

C A N A D A

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,

Mises en cause

MOTION SEEKING

(i) THE APPROVAL OF A PLAN OF ARRANGEMENT

-&-

(ii) THE EXTENSION OF STAY OF PROCEEDINGS

(Sections 6 and 11.02 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:
 - a) An order approving the Amended Plan of Arrangement (as defined hereinafter); and
 - b) An order extending the stay of proceedings until the earlier of (i) the Implementation Date or (ii) further Order of this Court,the whole 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;
3. Capitalized terms not otherwise defined herein shall have the meaning ascribed to same in the Claims Process Order, copy of which is filed herewith as **EXHIBIT R-2**, and/or the Amended Plan of Arrangement (as defined hereinafter), copy of which is filed herewith as **EXHIBIT R-3**;

B. THE PARTIES

4. Until the closing of the Timbercreek Transaction (as defined hereinafter), the Debtors owned, operated and managed 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;
5. The Property was 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;
6. 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”***) were/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;
7. The Mise en cause *Computershare* acted as *fondé de pouvoir* of the Mise en cause 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;
8. Until August 25, 2014, Timbercreek was the principal secured lender of the Debtors, as appears from the Court record herein;

9. Pursuant to the Timbercreek Transaction (as defined hereinafter), Timbercreek released, *inter alia*, the Debtors from any and all claims it may have as against them, granting a mainlevée and a release in respect to its security interest over the Debtors' assets, as appears from the Court record herein;
10. Since August 25, 2014, Timbercreek is no longer a creditor of the Debtors, as appears from the Court record herein;
11. The Mise en cause *IFB Beteiligungen AG i.L.* (hereinafter "**IFB**") was until August 25, 2014, the Debtors' Interim Financing Lender, having agreed to advance up to **\$2,177,502** to the Debtor Casperdiny through the Interim Financing Facility (as defined in the Initial Order) which was secured by the Interim Lender's Charge (as defined in the Initial Order), as appears from the Court record herein;
12. Pursuant to the TSA, Timbercreek had to reimburse the outstanding amounts due by the Debtors to IFB as a result of Interim Financing Facility (as defined in the Initial Order), which payment was completed on August 25, 2014, as appears from the Court record herein;
13. The Monitor *Richter Advisory Group Inc.* (hereinafter "**Richter**") was first appointed Trustee to the Debtors' notice of intention pursuant the BIA and then appointed Monitor to the Debtors' restructuring process under the CCAA pursuant to the Initial Order, as appears from the Court record herein;

C. THE CONTEXT

14. On March 3, 2014, as appears from the Court record herein, the Debtors filed a notice of their intention to submit a proposal to their creditors in accordance with the BIA;
15. On March 21, 2014, as appears from the Court record herein, this Honourable Court issued the Initial Order;
16. The Initial Order was extended from time to time by this Honourable Court until November 28, 2014, as appears from the Court record herein;
17. On July 17, 2014, the Debtors and Timbercreek entered into the *Transfer and Surrender Agreement* (hereinafter the "**TSA**"), agreeing on the terms and conditions upon which the transfer of the Property would take place, as appears from the Court record herein;
18. Pursuant to the TSA, essentially (hereinafter the "**Timbercreek Transaction**"):
 - a) The Debtors agreed 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;
 - b) Timbercreek agreed 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 had undertaken to deposit an amount of **\$400,000** with its attorneys' trust account, in order to allow for the transfer of clear title to the Transferred Assets pursuant to the TSA, without causing any prejudice to the Syndicate's alleged claim or diminishing any security that it may purport to benefit from.

Before closing of the Timbercreek Transaction occurred on August 25, 2014, Timbercreek's attorneys confirmed to the Monitor that they were holding an amount of **\$400,000 in trust**, as appears from the Court record herein;

- c) The whole subject to the issuance of a vesting order;
- 19. On July 18, 2014, this Honourable Court authorized the Debtors to complete the Timbercreek Transaction as appears from the Court record herein;
 - 20. On August 25, 2014, the Monitor filed the Monitor's Certificates, confirming that the Timbercreek Transaction had been completed, as appears from the Court record herein;
 - 21. On September 26, 2014, the Court issued the Claims Process Order (**R-2**), which provides for, *inter alia*, that:
 - a) Every Creditor having an Affected Claim against the Debtors and Released Parties had to file a Proof of Claim with the Monitor before the Claims Bar Date which was scheduled for **October 31, 2014**;
 - b) A Creditors' Meeting would take place at the Monitor's offices on **November 20, 2014** to consider and vote upon the Plan of Arrangement to be submitted by the Debtors at the latest by November 7, 2014;

D. THE PLAN OF ARRANGEMENT AND THE AMENDED PLAN OF ARRANGEMENT

- 22. On November 7, 2014, the Debtors filed with the Monitor a Plan of Arrangement, pursuant to which, essentially, it was offering to the Affected Creditors the Sundry Amount (an amount of **\$100,000**) in full and final settlement of their Affected Claims, as appears from a copy of the Plan of Arrangement filed herewith as **EXHIBIT R-4**;

