

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. : 500-11-046281-149

“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 EXTENSION OF THE INITIAL ORDER AND
(ii) ORDERS ESTABLISHING A PROCEDURE FOR THE IDENTIFICATION, FILING,
RESOLUTION AND BARRING OF CLAIMS AGAINST THE DEBTORS AND
SETTING THE PROCEDURES WITH RESPECT TO THE CALLING AND CONDUCT
OF A MEETING OF THE CREDITORS**

(Section 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 extending the Initial Order (as defined hereinafter) until **November 28, 2014** (hereinafter the “***Additional Period***”); and
 - b) An order establishing the claims procedure, the whole in accordance with the draft order filed herewith as **EXHIBIT R-1** (hereinafter the “***Draft Order***”);
2. The Draft Order is based on the standard Claims Procedure order of the Commercial Division of the Superior Court of Montreal. A comparative version outlining the differences between the standard order and the Draft Order is attached hereto as **EXHIBIT R-2**;
3. 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

4. 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***”);
5. 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);

6. The Initial Order was extended from time to time by this Honourable Court until September 26, 2014, as appears from the Court record herein;

7. On July 18, 2014, this Honourable Court authorized the Debtors to complete the Timbercreek Transaction (as defined hereinafter) with *Timbercreek Senior Mortgage Investment Corporation* (hereinafter "**Timbercreek**"), as appears from the Court record herein;

8. On August 25, 2014, the Monitor filed the Monitor's Certificates, confirming that the Timbercreek Transaction (as defined hereinafter) had been completed, as appears from a copy of such Monitor's Certificates, filed herewith as **EXHIBIT R-3** (hereinafter the "**Certificates**");

C. THE PARTIES

9. Until the closing of the Timbercreek Transaction, 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;

10. 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;

11. 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;

12. 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;

13. Until August 25, 2014, Timbercreek was the principal secured lender of the Debtors, as appears from the Court record herein;

14. 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 a copy of the *Transfer and Surrender Agreement* (paragraph 3.3), filed herewith as **EXHIBIT R-4** (hereinafter the "**TSA**");

15. Effectively, given the TSA and the Certificates, Timbercreek is no longer a creditor of the Debtors;

16. 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;
17. 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 a copy of IFB's final statement of account and of the wire transfer confirmation in connection thereto, filed herewith as **EXHIBIT R-5**;
18. 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

19. 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; and
 - b) The implementation of the solicitation process aimed at attracting offers in respect to the Property (hereinafter the "**Solicitation Process**");
20. The Debtors have worked with *CBRE Capital Markets - National Apartment Group* (hereinafter "**CBRE**") in the conduct of the Solicitation Process;
21. 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 the Court record herein (hereinafter the "**Retained Bid**");
22. 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 the Court record herein;

E. THE TRANSFER AND SURRENDER OF THE PROPERTY TO TIMBERCREEK

23. 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;
24. 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;

25. On July 17, 2014, the Debtors and Timbercreek entered into the TSA, agreeing on the terms and conditions upon which the transfer of the Property would take place ;
26. 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 (as further defined in the Transfer and Surrender Agreement, hereinafter the "*Sundry Assets*");
 - 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 a copy of the email in this regard, filed herewith as **EXHIBIT R-6**;

- c) The whole subject to the issuance of a vesting order;
27. On July 18, 2014, this Honourable Court authorized the Debtors to complete the Timbercreek Transaction as appears from the Court record herein;
28. The closing of the Timbercreek Transaction occurred on August 25, 2014, as appears from the Certificates;

F. THE PLAN OF ARRANGEMENT

29. One of the impact of the Timbercreek Transaction was to crystalize Capital's loss, which is in excess of **\$26,500,000** as of today;
30. The Court has insisted throughout the process that the Debtors be mindful of the interest of the unsecured creditors;
31. The Debtors have given considerable thought to this concern of the Court. Despite Capital's significant loss, 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;
32. 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 is essential to allow the Debtors to submit a plan of arrangement to their creditors;
33. With the support of Capital who has agreed to renounce to an amount of **\$100,000** from the realization proceeds of the Sundry Assets in order to fund the Debtors plan of arrangement, the Debtors intend to submit a plan of arrangement to their creditors which will essentially offer to them an amount of **\$100,000** out of the Sundry Assets anticipated realization proceeds in full and final payment of their respective claims;
34. As appears from a copy of the Monitor's Report (hereinafter the "**Report**"), the Debtors' pool of unsecured claims total approximately **\$1,000,000**, excluding related parties' claims;

