

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

No. 500-11-038703-100

**IN THE MATTER OF THE APPOINTMENT OF
A RECEIVER TO THE ASSETS OF:**

9178-2292 QUÉBEC INC., a legal person having its principal place of business at 5300 chemin de la Côte-Saint-Luc, in the City and District of Montréal, Province of Québec, H3X 0A3

Debtor/Respondent

-and-

ROYAL BANK OF CANADA, a legal person duly constituted having a place of business at 1 Place Ville-Marie, 9th Floor, West, in the City and District of Montréal, Province of Québec H3C 3A9

Petitioner

-and-

RSM RICHTER INC., legal person duly constituted having a place of business at 2 Place Alexis-Nihon, Suite 1800, in the City and District of Montréal, Province of Québec, H3Z 3C2

Receiver

**MOTION FOR THE APPOINTMENT OF A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act* (“*BIA*”)
and Rule 6(4) of the *Bankruptcy and Insolvency General Rules*)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR TO THE REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, ROYAL BANK OF CANADA (“PETITIONER”) RESPECTFULLY SUBMITS THE FOLLOWING:

I – INTRODUCTION

The Parties

1. The Debtor/Respondent, 9178-2292 Québec Inc. (the “**Debtor**”) is an insolvent legal person pursuant to the provisions of the *Bankruptcy and Insolvency Act* (the “**BIA**”).
2. The Debtor is a corporate member of the Melior Group, one of Québec’s largest group devoted to, *inter alia*, ownership and management of senior housing facilities.
3. The Debtor is the owner of a building located at 263 Ste-Rose Blvd., Laval sometimes referred to as Phase III of the *Domaine des Forges* (the “**Building**”). Said building is the sole asset of the Debtor.
4. There are two other buildings which are adjacent and which are owned by 9145-8794 Québec Inc. (“**9145**”) and 9157-7437 Québec Inc. (“**9157**”), entities which are under the control of the Melior Group. The three buildings represent 475 residential units divided as follows:
 - a) 9145: 221 units;
 - b) 9157: 171 units; and
 - c) the Debtor: 83 units.
5. The Petitioner, Royal Bank of Canada (“**RBC**”), is a Canadian chartered bank duly constituted.

RBC’s Hypothecary Loan Agreement

6. RBC is a first ranking secured creditor of the Debtor pursuant to a Loan Agreement dated March 31, 2008 (the “**Loan Agreement**”) for an amount of \$8,803,725, as appears from the Loan Agreement communicated in support hereof as **Exhibit R-1**.
7. The immovable and movable properties of the Debtor related to the Building were hypothecated in favour of RBC by way of an immovable hypothec executed on June 11, 2008 (the “**Immovable Hypothec**”) to secure the payment and performance of the obligations under the Immoveable Hypothec, as appears from the Immoveable Hypothec as well as the statement issued by the Land Registry Office of Laval and the printout of the Register of Personal and Movable Real Rights communicated in support hereof *en liasse* as **Exhibit R-2**.

Appointment of a Receiver for the assets of 9145

8. On October 29, 2009, The Manufacturers Life Insurance Company (“**Manulife**”), the first ranking secured creditor of the immovable owned by 9145, filed with this Court a Motion for the Appointment of an Interim Receiver to the property of 9145 (the “**First Motion**”), following various defaults under its loan agreement, the whole as appears from a copy of such First Motion communicated in support hereof as **Exhibit R-3**;

9. On November 16, 2009, the Registrar for the Superior Court, Commercial Division, rendered an Order appointing PricewaterhouseCoopers Inc. (“PwC”) as Interim Receiver, the whole as appears from a copy of such order communicated in support hereof as **Exhibit R-4** and from the Court’s record in file no. 500-11-037810-096.
10. More particularly, the Court Order authorized PwC, *inter alia*, to take possession of all books and records of 9145, and to take control of its receipts and disbursements.
11. On February 9, 2010, Manulife filed with the Superior Court a *Motion for the Appointment of a Receiver to the Property of the Debtor* (the “**Second Motion**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”) as appears from a copy of such Second Motion communicated in support hereof as **Exhibit R-5**.
12. On February 11, 2010, the Registrar for the Superior Court, Commercial Division, rendered an Order appointing PwC as Receiver, the whole as appears from a copy of such order communicated in support hereof as **Exhibit R-6** and the Court’s record in file number 500-011-037810-096.
13. On April 29, 2010, the powers of PwC as receiver to the assets of 9145 were extended, the whole as appears from a copy of an order dated April 29, 2010 communicated in support hereof as **Exhibit R-7**.

