

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO. : 500-11-026779-054

SUPERIOR COURT
COMMERCIAL DIVISION
(In bankruptcy and insolvency)

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

MINCO-DIVISION CONSTRUCTION
INC.

and

SLEB 1 INC.

Debtors

and

LITWIN BOYADJIAN INC., in its
capacity as Monitor of Debtors under the
Companies' Creditors Arrangement Act;

Monitor

and

RSM RICHTER INC., in its capacity as
Interim Receiver of the Debtors;

Interim Receiver

and

CANADIAN IMPERIAL BANK OF
COMMERCE,

Petitioner

MOTION TO VARY THE POWERS OF THE INTERIM RECEIVER
(Section 11 of the *Companies' Creditors Arrangement Act* ("CCAA") and
Section 47.1 of the *Bankruptcy and Insolvency Act* ("BIA"))

**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT,
SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE DISTRICT
OF MONTREAL, THE PETITIONER SUBMITS AS FOLLOWS:**

The Proceedings

1. On October 27, 2005, the Debtors filed a Notice of Intention under the *Bankruptcy and Insolvency Act* (“BIA”);
2. On October 29, 2005, the Debtors filed a Petition to Take Up and Continue Under the Companies’ Creditors Arrangement Act Proceedings Commenced under Part III of the BIA, the whole as appears from the Court Record;
3. On November 2, 2005, the Debtors filed a Motion for the Appointment of an Interim Receiver the whole as appears from the Court Record;
4. On November 3, 2005, this Court issued an Initial Order under the CCAA and Litwin Boyadjian Inc. was appointed as Monitor, the whole as appears from the Court Record;
5. On November 3, 2005 this Court also issued an Interim Receivership Order under Section 47.1 of the BIA appointing RSM Richter Inc. as Interim Receiver, the whole as appears from the Court Record;
6. The Initial Order provides, *inter alia*, that all Proceedings (as defined in the Initial Order) against the Debtors and their assets are subject to a stay of proceedings (the “Stay of Proceedings”) until November 30, 2005 (the “Stay Termination Date”) unless this Court authorizes Proceedings to be instituted or continued in accordance with the provisions of the CCAA;

Extensions of the Stay Termination Date

7. On March 10, 2006, this Court granted a third extension of the Stay Termination Date to March 31, 2006, the whole as appears from the Court Record;
8. As appears from the Order of this Court dated March 10, 2006, this last extension of the Stay Termination Date was granted for a period of 3 weeks in order to allow CIBC to finalize its review of the costs to complete Phase I of the Project and to determine if it is prepared to finance the completion of the Project;
9. Since the issuance of the Initial Order, CIBC through a DIP Facility granted and approved by this Court has funded the operations and the

restructuring costs of the Debtors as same did not have the financial resources or available alternate funding to do so;

10. The granting of an additional DIP Financing sufficient to fund the completion of Phase I of the Project was a *sine qua non* condition to the successful implementation of any consolidated plan of compromise or arrangement allowing for a continuation of the operations of the Debtors;
11. After a careful review and analysis of the situation, CIBC has decided that it is not prepared, at this time, to provide additional DIP Financing to fund the completion of Phase I of the Project and the Debtors have not found alternate financing;
12. Without additional DIP Financing, the Debtors are clearly not in a position to continue their operations and complete Phase I of the Project;

Sale of the assets of the Debtors

13. In the circumstances, it is highly unlikely that the Debtors will be in a position to successfully propose, to their creditors, a plan of compromise or arrangement allowing for a continuation of their operations;
14. It is therefore in the best interest of all stakeholders that the Debtors terminate their operations and that their assets be marketed for sale by the Interim Receiver and sold with the approval of this Court;
15. Since November 2005, the construction of the Project has stopped and only limited measures to ensure the safeguard and integrity of the Project have been taken;
16. The vast majority of purchasers are extremely anxious to take possession of their pre-sold units and unless Phase I of the Project can be completed in a reasonable delay, such pre-sales will be jeopardized;
17. Continuing delays in marketing and selling the Project will have the effect of reducing the price any prospective purchaser is prepared to pay for the Project;
18. It is in the best interest of all stakeholders that the Stay Termination Date be extended to June 30, 2006 and that, during that period, the Interim Receiver be:
 - a. authorized to market and advertise any and all of the assets of the Debtors, solicit offers in respect of those assets or any part or parts thereof and negotiate such terms and conditions of sale as the Interim Receiver, in its discretion, may deem appropriate;

