

**SUPERIOR COURT
(Commercial Division)**



**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

NO.: 500-11-041710-118

DATE: May 15, 2012

PRESENT: THE HONOURABLE JUSTICE MANON SAVARD, J.C.S.

4077547 CANADA INC.

Petitioner

vs.

3762904 CANADA INC.

Respondent

and

TELMONDE GROUP INC.

and

LEINAL INC.

and

VIMETAL INC.

and

HAIM KOTLER

and

ADRIANA KOTLER

and

RAFAEL TZOUBARI

and

THE DIRECTOR

Mise-en-Cause

O R D E R

[1] **THE COURT**, exercising its jurisdiction as the “court” as defined in the *Canada Business Corporations Act* (“**CBCA**”), is seized with Petitioner’s “Application for

Liquidation and Dissolution and Related Orders” herein (the “**Application**”), seeking the liquidation and dissolution of Respondent 3762904 Canada Inc. (the “**Respondent**” or the “**Corporation**”) and the other orders therein set forth;

- [2] **SEEING** the allegations contained in the Application, the exhibits produced therewith and the Solemn Affirmation in support thereof;
- [3] **SEEING** the relevant provisions of the *CBCA* in general and Sections 214(1)(b)(ii) and 217 and following thereof in particular as well as Article 46 of the *Quebec Code of Civil Procedure*;
- [4] **SEEING** the consent of all of the parties to the Application to the granting of the present Order;

THE COURT HEREBY:

GENERAL

- [5] **DISPENSES** Petitioner 4077547 Canada Inc. (“**Petitioner**”) from giving notice of the present Application to any interested person or any other person other than Respondent and each of the *Mise-en-Cause* herein.
- [6] **ORDERS** that the Corporation be liquidated pursuant to the relevant provisions of the *CBCA*.
- [7] **ORDERS** that the Corporation shall continue in existence but shall, effective immediately, cease to carry on business except the business that is, in the opinion of the hereafter defined “Liquidator”, required for an orderly liquidation of the Corporation.
- [8] **ORDERS** that, effective immediately, the powers of the directors and shareholders of the Corporation shall cease and vest in the hereinafter defined “Liquidator”, except as may hereafter be specifically authorized by this Court.

APPOINTMENT OF LIQUIDATOR

- [9] **APPOINTS** RSM Richter Inc. (the “**Liquidator**”) as the liquidator of and in respect of the Corporation and all of the Corporation’s movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible property of every nature, form or location whatsoever (collectively the “**Property**”) including, without limitation, all shares (the “**Leinal Shares**”) held and owned by the Corporation in the capital stock of the Corporation’s wholly owned subsidiary, Leinal Inc. (“**Leinal**”).
- [10] **ORDERS** that the appointment of the Liquidator shall be without security.

DUTIES AND POWERS OF LIQUIDATOR

- [11] **ORDERS** that the Liquidator shall have all of the duties and powers set forth in the relevant provisions of the *CBCA*, and that all of such powers may be exercised by the Liquidator as the Liquidator deems necessary, appropriate or useful.
- [12] **ORDERS** that additionally, the Liquidator shall have the following duties and powers:
- (a) to exercise all of the rights (including voting rights) attaching to the Leinal Shares, to the complete exclusion of the Corporation, including, without limitation, the power to:
 - (i) remove and/or replace some or all of Leinal's directors; and
 - (ii) restrict, partially remove or completely remove the powers of Leinal's directors;
 - (b) to sell and/or dispose of all of the Property as well as all of Leinal's movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible property of any nature, form or location whatsoever ("**Leinal Property**") through and in accordance with the provisions of the hereafter defined "Sale Process";
 - (c) to publish, register or record a copy of this Order (and any other orders envisaged hereby) against and in respect of the Property; and
 - (d) to sign, execute and deliver all documents and do and perform all acts and things as may be necessary, advisable or useful in order to carry out and exercise the Liquidator's duties and powers hereunder as well as to carry out and effect the Corporation's liquidation.

SALE PROCESS

- [13] **ORDERS** that, within thirty days immediately following the date of this Order (or such further delay as may be, at the request of the Liquidator, granted by this Court), the Liquidator shall deliver to Petitioner and each of the *Mise-en-Cause* and present before this Court the Liquidator's written report containing the Liquidator's recommended process for the sale of all of the Property and either the Leinal Shares or the Leinal Property for the best possible prices having regard all of the circumstances (the "**Recommended Sale Process**"). Such Recommended Sale Process shall envisage all of such sales being completed and concluded (or the object of an accepted offer to purchase in respect of which all conditions for occurrence of closing have been fulfilled) no later than twelve months immediately following the date of this Order (the "**Sale Period**").