Notices of Intention

14. On April 1, 2010, each of the Debtor, 9145 and 9157 filed a notice of intention to make a proposal to their creditors pursuant to the BIA, appointing Ernst & Young Inc. (“**E&Y**”) as trustee, as appears from the printouts of the Office of the Superintendent of Bankruptcy Canada communicated in support hereof *en liasse* as **Exhibit R-8**.
15. Such filing constitutes an admission of insolvency.
16. Since then, the delay to file a proposal has been extended on two (2) occasions and will expire on June 10, 2010, the whole as appears from this Court record.

II – RBC’S CLAIM AGAINST THE DEBTOR – BACKGROUND

E&Y’s Analysis of the Debtor’s Financial Situation

17. In October 2009, Melior Group informed RBC that it was experiencing significant financial difficulties and that it had retained the services of E&Y:
 - a) to review the Melior Group’s financial situation; and
 - b) to assist in the reorganization of the group and that of the Debtor.
18. As a result of the foregoing and with the filing of the notices of intention, the Debtor is admitting being clearly insolvent and its last proposed workout arrangement is not only unacceptable from RBC’s point of view but contrary to its interests.

19. Since then, the Debtor clearly stated that the only alternative is to complete the sale of the Building.

Defaults and outstanding amounts owed by the Debtor

20. As of the date of this Motion, the Debtor is still in default with respect to its obligations pursuant to the terms of the Loan Agreement in that:
 - a) it filed a Notice of intention to make a proposal; and
 - b) it wants to sell the Building.

Management Agreement between Melior Group and Cogir

21. On March 31, 2010, Melior Group and Société de Gestion Cogir s.e.n.c. (“**Cogir**”) have entered into an agreement entitled “*Cession d’entente de gestion*” whereby Melior Group has agreed to transfer to Cogir its rights, title and interests in the management and/or in any management contract concerning, amongst other properties, the Building and the buildings owned respectively by 9145 and 9157 (the “**Agreement**”), as appears from a copy of the Agreement communicated in support hereof as **Exhibit R-9**.
22. Pursuant to Section 13 of the Agreement, each entity within the Melior Group is called upon to execute in the best possible delays a separate management agreement with Cogir based on the terms and conditions of the draft management agreement appended to the Agreement.
23. To RBC’s knowledge, the Debtor has not executed any management agreement with Cogir.
24. RBC has recently been advised that the CIBC, the secured creditor of the building owned by 9157, has the intention of requesting the appointment of a receiver which shall undertake a sale process.
25. The buildings respectively owned by 9145 and 9157 will likely be for sale by court appointed receivers.
26. Such situation is clearly detrimental to the Building and to the interest of RBC.
27. Therefore, RBC has no other alternative, under the circumstances, but to seek the appointment of a receiver which shall, amongst other, be empowered to carry a sale process and to sell the Building, as more fully described in the conclusion of this Motion.
28. Given the above, RBC has no other alternative but to request the immediate intervention of this Honourable Court (i) to waive and shorten the delays for service, filing and presentation of the present Motion and (ii) to grant this Motion in accordance with the conclusions set forth below. Indeed, given that 9145 is the subject of a receivership and that 9157 will probably be the subject of a receivership, RBC must obtain the Order sought herein so as to protect and maximize the value of the Building.

29. For the same reasons and given the nature of the appointment of a Receiver, it is necessary that this Honourable Court grant provisional execution of the conclusions set forth below.
30. The present Motion is well-founded in fact and in law.

WHEREFORE, THE PETITIONER PRAYS THIS HONOURABLE COURT TO:

WHEREFORE, PETITIONER PRAYS THIS HONOURABLE COURT TO:

