

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-060613-227

SUPERIOR COURT
(Commercial Division)

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

RISING PHOENIX INTERNATIONAL INC.

- and -

10864285 CANADA INC. doing business under
the trade name **M COLLEGE OF CANADA**

- and -

11753436 CANADA INC.

- and -

CDSQ IMMOBILIER INC.

- and -

COLLÈGE DE L'ESTRIE INC.

- and -

**ÉCOLE D'ADMINISTRATION ET DE
SECRÉTARIAT DE LA RIVE SUD INC.**

- and -

9437-6845 QUÉBEC INC.

- and -

9437-6852 QUÉBEC INC.

Applicants

- and -

RICHTER INC.

Monitor

**APPLICATION FOR THE CONTINUANCE OF THE *DEMANDE DE BENE ESSE EN
DÉCLARATION D'INAPPLICABILITÉ DE LA SUSPENSION DES PROCÉDURES
ET, SUBSIDIAIREMENT, POUR LEVER LA SUSPENSION DES PROCÉDURES EN
FAVEUR DES ADMINISTRATEURS ET DIRIGEANTS OF
LES CONSULTANTS 3 L M INC.***

(Sections 11 and 11.02(2) of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE DAVID R. COLLIER, JUSTICE OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
MONTREAL, THE APPLICANTS RESPECTFULLY SUBMIT THE FOLLOWING:**

I. ORDER SOUGHT

1. Les Consultants 3 L M Inc. (hereinafter "**ISI**"), asks this Honorable Court, *de bene esse* (the "**de bene esse Application**"), to declare that the stay of proceedings (the "**D&O Stay Order**") in favor of the Directors and Officers of the Applicants ordered in the First Day Order, as amended by the Amended and Restated Initial Order and the Re-Amended and Restated Initial Order (the "**Initial Order**"), does not apply to an application for homologation and enforcement by ISI of the arbitration award rendered by Me Gordon Kugler on February 17, 2022 (the "**Arbitration Award**") with respect to the defendants Caroline, Christina and Joseph Mastantuono (the "**Mastantuonos**" or the "**Directors and Officers**").
2. Alternatively, and if the Court is of the opinion that the D&O Stay Order applies, ISI asks that it be lifted.
3. The Applicants oppose the *de bene esse* Application and hereby request that any debate on it be postponed to a later date, in order to:
 - a. Allow the Directors and Officers of the Applicants to focus on and devote all their time and energy to the restructuring process of the Applicants, the whole to the greater benefit of all creditors;
 - b. Avoid a race for the assets of the Directors and Officers, whereby ISI is given an advantageous lead, while all other creditors remain stayed;
 - c. Allow the Applicants and the Monitor to put in place a claims process which will address the claims of all the Applicants' creditors; and
 - d. Allow the Applicants to submit to the creditors a global plan of arrangement, which is expected to include a significant financial contribution by the Directors and Officers in exchange for a release in their favor.
4. In the meantime, the Directors and Officers will undertake not to dispose of any of their assets.

II. PROCEDURAL BACKGROUND

5. On January 5, 2022, the Applicants filed an application pursuant to the *Companies Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended, (the "**CCAA**") entitled *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the "**Initial Application**").

6. On January 6, 2022, the Superior Court of Quebec (Commercial Division) (the "**Court**") partially granted the Initial Application and rendered a First-Day Initial Order (the "**First Day Order**"), which, *inter alia*:
 - (a) declared that the Applicants are corporations to which the CCAA applies;
 - (b) stayed all proceedings and remedies taken or that might be taken in respect of the Applicants and their Directors and Officers, or any of their property, except as otherwise set forth in the First Day Order or as otherwise permitted by law, until January 14, 2022, in accordance with the CCAA (the "**Stay Period**");
 - (c) ordered the procedural consolidation of these CCAA proceedings (the "**CCAA Proceedings**") in respect of each of the Applicants, for administrative purposes only;
 - (d) appointed Richter Inc. (formerly Richter Advisory Group Inc., "**Richter**" or the "**Monitor**") as the Monitor of the Applicants in these CCAA Proceedings with certain extended powers;
 - (e) granted an Administration Charge and a Directors' Charge (as such terms are defined in the Initial Application); and
 - (f) sealed the confidential exhibits which were filed in support of the Initial Application.
7. On January 13, 2022, Firm Capital Mortgage Fund Inc. ("**Firm Capital**") filed a Contestation (the "**FC Contestation**") to the Applicants' request for the issuance of an Amended and Restated Initial Order (as defined hereinafter) which was sought pursuant to the Initial Application.
8. On January 14, 2022, the Court agreed to postpone the hearing on the issuance of the Amended and Restated Initial Order to January 17, 2022 and rendered an order extending the Stay Period to January 17, 2022.
9. Firm Capital did not proceed with the FC Contestation in view of the settlement that preceded the hearing on January 17, 2022. Firm Capital has since provided financing to the Applicants on the terms and conditions set forth in the interim financing facility term sheet (the "**Interim Financing Term Sheet**") approved by the Court which provides for a credit facility in the principal amount of \$1,750,000 plus Lender's Costs (the "**Interim Financing Facility**").
10. On January 16, 2022, the Applicants filed an *Amended Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the "**Amended Initial Application**").
11. On January 17, 2022, the Court granted the Amended Initial Application and rendered an order (the "**Amended and Restated Initial Order**") which, *inter alia*:
 - (a) extended the Stay Period until February 28, 2022;