- [14] **ORDERS** that the Recommended Sale Process after approval by this Court (together with such modifications as this Court may deem appropriate) (the "**Sale Process**") shall be thereafter implemented and carried out by the Liquidator within the Sale Period.
- [15] **ORDERS** that the Sale Process shall not be extended beyond the Sale Period without the (i) express written approval of Mise-en-Cause Vimetal Inc. ("**Vimetal**"), and (ii) approval of this Court.

DUTY TO PROVIDE ACCESS AND COOPERATION TO THE LIQUIDATOR

- [16] **ORDERS** that each of (i) the Corporation, (ii) each of the Mise-en-Cause, (iii) all of the Corporation's and Leinal's current and former directors, officers, employees, agents and shareholders, and (iv) all other individuals, firms, corporations, governmental bodies or agencies or other entities having notice of the Order (collectively the "**Affected Persons**") shall forthwith advise the Liquidator of any Property or Leinal Property in each such Affected Person's possession or control and that each of such Affected Persons shall forthwith grant unfettered immediate and continued access to such Property and/or Leinal Property to the Liquidator.
- [17] **ORDERS** that each of the Affected Persons shall deliver to the Liquidator all of the Corporation's and Leinal's 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 Corporation and/or Leinal relating thereto in their possession or control (collectively the "**Records**") and that each of the Affected Persons shall provide the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator access to and use of all accounting, computer, software and electronic system facilities relating to such Records.
- [18] **ORDERS** that each of the Affected Persons shall not destroy or dispossess themselves of any of the Property, the Leinal Property or the Records without having provided the Liquidator with prior written notice of at least seven days.
- [19] **ORDERS** 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, each of the Affected Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator 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 Liquidator deems expedient) and that each of the Affected Persons shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, each of the Affected Persons shall forthwith provide the Liquidator with all such

assistance in gaining immediate access to the information in the Records as the Liquidator may require including, without limiting the generality of the foregoing, providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

PROCEEDINGS AGAINST THE LIQUIDATOR

- [20] **ORDERS** that no legal proceedings, enforcement process or extra-judicial proceedings in any court or other tribunal (with the sole exception of the hereafter defined "Vimetal Proceedings") shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

- [21] **ORDERS** that the Liquidator shall incur no liability or obligation as a result of its appointment or fulfillment of its duties in carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on the Liquidator's part.
- [22] **DECLARES** that the Liquidator shall not be considered as operating or continuing the businesses or enterprises of the Corporation or Leinal for any purposes whatsoever and that the Liquidator shall not be deemed to be a director of the Corporation or Leinal.
- [23] **ORDERS** that the Liquidator shall not incur any liability whatsoever regarding third parties for any act done under the Order.
- [24] **ORDERS** that the Liquidator shall not be deemed or considered to be a successor employer, related employer, sponsor or payer to any of the current or former employers of the Corporation or Leinal within the meaning of any provincial, federal or municipal legislation, civil law or common law governing employment or labour standards (the "**Labour Laws**") or any other statute, regulation or rule of law or equity for any purpose whatsoever, or any collective agreement or any other contract between the Corporation and/or Leinal and any of the Corporation's or Leinal's current or former employees. In particular, the Liquidator shall not be liable to any of the current or former employees of the Corporation and/or Leinal for any wages under any applicable Labour Laws, including severance pay, termination pay and vacation pay. The Liquidator shall not be liable for any contribution or any payment to any pension or benefit fund.
- [25] **ORDERS** that the Liquidator shall not, as a result of the Order, or anything done in pursuance of the Liquidator's duties and powers hereunder, be deemed to be in possession of the Property or the Leinal Property 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 any other contamination and regulations thereunder.

- [26] **ORDERS** that pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, Canada, the Liquidator shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and the Leinal Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of such Property and such Leinal Property pursuant to the Sale Process (the “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale and, if it does not complete such a Sale, such purchaser or bidder shall immediately return all information to the Liquidator or, in the alternative, destroy all such information. The purchaser of any Property or any Leinal Property shall be entitled to continue to use the personal information provided to it and related to the Property and/or Leinal Property so purchased pursuant to the relevant Sale, in the manner which is in all respects identical to the prior use of such information by the Corporation or Leinal (as the case may be) and shall return all other personal information to the Liquidator, or ensure that all other personal information is destroyed.

