

SUPERIOR COURT
(Commercial Division)

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No :

IN THE MATTER OF THE RECEIVERSHIP OF:

ENVIROPLAST INC., a corporation having its registered office at 11060 boul. Parkway, Montréal, Québec, H1J 1R6

Debtor

-and-

FIERA PRIVATE DEBT FUND GP INC. (Formerly, PRIVATE DEBT FUND GP INC.), the general partner of **FIERA PRIVATE DEBT FUND V LP (Formerly, INTEGRATED PRIVATE DEBT FUND V LP)**, having an establishment at 1981 McGill College Avenue, Suite 1500, Montreal, Quebec, Canada H3A 0H5

Applicant

-and-

DELOITTE RESTRUCTURING INC., having an establishment 1190 Avenue des Canadiens-de-Montréal, Suite 500, Quebec, H3B 0M7

Proposed Receiver

-and-

FIERA PRIVATE DEBT INC. acting on behalf of **GENERAL PARTNER FIERA FP BUSINESS FINANCING FUND INC.** the general partner of **FIERA FP BUSINESS FINANCING FUND, L.P.** having an establishment at 20 Adelaide Street East, Suite 1500, Toronto, Ontario, M5C 2T6

Impleaded Party

APPLICATION TO APPOINT A RECEIVER
(Section 243 and following of the *Bankruptcy and Insolvency Act*)

TO ONE OF THE HONORABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION IN THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY STATES:

I. INTRODUCTION

1. By the present application (the “**Application**”), the Applicant, Fiera Private Debt Fund GP Inc. (Formerly, Private Debt Fund GP Inc.) acting as general partner of Fiera Private Debt Fund V LP (formerly, Integrated Private Debt Fund V LP) (“**Fiera**”) seeks the appointment of the Proposed Receiver, Deloitte Restructuring Inc. (the “**Receiver**”) to the assets of the Debtor, Enviroplast Inc. pursuant to section 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”) and in accordance with the proposed receivership order, communicated herewith as **Exhibit A-1** (the “**Proposed Order**”).
2. The Applicant also seeks, in particular, orders:
 - (a) approving interim financing to be granted by the Impleaded Party, Fiera Private Debt Inc., acting on behalf of General Partner Fiera FP Business Financing Fund Inc. the general partner of Fiera FP Business Financing Fund, LP (the “**Interim Lender**”), to be secured by a priority charge on the a portion of the Debtor’s moveable property (as more fully defined in the Proposed Order, the “**Property**”), in order maintain the Debtor’s ongoing operations and to implement the contemplated restructuring process (the “**Restructuring**”);
 - (b) authorizing the Receiver to enter into agreements, including interim financing arrangements with the Interim Lender, and to file insolvency proceedings, on behalf of the Debtor, in order to facilitate continuation of the Debtor’s business (the “**Business**”) and the Restructuring.
3. Fiera and Canadian Imperial Bank of Commerce (“**CIBC**” and together with Fiera, the “**First Secured Creditors**”) collectively hold first ranking security over the Property and respectively hold first or second ranking security on different assets forming part of the Property.
4. Fiera is owed over \$ 14,000,000 by the Debtor and its credit and security positions are deteriorating. CIBC consents to the conclusions sought in this Application and will participate in the Restructuring.
5. it is therefore respectfully submitted that Fiera is entitled to obtain the appointment of the Receiver, in accordance with the terms of the Proposed Order, and that such appointment would be just and convenient in the circumstances.

II. THE DEBTOR AND THE BUSINESS

6. The Debtor is a privately held corporation constituted on March 22, 2016 under the *Canada Business Corporations Act*, as appears from the relevant extract of the Quebec enterprise register (“**REQ**”) communicated herewith as **Exhibit A-2**.

