

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. : 500-11-046282-147

"Commercial Division"

SUPERIOR COURT

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
(1985) ch. C-36, as amended of:

CASPERDINY IFB REALTY INC.,

-and-

LES APPARTEMENTS CLUB SOMMET INC.,

Debtors/Petitioners

-and-

RICHTER ADVISORY GROUP INC.,

Monitor

-and-

COMPUTERSHARE TRUST COMPANY OF
CANADA,

-and-

TIMBERCREEK SENIOR MORTGAGE
INVESTMENT CORPORATION,

-and-

CASPERDINY IFB CAPITAL INC.,

-and-

IFB BETEILIGUNGEN AG i.L.,

-and-

THE SYNDICATE OF LE PARC CO-
OWNERSHIP,

-and-

THE LAND REGISTRAR FOR THE LAND
REGISTRY OFFICE FOR THE
REGISTRATION DIVISION OF MONTREAL

-and-

THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS

Mises en cause

MOTION

(i) SEEKING LEAVE TO TRANSFER AND SURRENDER SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS OUTSIDE THE NORMAL COURSE OF BUSINESS

(ii) SEEKING THE EXTENSION OF THE INITIAL ORDER

(Sections 11.02 and 36 of the *Companies' Creditors Arrangement Act*, R.S.C. (1985), ch. C-36, (hereinafter "**CCAA**"))

TO THE HONOURABLE MARTIN CASTONGUAY, S.C.J., OF THE SUPERIOR COURT SITTING IN COMMERCIAL CHAMBER IN AND FOR THE DISTRICT OF MONTREAL, THE DEBTORS/PETITIONERS RESPECTFULLY SUBMIT:

A. PURPOSE OF THE MOTION

1. Pursuant to the present Motion, the Debtors will request from this Honourable that it issues an order:
 - a) authorizing the Debtors to enter into the Transfer and Surrender Agreement (as defined hereinafter) and to surrender the Transferred Assets (as defined hereinafter) to *Timbercreek Senior Mortgage Investment Corporation* (hereinafter "**Timbercreek**") in accordance thereto; and
 - b) extending the Initial Order (as defined hereinafter) until August 19, 2014 (hereinafter the "**Additional Period**"),the whole free and clear of any encumbrances and in accordance with the draft order filed herewith as **EXHIBIT R-1** (hereinafter the "**Draft Order**");
2. The Debtors are simultaneously filing the present Motion in two (2) distinct Court files, one for each of the Debtors, but will request that the hearing of these Motions be held jointly;

B. INTRODUCTION

3. On March 3, 2014, as appears from the Court record herein, *Casperdiny IFB Realty Inc.* (hereinafter "**Casperdiny**") and *Les Appartements Club Sommet Inc.* (hereinafter "**Sommet**") and together with Casperdiny, the "**Debtors**") filed a notice of their intention to submit a proposal to their creditors in accordance with the *Bankruptcy and Insolvency Act*, R.S.C. (1985) ch. B-3, (hereinafter the "**NOI**");
4. On March 21, 2014, as appears from the Court record herein, this Honourable Court issued an order (hereinafter the "**Initial Order**"):
 - a) Authorizing the continuation of the NOI proceedings under the CCAA;
 - b) Issuing an initial order pursuant to the CCAA in favour of the Debtors;

- c) Granting the Administration Charge (as this term is defined in the Initial Order);
 - d) Approving the Interim Financing Facility (as this term is defined in the Initial Order), and authorizing the Debtors to borrow from the Mise en cause *IFB Beteiligungen AG i.L.* (hereinafter “**IFB**”) in accordance with same; and
 - e) Granting the first ranking Interim Lender’s Charge in favour of IFB (as this term is defined in the Initial Order);
- 5. On April 15, the Initial Order was extended in its effects by this Honourable Court until May 29, 2014, as appears from the Court record herein;
 - 6. On May 29, 2014, the Initial Order was further extended in its effects by this Honourable Court until July 3, 2014, as appears from the Court record herein;
 - 7. On July 3, 2014, the Initial Order was further extended in its effects by this Honourable Court until July 18, 2014, as appears from the Court record herein;

