lender against its wishes. In considering Upbrella's request for interim financing, this Court should consider, *inter alia*:
- a. whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Debtors (s. 11.2(4)(d) CCAA), which is not the case, since no kernel of a plan has been proposed apart from the suggestion of an eventual liquidation, and Romspen has no intention of voting in favour of any plan that would compromise its claim;
 - b. the value of the Flora Property (s. 11.2(4)(e) CCAA), which has not been established by Upbrella; and
 - c. whether Romspen would be materially prejudiced as a result (s. 11.2(4)(f) CCAA).
55. The interim financing and other CCAA charges sought would be highly prejudicial to Romspen and would put its recovery in significant jeopardy. Upbrella and HRM Inc. seek

the super-priority charges precisely because of the risk of insufficient assets to support the interim financing and the fees of their professionals.

56. In a debtor-requested CCAA proceeding, this Court would consider whether the company's management has the confidence of its major creditors (s. 11.2(4)(c) CCAA), but in this case this Court should consider whether there is confidence in Upbrella, HRM Inc. and Kerub. Based on the allegations set out herein, there is clearly none whatsoever, and such parties should not be involved in the financing, construction or sale of the Project.
57. Nothing in the CCAA provides that Upbrella may impose super-priority interim financing on the Debtors; on the contrary s. 11.2 CCAA stipulates that interim financing can be sought "on application by a debtor company".

D. Erosion of Romspen's position by the cost of protecting Upbrella

58. Upbrella not only seeks CCAA protection for the Debtors, but also to protect itself from its own creditors, including staying the very proceedings by which Flora challenges Upbrella's claim as a creditor and any proceedings by its own subcontractors.
59. Upbrella inappropriately aims to finance its own CCAA protection (without assuming the constraints and dire consequences of being a debtor company subject to the CCAA) by:
 - a. forcing the Debtors to incur interim financing by HRM Inc., an entity owned and controlled by Kerub, who is related to Upbrella; and
 - b. securing that related-party interim financing not with its own property, but with the Flora Property, to the detriment of Flora's creditors, such as Romspen.
60. Nothing in the CCAA allows Upbrella to finance its own CCAA protection with the property of the Debtors, which has been contractually charged in favour of Romspen.

E. CCAA delays and prejudice to Romspen from forced extension of loan

61. Any CCAA process that contemplates a delay for the potential negotiation and filing of a plan of arrangement will necessarily be lengthier than a receivership process that does not.
62. Any such delay constitutes a non-consensual extension of Romspen's loan terms with the Debtors for the duration of a CCAA process that Romspen does not support, during which time Romspen's security is at risk of deterioration.
63. Conversely, during a receivership, nothing stops the Debtors or another interested party from negotiating a transaction that addresses the interests of the secured creditors and applying to this Court to terminate the receivership.

F. Contested status of Upbrella as CCAA Applicant/Creditor

64. The alleged claim of Upbrella against the Debtors is so contingent and precarious that it cannot be relied upon as a basis for seeking a CCAA initial order.