7. The activities of the Debtor include the collection of waste materials and the production and distribution of recycled plastic products to clients in Canada and the United States.
8. The Debtor operates primarily from a facility located at 11060 boulevard Parkway, Montreal (arrondissement Anjou), Quebec, H1J 1R6 (the “**Facility**”), which is leased from another related entity, Immeuble 11060 Parkway Inc. (“**Parkway**”).
9. The Debtor employs 46 full and part time employees that work at the Facility or collect waste materials for processing.
10. The current shareholders of the Debtor are Mr. Mathieu Seguin (“**Seguin**”) and, indirectly through various holding corporations and a family trust, Mr. Michael Feola (“**Feola**”), although the latter’s shareholding is not recognized by Fiera as its approval was never obtained.
11. Seguin is a director and Chief Executive Officer of the Debtor while Feola is also a director and the company’s President and Secretary.
12. In August 2019, Feola acquired the shares of Enviroplast previously held indirectly by the Debtor’s former principal, Stéphane Begin (“**Begin**”), in violation of the Debtor’s contractual obligations toward Fiera.

III. THE SECURED DEBT AND THE CREDIT FACILITIES

13. The Debtor is indebted to Fiera under certain credit facilities (the “**Credit Facilities**”) made available to it pursuant to a credit agreement dated October 15, 2018 (as amended, the “**Credit Agreement**”), communicated herewith as **Exhibit A-3**.
14. As security for, *inter alia*, all of its obligations under the Credit Agreement, the Debtor hypothecated in favor of Fiera, the universality of its movable property, pursuant to a Hypothec on the Universalities of Moveable Property dated October 22, 2018, in the amount of \$14,000,000, plus interest at the rate of 25% per annum (the “**Hypothec**”), which was duly published at the Register of Personal and Movable Real Rights (“**RPMRR**”) on October 25, 2018, under number 18-1185557-0001, the whole as appears from the Hypothec and the certified statement of its registration, communicated herewith *en liasse* as **Exhibit A-4**.
15. As appears from a Moveable Property Security Search Report (the “**Search Report**”), communicated herewith as **Exhibit A-5**, security has also been registered against the Property in favor of the following secured creditors:
 - (a) CIBC;
 - (b) Roynat Inc. (“**Roynat**”); and
 - (c) Investissement Quebec (“**IQ**”), which holds first ranking security along with Fiera on certain specific equipment of the Debtor;

- 16. The respective priorities of the security held by the First Secured Creditors in respect of the Property are governed by an Intercreditor Agreement dated October 25, 2018 (the “**Intercreditor Agreement**”), communicated herewith as **Exhibit A-6**.
- 17. Based on the Intercreditor Agreement and the Search Report, the apparent rank of the security held by the First Secured Creditors on the Property can be summarily described as follows:

| Secured Creditor | Property Subject to Security | Apparent Rank |
|-------------------------|---|------------------------------|
| Fiera | The universality of the Debtor’s movable property except the CIBC Assets (as defined in the Intercreditor Agreement) | 1 |
| CIBC | CIBC Assets (consisting of the Debtor’s inventory, intellectual property, accounts receivable, and all cash and cash equivalents) | 1 (up to \$ 3,000,000) |
| Fiera | CIBC Assets | 2 |
| CIBC | The universality of the Debtor’s movable property | 2 |

IV. THE DEFAULTS UNDER THE CREDIT AGREEMENT

- 18. The Credit Facilities were extended to the Debtor in October of 2018 primarily to allow for the reimbursement of certain of its secured debts as well as to finance new equipment to expand the Debtor’s operations.
- 19. In addition to the Hypothec, Fiera obtained, as security for the Debtor’s obligations under the Credit Agreement, a pledge of the Debtor’s shares (the “**Pledge of Shares**”), all of which were then held by Aliston Investissement Inc. (“**Aliston**”), a corporation controlled by Begin.
- 20. As early as December 2018, the Debtor had breached its obligations under the Credit Agreement and the Pledge of Shares by allowing certain of its shares to be transferred from Aliston to Seguin.
- 21. At the beginning of 2019, the Debtor attempted to expand its business to Toronto Ontario. However, the Debtor lacked the necessary financial capacity to undertake such an expansion.