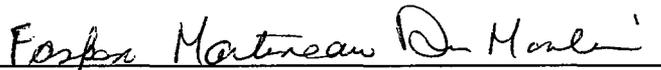
G. CONCLUSIONS SOUGHT

35. The Monitor supports the conclusions sought pursuant to the present Motion as appears from the Report;
36. The extension of the Initial Order is likely to allow for the filing of a plan of arrangement and the holding of a meeting of creditors, the whole to the benefit of the Debtors' creditors;
37. The putting in place of a claim procedure order will allow to deal efficiently with the various claims against the Debtors;
38. Given that the Claims Bar Date (as defined in the Draft Order) is scheduled for **October 31, 2014**, the Debtors anticipated to be in a position to seek approval of the plan of arrangement within the Additional Period, provided that such plan of arrangement is approved by the required statutory majority of the Debtors' creditors;
39. The Debtors respectfully submit that the present Motion should be granted in accordance with the Draft Order;
40. 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 extension of the Initial Order and (ii) Orders establishing a procedure for the identification, filing, resolution and barring of claims against the Debtors and setting the procedures with respect to the calling and conduct of a meeting of the creditors*”;
- [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, September 25, 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 :

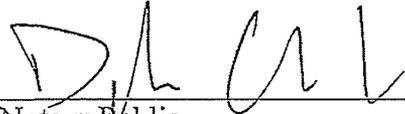
1. I am a duly authorized representative of the Debtors *Casperdiny IFB Realty Inc.* and *Les Appartements Club Sommet Inc.* in the present case;
2. I am also a duly authorized representative of the Mise en cause *Casperdiny Capital IFB Inc.*;
2. All the facts alleged in the present Motion are true.

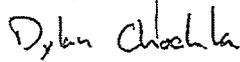
AND I HAVE SIGNED :



DIANA MASON-STEFANOVIC

Solemnly affirmed before me, in Toronto,
on September 25, 2014



Notary Public 



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
1, Place Ville-Marie
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 BETEILLIGUNGEN 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 extension of the Initial Order and (ii) Orders establishing a procedure for the identification, filing, resolution and barring of claims against the Debtors and setting the procedures with respect to the calling and conduct of a meeting of the creditors*” 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, September 26, 2014 at 9:00 a.m.** or so soon thereafter as counsel may be heard, in **room 16.06**, of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, September 25, 2014



FASKEN MARTINEAU DuMOULIN LLP
Attorneys for Debtors

CANADA

“Commercial Division”

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

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CASPERDINY IFB REALTY INC.,
-and-
LES APPARTEMENTS CLUB SOMMET INC.,
Debtors

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RICHTER ADVISORY GROUP INC.,
Proposed Monitor

-and-

**COMPUTERSHARE TRUST COMPANY OF
CANADA,
TIMBERCREEK SENIOR MORTGAGE
INVESTMENT CORPORATION,
CASPERDINY IFB CAPITAL INC.,
IFB BETEILLIGUNGEN AG i.L.,
THE SYNDICATE OF LE PARC CO-
OWNERSHIP,**

Mises en cause

LIST OF EXHIBITS

- EXHIBIT R-1:** Draft Order.
- EXHIBIT R-2:** Comparative Order (outlining the changes made to the Standard Claims Process Order)
- EXHIBIT R-3:** Monitor’s Certificate
- EXHIBIT R-4:** Transfer and Surrender Agreement
- EXHIBIT R-5:** IFB’s final statement of account and of the wire transfer confirmation in connection thereto

EXHIBIT R-6: Email from Me Laurent Roy

Montréal, September 25, 2014

Fasken Martineau Du Moulin

FASKEN MARTINEAU DuMOULIN LLP

Attorneys for Debtors