- (b) confirmed the appointment of Richter as Monitor of the Applicants in these CCAA Proceedings;
 - (c) declared that Me Gordon Kugler, acting in his capacity as arbitrator, was not precluded from making and delivering his arbitral decision on the merits of the ISI arbitration matter, adding however that this declaration applied solely in respect of the making of the Arbitral Decision and not in respect of any subsequent homologation and/or enforcement proceedings in respect of the Arbitration Award;
 - (d) confirmed the Administration Charge and the Directors' Charge previously granted in the First Day Order, as well as increasing the quantum of the Administration Charge (as such terms are defined in the Amended Initial Application);
 - (e) approved an Interim Financing Term Sheet (as defined in the Amended Initial Application) and allowed the Applicants to borrow thereunder the amounts required to fund their liquidity needs, as well as granted a related Interim Financing Charge (as defined in the Amended Initial Application); and
 - (f) confirmed the sealing of the confidential exhibits filed in support of the Amended Initial Application.
12. On February 9, 2022, Anish Sachdeva, Manjot Singh, Sukhrajpreet Singh, Sukhmanpreet Singh and Jaspreet Singh (the "**Proposed Student Representatives**") filed an Application for the Issuance of a Student Representation Order (the "**Representation Application**").
13. On February 15, 2022, the Court granted in part the Representation Application and issued an order (the "**Student Representation Order**") pursuant to which, McCarthy Tétrault LLP was appointed as representative counsel (the "**Students' Representative Counsel**") in these CCAA Proceedings to represent the interests of all persons who are creditors of the Applicants as a result of their status as a currently enrolled student at the Colleges (as defined hereinafter), pipeline student of the Colleges or in light of tuition fees paid to the Applicants (collectively, the "**Students**").
14. On February 28th, 2022, the Court extended the Stay Period pronounced in the First Day Order and the Amended and Restated Initial Order until April 29th, 2022.
15. On March 14th, 2022, pursuant to the Applicants' Application for (I) The Issuance of an Approval and Vesting Order (II) The Approval of a Junior Interim Financing Agreement and (III) A Re-Amended and Restated Initial Order dated March 10th, 2022, the Court rendered two orders, namely:
- (a) a Re-Amended and Restated Initial Order (the "**Re-Amended and Restated Initial Order**") which restated the conclusions of the Amended and Restated Initial Order and, in addition thereto, *inter alia*:
 - i. confirmed the extension of the Stay Period until April 29, 2022;

- ii. approved a Junior Interim Financing Agreement (as defined therein) and allowed the Applicants to borrow thereunder the sum of \$2.5 million required to fund their liquidity needs, as well as granted a related Junior Interim Lender Charge (as defined therein); and
 - iii. ordered the sealing of certain new confidential exhibits, in addition to confirming the sealing of the confidential exhibits filed in support of the Amended Initial Application; and
- (b) an Approval and Vesting Order (the “**Approval and Vesting Order**”) which approved the sale as a going concern of the Colleges and other identified assets of the Applicants to a third party purchaser, 6815464 Canada Ltd., (the “**Purchaser**”).