- b. instructed to report back to this Court on the outcome of the above mentioned marketing process on or before the Stay Termination Date and, if applicable, during the said period, obtain the authorization of this Court to sell the any of the assets of the Debtors.
19. In this context, any sale, transfer, assignment, conveyance or transfer of the assets of the Debtors shall be subject to a further order from this Court approving the terms and condition of sale and authorizing that the assets be sold, transferred, assigned or conveyed to the purchaser thereof, free and clear of any charges, liens or encumbrances;
20. The sale of the assets of the Debtors in the context of the existing CCAA proceedings by the Interim Receiver will allow for the orderly sale of the assets of the Debtors for the best price without incurring unnecessary delays;
21. CIBC has agreed to make available to the Debtors additional interim DIP Financing in the minimum sum of \$484,497.00 to fund the above mentioned marketing and sale process and the limited operations of the Debtors, the whole as will appear from a copy of a revised term sheet, which shall be executed shortly by the Debtors and CIBC (the "**Third Revised Term Sheet**") to be produced herewith prior to the hearing as Exhibit R-1;
22. As appears, from the Third Revised Term Sheet, the additional interim DIP Financing is, *inter alia*, conditional upon the extension of the Stay Termination Date, the approval by this Court of the Third Revised Term Sheet and related DIP charge and the powers of the Interim Receiver being extended as per the conclusions of this Motion;
23. In a bankruptcy scenario, existing sales of condominium units will be lost and a new construction permit will have to be issued to continue the Project;
24. It is virtually certain that a sale of the assets of the Debtors by the Interim Receiver in the context of the existing CCAA proceedings will yield a far superior realization than would otherwise be attained in a forced liquidation or bankruptcy scenario;
25. This Motion is well founded in fact and in law.

WHEREFORE THE PETITIONER PRAYS THAT BY JUDGMENT TO INTERVENE HEREIN THIS COURT:

GRANT THIS MOTION TO VARY THE POWERS OF THE INTERIM RECEIVER (the "**Motion**") pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") seeking a modification of the powers of **RSM Richter Inc.** as interim receiver (the "**Interim Receiver**") without security, in respect of **SLEB 1 Inc.** and **MINCO-DIVISION CONSTRUCTION INC.** (the "**Debtors**").

SERVICE

1. **ORDER** that the time for service of this Motion is hereby abridged so that the motion is properly presentable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **ORDER** that pursuant to section 47.1 of the BIA, RSM Richter Inc. is hereby appointed Interim Receiver, without security, in respect of the Debtors, with the powers hereinafter set forth until further order of this Court. For the purposes hereof, the Property means the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all cash and amounts held by third parties.

INTERIM RECEIVER'S POWERS

3. **ORDER** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once to do any of the following where the Interim Receiver considers it necessary or desirable:
 - (a) to supervise and monitor all activities and conduct of the Debtor, notably with regard to the preservation, protection, possession, and /or control of the Property, or any part or parts thereof, including, but not limited to, the relocating of any Property to safeguard it, the engaging of security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (b) to hold jointly with the Monitor all net proceeds and receipts arising from the Project including, without limitation, all deposits, tax refunds or other receipts (the "**Net Proceeds**") in a trust account opened in the names of both the Monitor and the Interim Receiver;
 - (c) to control and authorize any and all disbursements by the Petitioners after the date of this Order save in respect of charges secured by the Administration Charge, the amount and details of which charges will be reported by the Monitor to the Interim Receiver twice a month;
 - (d) to inquire and analyze the extent to which the Property is appropriately

safeguarded and controlled;

- (e) to inquire, investigate, review and analyze the affairs and the Property of the Debtors including, without limitation transactions relating to the development and construction of Phase I of the Project (as defined in this Motion) and any payments, transfers and conveyances to third parties or related persons;
- (f) to analyze and review all relevant data concerning the state of the accounts payable of the Debtors, the status of contracts existing or required for the completion of Phase I of the Project, the status of existing agreements with purchasers for the purchase of units and marketing efforts for those units for which there are no sale agreements and to communicate with the relevant third parties in regard thereof;
- (g) to approve jointly with the Monitor the entering into by the Debtors of any new contracts, agreements and settlements with third parties, and the Debtors are ordered not to enter into any contracts, agreements and settlements without the approval of the Interim Receiver;
- (h) to inquire into and analyze the funding requirements to bring Phase I of the Project to an appropriate state of completion and any available avenues for such funding and to make any appropriate recommendations in such regard;
- (i) to engage consultants, appraisers, agents, experts, auditors, accountants, counsel, as the Interim Receiver deems appropriate and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (j) to report to, meet with and discuss with such secured and unsecured creditors of the Debtors and their advisors, as the Interim Receiver deems appropriate, on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable; and
- (k) to report to, confer with and share all information relating to the Debtors and/or to the Interim Receiver's duties, powers and activities as set out herein with the Debtors' mortgage creditors;
- (l) if necessary, apply at a later date to this Honorable Court for any further order it may deem necessary or advisable; and
- (m) to take any steps reasonably incidental to the exercise of these powers.