LIQUIDATOR CHARGE

- [27] **ORDERS** that any expenditure or liability which shall properly be made or incurred by the Liquidator, including all of the Liquidator’s fees and fees of the Liquidator’s attorneys (at the Liquidator’s and its attorneys’ prevailing hourly rates) and disbursements incurred in fulfilling its duties and exercising its powers hereunder shall, once approved by the Court, form a first charge on all of the Property and all of the Leinal Property in priority to and ahead of all hypothecs, security interests, trusts, liens, charges, encumbrances and third party rights (statutory or otherwise) in favour of Vimetal Inc. (“**Vimetal**”) or any other person (the “**Liquidator’s Charge**”).
- [28] **ORDERS** that the Liquidator shall be at liberty, from time to time, to apply amounts, out of the monies in the Liquidator’s hands, against expenditures and liabilities covered by the Liquidator’s Charge, subject to ultimate approval by this Court.

VIMETAL PROCEEDINGS

- [29] **PERMITS** Vimetal to, at any time, give to the Corporation, Leinal and/or the Liquidator such default or other notices (including prior notices of the exercise of hypothecary rights and notices of enforcement of security pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act*, Canada) in respect of any

indebtedness owing to Vimetal by the Corporation or Leinal (the "**Vimetal Claims**") and/or any hypothecs, security interests or other rights held by Vimetal over any of the Property or the Leinal Property (the "**Vimetal Security**").

[30] ORDERS that, during the (i) Sale Period, or (ii) such earlier date as this Court may hereafter order (the "**Vimetal Stay Period**"), Vimetal shall not be entitled to initiate any new legal proceedings, (including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act, Canada*), continue any existing legal proceedings or enforce any judgment (other than this Order) against the Corporation, Leinal and/or the Liquidator in respect of the Vimetal Claims and/or the Vimetal Security (the "**Vimetal Proceedings**"), provided that Vimetal shall, nevertheless, be and remain entitled to initiate and/or continue any such Vimetal Proceedings during the Vimetal Stay Period in order to:

- (a) interrupt prescription;
- (b) prevent dismissal of any of the Vimetal Proceedings;
- (c) prevent Vimetal from losing any of its rights in respect of the Vimetal Claims and/or the Vimetal Security; or
- (d) withdraw Leinal's authority to collect rentals from Leinal's immovable properties, in the event that Leinal defaults in payment of monthly interest on the indebtedness owing by Leinal to Vimetal.

DISTRIBUTIONS

[31] ORDER and AUTHORIZE the Liquidator to pay, in order of rank established by law, all present and future debts, liabilities and obligations of each of the Corporation and Leinal (including, without limitation, each of the Vimetal Claims, all income and other taxes, as well as, all debts, liabilities and obligations forming the object of the Liquidator's Charge), to the extent possible, out of the available proceeds of sale of the Property and the proceeds of sale of either the Leinal Shares or the Leinal Property;

[32] ORDER and AUTHORIZE the Liquidator, after payment or provision for payment of all of the present and future debts, liabilities and obligations of each of the Corporation and Leinal provided for in the preceding paragraph, to distribute, in one or more distributions, withholding such reserves deemed appropriate by the Liquidator, the balance of the proceeds of sale of the Property and the proceeds of sale of either the Leinal Shares or the Leinal Property to the Corporation's shareholders, Petitioner and Respondent Telmonde Group Inc., on an equal basis, the whole subject to approval by this Court;

MISCELLANEOUS

- [33] **ORDERS** that the Liquidator may, from time to time, apply to this Court for advice and directions as to any matter pertaining to this Order, the Corporation and/or Leinal.
- [34] **ORDERS** that nothing contained in this Order shall prevent the Liquidator from acting as a trustee in bankruptcy of the Corporation or Leinal, in the event of the bankruptcy of either the Corporation or Leinal.
- [35] **ORDER** that the filing and presentation of the Application and the issuance of this Order has not and shall not constitute any event of default, default or breach under or pursuant to any and all agreements, undertakings or engagements to which the Corporation or Leinal is a party.
- [36] **REQUEST** the aid and recognition of any court, tribunal, regulatory body or administrative body having jurisdiction anywhere in Canada or the United States of America to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory bodies and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.
- [37] **ORDER** that the Liquidator be entitled, authorized and empowered to apply to any court, tribunal, regulatory body or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
- [38] **THE WHOLE** without costs.


MANON SAVARD, J.C.S. j.c.s.

COPIE CONFORME


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