

SUPERIOR COURT

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No: 500-11-041322-112

DATE: September 15, 2011

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PRESENT : THE HONOURABLE JUSTICE CHANTAL CORRIVEAU, J.S.C.

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IN THE MATTER OF THE FOREIGN BANKRUPTCY OF:

GEORGES MARCIANO

Debtor

And

DAVID GOTTLIEB

Trustee/Petitioner

And

PRICEWATERHOUSECOOPERS INC.

Receiver

**ORDER  
(RECOGNITION OF A MAIN FOREIGN PROCEEDING)**


- [1] **CONSIDERING** the Petitioners' *Motion to obtain the recognition of a main foreign proceeding* dated September 13, 2011 (the "**Motion**"), the affidavit of David Gottlieb and the exhibits filed in support thereof;
- [2] **CONSIDERING** the representations of the counsel for the Petitioner;
- [3] **CONSIDERING** section 272 of the *Bankruptcy and Insolvency Act*;

**FOR THESE REASONS THE COURT:**

- [4] **GRANTS** the present Motion to obtain the recognition of a main foreign proceeding (the "**Motion**");

4.1 **ORDERS** that the time for service of this Motion is abridged so that the Motion is properly presentable today and dispense with further service thereof

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4.2 Declares that in light of the circumstances further described in this motion, said motion can be presented ~~ex parte~~ 

- [5] **DECLARES** that the United States bankruptcy proceeding bearing Court number 1:11-bk-10426-Vk and CC-11-1008-DMkKi (the "**Foreign Proceeding**") is a foreign main proceeding pursuant to Section 270(2) of the BIA;
- [6] **RECOGNIZES** that the Petitioner, David Gottlieb, in his capacity as Trustee to the estate of Georges Marciano, is entitled to act as a foreign representative in respect to the Foreign Proceeding;
- [7] **DECLARES AND ORDERS** that save and except with the authorization of this Honourable Court, no person shall commence or continue any execution or other proceedings concerning the Debtor, its property, debts, liabilities or obligations;
- [8] **ORDERS** that the Debtor shall not sell or otherwise dispose of or transfer any of its property in Canada;
- [9] **AUTHORIZES** the Petitioner to issue subpoenas in order to proceed to the examination of:
- a) a representative of Royal Bank of Canada;
  - b) a representative of the Canadian Imperial Bank of Commerce;
  - c) Georges Marciano;
  - d) Michael Bensmihen;
  - e) Yannick Desbiens;
  - f) Mtre Marc Rubin;
  - g) Sascha Romer;
- [10] **AUTHORIZES** the Petitioner to obtain, from Georges Marciano or anyone retained by him or in his employment, copies, records or documents concerning the filing of returns with the Canadian tax authorities;

#### **RECEIVER**

- [11] **ORDERS** that the administration or realization of all of the Debtor's property located in Canada shall be carried out by PWC acting as receiver (the "**Receiver**");
- [12] **RESERVES** to PWC the right to apply to this Court for any further orders that may be necessary or appropriate to the fulfilment of its duties;
- [13] **ORDERS** that the Receiver is hereby empowered:

- a) to supervise and monitor all activities with regard to the preservation, protection, removal, consolidation, possession, and/or control of the Debtor's assets, including the assets owned or controlled by the Debtor indirectly, and without limiting the generality of the foregoing, the assets in the name of Chloe M ULC, 1305066 Alberta ULC, 9204-7570 Québec Inc., 9211-9882 Québec Inc., 9213-4568 Québec Inc. and the CKSM Family Trust (hereinafter the "**Property**"), wherever situated, including without limitation, to relocate any of the Property in order to safeguard it, to retain the services of security personnel, to take physical inventory and to enter into an agreement on behalf of the Debtor for such insurance coverage as may be necessary or desirable;
- b) to take possession of all or part of the Property, if needed;
- c) to take any conservatory measures appropriate including, without limitation, to defend or to contest any motion, suit or proceedings relating to the Property that may be instituted by any of the secured creditors, lien holders or others if need be;
- d) to institute any proceedings, to obtain the authorization to seize assets or to search premises or to obtain any necessary declaration on the rights of ownership of the Debtor on any given asset;
- e) make arrangements with such agents, consultants, assistants and employees as the Receiver may consider necessary or desirable to secure their assistance in the exercise of the Receiver's powers and the performance of the Receiver's duties hereunder;
- f) to manage, operate and carry on the business of the Debtor;
- g) obtain appraisals of the Property;
- h) solicit offers to purchase the Property;
- i) take steps for the preservation and protection of the Property;
- j) employ and retain such agents, assistants, experts, auditors, advisors, consultants, employees, solicitors and counsel, to carry out the management of some or all of the Property;
- k) receive, attorn and collect all monies and deposits now or hereafter owing to the Debtor, pertaining to the Property;
- l) take such steps as in the opinion of the Receiver are necessary or to establish and maintain control over the Property including the

changing of locks and security codes, the engaging of independent security personnel, the taking of physical inventories and the placement of adequate insurance coverage as required;

### RECEIVER'S ACCOUNTS

- [14] **ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the current rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Debtor's assets, including the assets owned or controlled by the Debtor indirectly, and without limiting the generality of the foregoing, the assets in the name of the CKSM Family Trust and its affiliates (hereinafter the "**Property**"), in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person (the "**Receiver's Charge**");
- [15] **ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to the registrar or a judge of the Commercial Division of this Court;
- [16] **ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its possession, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court;

### GENERAL

- [17] **ORDERS** that nothing in this Order shall prevent the Receiver from acting as a receiver or a trustee in bankruptcy of the Debtor;
- [18] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America to give effect to the Order to be rendered on the present Motion and to assist the Receiver and its agents in carrying out the terms of the Order to be rendered on the present Motion. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to the Order to be rendered on the present Motion or to assist the Receiver and its agents in carrying out the terms of the Order to be rendered on the present Motion;


- [19] **ORDERS** that the Receiver is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of Order to be rendered on the present Motion and for assistance in carrying out the terms of the Order to be rendered on the present Motion;
- [20] **ORDERS** the provisional execution of the Order to be rendered on the present Motion notwithstanding appeal and bankruptcy;
- [21] **THE WHOLE** without costs.

Montréal, September 15, 2011

  
CHANTAL CORRIVEAU, J.S.C.

Mtre Bernard Boucher  
Mtre Patrick Kergin  
**Blake, Cassels & Graydon LLP**  
Attorneys for Petitioner

COPIE CONFORME

  
Elaine C. Nave  
Greffier adjoint

Dates of hearing: September 14, 15, 2011.