- [A] **GRANT** the present *Motion for the Appointment of a Receiver* (the “**Motion**”);
- [B] **SHORTEN** and **WAIVE** the delays for service, filing and presentation of the Motion;
- [C] **APPOINT** RSM Richter Inc., through its representative, Yves Vincent, to act as receiver (the “**Receiver**”) to the property of Debtor/Respondent, 9178-2292 Québec Inc. (the “**Debtor**”), pursuant to Section 243 of the *Bankruptcy and Insolvency Act* ;
- [D] **AUTHORIZE** the Receiver, at the Receiver's discretion, to take possession of all of the Debtor's assets and exercise upon them, as well as on the Debtor's business, complete control and, without restricting the generality of the foregoing, **GRANT** to the Receiver the following powers which, at the Receiver’s discretion, may be utilized :
- (a) all the necessary powers to collect all the accounts receivables of Debtor;
 - (b) all the powers necessary to the control of the receipts and disbursements of Debtor;
 - (c) all powers necessary to negotiate, enter into and terminate any agreement with respect to the Debtor's operations, business, assets and property;
 - (d) all the powers necessary to operate, on behalf of Debtor, its business, including without limitation, the powers to hire employees, to purchase goods and services and to lease rooms/apartments and more generally, to do anything required or useful to continue the operations of Debtor;
 - (e) all the powers necessary to hire, on behalf of Debtor, any qualified nurse or other professional required, in its sole opinion, to operate Debtor’s business;
 - (f) all the powers to sign and issue cheques on behalf of Debtor;
 - (g) all the powers necessary to protect the interests of Petitioner, the Royal Bank of Canada (“**Petitioner**”);
 - (h) all the powers necessary to take safeguard measures in order to prevent that Debtor squanders its assets and/or erodes the value of the security of Petitioner;
 - (i) any other power necessary to the taking of safeguard measures regarding all of Debtor’s assets and operations;

- (j) open any required bank account on behalf of the Debtor, according to terms and conditions that it will, in its sole discretion, consider appropriate, with any Canadian chartered bank, including Petitioner or any other acceptable financial institution, in order to cash in any sum payable to Debtor, or to its benefit, and make any payment that, in its opinion, is necessary, to Petitioner or to the fulfilling of the Receiver's duties; and
- (k) contract any loan or other form of credit on behalf of the Debtor up to a capital amount of \$150,000 in order to allow the continuation of Debtor's operations, and the charge or hypothec on any such debt or loan (plus the additional hypothec of 20%) will be ranked in preference and priority to any other existing guarantee or security, of any nature whatsoever, and will be paid in preference and priority by the Receiver;

[E] **AUTHORIZE** the Receiver to conduct and supervise a sale process of Debtor's assets and business;

[F] **AUTHORIZE** the Receiver to solicit, through private or public call for tenders or through any other means, bids regarding Debtor's assets and business;

[G] **DECLARE** that the Receiver has all the powers necessary, required or appropriate in order to:

- (a) solicit bids for Debtor and, more generally, to manage the call for tenders process or any other sale process;
- (b) determine the means to contact potential buyers, through private mailings, publication in newspapers or otherwise, and proceed accordingly;
- (c) determine the means of commercializing Debtor, and/or, amongst others, the groups of assets or the grouping of assets of Debtor;
- (d) allow any potential buyer or any person having demonstrated or demonstrating an interest in Debtor to proceed to a due diligence or to any other analysis of Debtor; and
- (e) conclude any agreement, of any nature whatsoever, on behalf of Debtor, with any person, in order to receive bids regarding Debtor;

[H] **DECLARE** that:

- (a) the Receiver shall be entitled to institute appropriate proceedings, as the case may be and retain the services of legal advisors for the purposes of these proceedings or for any other need. Moreover, such Receiver shall be entitled to file any motion for directions within the meaning of section 34 of the *Bankruptcy and Insolvency Act* as if it were a trustee and if necessary, to execute any necessary document to place Debtor into bankruptcy;

- (b) in addition to the foregoing, the Receiver shall not be liable for any debt that came into existence prior to the service of the judgment to be rendered herein;

[I] **DECLARE** that:

- (a) the Receiver shall not be considered the employer, for all intents and purposes, and shall not incur any liability whatsoever regarding third parties, the Receiver acting for and on behalf of Debtor, among others, as if it were a taking of possession for purposes of administration within the meaning of articles 2773 of the *Civil Code of Québec* and seq., or a sale by the creditor within the meaning of article 2786 *Civil Code of Québec*;
- (b) the Receiver will not be considered as operating or continuing the enterprise of Debtor, for any purposes whatsoever;
- (c) the Receiver shall not incur any liability whatsoever regarding third parties or the Debtor for any act done under the judgment to be rendered herein;
- (d) all the powers, obligations and duties of the Receiver shall be exercised in his sole discretion and according to the judgment to be rendered herein;
- (e) the Receiver shall benefit from the protection of sections 14.06 of the *Bankruptcy and Insolvency Act* and more particularly the Receiver shall not, as a result of the judgment to be rendered herein or anything done in pursuance of the Receiver's duties and powers under the judgment to be rendered herein, be deemed to be in possession of any of the property of Debtor within the meaning of any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination and regulations thereunder;