C. THE PARTIES

- 8. Together, the Debtors own, operate and manage a sixteen (16) storey, 291-unit apartment building located in downtown Montreal, on De La Montagne (hereinafter the “**Property**”), as appears from the Court record herein;
- 9. The Property is currently operated as a luxury-rental apartment building offering all-inclusive services to its tenants, including a concierge, doorman, cable/internet services, electricity, fitness facility and indoor and outdoor pool areas;
- 10. The Mises en cause *Computershare Trust Company of Canada* (hereinafter “**Computershare**”), *Syndicate of le Parc Co-Ownership* (hereinafter the “**Syndicate**”) and *Casperdiny IFB Capital Inc.* (hereinafter “**Capital**”) are the only creditors having registered security interest against the assets of the Debtors (hereinafter collectively the “**Secured Creditors**”) as appears from the Court record herein;
- 11. The Mise en cause *Computershare* acts as fondé de pouvoir of the Mise en cause *Timbercreek Senior Mortgage Investment Corporation* (hereinafter “**Timbercreek**”) in the context of the Timbercreek’s hypothec and financing, in accordance with section 2692 of the *Civil Code of Quebec*, as appears from the Court record herein;
- 12. Timbercreek is the principal secured lender of the Debtors, as appears from the Court record herein;
- 13. The Mise en cause *IFB Beteiligungen AG i.L.* (hereinafter “**IFB**”), in its capacity of Interim Financing Lender, has agreed to advance up to **\$2,177,502** to the Debtor Casperdiny through the Interim Financing Facility (as defined in the Initial Order) which is secured by the Interim Lender’s Charge (as defined in the Initial Order), as appears from the Court record herein;

14. The Monitor *Richter Advisory Group Inc.* (hereinafter "**Richter**") was first appointed Trustee to the Debtors' NOI and then appointed Monitor to the Debtors' restructuring process under the CCAA pursuant to the Initial Order, as appears from the Court record herein;

D. THE RESTRUCTURING EFFORTS SINCE THE INITIAL ORDER

15. As appears from the Court record herein, the preliminary restructuring plan of the Debtors was centered around two main (2) components:
 - a) The implementation of a lease up program aimed at maximizing the occupational rate of the Property and, ultimately, increasing the value of the Property (hereinafter the "**Lease Up Program**"); and
 - b) The implementation of the solicitation process aimed at attracting offers in respect to the Property (hereinafter the "**Solicitation Process**");
16. As at the issuance of the Initial Order, the occupational rate of the Property was at fifty-eight percent (**58%**), as appears from the Court record herein;
17. Since the issuance of the Initial Order, the bulk of the Debtors' management's efforts were focused on the Solicitation Process as it was assumed that any eventual purchaser would want to implement its own lease-up measures;
18. The Debtors have worked with *CBRE Capital Markets - National Apartment Group* (hereinafter "**CBRE**") to establish the best approach for the Solicitation Process to be implemented in respect to the Property;
19. On April 10, 2014, CBRE submitted to the Debtors and the Monitor a "*Proposal for Marketing Representation*", as appears from the Court record herein (hereinafter the "**CBRE Proposal**");
20. As appears from the CBRE Proposal, CBRE suggested that the Solicitation Process be conducted over a period of approximately four (4) months, with a bid deadline set for between May 26 and May 30, 2014 and a closing deadline set for August 20, 2014;
21. CBRE has extensive experience in the marketing and the selling of comparable real estate and Debtors believes that the CBRE Proposal is the optimal method to conduct the Solicitation Process, generate interest in the Property and to maximize the realization value of the Property, as appears from the CBRE Proposal;
22. On or about April 28, 2014, CBRE sent to potential bidders the following documents (hereinafter the "**Solicitation Documents**"):
 - a) A teaser outlining the investment opportunity in respect to the Property;