MARKETING PROCESS

3.1 **ORDER** that the Interim Receiver is exclusively authorized and empowered to conduct a marketing process with respect to all of the Property or any part or parts thereof and to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate, provided that, in so doing, the Interim Receiver shall not complete any sale or disposition of the Property without the approval of the Court;
- (b) to perform all acts, sign all documents and take any necessary steps in order to market, advertise or solicit offers with respect to the Property;
- (c) to report to this Court on the outcome of the above mentioned marketing process on or before the Stay Termination Date; and
- (d) if applicable, apply for orders necessary to obtain the approval of the Court to sell, transfer and assign all the rights, title and interest of the Debtors in and to the Property and to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any hypothecs, charges, liens or encumbrances affecting such Property;

and that the Interim Receiver shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, and without interference from any other Person.

3.2 **ORDER** that all Persons shall provide the Interim Receiver with any information, documentation or Records, which the Interim Receiver, in its discretion, may request in connection with the marketing, advertising or solicitation of offers with respect to the Property.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. **ORDER** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents and shareholders, any other persons acting on its instructions or behalf including, without limitation, any accountants or legal counsel, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise

the Interim Receiver of any Property in such Person's possession or control, shall grant unfettered immediate and continued access to the Property to the Interim Receiver.

5. **ORDER** that all Persons shall deliver to the Interim Receiver all of the Debtors' books, documents, securities, contracts, orders, corporate and accounting records and all computer records, computer programs, computer tapes, computer disks, data storage media and programs containing any such information, and any other papers, records and information of any kind of the Debtors relating thereto in their possession or control (the foregoing, collectively, the "Records"), and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver access to and use of accounting, computer, software and physical facilities relating thereto.

5.1 **ORDER** all Persons not to destroy or dispossess themselves of any of the Property or the Records without having provided the Interim Receiver with a prior notice of not less than five business days.

6. **ORDER** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including, without limiting the generality of the foregoing, providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

7. **ORDER** that no proceeding, enforcement process or extra-judicial proceeding in any court or other tribunal (each, a "Proceeding") shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

8. **ORDER** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the fulfillment of its duties in carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

8.1. **DECLARE** that the Interim Receiver shall not be considered as operating or continuing the enterprise of the Debtors, for any purposes whatsoever;

8.2. **ORDER** that the Interim Receiver shall not incur any liability whatsoever regarding third parties for any act done under the Order;

8.3. **ORDER** that the Interim Receiver is not and shall not be deemed or considered to be a successor employer, related employer, sponsor or payer with respect to any of the employees of the Debtors or any former employees within the meaning of any provincial, federal or municipal legislation or common law governing employment or labor standards (the "**Labor Laws**") or any other statute, regulation or rule of law or equity for any purpose whatsoever, or any collective agreement or other contract between the Petitioner and any of their current or former employees. In particular, the Interim Receiver shall not be liable to any of the employees of the Debtors for any wages under applicable Labor Laws, including severance pay, termination pay and vacation pay. The Interim Receiver shall not be liable for any contribution or other payment to any pension or benefit fund;

8.4. **ORDER** that nothing herein contained shall require the Interim Receiver to take care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "**Possession**"), or require or obligate the Interim Receiver to occupy or to take control, care, charge, occupation, possession or management of any of the Property;

8.5. **ORDER** that the Interim Receiver shall not, as a result of the Order or anything done in pursuance of the Interim Receiver's duties and powers under the Order, be deemed to be in possession of any of the property of the Debtors 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;

INTERIM RECEIVER'S ACCOUNTS

8.6. **ORDER** that any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its counsel, incurred at the normal rates and charges of the Interim Receiver and its counsel, shall be paid pursuant to the

Third Revised Term Sheet and shall be secured by the DIP Charge (as defined in the Initial Order, as amended and restated) and shall have first priority over all of the present and future Property the whole as stated in the order of this Court granting the DIP Charge.