22. By the spring of 2019, the Debtor was in default of its financial covenants and had failed to respect the reporting requirements provided for under the Credit Agreement.
23. Furthermore, the Debtor exacerbated its already precarious financial position by disbursing funds in favor of Begin consisting of advances and the reimbursement of expenses for amounts totaling nearly \$ 1.4 million.
24. In June 2019, representatives of Fiera met with Seguin and informed the latter that the current situation was unacceptable and the corrective measures would have to be immediately implemented to bring the Debtor back into compliance with the terms of the Credit Agreement.
25. Nevertheless in August 2019, Fiera learned that Feola had acquired a controlling interest in the Debtor by indirectly purchasing all of Aliston's shares in contravention of the terms of the Credit Agreement and the Pledge of Shares.
26. On September 26, 2019, Fiera formally advised by the Debtor that, in light of the various defaults, it would be withdrawing its financial support and requiring complete reimbursement of the Credit Facilities no later than November 25, 2019, as appears from a letter from Fiera to the Debtor (the "**Default Notice**"), communicated herewith as **Exhibit A-7**.

V. THE NOTICE OF INTENTION TO ENFORCE SECURITY

27. Following the Default Notice, a meeting was held between Fiera and representatives of the Debtor with a view to exploring the conditions on which Fiera would continue to provide financial support for a limited period. Ultimately no satisfactory agreement was reached by the parties.
28. Furthermore, Fiera was advised that the Debtor lacked the necessary liquidity to maintain its ongoing operations and that many of its important suppliers had not been paid for extended periods.
29. On October 9, 2019, Fiera sent a notice of intention to enforce security pursuant to section 244 BIA (the "**244 Notice**"), the receipt of which was acknowledged on November 11, 2019 by Feola's attorneys, as appears from the 244 Notice and the response letter, communicated herewith *en liasse* as **Exhibit A-8**.
30. The 244 Notice makes reference to numerous defaults under the Credit Agreement on the part of the Debtor, including:
 - (a) failures to pay amounts owing under the Credit Agreement;
 - (b) failures to pay amounts owed to critical suppliers of the Business;
 - (c) failures to satisfy the applicable reporting requirements;
 - (d) failures to respect financial covenants;

- (e) making unauthorized advances to Begin, the Debtor's former shareholder;
 - (f) incurring unauthorized unsecured debts; and
 - (g) permitting an unauthorized transfer of shares of the Debtor.
31. As of the date hereof, the Debtor has not remedied these defaults or caused the amounts owed under the Credit Agreement to be reimbursed to Fiera.

VI. IT IS JUST AND CONVENIENT TO APPOINT THE RECEIVER PURSUANT TO THE TERMS OF THE PROPOSED ORDER

32. As at November 21, 2019, the Debtor was indebted to Fiera under the Credit Agreement in the aggregate amount of \$14,059,882.78, in principal interests and costs.
33. The Debtor is currently unable to maintain its ordinary operations and Fiera's credit and security position are deteriorating with the passage of time.
34. In such circumstances, it is respectfully submitted that it is urgently necessary to initiate the Restructuring to preserve the value of the Business and the Property, for the benefit of all of the Debtor's stakeholders.
35. Without an injection of capital, the Debtor lacks the financial capacity to continue to operate and to support the costs associated with the Restructuring, which will likely involve the deployment of a sale or investment solicitation process in respect of the Business and/or the Property (the "**SISP**"), to be implemented by the Receiver in consultation with the First Secured Creditors.
36. The Interim Lender, an entity related to Fiera, has agreed to provide interim financing (the "**Interim Facility**") in accordance with the terms and conditions of the Interim Financing Term Sheet, communicated herewith *under seal* as **Exhibit A-9**.
37. As appears from the cash-flow projections prepared by certain representatives of the Debtor (the "**Financial Projections**"), which will be filed at the hearing of this Application, the Interim Facility will provide the funding necessary to maintain the Debtor's ongoing operations and to implement the SISP.
38. It is also noteworthy that a party dealing at arm's length with the Debtor has already expressed interest in acquiring substantially all of the Business and the Property as a going concern in the context of the Restructuring.
39. In the circumstances, it is respectfully submitted that the Receiver should be authorized to enter into agreements on behalf of the Debtor, including in connection with the Interim Facility, and to cause the Debtor to initiate proposal or bankruptcy proceedings under the BIA in order facilitate the implementation of the Restructuring.