- b) A document entitled "*Terms and Conditions*" outlining the terms and conditions by which any potential bidder must abide in submitting its bid within the Solicitation Process (hereinafter the "***Terms and Conditions***");
- c) A document entitled "*Confidentiality Agreement*" outlining the terms and conditions pursuant to which the documents and information in respect to the Property were given to the potential bidders (hereinafter the "***Confidentiality Agreement***");

as appears from the Court record herein;

23. Within the Solicitation Process:

- a) Thirty five (**35**) potential bidders were approached;
- b) Ten (**10**) potential bidders executed the Terms and Conditions and the Confidentiality Agreement, which gave them access to:
 - i) A virtual data room providing for sensitive and economical information in respect to the Property;
 - ii) A Confidential Information Memorandum;

as appears from the Court record herein;

24. As appears from the Solicitation Documents:

- a) The deadline for potential bidders to submit their bid was set for 5:00 on May 26, 2014 (hereinafter the "***Bid Deadline***");
- b) The deadline for the closing of the contemplated transaction could not be later than September 30, 2014 (hereinafter the "***Closing Deadline***")

25. After reviewing and analyzing the bids submitted within the Solicitation Process, the Debtors with the assistance of CBRE and Richter, decided to accept one of them, subject to this Honourable Court's approval, as appears from a duly executed copy of this accepted bid filed herewith as **EXHIBIT R-2** (hereinafter the "***Retained Bid***");

26. The contemplated transaction pursuant to the Retained Bid may be summarized as follows (hereinafter the "***Contemplated Transaction***");

- a) The bidder (hereinafter the "***Retained Bidder***") undertakes to complete its due diligence within a period of thirty (**30**) days from the issuance of the second extension order;
- b) The Retained Bidder offers to pay an amount of money in exchange for the transfer of the Property free and clear of any liens, hypothecs or charge pursuant to a vesting order from this Honourable Court;

- c) The closing date is scheduled for August 1, 2014 (hereinafter the “***Anticipated Closing Date***”);
 - d) The Contemplated Transaction is subject to the issuance of a vesting order from this Honourable Court;
27. On June 26 2014, the Retained Bidder informed the Debtors that it was not satisfied of its due diligence process and that therefore it would not complete the Contemplated Transaction, as appears from a copy of the email sent by the Retained Bidder to the Debtors filed herewith as **EXHIBIT R-3** (hereinafter the “***Retained Bidder’s Notice***”);
- E. THE TRANSFER AND SURRENDER OF THE PROPERTY TO TIMBERCREEK**
28. The Retained Bid was the only bid received within the CBRE Process contemplating a transaction that was offering a purchase price superior to the secured indebtedness of the Debtors;
29. Given that the CBRE Process had not given rise to any other bids allowing for the payment of Debtors’ secured claims, the Debtors, with the assistance of the Monitor worked with Timbercreek to facilitate the transfer of the Property in the most efficient manner, the whole with a view to minimize the impact of such a transition on the ongoing operations of the Property;
30. On July 17, 2014, the Debtors and Timbercreek agreed on the terms and conditions upon which the transfer of the Property would take place as appears from a copy of the *Transfer and Surrender Agreement* filed herewith as **EXHIBIT R-4** (the “***Transfer and Surrender Agreement***”);
31. No commission is payable to CBRE as a result of the Transfer and Surrender Agreement, the purpose of which is merely to facilitate the transfer of the Property to the Debtors’ main secured lender;
32. Pursuant to the Transfer and Surrender Agreement, essentially:
- a) The Debtors agree to surrender and transfer the Property and any related movable assets (hereinafter the “***Transferred Assets***”) to Timbercreek, with the exception of the Sundry Assets, which are essentially comprised of litigated claims to which the Debtors are parties to (as further defined in the Transfer and Surrender Agreement);
 - b) Timbercreek agrees to pay the priority payables, namely:
 - i) The amounts due to IFB pursuant to the Interim Financing Facility (as this term is defined in the Initial Order);
 - ii) The amounts due to the beneficiaries of the Administration Charge (as this term is defined in the Initial Order);

- iii) The amounts due to the Syndicate which are subject to the Syndicate Prior Notice and the Syndicate Motion (as these terms are defined in the Initial Order).

