

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-060613-227

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PLAN OF
ARRANGEMENT AND COMPROMISE OF:

RISING PHOENIX INTERNATIONAL INC.

- and -

10864285 CANADA INC. doing business under
the trade name **M COLLEGE OF CANADA**

- and -

11753436 CANADA INC.

- and -

CDSQ IMMOBILIER INC.

- and -

COLLÈGE DE L'ESTRIE INC.

- and -

**ÉCOLE D'ADMINISTRATION ET DE
SECRÉTARIAT DE LA RIVE SUD INC.**

- and -

9437-6845 QUÉBEC INC.

- and -

9437-6852 QUÉBEC INC.

-and-

9392-9073 QUÉBEC INC.

Applicants

- and -

RICHTER INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF AN ORDER
EXTENDING THE STAY PERIOD
(Section 11.02(2) of the *Companies' Creditors Arrangement Act*)**

TO THE HONOURABLE DAVID R. COLLIER OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE APPLICANTS RESPECTFULLY SUBMIT THE FOLLOWING:

I. ORDER SOUGHT

1. By way of the present Application for the Issuance of an Order Extending the Stay Period (the "**Application**"), the Applicants seek the issuance of an order substantially in the form of the draft order communicated herewith as Exhibit R-1 extending the Stay Period (as defined below) until April 28, 2023.

II. PROCEDURAL BACKGROUND

2. On January 5, 2022, the Applicants filed an application pursuant to the *Companies Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended, (the "**CCAA**") entitled *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the "**Initial Application**").
3. On January 6, 2022, the Superior Court of Quebec (Commercial Division) (the "**Court**") partially granted the Initial Application and rendered a First-Day Initial Order (the "**First Day Order**"), which, *inter alia*, stayed all proceedings and remedies taken or that might be taken in respect of the Applicants, or any of their property, and their Directors and Officers, until January 14, 2022, which has since been extended on several occasions, and most recently, until February 24, 2023 (the "**Stay Period**").
4. On January 13, 2022, Firm Capital Mortgage Fund Inc. ("**Firm Capital**") filed a Contestation (the "**FC Contestation**") to the Applicants' request for the issuance of an Amended and Restated Initial Order (as defined hereinafter) which was sought pursuant to the Initial Application.
5. Firm Capital did not proceed with the FC Contestation in view of the settlement that preceded the hearing on January 17, 2022, and ultimately provided financing to the Applicants on the terms and conditions set forth in the interim financing facility term sheet approved by the Court which provided for a credit facility in the principal amount of \$1,750,000 plus Lender's Costs, which amounts have since been paid back.
6. On January 16, 2022, the Applicants filed an *Amended Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the "**Amended Initial Application**").
7. On January 17, 2022, the Court granted the Amended Initial Application and rendered an order (the "**Amended and Restated Initial Order**") and extended the Stay Period until February 28, 2022.
8. On February 9, 2022, Anish Sachdeva, Manjot Singh, Sukhrajpreet Singh, Sukhmanpreet Singh and Jaspreet Singh (the "**Proposed Student Representatives**") filed an *Application for the Issuance of a Student Representation Order* (the "**Representation Application**").

