

CANADA

SUPERIOR COURT
(Commercial Division):

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mgp

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS
NO.: 450-11-000056-139

IN THE MATTER OF THE RECEIVERSHIP
OF:

9055-8453 QUÉBEC INC.

Debtor

and

PRIME RESTAURANTS INC.

Petitioner

and

RICHTER ADVISORY GROUP INC.

Receiver

and

ROYAL BANK OF CANADA, a Canadian chartered bank having its head office and principal place of business at 1 Place Ville-Marie, in the City and District of Montreal, Province of Québec, H3B 3A9, and a branch at 2665 King Street West, Suite 101, in the City of Sherbrooke, District of St-François, J1L 2G5

Receiver

Le 23 mai 2013.
Vu la présente requête
et les pièces,
les articles pertinents,
du Royal Bank c Sun Squeeze
dices inc (1994), 24 C.B.R.
Requête accordée selon
ses conclusions.
M. Authier
Registraire.

PROVINCE OF QUEBEC
DISTRICT OF SHERBROOKE
2013-05-17
10:00

**MOTION TO AUTHORIZE THE RECEIVER TO FILE AN
ASSIGNMENT IN BANKRUPTCY AND APPOINTING RICHTER
ADVISORY GROUP AS TRUSTEE, AND FOR THE ISSUANCE OF A
SAFEGUARD ORDER**
(Sections 49, 243, 249 and 250 of the *Bankruptcy and Insolvency Act* (the "BIA"))

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN BANKRUPTCY, IN AND FOR THE DISTRICT OF ST-FRANCOIS, OR TO A REGISTRAR THEREOF, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

A. INTRODUCTION

1. The Debtor, 9055-8453 Québec Inc. (the "**Debtor**"), was the operator and franchisee of the *East Side Mario's* restaurant located at 2660 King Street West, Sherbrooke, Quebec (the "**Restaurant**");
2. The Petitioner, Prime Restaurants Inc. ("**Prime**"), formerly Prime Restaurants of Canada Inc. and Les Restaurants Prime du Québec Inc., is a company doing business in the restaurant field and is the franchisor for the *East Side Mario's* brand across Canada;
3. On or about March 5th, 2013, Prime terminated the Franchise Agreement with the Debtor, issued a notice pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and made a motion to appoint an interim receiver, as well as a receiver, in respect of the Debtor's assets;
4. On March 7th, 2013, Registrar Gauthier of this Honourable Court issued an order appointing Richter Advisory Group Inc. ("**Richter**") as Interim Receiver of the Debtor's assets (the "**Interim Receivership Order**");
5. Following issuance of the Interim Receivership Order, Mr. Jean-François Lemieux, sole shareholder and director of the Debtor, ceased to participate in the day to day affairs of the Restaurant;
6. Richter exercised its powers under the Interim Receivership Order and worked with the Restaurant staff in order to ensure that operations continued normally;
7. On March 18th, 2013, Registrar Gauthier of this Honourable Court issued an Order Appointing a Receiver (the "**Receivership Order**"), pursuant to which Richter was appointed Receiver of the Debtor's assets, the whole as appears from a copy of the Receivership Order, attached herewith as **Exhibit P-1**;

B. SUBSEQUENT EVENTS

8. Concurrently with or shortly after the issuance of the Receivership Order, the Debtor's sole shareholder and director ceased all contact with the Receiver (and Prime);
9. Richter entered into a Management Agreement, as per the terms of the Receivership Order, and by virtue thereof, Prime has been operating the Restaurant and ensuring that all ongoing obligations are met;
10. Richter has concurrently fulfilled its obligations as Receiver, and notably a) sent a Notice of the Receiver to all known creditors on March 27, 2013 and b) had a third party take inventory of all of the Debtor's assets in anticipation of a sale process with respect thereto;

11. Richter expects to be in a position to advertise the Debtor's assets for sale, to approach potential purchasers and to solicit offers for such assets within the coming weeks;

C. THE ASSIGNMENT IN BANKRUPTCY

12. Since the issuance of the Receivership Order, Richter and Prime have had the opportunity to gain an understanding of the Debtor's financial situation;