65. Upbrella's alleged status as a secured creditor of Flora has been fiercely contested by Flora since October 22, 2021, when Flora filed its *Demand introductive d'instance en dommages-intérêts et pour la radiation d'un avis d'hypothèque légale de la construction* (R-9) in Superior Court file 500-17-118706-210, in which Flora alleges that:
- a. Upbrella was retained as general contractor for the Project;
 - b. there were differences in the millions of dollars between the progress declared by Upbrella (in order to obtain payments from Flora), the actual progress of the Project and the amounts indicated in releases from subcontractors;
 - c. there were serious delays in the work, pushing back even the modified schedule by almost a year;
 - d. Upbrella had neglected to obtain releases from major subcontractors;
 - e. Upbrella has failed to demonstrate that funds in the amount of \$539,747 remitted to it by Flora for the limited purpose of paying subcontractors were used for that purpose;
 - f. Upbrella refused to collaborate with Flora or correct its alleged defaults;
 - g. Upbrella had threatened on April 16, 2021 that it would seek CCAA protection within days;
 - h. Flora resiliated Upbrella's contract on April 16, 2021;
 - i. Flora had to retain the services of a new general contractor, Les Entreprises QMD Inc. ("**QMD**");
 - j. Upbrella was overpaid by approximately \$3,796,577, representing *inter alia* amounts not paid to subcontractors, work not done and a deposit provided by Flora at the outset of the Project;
 - k. Upbrella instructed at least one of its subcontractors to save on costs by not following the plans, resulting in numerous defects;
 - l. Upbrella has caused damages to Flora in the amount of approximately \$9,341,000, representing interest and fees resulting from delays, the increased cost of retaining QMD over the fixed price in Upbrella's contract, administrative costs relating to the extended work site and the correction of defects; and
 - m. Upbrella owes Flora approximately \$13,062,060 and has no valid claim against Flora, and therefore no valid legal hypothec.
66. Flora is also contesting Upbrella's *Demande introductive d'instance en délaissement forcé pour vente sous contrôle de justice* filed by Upbrella on October 22, 2021 in Superior Court file 500-17-118728-214 (R-6), in which Upbrella seeks the sale under judicial control of the Flora Property, a protocol was agreed to and a case management conference was scheduled for March 21, 2022.

67. Any claim by Upbrella against Flora must be based on work properly completed by its subcontractors and paid for by Upbrella, as evidenced by releases from such contractors.
68. Therefore, in addition to the above allegations, Upbrella's claim of \$9,714,431 is clearly duplicative of the claims of unpaid subcontractors, many of whom have separately filed their own notices of legal hypothec and some of whom have filed prior notices of the exercise of hypothecary rights, as appears from the index of immovables, R-13 and summarized as follows:

Date	Registration	Name of creditor	Amount (\$)
2021-04-06	26 185 376	Construction Deric Inc.	741,072.76
2021-04-13	26 207 924	Martineau Coffrage Inc.	632,355.36
2021-04-14	26 212 608	Coffrages Daniel Lampron Inc.	947,094.45
2021-04-15	26 215 598	Maçonnerie Mathieu Inc.	298,704.23
2021-04-21	26 230 469	Lavallée-Dufour Inc.	505,905.07
2021-04-26	26 242 087	Acier d'Armature 2000 Inc.	58,146.07
2021-04-26	26 242 088	Acier d'Armature 2000 Inc.	216,656.36
2021-04-26	26 242 164	Les Entreprises Givesco Inc.	37,671.37
2021-04-26	26 242 168	Douglas, Tammy and McComber, Tekawa'Tsiraken	148,862.69
2021-04-30	26 259 888	Sintra Inc.	61,785.00
2021-04-30	26 261 199	Acier Métaux-Spec Inc.	783,481.10
2021-05-04	26 270 912	Groupe Lessard Inc.	588,871.79
2021-05-11	26 289 937	Groupe Canam Inc.	30,821.76
2021-05-12	26 294 306	Revêtement Extérieur Raymond Inc.	877,753.61
2021-05-13	26 297 208	Construction PF Excel Inc.	309,173.18
2021-05-13	26 297 223	Produits Métalliques Bailey Ltée	94,856.76
2021-05-13	26 297 241	Construction Altar	608,891.22
2021-05-19	26 317 271	Le Groupe DR Électrique Inc.	1,588,190.58
2021-05-20	26 321 948	Solarcom Inc.	29,294.46
2021-05-21	26 324 775	Édouard Beauchesne (1985) Inc.	190,660.19
2021-05-27	26 343 138	Électrimat Ltée	276,380.75
2021-06-08	26 381 513	EMCO Corporation	111,746.41
2021-07-22	26 530 541	Goudron Pagé Inc.	23,965.04
2021-08-09	26 567 142	9015-9849 Québec Inc.	17,889.02
2021-12-13	26 889 656	Le Groupe Dr Électrique Inc.	567,628.14
2021-12-22	26 920 806	Location Benoit Inc.	34,741.63
2022-01-13	26 943 530	Lavallée-Dufour Inc.	123,592.76
2022-01-27	26 975 108	Groupe LMT Inc.	118,258.69
2022-01-28	26 979 795	9184-9745 Québec Inc.	200,182.81
2022-02-09	27 007 683	Les Entreprises QMD Inc.	1,536,351.84
2022-02-09	27 021 018	Groupe Altair inc.	29,456.02
2022-02-09	27 040 696	STC Acoustique 2015 Inc.	205,864.18
		Total:	\$11,996,305