23. On November 7, 2014, in accordance with the Claims Process Order, the Monitor sent to the Creditors the Meeting Materials, as appears from a copy of the Report of the Monitor filed in support of the present Motion as **EXHIBIT R-5** (hereinafter the “**Monitor’s Report**”);
24. On November 20, 2014, at the Creditors’ Meeting:
- a) The Debtors amended their Plan of Arrangement to add to the Unaffected Claims, the Unaffected Litigated Claims, as appears from a copy of the amended Plan of Arrangement (hereinafter the “**Amended Plan of Arrangement**”) (R-3);
 - b) The Affected Creditors voted in favour of the Amended Plan of Arrangement unanimously (**100%** in value and number), as appears from the Monitor’s Report;
25. The Amended Plan of Arrangement provides for the following:
- a) Payment of the Crown Claims: Unaffected Crown Claims will be paid for by the Debtors in accordance with Section 6(3) (a), (b) or (c) of the CCAA. The Debtors declares having no Unaffected Crown Claims outstanding;
 - b) Payment of the Employee Claims: Unaffected Employee Claims will be paid for by the Debtors in accordance with Section 6(5) (a) of the CCAA. The Debtors declares having no Unaffected Employee Claims outstanding;
 - c) Payment of the Affected Claims: The Amended Plan provides for a payment to the Affected Creditors of the Sundry Amount (an amount of **\$100,000**) in full and final settlement of their Affected Claims:
 - i) The Sundry Amount is essentially funded from:
 - 1) The Capital Contribution (partial renunciation from Capital to its Capital Secured Claim (**\$26,5M**) over the Sundry Proceeds up to **\$86,000**).
 - The Capital Contribution shall be taken from the anticipated realization proceeds (the Sundry Proceeds) of a pool of litigated claims (the Sundry Assets) which are ongoing. The litigated claims forming part of the Sundry Assets are either scheduled for hearing or ready to be scheduled for a hearing (provisional role in January 2015). Pursuant to these litigated claims, the Debtors are claiming an amount of approximately **\$2,5M**; and
 - 2) The ChauvelCo Contribution (a direct investment from ChauvelCo in the amount of **\$14,000**);

ii) The Sundry Amount is to be paid by the Debtors, Capital and/or ChauvelCo at the latest by the Implementation Date, i.e. ten (10) days after the Conditions have been met, i.e:

- 1) Acceptance of the Plan by the requisite majority of the Affected Creditors' Proven Claim;
- 2) Issuance of the Final Order approving the Amended Plan of Arrangement by this Honourable Court; and
- 3) Receipt by the Debtor of the Sundry Amount;

26. Pursuant to the Amended Plan of Arrangement, the Debtors have elected to allow for the Unaffected Litigated Claims to be unaffected and therefore not be compromised pursuant thereto;
27. The Unaffected Litigated Claims are comprised of six (6) Claims of *Immoparc Holdings Two Ltd.* (hereinafter "**Immoparc**") and related parties against the Debtors which are directly related to the Sundry Assets (five (5) of which are essentially counterclaims to the claims of the Debtors forming part of the Debtors' Sundry Assets pursuant to which Immoparc and related parties are each claiming **\$50,000** for alleged defamatory language used in Court proceedings and another one (1) claim pursuant to which Immoparc is claiming damages in an approximate amount of **\$253,000** against the Debtors based on a contractual dispute between the parties);
28. The decision not to affect the Unaffected Litigated Claims is based on fairness as it seemed unfair for the Debtors to continue the litigated claims forming part of the Sundry Assets and fund part of the Sundry Amount on the proceeds resulting therefrom while at the same time compromising the Unaffected Litigated Claims which were directly related to the litigated claims forming part of the Sundry Assets;
29. Besides, given the reciprocity of the litigated claims forming part of the Sundry Assets and the Unaffected Litigated Claims, Immoparc and the related parties having an Unaffected Litigated Claim could have argued to be entitled to apply set-off eventually once a decision was rendered on the litigated claims forming part of the Sundry Assets and the Unaffected Litigated Claims;
30. On November 20, 2014, the Monitor issued the notices of disallowance in respect to the Unaffected Litigated Claims, as appears from a copy of such notices filed herewith as **EXHIBIT R-6**;
31. The recovery for the Affected Creditors is estimated at **31%** of their respective Affected Claims, as appears from the Monitor's Report;

E. CONCLUSIONS SOUGHT

32. The Court has insisted throughout the process that the Debtors be mindful of the interest of the unsecured creditors;