III. **GROUNDINGS FOR THE CONTINUANCE OF THE DE BENE ESSE APPLICATION**

A. **The Directors and Officers of the Applicants must be allowed to concentrate and devote all their energies to the restructuring process of the Applicants**

16. Since the commencement of these CCAA Proceedings, the Applicants, all directly or indirectly owned and/or controlled by the Mastantuonos, who are all current or former directors of one or another of the Applicants, have worked assiduously with the Monitor towards:
- (a) stabilizing their operations;
 - (b) operating the Colleges, albeit with very limited human and financial resources;
 - (c) resuming classes of hundreds of students;
 - (d) crafting a sale and investment solicitation process and populating the required data room;
 - (e) dealing with thousands of student requests;
 - (f) assisting in the negotiation of a Junior DIP financing facility, an Asset Purchase Agreement and a Transition Services Agreement (the “**TSA**”) with the Purchaser;
 - (g) providing countless number of documents, reports and answers to the Monitor and the Purchaser;
 - (h) cooperating with the Student Representative Counsel and providing all required information; and
 - (i) ensuring that the students are looked after and are able to resume their educational programs as quickly as possible.
17. In sum, the Applicants and their Directors and Officers have been working, in good faith, in ensuring that the Applicants, and more specifically the Colleges, can

continue to operate such that they can be sold as going concerns for the benefit of all stakeholders, and in particular, the Students.

18. Following, and as a pre-closing condition of the Asset Purchase Agreement entered into with the Purchaser, the Directors and Officers entered into a TSA with the Purchaser to facilitate a seamless transition of the Colleges to the Purchaser, a copy of which is communicated herewith as **Exhibit R-1**.
19. The Directors and Officers are bound by the terms of the TSA, the obligations of which cover the period both before and after the closing of the transaction, the whole to ensure a successful transition of the Colleges to the benefit of all stakeholders, but in particular, the Students.
20. Without the unfailing support and commitment of the Directors and Officers, the transaction is put into jeopardy.
21. While the Directors and Officers have and wish to continue to focus on this successful transition, they may not be able to do so if the stay of proceedings is lifted, as they might then be forced to focus on the consequences of no longer being protected by these CCAA proceedings.

B. Avoid a race for the assets of the Directors and Officers, on the part of ISI

22. ISI is not the only creditor of the Directors and Officers of the Applicants.
23. In particular, the Directors and Officers have personally guaranteed the Firm Capital Facility, and Caroline Mastantuono has personally guaranteed the FCC Interim Facility.
24. The lifting of the stay against the Directors and Officers at this stage would fuel a race to their assets with ISI leading the pack.
25. ISI's de bene esse Application is geared at being first out of the gate, in a race for the assets of the Directors and Officers, which could then force other creditors to seek to enforce their rights against the Mastanuonos.
26. The assets of the Directors and Officers should not be subject to a free for all process to the sole benefit of the fastest creditor to seize.
27. Thus, the lifting of the stay should not be considered, at this stage, since doing so, may result in an unfair advantage for one creditor, to the detriment of others.

C. Allow for a claims process to be implemented

28. The structure of the claims process to be put in place is complex, in particular due to the fact that the quantum of claims is likely to vary significantly over the coming months.

29. Indeed, the sale of the Colleges, as going concerns, made it possible to negotiate an agreement with the Purchaser giving the majority of the Students, who had potential claims of several million dollars on the day of the filing, the possibility of attending the soon to be purchased Colleges and to complete the program of their choice (which will benefit the mass of creditors by reducing the quantum of unsecured claims).
30. In doing so, a large proportion of potential claims against the Applicants will be paid in kind, through the provision of educational services to the Students, as per their educational contracts. Failing payment in kind, the Purchaser has undertaken to reimburse all Pipelines Students who were issued letters of acceptance should they choose not to pursue their education with the Purchaser.
31. In light of the foregoing, the status of these potential creditors and the amount of their claims will vary in time.
32. The status of ISI students and of the ISI claim also complicates the process, raising a new set of questions, which need to be assessed, including the following:
 - a. How many ISI students have requested a refund?
 - b. Have these students been reimbursed by ISI?
 - c. Are they entitled to reimbursement from ISI or must they submit their claims as part of the plan to be filed by the Applicants?
 - d. In this regard, are the findings made by the Arbitrator binding on this Court?
 - e. What is the effect of the \$1,635,000.00 hypothec granted by 11753436 Canada Inc., in favor of RPI, to guarantee the obligations of RPI towards the ISI Students, if any?
 - f. How do we avoid duplication of claims and the Applicants being called upon twice to pay for the claim of ISI and those of its students?
 - g. Should the Students be afforded a special status? If so, should such a status extend to ISI? What is the position of the Student Representative Counsel on these issues?
33. These are questions that require reflection and debate, in particular to ensure that all creditors are treated fairly.
34. These issues, and many others, are being analyzed by the Applicants and the Monitor and will be the subject of an upcoming application to establish the creditors' claims process.
35. Allowing ISI to pursue the execution of the Arbitration Award at this stage would solely benefit ISI and would impede the restructuring process as a whole, to the detriment of all the other creditors, including the Students.