In this regard, Timbercreek has informed the Debtors that it does not acknowledge the validity and priority of the amounts claimed by the Syndicate, which presently total approximately **\$356,500**. Should this issue not be resolved before the Closing Deadline (as defined hereinafter), Timbercreek confirmed to the Debtors that it shall deposit an amount of **\$400,000** with the Court, in order to allow for the transfer of clear title to the Transferred Assets pursuant to the Transfer and Surrender Agreement and impending Order, without causing prejudice to the Syndicate or diminishing any security that it may purport to benefit from;

- c) The closing must occur at the latest on August 18, 2014 (hereinafter the ***"Closing Deadline"***);
 - d) Timbercreek is to take possession and manage the Property for the period comprised between the issuance of the orders sought pursuant hereto and the Closing Deadline, Timbercreek being charged with the simple administration of the Property, with the authority to sign new leases of dwellings;
 - e) The whole subject to the issuance of a vesting order;
33. The Monitor supports the conclusions sought pursuant to the present Motion as it is satisfied that:
- a) The CBRE Process properly canvassed the market in respect to the Property;
 - b) The Transfer and Surrender Agreement represents the best transaction possible under the circumstances;
 - c) It is unlikely that in a context of bankruptcy a transaction offering a better return on the Property could be achieved;

as appears from a copy of the Monitor's Report filed herewith as **EXHIBIT R-5**;

F. CONCLUSIONS SOUGHT


34. The Debtors respectfully submit to this Honourable Court that the orders sought pursuant hereto are wholly appropriate as:
- a) The Property was subject to a thorough solicitation process led by CBRE;
 - b) The Monitor supports the issuance of the orders sought pursuant hereto;
 - c) Timbercreek supports the issuance of the orders sought pursuant hereto;

- d) The transfer of the Property in accordance with the Transfer and Surrender Agreement will allow for a smooth transition while minimizing the impact on the occupants of the Property; and
 - e) It is fair and reasonable under the circumstances to allow for the Debtors to transfer the Property to Timbercreek in accordance with the Transfer and Surrender Agreement;
 - f) The extension of the Initial Order will allow for the closing of the transfer of the Property in accordance with the Transfer and Surrender Agreement, without materially prejudicing the Debtors' creditors;
35. The Secured Creditors were duly served with the present Motion;
36. The Debtors respectfully submit that the present Motion should be granted in accordance with the Draft Vesting Order;
37. The present Motion is well founded both in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [1] **GRANT** the present "*Motion (i) seeking leave to transfer and surrender substantially all of the Debtors' assets outside the normal course of business and (ii) seeking the extension of the Initial Order*" (hereinafter the "**Motion**");
- [2] **ISSUE** an order substantially in the form of the draft order filed in support of the present Motion as **EXHIBIT R-1**;
- [3] **THE WHOLE** without costs, save and except if contested and then, with costs against any contesting parties solidarily.

Montréal, July 17, 2014


FASKEN MARTINEAU DuMOULIN LLP
Attorneys for Debtors

AFFIDAVIT

I, the undersigned, Diana Mason-Stefanovic, duly authorized director, having my professional address at 555 Richmond Street, West Suite 504, Toronto, province of Ontario, MV5 3B1, do solemnly declare the following :

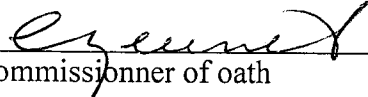
1. I am a duly authorized representative of the Debtors *Casperdiny IFB Realty Inc.* and *Les Appartements Club Sommet Inc.* in the present case;
2. All the facts alleged in the present Motion are true.