9. On February 15, 2022, the Court granted in part the Representation Application and issued an order (the “**Student Representation Order**”) pursuant to which, McCarthy Tétrault LLP was appointed as representative counsel (the “**Students’ Representative Counsel**”) in these proceedings (the “**CCAA Proceedings**”) to represent the interests of all persons who are creditors of the Applicants as a result of their status as a currently enrolled student at the Colleges (as defined hereinafter), pipeline student of the Colleges or in light of tuition fees paid to the Applicants (collectively, the “**Students**”).
10. On March 14th, 2022, pursuant to the *Applicants’ Application for (I) The Issuance of an Approval and Vesting Order (II) The Approval of a Junior Interim Financing Agreement and (III) A Re-Amended and Restated Initial Order* dated March 10th, 2022, the Court rendered two orders, namely:
 - (a) a Re-Amended and Restated Initial Order (the “**Re-Amended and Restated Initial Order**”) which restated the conclusions of the Amended and Restated Initial Order and, in addition thereto, *inter alia*:
 - i. confirmed the extension of the Stay Period until April 29, 2022; and
 - ii. approved a Junior Interim Financing Agreement of \$2.5 million;
 - (b) an Approval and Vesting Order (the “**Approval and Vesting Order**”) which approved the sale as a going concern of the Colleges and other identified assets of the Applicants to a third party purchaser, 6815464 Canada Ltd., (the “**Purchaser**”).
11. On March 15, 2022, Les Consultants 3 L M Inc. (hereafter “**ISI**”), filed a « *Demande de Bene Esse en Déclaration d’Inapplicabilité de la Suspension des Procédures et, Subsidairement, pour Lever la Suspension des Procédures en faveur des Administrateurs et Dirigeants* » (the “**ISI Application**”).
12. On, April 8, 2022, the Applicants filed an application for the continuance of the ISI Application, filed on April 8, 2022 (the “**Stay Application Continuance**”).
13. On April 8, 2022, the Student Representative Counsel filed an *Application for an Order Extending the CAQ and/or Study Permit of Certain Students and Implementing a Streamlined Process for the Reconsideration of Refused Study Permit Applications* (the “**Immigration Application**”), which was dismissed by the Court on April 22, 2022.
14. On May 9th, 2022, the Court partially granted both the ISI Application and the Stay Application Continuance by, *inter alia*, (i) suspending ISI’s homologation of the February 17, 2002 arbitral award until a plan of arrangement has been presented to creditors and voted upon; (ii) ordering Caroline, Christina and Joseph Mastantuono to declare, under oath, all of the assets they own, directly or indirectly control, or are beneficially entitled to receive; and (ii) Ordering Caroline, Christina and Joseph Mastantuono not to dispose of or transfer any of these assets.

15. On May 23, 2022, Caroline, Christina and Joseph Mastantuono each declared under oath the assets they own, directly or indirectly control, or are beneficially entitled to receive.
16. On June 23, 2022, Caroline, Christina and Joseph Mastantuono were each examined by ISI on their affidavit. The objections raised during the course of the examinations are scheduled to be debated before this Court on September 15, 2022.
17. On June 29, 2022, the Monitor filed a motion for an order expanding its powers in order to be able to insure the immoveable property of the Applicants (the **“Monitor’s Power Application”**).
18. On June 30, 2022, the Court granted the Monitor’s Power Application.
19. On July 13, 2022, the Purchaser filed a motion to be authorized to retrieve and remove from the Court record the Asset Purchase Agreement previously filed under seal or to have it kept confidential until further order of this Court (**“Cestar’s Withdrawal Application”**).
20. On July 25, 2022, the Court dismissed Cestar’s Withdrawal Application.
21. On November 11, 2022, the Monitor filed an *Application for the issuance of an order forcing the communication of information to the Monitor* (the **“ISI Information Application”**), which ultimately was not presented to this Court, ISI having accepted to communicate the information sought by the Monitor.
22. On November 24, 2022, the Students’ Representative Counsel filed an *Application for the issuance of an order forcing the communication of information to the Students’ Representative Counsel* (the **“CESTAR Information Application”**), which also was not presented the Court, CESTAR having agreed to communicate the information sought by the Students’ Representative Counsel.
23. On November 28, 2022, the Applicants filed an *Application for the issuance of (i) an amended and restated initial order adding an additional applicant and (ii) for an order extending the stay period*, which was granted by the Court on December 16, 2022.
24. On February 20, 2023, the Students’ Representative Counsel filed an *Application for the issuance of an Amended and Restated Student Representation Order* seeking, *inter alia*, to be authorized to initiate an action in damages, for and on behalf of the Students, against the Government of Québec (Ministère de l’Enseignement supérieur, de la Recherche, de la Science et de la Technologie and the Government of Canada (Immigration, Refugees and Citizenship Canada (the **“Students Recourse”**)).

