

CANADA		PROCÈS-VERBAL D'AUDIENCE		COUR SUPÉRIEURE	
PROVINCE DE QUÉBEC		Pratique Commerciale		Chambre Commerciale	
DISTRICT DE MONTRÉAL		Référé de	Salle prévue	Date : le 30 juillet 2024	
No :	500-11-064146-240	16.10	16.04		
Juge : L'HONORABLE JANET MICHELIN, J.C.S.					Code : JM3073

Requérante		Avocat(e) (s)	
Bank of Montreal	Teams	Me Jason Dolman Fishman Flanz Meland Paquin s.e.n.c.r.l. jdolman@ffmp.ca	Présent
Débiteur		Avocat(e)(s)	
Holding DSquare Inc. / DSquare Holdings Inc.	Absente	Me Maxime St-Onge Robinson Sheppard Shapiro sencrl mstonge@rsslex.com	Présent
Séquestre			
Richter Inc.	Présente	M. Andrew Adeesky , CPA,MBA, CIRP, LIT aadessky@richter.ca	Présent
Mise en cause			

Nature de la cause
Lois sur la faillite et l'insolvabilité

Montant : 0,00\$

Cote(s)	Requête (s)
2	Motion to appoint a receiver and for an approval and vesting order

Greffier Junior Richemond	Interprète _____	Sténographe _____
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ENREGISTREMENT NUMÉRIQUE

Audition AM :	Début 9 h 03	Fin 9 h 48	Audition PM :	Début	Fin
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Affaires référées au maître des rôles	Résultat de l'audition Le Tribunal signe les projets d'ordonnances
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HEURE

9 h 03	Ouverture de l'audience Appel de la cause et Identification des parties
9 h 03	Échanges entre le Tribunal et les procureurs sur la gestion du dossier
9 h 05	Le TRIBUNAL a indiqué aux parties que le frère de la soussignée, Andrew Michelin, est associé chez Richter inc. qu'on demande de nommer à titre de séquestre dans le présent dossier. Les parties acceptent que la soussignée entende la cause.
9 h 06	Le Tribunal questionne Me Dolman sur la pièce P-11
9 h 07	Me Dolman s'adresse au Tribunal sur les pièces P-11

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9 h 09	Échanges entre le Tribunal et Me Dolman se poursuivent
9 h 13	Me Dolman soumet son plan d'argumentation au Tribunal
9 h 14	Les plaidoiries de Me Dolman
9 h 16	Me Dolman se réfère aux pièces P-3 et P-04 lors de ses plaidoiries
9 h 19	Me Dolman soumet une copie d'un courriel
9 h 22	Les échanges de courriels entre les parties en date du 10 avril 2024 sont produites comme P-13
9 h 36	Me Dolman se réfère à la pièce P-2 lors de ses plaidoiries
9 h 41	Fin des plaidoiries de Me Dolman
	JUDGEMENT
	<p>The Debtor DSquare Holdings Inc. (Holdings or the Debtor) is currently insolvent. (Exhibit P-13). The Bank of Montreal (BMO) seeks the appointment of Richter Inc. as a receiver in order to realize its security on the Debtor's assets. BMO also seeks an Approval and Vesting Order (AVO) in respect of certain property belonging to the Debtor.</p> <p>BMO was the secured creditor of DSquare Transport Inc. (Transport). Following Transport's insolvency, Holdings guaranteed Transport's obligations to BMO in the amount of \$4.1 Million (Exhibit P-3) and granted BMO a hypothec on its present and future moveable property (Exhibit P-4).</p> <p>On April 15, 2024, BMO served the Debtor with a notice to realize its security (Exhibit P-6) and a prior notice to exercise its hypothecary rights (Exhibit P-7).</p> <p>The Debtor owns 20 steel dry cargo shipping containers and 17 chassis (the Property). Given the limited market interest in this Property and other factors, Richter marketed the Property informally, with the Debtor's consent. An offer was confirmed by L. Simard Transport Limited (Simard) in May 2024 (Exhibit P-9). The representative from Richter, Andrew Adessky, affirms in his solemn declaration that that this was the most advantageous offer that could be achieved, and the consideration was therefore reasonable.</p> <p>After the sale was agreed to, the Debtor ceased cooperating with BMO and Richter. Accordingly, BMO now requests that Richter be appointed the Debtor's receiver to sell the Property. The Debtor does not contest BMO's application.</p> <p>The Court concludes that the criteria set out in s. 243 of the <i>Bankruptcy and Insolvency Act</i> are met¹. The Bank of Montreal is in good faith and has sought the most efficient and cost-effective process to realize its security. The Debtor is no longer operating. It is therefore just and convenient to appoint Richter as receiver for the Debtor and to take all necessary steps to execute the sale of the Property.</p>
9 h 41	

¹ *Séquestre de Media5 Corporation*, 2020 QCCA 943, par. 97 and following.

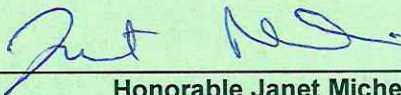
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As for the AVO, the criteria set out in the jurisprudence are also met². The first sale process was done for Transport's assets and was overseen by Richter. Accordingly, Richter was able to recontact the same potential purchasers for the Property so a fair sale process was executed. The process was transparent in that the Debtor was aware of the steps taken by Richter. The value of the assets does not justify a lengthy sale process³. BMO is the only interested party and it supports the process in place. The Court accepts its business judgment in the present case.


For these reasons, the Court:

SIGNS this day the Receivership Order in the form of Exhibit P-11 and the Approval and Vesting Order in the form of Exhibit P-12.

THE WHOLE, without Costs.



Honorable Janet Michelin, J.C.S.

9 h 44	Échanges entre le Tribunal et Me Dolman
9 h 45	Le Tribunal signe les projets d'ordonnances qui sont annexés à ce présent procès-verbal
9 h 48	FIN DE L'AUDIENCE
	 _____ Junior Richemond, g.a. / adj.C.S.

² *Séquestre de Société en commandite Portage*, 2019 QCCS 5505, par. 9.

³ *Fairmont Resort Properties Ltd. (Re)*, 2012 ABQB 39, par. 19.