69. The total of \$11,996,305 represents duplication of claims, since various holders of legal hypothecs have claimed the amounts that are also claimed by their subcontractors.
70. As alleged in paragraphs 30 to 32, some of the above-mentioned claims were settled and settlement discussions are continuing with other holders of legal hypothecs having valid claims, in order to ultimately come to agreements with all of them. It appears likely that the only outstanding claim purporting to be secured by a legal hypothec on the Flora Property would eventually be the disputed claim of Upbrella.
71. Considering that the status of Upbrella as a purported creditor of Flora is already a contested issue in pending litigation, that the majority of amounts claimed by it also appear to be separately claimed by subcontractors, and that Flora and Romspen have settled and continue to settle claims of such contractors, Upbrella cannot be presumed to hold any valid claims against Flora, secured or otherwise. It therefore has insufficient standing to make the CCAA Application.

G. Preservation and protection of the Flora Property

72. Although the Debtors have represented that the Flora Property is secured and insured, concerns have been raised by Upbrella that additional supervision is required. The appointment of a receiver would ensure that supervision.
73. As opposed to Upbrella, Romspen has actually been paying for worksite, machinery and liability insurance coverage relating to the Flora Property, which shall expire on March 30, 2022. As recently as January 12, 2022, Romspen made a payment of \$50,302.41 to the Debtors' insurer to secure coverage until the end of the existing policy period.
74. Romspen was advised that, due to the cessation of work on the Project in mid-December, the existing insurance policies will not be renewed, and Flora has been discussing insurance options with its broker. No confirmation has been received by Romspen that the Debtors have secured replacement insurance coverage and Romspen has been exploring the possibility of using its own insurance coverage to the extent available.
75. A CCAA process would not address the difficulty experienced by the Debtors in securing insurance coverage after a prolonged work stoppage. Any insurance policies available to the Debtors or to a monitor would also be available to a receiver.

VI. RECEIVERSHIP AND CHARGES

A. Powers of the Receiver

76. In order to address the concerns of Romspen as well as those raised by this Court during the hearing of March 16, 2022, Romspen proposes that the receiver be given the powers set out in the draft order communicated herewith as **Exhibit RIC-12** and **Exhibit RIC-12A** (compared to the model order), which would enable it to, *inter alia*:
 - a. preserve and protect the Flora Property;

- b. control all funds advanced by Romspen to the Debtors for the funding of the receivership and make such disbursements on behalf of the Debtors as may be required in connection therewith;
 - c. implement a sale and investment solicitation process (“SISP”) with a view to maximizing the value of the Flora Property within a reasonable time frame;
 - d. implement the transaction resulting from the SISP;
 - e. implement an efficient claims process to resolve any remaining claims of creditors asserting legal hypothecs against the Flora Property that have not otherwise been settled by the Debtors with the receiver’s approval;
 - f. facilitate such mechanism as may be necessary to address claims of persons who have made offers, with deposits, to purchase condominium units in the Project in the event that such offers are disclaimed or cancelled; and
 - g. distribute the net proceeds of the sale of the Flora Property in accordance with the respective priorities of the outstanding claimants.
77. Recourses against the Debtors and their property would be stayed during the receivership in order to reduce procedural costs and permit an efficient resolution of such claims in a single proceeding.
78. As set forth in the confirmation from the proposed receiver, **Exhibit RIC-9**, the intent of the proposed receiver would be to commence the SISP as soon as possible after its appointment with a view to completing the sale process by July of 2022 (the start of the construction holiday), including the negotiation of the most advantageous transaction that results therefrom and seeking court approval thereof.