13. Despite Prime's best efforts, the Restaurant continues to be cashflow negative and, as a result, Prime has had to step in and finance certain expenses when there are insufficient funds to meet ongoing obligations;

14. In view of the above, the Debtor is clearly insolvent (and has thus committed and continues to commit acts of bankruptcy) and Richter and Prime consider that it is now most appropriate to make an assignment of the Debtor's assets;

15. In anticipation thereof, Richter has agreed to act as trustee in respect of the Debtor's assets and has prepared an Assignment in Bankruptcy (the "Assignment"), a copy of which is attached hereto as Exhibit P-2;

16. At the current time, the Debtor's assets and liabilities can be summarily described as follows:

ASSETS		
Machinery, equipment, and furniture		<u>50,000 \$</u>
LIABILITIES		
Secured creditors		
GE Canada Equipment Financing G.P. (1 st rank)	92,550 \$	
Prime Restaurant Inc.	<u>258,468</u>	351,018 \$
Unsecured creditors		
		<u>115,669</u>
		<u>466,687</u>
Deficiency		<u><u>416,687 \$</u></u>

17. It is submitted that Richter, in its capacity as Receiver, is best placed to file the Assignment, notably in light of the absence of the Debtor's sole shareholder and director and in view of the provisions of the Receivership Order;

18. Indeed, it is submitted that the Receiver has the requisite power, by virtue of the Receivership Order, to prepare and execute the assignment on the Debtor's behalf;

19. Having said that, as the power to file an assignment in bankruptcy is not explicitly set forth in the Receivership Order, Prime, in conjunction with Richter, hereby seek an order of this Honourable Court authorizing Richter to file the Assignment;

20. Prime further submits that it is proper in the circumstances for Richter to be appointed trustee to the Debtor's assets, as it is in the best position to fulfill this role, in view of its existing activities as Receiver, and as it has accepted to act as trustee;
21. Richter has expressed its support for the present motion in its Report dated May 14th, 2013, attached herewith as **Exhibit P-3**;

D. THE REQUEST FOR A SAFEGUARD ORDER

22. On Monday, May 13th, 2013, Richter received a notice entitled "*Avis du Ministre du revenu a un tiers-saisi et Demande formelle de paiement*", the whole as appears from a copy of the said notice attached hereto as **Exhibit P-4**;
23. By way of Exhibit P-4, the Ministre du revenu du Québec (the "**MRQ**") attempted to seize certain sums allegedly due by the Debtor;
24. What's more, the MRQ sought to order Richter to pay such amounts to the MRQ immediately and in priority to any payment(s) made to Prime;
25. Richter thereafter learned that the MRQ also served a notice of the same or similar nature upon the Mise en cause, Royal Bank of Canada ("**RBC**"), which maintains an operating account for the Debtor, namely chequing account number 05585-1002526 (the "**Debtor's Chequing Account**");
26. By virtue of the Receivership Order, the Debtor's Chequing Account was placed under the control of Richter;
27. Despite this, having received the aforementioned notice from the MRQ, RBC removed the entire balance of \$21,459.01 contained in the Debtor's Chequing Account without any prior notice to or approval from Richter, the whole as appears from a copy of a printout from the RBC website relating to the Debtor's Chequing Account, attached herewith as **Exhibit P-5**;
28. In fact, RBC ignored Richter's repeated attempts to regain control of the funds contained in the Debtor's Chequing Account, which are clearly crucial to the Debtor's ongoing operations and has refused to respect Richter's instructions;
29. It is therefore requested that this Honourable Court issue a safeguard order compelling RBC to return the entire sum removed from the Debtor's Chequing Account;
30. It is submitted that this is essential for the proper administration of the Debtor's affairs, and that the MRQ's claim must be treated in the same manner as the claims of other creditors, i.e. it must be submitted for review and analysis by Richter, and Richter shall pay the MRQ's claim (once validated) based upon its rank as set forth in the *Bankruptcy and Insolvency Act* (the "**BIA**");
31. It is further submitted that it is in the interests of justice to ensure that the Receivership Order is respected and that creditors are not permitted to circumvent the Receivership

