

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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.;

Petitioners

– and –

LITWIN BOYADJIAN INC., in its capacity as
Monitor of Petitioners under the *Companies’
Creditors Arrangement Act*;

Monitor

- and –

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

Interim Receiver

**MOTION TO VARY THE POWERS OF THE MONITOR
(Section 11 of the *Companies’ Creditors Arrangement Act*,
R.S.C. 1985, c. C-36)**

**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL,
PETITIONERS RESPECTFULLY SUBMIT THAT:**

1. As appears from the Court record, Petitioners commenced proceedings, on October 27, 2005, under Part III of the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) (the “**BIA**”) and filed a Notice of Intention;
2. By Petition dated October 29, 2005, Petitioners sought to take up and continue the BIA proceedings under the *Companies’ Creditors Arrangement Act* (the «**CCAA**»);
3. On November 3, 2005, this Court rendered an Initial Order (the «**Initial Order**») under the CCAA declaring, *inter alia*, that the Petitioners were companies to which the CCAA applies, granting a stay of proceedings in respect of the Petitioners up to and including December 2, 2005 and appointing Litwin Boyadjian Inc. (the «**Monitor**») as Monitor;
4. On November 3, 2005, this Court rendered an Interim Receiver Order (the «**I.R. Order**») appointing RSM Richter Inc. (the «**Interim Receiver**») as interim receiver in respect of the Petitioners;
5. On December 2, 2005, this Court extended the Stay Termination Date (as defined in paragraph 8 of the Initial Order) to January 31, 2006 (the «**First Extension Order**»);

6. On December 15, 2005, this Court rendered an order (the “**Claims Procedure Order**”) setting forth a claims process and procedure for all claims, with the exception of holders of conventional hypothecs, in order to accelerate the reception and quantification of such claims and to resolve any disputes in respect thereof in a timely fashion;
7. On January 27, 2006, this Court extended the Stay Termination Date (as defined in paragraph 8 of the Initial Order), to March 10, 2006 (the «**Second Extension Order**»);
8. On February 27, 2006, this Court amended the Claims Procedure Order by extending to 5:00 p.m. on March 17, 2006 the time for the Monitor to file Notices of Disallowances;
9. On March 10, 2006, this Court extended the Stay Termination Date (as defined in paragraph 8 of the Initial Order) to March 31, 2006 (the «**Third Extension Order**»);
10. On March 29, 2006, this Court extended the Stay Termination Date (as defined in paragraph 8 of the Initial Order) to June 30, 2006 (the «**Fourth Extension Order**»);
11. On March 29, 2006, this Court varied the I.R. Order and authorized the Interim Receiver to conduct a marketing process in respect of the possible sale of the property of the Petitioners (the «**First Amending I.R. Order**»);
12. On June 9, 2006, this Court amended the First Amending I.R. Order essentially removing from the powers of the Interim Receiver the powers in respect of the marketing process for the possible sale of the property of the Petitioners (the «**Second Amending I.R. Order**»);
13. For purposes hereof, the I.R. Order, as amended by the First Amending I.R. Order and further amended by the Second Amending I.R. Order, is referred to as the «**Interim Receivership Order**»;

DISCHARGE OF THE INTERIM RECEIVER

14. As previously indicated to the Court on June 9, 2006, the Interim Receiver shall be seeking its discharge on June 20, 2006;
15. On that same date, an accepted offer to purchase the claims of the Canadian Imperial Bank of Commerce (the «**CIBC**») by a purchaser represented by Mtre. Dario Santillo (the «**New Investor**») shall be closed with the result that the CIBC will no longer have any economic interest in respect of the Sleb project or the Petitioners;
16. As previously indicated by counsel for Petitioners, and for the reasons that will be more fully exposed in a motion returnable before this Court on June 22, 2006, the Petitioners shall be seeking a further extension of the stay termination date for purposes of, *inter alia*, resolving the claims of all of the lien creditors, submitting a plan of arrangement to their other creditors and completing the construction of the first phase of the project known as Sleb 1;
17. Until such time as this Court may terminate the present proceedings pursuant to the CCAA, it is essential that the powers of the Interim Receiver pursuant to the Interim Receivership Order be assumed by the Monitor appointed under the Initial Order;
18. In order to avoid any disruption and/or lack of continuity as a result of the discharge of the Interim Receiver, an order is being hereby sought for the turnover by the Interim Receiver to the Monitor of all documentation in the possession of the Interim Receiver related, *inter alia*, to the assets and liabilities of the Petitioners, all information located in the data room maintained by the Interim Receiver, all suppliers and contractors’ files relating to work performed by subcontractors and other workmen both before the issuance of the Initial Order and subsequent thereto including contracts, purchase orders, invoices, change orders, as well as any engineers, architects and cost consultants certificates and reports and any other documents related to the administration by the Interim Receiver up to the date of its discharge;

19. The present Motion is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS HONORABLE COURT TO:

- [1] GRANT the present Motion;
- [2] DECLARE that the delay for service of the present Motion is hereby abridged such that the present Motion is properly presentable and that any requirement for additional notice or service of the present Motion is hereby dispensed with;
- [3] ORDER that effective from the time of the discharge of the Interim Receiver that all powers previously entrusted with the Interim Receiver be assumed by the Monitor for all legal purposes;
- [4] ORDER the turnover by the Interim Receiver to the Monitor of all documentation in the possession of the Interim Receiver related, *inter alia*, to the assets and liabilities of the Petitioners, all information located in the data room maintained by the Interim Receiver, all suppliers and contractors' files relating to work performed by subcontractors and other workmen both before the issuance of the Initial Order and subsequent thereto including contracts, purchase orders, invoices, change orders, as well as any engineers, architects and cost consultants' certificates and reports and any other documents related to the administration by the Interim Receiver up to the date of its discharge;
- [5] DECLARE the Orders to be rendered pursuant hereto executory notwithstanding any appeal;
- [6] THE WHOLE without costs.

MONTRÉAL, June 15, 2006

(S) FISHMAN FLANZ MELAND PAQUIN, L.L.P.

FISHMAN FLANZ MELAND PAQUIN, L.L.P.
Attorneys for the Petitioners Minco Division
Construction Inc. and Sleb 1 Inc.

AFFIDAVIT

I, Luciano Miniccuci, residing and domiciled at 334 des Prairies Boulevard, Laval-des-Rapides, in the District of Laval, Province of Quebec, H4N 2V7, being duly sworn, attest and depose that:

1. I am the President of both Minco Construction Division Inc. and Sleb 1 Inc.;
2. All of the facts alleged in the present Motion to Vary the Powers of the Monitor are true.

AND I HAVE SIGNED, in Montréal, Province of Québec, on June 15, 2006,

(S) LUCIANO MINICUCCI

LUCIANO MINICUCCI

SOLEMNLly affirmed before me,
in Montreal, Province of Québec,
on June 15, 2006

(s) Jacynthe Lavoie (81,598)

Commission of Oaths for all Districts
of the Province of Québec

NOTICE OF PRESENTATION

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

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

SERVICE LIST (see attached list)

SIRS:

TAKE NOTICE of the foregoing Motion to Vary the Powers of the Monitor and that same will be presented before the Honourable Justice Daniel H. Tingley, J.S.C., in a Room 16.36, of the Court House of Montreal, 10 St-Antoine East, on the 20th day of June, 2006, at 8:30 a.m. or so soon thereafter as Counsel may be heard.

AND DO YOU GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 15, 2006

(S) FISHMAN FLANZ MELAND PAQUIN, L.L.P.

FISHMAN FLANZ MELAND PAQUIN, L.L.P.
Attorneys for Petitioners