III. RESTRUCTURING EFFORTS SINCE THE COMMENCEMENT OF THE CCAA PROCEEDINGS

A. The Sale Transaction

25. Following the commencement of these CCAA Proceedings, the Monitor launched an accelerated sale process, in consultation with the Applicants and Firm Capital, which culminated in the signing of an asset purchase agreement (the “**APA**”) with the Purchaser, for a going concern sale of the Colleges (the “**Transaction**”).
26. The APA was approved by this Court with the issuance of the Approval and Vesting Order, on March 14, 2022.
27. On June 29, 2022, the Education Ministries authorized the transfer of all required education permits.
28. On June 30, 2022, the Applicants and the Purchaser proceeded to the closing of the Transaction.
29. Since the closing, the Applicants and their Directors and Officers have continued to assist the Purchaser in the transition of the Colleges, the whole to ensure a smooth transition for all Registered Students who are now able to complete their educational program.
30. The Applicants and their Directors have also been working, with the Monitor, to finalise with Cestar the last remaining post-closing adjustments and tax election issues.
31. The Transaction with Cestar has permitted the reimbursement in full of the DIP lenders and of Firm Capital, the Applicant’s secured lender, and has ensured that all Registered Students would be provided with the educational program they had paid for and that all of the Applicant’s Pipeline Students would either be educated or reimbursed by Cestar.
32. The assumption by Cestar of such liabilities towards the Students will have a significant effect on their claims and the claims process, and the eventual distribution to the remaining creditors of the Applicants, including the students.

B. The proposed Plan of arrangement

33. As previously announced to this Court, the Applicants intend to put forward a plan of arrangement, in which the Directors would be pledging assets valued at more than \$2.1 million (the “**Director-pledged assets**”).
34. Since our last appearance in Court, on December 16 2022, the Monitor and the Plaintiffs have worked to clarify and detail the main terms of a possible plan of arrangement in the format of a Plan Term Sheet (“**Term Sheet**”), the main terms of which are summarized in the Monitor’s 11 Report.
35. The Term Sheet was shared with the Students' Representative Counsel and ISI's attorneys, the primary key stakeholders, for their review.
36. Although no agreement has yet been reached as to the precise terms of a plan, the parties have made significant progress.
37. The Applicants are encouraged by the favorable response from the primary key stakeholders and believe that they will soon be able to reach a consensus which will pave the way for the filing of a plan of arrangement.
38. A CCAA plan of arrangement is the only means by which the largest class of creditors of the Applicants (the students) will obtain any meaningful recovery from the Applicants’ estates.

IV. RELIEF SOUGHT

39. Since the commencement of these CCAA Proceedings, the Applicants have acted in good faith and with due diligence.
40. The Directors have offered assets of a substantial value to fund a plan of arrangement, and continue to engage in meaningful discussions and work towards the presentation and implementation of such a plan.
41. The Applicants believe and respectfully submit that an extension of the Stay Period until April 28, 2023 is reasonable in the circumstances, as it will allow additional time to reach a consensus as to the main terms of the Plan of arrangement to be submitted, to prepare a claims process and to draft a Plan of arrangement for the creditors’ consideration.
42. The alternative, a bankruptcy liquidation of the Applicants, would lead to the following chain reaction:
 - (a) The stay against individual Directors would be lifted, which would lead to a “race” against their personal assets by creditors;
 - (b) The Directors would have no choice but to file personal insolvency proceedings; and

- (c) Protracted and costly litigation would likely to take place within these personal insolvency proceedings over the realization of assets held in trust or by third parties.
43. A bankruptcy liquidation would only reward a small number of creditors with liquidated claims against the Directors and the resources required to hire lawyers to pursue these claims.
44. On the other hand, a bankruptcy liquidation would unlikely be the best possible outcome for other creditors, in particular the students, who may hold claims or contingent claims, but who do not have the means to pursue them. In addition, a bankruptcy liquidation would not provide any avenue to pursue the Students Recourse.
45. The requested extension of the Stay Period will not cause any prejudice to the various stakeholders, but rather will allow for the implementation of the above-mentioned steps, which are to the benefit of the Applicants various stakeholders and creditors, including in particular, the students.
46. The Applicants understand that the Monitor and the Student Representative Counsels are supportive of their request to extend the Stay Period.
47. In light of the foregoing, the Applicants respectfully submit that the present Application should be granted in accordance with its conclusions.

WHEREFORE, MAY THIS COURT:

GRANT this *Application for the Issuance of an Order extending the Stay Period*.

ISSUE orders substantially in the form of the amended draft order communicated as **Exhibit R-1**;

WITHOUT COSTS, save and except in case of contestation.

MONTRÉAL, February 21, 2023

Kaufman Avocats s.e.n.c.r.l.