GENERAL

9. **ORDER** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.


10. **ORDER** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

11. **REQUEST** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

12. **ORDER** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

THE WHOLE WITHOUT COSTS save in case of contestation.

Montreal, this 27th day of March 2006



STIKEMAN ELLIOTT LLP
Attorneys for the Petitioner
Canadian Imperial Bank of Commerce

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO. : 500-11-026779-054

SUPERIOR COURT
COMMERCIAL DIVISION
(In bankruptcy and insolvency)

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

MINCO-DIVISION CONSTRUCTION
INC.

and

SLEB 1 INC.

Debtors

and

LITWIN BOYADJIAN INC., in its
capacity as Monitor of Debtors under the
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Monitor

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Interim Receiver

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CANADIAN IMPERIAL BANK OF
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AFFIDAVIT

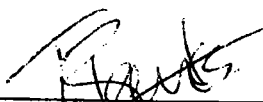
I, the undersigned, A. Kenneth Miller, General Manager, Special Loans Risk Management, exercising my profession at 199 Bay Street, 6th Floor, Toronto, Ontario, M5L 1A2, having been duly sworn, do depose and solemnly affirm that:

1. I am a representative of the Canadian Imperial Bank of Commerce herein and duly authorized for the purposes hereof;
2. I am aware of all the facts alleged in the motion to which this affidavit is attached;
3. All the facts alleged in the motion to which this affidavit is attached are true.

AND I HAVE SIGNED


A. Kenneth Miller

SOLEMNLY AFFIRMED TO BEFORE ME
at Toronto, this 27th day of March, 2006.



Timothy H. Beeks
(Name)
Notary Public of
(Title) the Province of Ontario

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO. : 500-11-026779-054

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Monitor

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RSM RICHTER INC., in its capacity as
Interim Receiver of the Debtors;

Interim Receiver

and

CANADIAN IMPERIAL BANK OF
COMMERCE;

Petitioner

NOTICE OF PRESENTATION

TO: SLEB 1 INC.
C/O GOLDSTEIN, FLANZ & FISHMAN S.E.N.C.
1250 René-Lévesque Blvd. West
Suite 4100
Montréal, QC H3B 4W8

Attention: Me Mark Meland

AND: MINCO-DIVISION CONSTRUCTION INC.
C/O GOLDSTEIN, FLANZ & FISHMAN S.E.N.C.
1250 René-Lévesque Blvd. West
Suite 4100
Montréal, QC H3B 4W8

Attention: Me Mark Meland

AND: LITWIN BOYADJIAN INC., in its capacity as Monitor
1 Place Ville-Marie
Suite 2720
Montreal QC H3B 4G4

Attention: Noubar Boyadjian

AND: RSM RICHTER INC., in its capacity as Interim Receiver
2 Place Alexis Nihon
3500 de Maisonneuve Blvd. West
22nd Floor
Montreal, QC H3Z 3C2

Attention: Yves Vincent

AND: SERVICE LIST (see attached list)

TAKE NOTICE that Petitioner's Motion to vary the powers of the interim receiver will be presented for adjudication before the Honourable Daniel H. Tingley on **March 29, 2006, at 9:15 AM**, in a room of the Courthouse of Montreal, located at 1 Notre-Dame Street East, Montreal to be determined, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, March 27, 2006


STIKEMAN ELLIOTT LLP
Attorneys for Petitioner

SUPERIOR COURT
COMMERCIAL DIVISION
(In bankruptcy and insolvency)

N° . 500-11-026779-054

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

MINCO-DIVISION CONSTRUCTION INC.

-and-

SLEB 1 INC.

Debtors

- and -

LITWIN BOYADJIAN INC.

Monitor

- and -

RSM RICHTER INC.

Interim Receiver

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Petitioner

BS0350

File: 000700-1412

MOTION TO VARY THE POWERS OF THE INTERIM
RECEIVER, AFFIDAVIT AND NOTICE OF
PRESENTATION.

(Section 11 and ss. of the *Companies' Creditors Arrangement
Act* ("CCAA") and Section 47.1 of the *Bankruptcy and
Insolvency Act* ("BIA"))

Mtre. Stephen M. Raicek/Guy P. Martel (514) 397-3068
Fax: (514) 397-3419

STIKEMAN ELLIOTT
Stikeman Elliott LLP BARRISTERS & SOLICITORS
40th Floor
1155 René-Lévesque West
Montréal, Canada H3B 3V2