AND I HAVE SIGNED :



DIANA MASON-STEFANOVIC

Solemnly affirmed before me, in
Montreal, on July 17, 2014



Commissioner of oath



NOTICE OF PRESENTATION

TO: Benoît Gingues
Eric Barbieri
**RICHTER ADVISORY GROUP
INC.**
1981 McGill College
Montréal, Québec, H3A 0G6

Monitor

TO: Me Alexander Bayus
Me Denis St-Onge
**Gowling Lafleur Henderson
S.E.N.C.R.L.**
1, Place Ville-Marie
37th floor
Montréal QC H3B 3P4

**Attorneys for Timbercreek Senior
Mortgage Investment Corporation**

TO: **IFB BETEILLIGUNGEN AG i.L.**,
Grünerstrasse 19
40239, Düsseldorf, Germany

TO: Benoît Poulin
CBRE LTD
2001, McGill College Avenue
Suite 2000
Montreal QC H3A 1G1

TO: **THE REGISTRAR OF THE
REGISTER OF PERSONAL AND
MOVABLE REAL RIGHTS**
Palais de Justice de Montréal
1, rue Notre-Dame Est
Montréal QC H2Y 1B6

TO: Me Jean G. Robert
Lette & Associés S.E.N.C.R.L.
2800-630, Blvd René-Lévesque West
Montréal QC H3B 1S6

**Attorneys for the Syndicate of le Parc
Co-Ownership**

TO: **COMPUTERSHARE TRUST
COMPANY OF CANADA**
c/o Stikeman Elliott S.E.N.C.R.L., S.R.L.
40 - 1155 René-Lévesque Blvd. West
Montreal, Quebec H3B 3V2

TO: **CASPERDINY IFB CAPITAL INC.**
555 Richmond Street West, Suite 504,
Toronto, Ontario, M5V 3B1

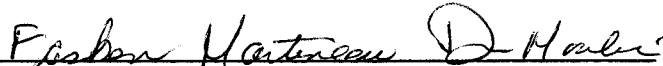
TO: **THE LAND REGISTRAR FOR THE
LAND REGISTRY OFFICE FOR THE
REGISTRATION DIVISION OF
MONTREAL**
2050, rue De Bleury
Montréal QC H3A 2J5

TAKE NOTICE that the present *Motion Seeking Leave to Transfer and Surrender Substantially all of the Debtors' Assets Outside the Normal Course of Business* will be presented for adjudication before Justice Martin Castonguay of the Superior Court, Commercial Division, sitting in and for the district of Montréal on **Friday, July 18, 2014 at 9:00 a.m.** or so soon

thereafter as counsel may be heard, in a room to be determined, of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, July 17, 2014


FASKEN MARTINEAU DuMOULIN LLP
Attorneys for Debtors

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. : 500-11-046282-147

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LIST OF EXHIBITS

EXHIBIT R-1: Draft Order.
EXHIBIT R-2: Retained Bid.
EXHIBIT R-3: Retained Bidder's Notice.

EXHIBIT R-4: Transfer and Surrender Agreement.

EXHIBIT R-5: Monitor's Report.

Montréal, July 17, 2014

A handwritten signature in cursive script, reading "Fasken Martineau DuMoulin", is written over a horizontal line.

FASKEN MARTINEAU DuMOULIN LLP

Attorneys for Debtors

N° : 500-11-046282-147

PROVINCE OF QUÉBEC
SUPERIOR COURT(Commercial Division)
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**(Sections 11.02 and 36 of the *Companies' Creditors
Arrangement Act*, R.S.C. (1985), ch. C-36),
AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF
EXHIBITS AND EXHIBITS R-1 TO R-5**

ORIGINAL

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