KAUFMAN LAWYERS LLP

Att. Me Martin P. Jutras

800 René-Lévesque boulevard West

Suite 2220

Montreal, Quebec H3B 1X9

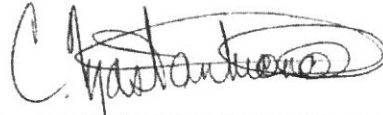
Attorneys for the Applicants

SWORN STATEMENT

I, the undersigned, **Caroline Bonneville (Mastantuono)**, having my principal place of business at 2140 rue de la Montagne, 3rd Floor, in the city of Montreal, Province of Quebec, solemnly declare the following:

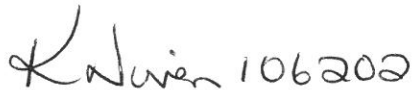
1. I am the president of Rising Phoenix International Inc. and of 9392-9073 Québec inc.;
2. All the facts alleged in the *Application for the Issuance of an Order extending the Stay Period* are, to the best of my knowledge, true.

AND I HAVE SIGNED



Caroline Bonneville

Solemnly declared before me at Montreal,
on the 21th day of February, 2023



Commissioner of oath for the Quebec

NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the *Application for the Issuance of an Order extending the Stay Period* will be presented for adjudication before the honourable Justice R. Collier of the Superior Court of Quebec, Commercial Division, at the Montréal Courthouse located at 1 Notre-Dame Street East, at a time and date to be determined by the Court and to be communicated to the Service List.

The Teams link, to participate in the virtual hearing, is available on the site <http://www.tribunaux.qc.ca>

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, February 21, 2023

Kaufman Lawyers LLP
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Attorneys for the Applicants

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

No.: 500-11-060613-227

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Applicants

- and -

RICHTER INC.

Monitor

INVENTORY OF EXHIBITS

Exhibit R-1: Draft Order;

MONTREAL, February 21, 2023

Kaufman Lawyers LLP

KAUFMAN LAWYERS LLP
Attorneys for the Applicants

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: **500-11-060613-227**

DATE: **February 24, 2023**

PRESIDING: THE HONOURABLE DAVID R. COLLIER

IN THE MATTER OF THE ARRANGEMENT OR COMPROMISE OF:

RISING PHOENIX INTERNATIONAL INC.

- and -

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- and -

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Applicants

- and -

RICHTER INC.

Monitor

ORDER EXTENDING THE STAY PERIOD

CONSIDERING the *Application for the Issuance of an Order Extending the Stay Period* (the “**Application**”) made by the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the “**CCAA**”) and the affidavit filed in support thereof;

SEEING the service of the Application;

SEEING the submissions of the Applicant’s counsel and other counsel present at the hearing on the Application;

GIVEN the First Day Initial Order rendered by this Court on January 6, 2022, ordering, *inter alia*, a stay of all proceedings and remedies taken or that might be taken in respect of the Applicants or any of their property, except as otherwise set forth in the First Day Initial Order or as otherwise permitted by law, until January 14, 2022 (as further defined in the First Day Order, the “**Stay Period**”);

GIVEN the Order Extending the Stay of Proceedings rendered by this Court on January 14, 2022, extending the Stay Period until January 17, 2022;

GIVEN the Amended and Restated Initial Order rendered by this Court on January 17, 2022, which has since been re-amended, restated and extended on several occasions, and most recently, until February 24, 2023;

SEEING that it is appropriate to extend the Stay Period until April 28, 2023;

GIVEN the provisions of the CCAA;

THE COURT:

- [1] **GRANTS** the Application;
- [2] **EXTENDS** the Stay Period until April 28, 2023;
- [3] **ORDERS** the provisional execution of the Order notwithstanding appeal, and without requirement to provide any security or provision for costs whatsoever;
- [4] **THE WHOLE** without costs.

Montreal, February 24, 2023

THE HONOURABLE DAVID R. COLLIER, J.S.C.

N^o: 500-11-060613-227

**SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL
PROVINCE OF QUÉBEC**

**IN THE MATTER OF THE PLAN OF ARRANGEMENT AND
COMPROMISE OF:**

**RISING PHOENIX INTERNATIONAL INC.
10864285 CANADA INC. (M College of Canada)
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ÉCOLE D'ADMINISTRATION ET DE SECRÉTARIAT DE LA
RIVE SUD INC.
9437-6845 QUÉBEC INC.
9437-6852 QUÉBEC INC.
9392-9073 QUÉBEC INC.
Applicants
and
RICHTER INC.
Monitor**

**APPLICATION FOR THE ISSUANCE OF AN ORDER
EXTENDING THE STAY PERIOD
(Section 11.02(2) of the Companies' Creditors Arrangement Act) and
Exhibit R-1**

ORIGINAL

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Our file: 15480-1

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