40. The Receiver, is a person possessing the requisite qualities to act as receiver, has consented to act in such capacity.
41. The requirements to appoint a receiver pursuant to sections 243 and 244 BIA are satisfied in that:
- (a) Fiera is a secured creditor of the Debtor;
 - (b) More than 10 days have elapsed since the 244 Notice was sent on November 9, 2019;
 - (c) It would be just and convenient to do so.
42. It is therefore respectfully submitted that Fiera is entitled to obtain the appointment of the Receiver as receiver to the Property in accordance with the terms of the Proposed Order

FOR THESE REASONS, MAY IT PLEASE THE COURT TO

GRANT the present *Application to Appoint a Receiver* (the “**Application**”).

RENDER an order substantially in the form of the draft order communicated herewith as **Exhibit A-1**.

THE WHOLE, WITHOUT LEGAL COSTS, except in the event of contestation.

MONTREAL, November 22, 2019

McCarthy Tétrault LLP

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AFFIDAVIT

I, the undersigned, Jean-Christophe Greck, Managing Director of Fiera Private Debt Fund V LP having an establishment at 1981 McGill College Avenue, Suite 1500, Montreal, Quebec, Canada H3A 0H5, solemnly affirm that all the facts alleged in the present *Application to Appoint a Receiver* that do not otherwise appear from the exhibits or the Court record are true.

AND I HAVE SIGNED:

JEAN-CHRISTOPHE GRECK

SOLEMNLy DECLARED before me
at Montréal, Québec
this ____ day of November, 2019

Commissioner of Oaths for the Province of Québec

NOTICE OF PRESENTATION

TAKE NOTICE that the present *Application to Appoint a Receiver* will be presented for adjudication before one of the Honourable Justices of the Superior Court of Quebec, sitting in the commercial division for the district of Montreal, on **November 25, 2019**, at **9:00 am in room 16.12** of the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6.

MONTRÉAL, November 22, 2019

McCarthy Tétrault LLP

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(Commercial Division)

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the general partner of **FIERA PRIVATE DEBT FUND V LP (Formerly, INTEGRATED**
PRIVATE DEBT FUND V LP)

Applicant

-and-

DELOITTE RESTRUCTURING INC.

Proposed Receiver

-and-

FIERA PRIVATE DEBT INC. on behalf of **GENERAL PARTNER FIERA FP BUSINESS**
FINANCING FUND INC. the general partner of **FIERA FP BUSINESS FINANCING**
FUND, L.P.

Impleaded Party

LIST OF EXHIBITS
(in support of the Application to Appoint a Receiver)

| Exhibit | Description |
|---------|---|
| A-1 | Proposed receivership order |
| A-2 | Extract of the Quebec enterprise register showing the Debtor |
| A-3 | Credit agreement dated October 15, 2018 |
| A-4 | <i>En liasse</i> Hypothec on the Universalities of Moveable Property dated October 22, 2018 and certified statement of registration no. 18-1185557-0001 |
| A-5 | Moveable Property Security Search Report |
| A-6 | Intercreditor Agreement dated October 25, 2018 |
| A-7 | Letter from Fiera to the Debtor (Default Notice) |
| A-8 | <i>En liasse</i> - 244 Notice and response letter |
| A-9 | <i>Under seal</i> - Interim Financing Term Sheet |

MONTRÉAL, November 22, 2019

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SUPERIOR COURT COMMERCIAL DIVISION
N° 500-17-
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

**IN THE MATTER OF THE RECEIVERSHIP OF:
ENVIROPLAST INC.,**

Debtor

-and-

**FIERA PRIVATE DEBT FUND GP INC. (Formerly,
PRIVATE DEBT FUND GP INC.), general partner of
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INTEGRATED PRIVATE DEBT FUND V LP)**

Applicant

-and-

DELOITTE RESTRUCTURING INC

Proposed Receiver

-and-

**FIERA PRIVATE DEBT INC. on behalf of GENERAL
PARTNER FIERA FP BUSINESS FINANCING FUND
INC. the general partner of FIERA FP BUSINESS
FINANCING FUND, L.P.**

Impleaded Party

**APPLICATION TO APPOINT A RECEIVER
(Section 243 and following of the Bankruptcy
and Insolvency Act) and LIST OF EXHIBITS**

ORIGINAL

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