33. The Debtors have given considerable thought to this concern of the Court. Despite Capital's significant loss (approximately **\$26,5M**), and as represented before the Court during the last hearing, the Debtors have seriously explored the possibility of submitting a plan of arrangement to their Creditors;
34. Given that the Sundry Assets are the only assets left with the Debtors and given that same remain subject to Capital's Hypothec, the support of Capital was essential to allow the Debtors to submit a plan of arrangement to their Creditors;
35. It is in this context that Capital and ChauvelCo, one of Capital's main shareholder, have agreed to sponsor the Amended Plan of Arrangement by funding the Sundry Amount to be distributed amongst the Affected Creditors;
36. As appears from a copy of the Monitor's Report (hereinafter the "**Report**"), the Debtors' pool of Affected Claims total approximately **\$300,000**;
37. The Sundry Amount (**\$100,000**) will allow for a significant recovery for the Affected Creditor in the circumstances, which recovery would not have been possible without Capital and ChauvelCo;
38. All the statutory conditions for the approval of the Amended Plan of Arrangement are met;
39. The Debtors respectfully submit to this Honourable Court that the Amended Plan of Arrangement is fair and reasonable under the circumstances;
40. Given that the Implementation of the Plan is subject to the Conditions and that the only Condition left to be complete (provided that an Order taking the form of the Draft Order is issued by the Honourable Court) pertains to the collection of the Sundry Amounts, which in turn is subject to a final judgment or a settlement being entered into between the Debtors and the opposing parties to the litigated claims forming part of the Sundry Assets, the Debtors respectfully submit to this Honourable Court that the stay of proceedings should be extended until the earlier of (i) the Implementation Date or (ii) further Order of this Court;
41. The orders sought pursuant to the Draft Order are in the best interest of the Debtors' Creditors;
42. The Monitor supports the conclusions sought pursuant to the present Motion as appears from the Report;
43. The Debtors respectfully submit that the present Motion should be granted in accordance with the Draft Order;
44. 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 seeking (i) the approval of a plan of arrangement and (ii) the extension of the stay of proceedings”*;
- [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, November 27, 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 :

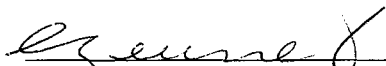
1. I am a duly authorized representative of the Debtors *Casperdiny IFB Realty Inc.* and *Les Appartements Club Sommet Inc.* in the present case;
2. I am also a duly authorized representative of the Mises en cause *Casperdiny Capital IFB Inc.*;
3. All the facts alleged in the present Motion are true.

AND I HAVE SIGNED :



DIANA MASON-STEFANOVIC

Solemnly affirmed before me, in
Montreal, on November 27, 2014



Commissionner of oath



NOTICE OF PRESENTATION

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

Monitor

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: Me Alexander Bayus
Me Denis St-Onge
Gowling Lafleur Henderson S.E.N.C.R.L
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37th floor
Montréal QC H3B 3P4

**Attorneys for Timbercreek Senior
Mortgage Investment Corporation**

**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: IFB BETEILIGUNGEN AG i.L.,
Grunerstrasse 19
40239, Düsseldorf, Germany

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

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

TAKE NOTICE that the present “*Motion seeking (i) the approval of a plan of arrangement and (ii) the extension of the stay of proceedings*” 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, November 28, 2014 at 9:00 a.m.** or so soon thereafter as counsel may be heard, in **room 16.12**, of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, November 27, 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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(1985) ch. C-36, as amended of:

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-and-
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Debtors

-and-

RICHTER ADVISORY GROUP INC.,
Proposed Monitor

-and-

COMPUTERSHARE TRUST COMPANY OF
CANADA,

-and-

TIMBERCREEK SENIOR MORTGAGE
INVESTMENT CORPORATION,

-and-

CASPERDINY IFB CAPITAL INC.,

-and-

IFB BETEILLIGUNGEN AG i.L.,

-and-

THE SYNDICATE OF LE PARC CO-
OWNERSHIP,

Mises en cause

LIST OF EXHIBITS

EXHIBIT R-1:	Draft Order.
EXHIBIT R-2:	Claims Process Order
EXHIBIT R-3:	Amended Plan of Arrangement
EXHIBIT R-4:	Plan of Arrangement
EXHIBIT R-5:	Monitor’s Report

EXHIBIT R-6: Notices of Disallowance - Unaffected Litigated Claims

Montréal, November 27, 2014

A handwritten signature in dark ink, appearing to read "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)
DISTRICT OF MONTREAL

**IN THE MATTER OF THE *COMPANIES'*
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Monitor**

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CANADA et al.**

Mises en cause

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**MOTION SEEKING
(i) THE APPROVAL OF A PLAN OF ARRANGEMENT
-&-
(ii) THE EXTENSION OF STAY OF PROCEEDINGS
(Sections 6 and 11.02 of the Companies' Creditors
Arrangement Act, R.S.C. (1985), ch. C-36),
AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF
EXHIBITS**

ORIGINAL

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