[J] **ORDER** Debtor and its representatives and employees to surrender all of those assets, the Receiver requires to implement the judgment to be rendered herein, upon service of said judgment;

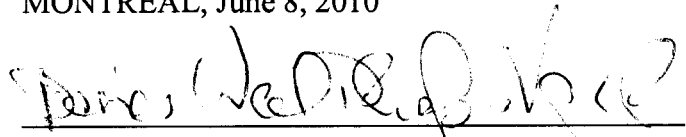
[K] **ORDER** Debtor and its representatives and employees to fully collaborate and cooperate with the Receiver and help and assist the Receiver in the fulfilling of its duties;

[L] **ORDER** Debtor and its representatives and employees to grant access to and to surrender to the Receiver all of its accounting records, books and other accounting or financial documents of any nature whatsoever, notwithstanding their medium, and fully assist and help the Receiver in accomplishing its duties and in analyzing such documents;

[M] **AUTHORIZE** the Receiver, on behalf of the Debtor, to retain or to terminate the services of any person or enterprise, including nurses or doctors, in order to effectively fulfill its duties and to delegate whenever suitable to the Receiver, such powers to any person or enterprise and appoint any agent or other representative;

- [N] **AUTHORIZE** the Receiver to pay out any advance regarding its fees and disbursements, with the agreement of Petitioner, the whole subject to taxation in conformity with the Law;
- [O] **EXEMPT** Petitioner from serving any prior notice for the presentation of the Motion;
- [P] **ORDER** that these proceedings shall have full force and effect in all of the provinces and territories in Canada;
- [Q] **ORDER** that the judgment to be rendered herein be executory, notwithstanding appeal and without any need to give security;
- [R] **ALLOW**, as the case may be, a shorter time for presentation;
- [S] **RENDER** any other remedy appropriate in the circumstances;
- [T] **THE WHOLE** without costs, save in case of contestation.

MONTRÉAL, June 8, 2010



DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioner, **ROYAL BANK OF CANADA**

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

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Debtor/Respondent

-and-

ROYAL BANK OF CANADA

Petitioner

-and-

RSM RICHTER INC.

Receiver

AFFIDAVIT OF BRAD FLICK

I, the undersigned, businessman, living and residing at 2235 TIGER ROAD, in the City of BURLINGTON, Province of Ontario, solemnly declare that:

1. I am the SENIOR MANAGER of the Petitioner, Royal Bank of Canada, herein and am duly authorized to sign the present affidavit;
2. I have read the attached *Motion for the Appointment of a Receiver* and all the facts alleged therein are true.

AND I HAVE SIGNED

Brad Flick
BRAD FLICK

SOLEMNLY AFFIRMED BEFORE ME
in the City of TORONTO, Province of Ontario
on this 9 day of June, 2010

Diane Monon Martella
Notary Public
Diane Monon Martella, Notary Public,
City of Toronto, limited to the attestation
of instruments and the taking of affidavits,
for Royal Bank of Canada.
Expires August 26, 2011.

Mt#: 1784383.10

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NOTICE OF PRESENTATION

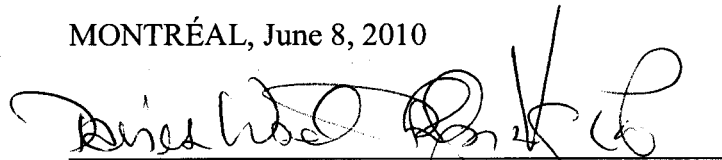
TO: Me Philippe H. Bélanger
McCarthy Tétrault LLP
1000 de la Gauchetière Street West, #2500
Montréal (Québec) H3B 0A2

Attorneys for the Debtor, 9178-2292 Québec Inc.

TAKE NOTICE that the present *Motion for the Appointment of a Receiver* will be presented for adjudication before one of the Judges of the Superior Court, sitting in the Commercial Division, or the Registrar, in and for the judicial district of Montreal at the Montreal Courthouse in Room 16.10, on June 9, 2010, 2010 at 3:00 p.m. or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, June 8, 2010



DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioner, **ROYAL BANK OF CANADA**

No. 500-11-038703-100

S U P E R I O R C O U R T
(Commercial Division)
District of Montréal

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**MOTION FOR THE APPOINTMENT OF A
RECEIVER)**

*(Section 243 of the Bankruptcy and Insolvency
Act and Rule 6(4) Bankruptcy and Insolvency
General Rules)*

ORIGINAL

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