Order and/or the ranking of creditors established pursuant to the BIA by way of tactics like those described above;

WHEREFORE MAY IT PLEASE THE COURT TO:

GRANT the present *“Motion to Authorize the Receiver to File an Assignment in Bankruptcy and Appointing Richter Advisory Group as Trustee”*;

ORDER that the time for service of the present motion is hereby abridged and **DISPENSE** the Petitioner, Prime Restaurants Inc., from further service thereof;

ON THE REQUEST FOR A SAFEGUARD ORDER:

ORDER the *Mise en cause*, Royal Bank of Canada, to return the entire balance of \$21,459.01 removed from Account 05585-1002526 within 48 hours of the date of the safeguard order to be issued, and to refrain from removing any further sum(s) from the said account without prior approval from Richter Advisory Group Inc. or further order of this Court;

AND IN RESPECT OF THE OTHER RELIEF SOUGHT:

AUTHORIZE the Receiver, Richter Advisory Group Inc., to file the assignment in bankruptcy attached as Exhibit P-2 with the official receiver;

APPOINT the Receiver, Richter Advisory Group Inc., as trustee to the assets of the Debtor, 9055-8453 Québec Inc.;

THE WHOLE without costs, save in case of contestation.

MONTRÉAL, May 15th, 2013

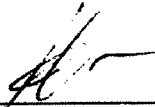

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioner
Prime Restaurants Inc.

AFFIDAVIT

I, the undersigned, Brian Elliot, of the City of Kitchener, Province of Ontario, having a place of business at 10 Kingsbridge Garden Circle, Suite 600, in the city of Mississauga, Province of Ontario, solemnly declare:

1. I am the Vice President of Financial Services of Prime Restaurants Inc.;
2. All the facts alleged in the present motion are true.

SOLEMNLY DECLARED before me in AND I HAVE SIGNED
Mississauga, Ontario, this 15th day of
May 2013


BRIAN ELLIOT

Notary Public

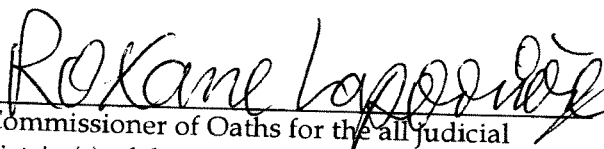
ATTESTATION OF AUTHENTICITY
(Article 82.1 of the Code of Civil Procedure)

I, the undersigned, MATTHEW LIBEN, attorney, practicing my profession at Stikeman Elliott LL.P., located at 1155 René-Lévesque Boulevard West, Suite 4000, in the City and District of Montreal, Province of Québec, H3B 3V2, do hereby solemnly affirm as follows:

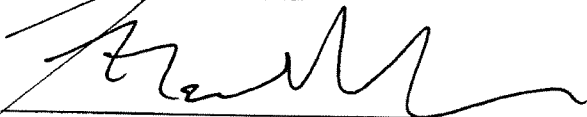
1. I am an attorney at the law firm of Stikeman Elliott LLP;
2. On May 15, 2013, at 8:09 A.M., I received an affidavit signed by Brian Elliot, Vice President of Financial Services of Prime Restaurants Inc., in support of the Petitioner's "Motion for the Authorization to File an Assignment in Bankruptcy";
3. The above-mentioned affidavit was sent to me by email (rbain@primerestaurants.com) from Ross Bain, Executive Vice-President, Legal Counsel and Secretary of Prime Restaurants Inc.;
4. The copy of the affidavit attached hereto is a true copy of the Affidavit of Brian Elliot received in PDF format on May 15, 2013 from Ross Bain;
5. The facts alleged herein are true.

Solemnly declared before me, at Montreal,
Quebec, this 15 day of May, 2013

AND I HAVE SIGNED



Commissioner of Oaths for the all judicial
district(s) of the Province of Québec



MATTHEW LIBEN