D. Allow the Applicants to submit to the creditors a global plan of arrangement

36. As the proceeds of sale resulting from the APA will not result in sufficient liquidities to satisfy all of the Applicants' unsecured creditors, the Directors and Officers have indicated their intention to contribute financially to the eventual plan of arrangement and seek appropriate releases in their favor.
37. It is in the interest of all stakeholders and the Students in particular, that the Applicants be given the opportunity to make such a plan of arrangement.
38. The question of whether the Directors and Officers' liability towards ISI, or any other of its creditors could be discharged through a plan of arrangement duly approved by the Applicants' creditors is a question to be determined in due course.
39. The Court will also be called to determine whether it is bound by the finding of fact of the Arbitrator, whether there is *chose jugée* on the characterization of the conduct of the Directors and Officers and whether the claim of ISI can be compromised, as the case may be.
40. The granting of the ISI Application at this time would inevitably prevent the Directors and Officers from contributing to a plan, would put at jeopardy the sale transaction and, consequently, any plan of arrangement which the Applicants would have otherwise submitted to their creditors, the whole to the detriment of all creditors and other stakeholders.

E. The Directors and Officers will undertake not to dispose of any of their assets

41. The Directors and Officers will undertake, on terms that this Court may impose, for as long as the stay is in effect or until such further order of the Court is rendered, not to dispose of any of their assets of value.
42. The postponement of the hearing on the merits of the ISI Application will not prejudice ISI since the assets of the Directors and Officers will be preserved until such time as the ISI Application may eventually be adjudicated and, in the interim, the *status quo* will be maintained for all stakeholders.

IV. RELIEF SOUGHT

43. Should the stay against the Directors and Officers be lifted at this stage, all the progress realized to date by the Applicants, the Monitor and the various other stakeholders towards making a viable plan of arrangement will fail, to the detriment of all stakeholders.
44. As such, the ISI Application, regardless of whether it has merit or not, is premature and ought not be adjudicated upon until such time as the Applicants have had the opportunity to present a plan of arrangement and, if approved, is implemented.

45. The Applicants understand that the Monitor, Firm Capital and the Student Representative Counsel are supportive of the request for a continuance of the ISI Application, and that the Monitor will be filing, in advance of the hearing on this Application, a report confirming same.
46. In light of the foregoing, the Applicants respectfully submit that the present Application should be granted in accordance with its conclusions.

WHEREFORE, MAY THIS COURT:

GRANT this application;

CONTINUE the ISI Application entitled *Demande de bene esse en déclaration d'inapplicabilité de la suspension des procédures et, subsidiairement, pour lever la suspension des procédures en faveur des administrateurs et dirigeants of les consultants 3 L M inc.* and postpone the hearing thereof until the filing of a plan of compromise and arrangement by the Applicants or such other date as this Court may order;

WITHOUT COSTS, save and except in case of contestation.

MONTREAL, April 8th, 2022



KAUFMAN LAWYERS LLP

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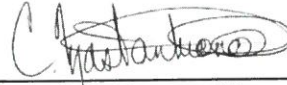
Attorneys for the Applicants

SWORN STATEMENT

I, the undersigned, **Caroline Bonneville (Mastantuono)**, residing and domiciled at 2384, Chopin St, in the city of Montreal, Province of Quebec, solemnly declare the following:

1. I am the president of Rising Phoenix International Inc.;
2. All the facts alleged in the **APPLICATION FOR THE CONTINUANCE OF THE DEMANDE DE BENE ESSE EN DÉCLARATION D'INAPPLICABILITÉ DE LA SUSPENSION DES PROCÉDURES ET, SUBSIDIAIREMENT, POUR LEVER LA SUSPENSION DES PROCÉDURES EN FAVEUR DES ADMINISTRATEURS ET DIRIGEANTS OF LES CONSULTANTS 3 L M INC.** is, to the best of my knowledge, true.

AND I HAVE SIGNED



Caroline Bonneville

Solemnly declared before me at Montreal,
on the 8th day of April 2022



Noémie Martel
237386

Commissioner of oath for the province of Quebec

NEW NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the Application for the continuance of the Demande *de bene esse* en déclaration d'inapplicabilité de la suspension des procédures et, subsidiairement, pour lever la suspension des procédures en faveur des administrateurs et dirigeants of les consultants 3 L M inc. will be presented for adjudication before the honourable Justice R. Collier of the Superior Court of Quebec, Commercial Division, at the Montréal Courthouse located at 1 Notre-Dame Street East, on April 13th, 2022, at 2:00 PM, in room 16.04.

The Teams link, to participate in the virtual hearing, is available on the site <http://www.tribunaux.qc.ca>

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, April 8th, 2022


KAUFMAN LAWYERS LLP
Attorneys for the Applicants