B. Funding of Receivership, Borrowing Charge and Administration Charge

79. Romspen is prepared to fund the cost of the receivership in accordance with the term sheet communicated herewith as **Exhibit RIC-13**, summarized as follows:

Principal amount:	\$850,000
Annual interest rate:	8%
Interim financing fee:	0%
Standby fee:	0%
Maturity:	September 30, 2022
Conditions:	Issuance of an order securing the interim financing with a borrowing charge on the property of the Debtors, ranking ahead of all claims except those of the Administration Charge and holders of legal hypothecs of construction.

80. As appears from the above, the terms and conditions of the proposed Romspen financing are far more advantageous to stakeholders than the interim financing proposed by Upbrella (which latter interim financing would, in all events, be effectively borne by Romspen).

81. Considering the priorities of the claims of the respective stakeholders, Romspen requests that the above-mentioned interim financing be secured by a borrowing charge on the property of the Debtors in the amount of \$1,000,000, ranking ahead of all claims except those of holders of legal hypothecs of construction and an administration charge.
82. It is appropriate that this Court order an administration charge of \$100,000 on the property of the Debtors to secure the fees and disbursements of the proposed receiver and receiver's counsel, which would rank ahead of all other claims. That limited administration charge is far lower than the amount requested by Upbrella (\$250,000) to secure the fees, *inter alia*, of its own legal counsel.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

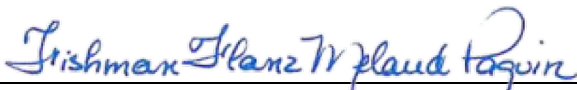
DISMISS the Applicant's *Demande pour l'émission d'une Ordonnance Initiale du Premier Jour et d'une Ordonnance Initiale Amendée et Reformulée* dated March 14, 2022;

GRANT Romspen Investment Corporation's *Motion to Appoint a Receiver*;

RENDER an order substantially in the form of the draft order communicated as **Exhibit RIC-12** in support of this motion;

THE WHOLE without legal costs, except if contested.

Montreal, March 23, 2022



FISHMAN FLANZ MELAND PAQUIN LLP
Attorneys for Romspen Investment Corporation

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-060843-220

SUPERIOR COURT
(Commercial Division)

In the matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36

9186-9297 QUÉBEC INC.

Applicant

and

10542113 CANADA INC.

Debtor

and

FLORA I LIMITED PARTNERSHIP

Mise-en-cause

and

RAYMOND CHABOT INC.

Proposed Monitor

and

ROMSPEN INVESTMENT CORPORATION, a
legal person having its head office at 300-162
Cumberland Street, Toronto, Ontario M5R 3N5

Contesting Secured Creditor

**In the matter of the *Bankruptcy and Insolvency Act*,
RSC 1985, c B-3**

ROMSPEN INVESTMENT CORPORATION, a
legal person having its head office at 300-162
Cumberland Street, Toronto, Ontario M5R 3N5

Petitioner

10542113 CANADA INC.

and

FLORA I LIMITED PARTNERSHIP

Debtor

and

MNP LTD.

Proposed Receiver

AFFIDAVIT OF PIERRE LEONARD
dated March 23, 2022

I, the undersigned, Pierre Leonard, businessman, having a business address at 300-162 Cumberland Street, Toronto, Ontario, M5R 3N5, do hereby solemnly affirm:

1. I am a representative of Romspen Investment Corporation.
2. The facts set out in Romspen Investment Corporation's *Motion to Appoint a Receiver and Contestation of the Applicant's Request for an Initial Order* dated March 23, 2022 that do not already appear from the Court record are true.

Solemnly affirmed before me in Montreal
by videoconference on March 23, 2022





Commissioner for Oaths for Quebec

And I have signed:



PIERRE LEONARD

NOTICE OF PRESENTATION

TO: The service list

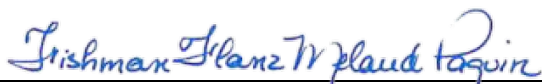
TAKE NOTE that *Romspen Investment Corporation's Motion to Appoint a Receiver and Contestation of the Applicant's Request for an Initial Order* will be presented in the Commercial Division of the Superior Court, in room **16.11** of the Montreal Courthouse on **March 28, 2022 at 9:30 a.m.**, or as soon as counsel can be heard.

The hearing may be attended virtually as follows:

16.11	<p><u>Rejoindre la réunion Microsoft Teams</u></p> <p><u>+1 581-319-2194</u> Canada, Québec (Numéro payant)</p> <p><u>(833) 450-1741</u> Canada (Numéro gratuit)</p> <p>ID de conférence : 681 190 887#</p> <p><u>Numéros locaux</u> <u>Réinitialiser le code confidentiel</u> <u>En savoir plus sur Teams</u> <u>Options de réunion</u></p> <p>Rejoindre à l'aide d'un dispositif de vidéoconférence</p> <p><u>teams@teams.justice.gouv.qc.ca</u> ID de la conférence VTC : 1120490432</p> <p><u>Autres instructions relatives à la numérotation VTC</u></p>
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Do govern yourselves accordingly.

Montreal, March 23, 2022



FISHMAN FLANZ MELAND PAQUIN LLP
Attorneys for Romspen Investment Corporation

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

In the matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36

N°: 500-11-060843-220

9186-9297 QUÉBEC INC.

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Mise-en-cause

and

RAYMOND CHABOT INC.

Proposed Monitor

and

ROMSPEN INVESTMENT CORPORATION

Contesting Secured Creditor

EXHIBITS OF ROMSPEN INVESTMENT CORPORATION

Exhibit RIC-1	Declarations filed with the Enterprise Register - HRM Projet, <i>en liasse</i>
Exhibit RIC-2	Assignments of rank by Aviva Insurance Company of Canada
Exhibit RIC-3	Draft Mortgage Loan Extension Agreement
Exhibit RIC-4	Letter from Romspen
Exhibit RIC-5	244 Notice and service reports
Exhibit RIC-6	Prior Notice and service reports
Exhibit RIC-7	Acknowledgment of Debt
Exhibit RIC-8	Default Notice of December 22, 2021
Exhibit RIC-9	Confirmation from MNP Ltd.
Exhibit RIC-10	Quebec Enterprise Register – HRM Inc.
Exhibit RIC-11	Quebec Enterprise Register - 3L Innogénie Inc.
Exhibit RIC-12	Draft receivership order
Exhibit RIC-12A	Draft receivership order, tracked to the model order
Exhibit RIC-13	Romspen Interim Financing Term Sheet

NO: 500-11-060843-220

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL

In the matter of the *Bankruptcy and Insolvency Act*,
RSC 1985, c B-3

ROMSPEN INVESTMENT CORPORATION
Petitioner

and

10542113 CANADA INC.

and

FLORA I LIMITED PARTNERSHIP
Debtor

and

MNP LTD.
Proposed Receiver

**ROMSPEN INVESTMENT CORPORATION'S
MOTION TO APPOINT A RECEIVER**
(s. 31(1) and 243 of the *Bankruptcy and Insolvency Act*,
RSC 1985, c B-3)
and
**CONTESTATION OF THE APPLICANT'S
REQUEST FOR AN INITIAL ORDER**
(seq. 1)

ORIGINAL

File: ROMSPE-4

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Me Jason Dolman
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