

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-047422-148

DATE: September 30, 2014

PRESIDING: Me Chantal Flamand, registraire , REGISTRAR

IN THE MATTER OF THE RECEIVERSHIP OF:
9121-4296 QUÉBEC INC.

Insolvent Debtor

-and-

LOBLAWS INC.

Petitioner

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Proposed Receiver

ORDER APPOINTING A RECEIVER
Section 243 of the *Bankruptcy and Insolvency Act*

[1] **THE COURT**, on reading the Petitioner's Motion for the Appointment of a Receiver (the "**Motion**") pursuant to Article 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;

[2] **SEEING** the service of the Motion;

- [3] **SEEING** the submissions of Petitioner's attorneys;
- [4] **SEEING** the ~~submissions of~~ *the court to Sogsewaert* *QC*
- [5] **SEEING** that Petitioner sent the Debtor a notice pursuant to the terms of Section 244 of the BIA;
- [6] **SEEING** that it is appropriate to appoint a Receiver to the property of the Debtor;

WHEREFORE THE COURT:

- [7] **GRANTS** the Motion;
- [8] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

[9] **APPOINTS** Samson Bélair/Deloitte & Touche Inc. (Mr. Ronald P. Gagnon) to the property of 9121-4296 Québec Inc. (the "**Debtor**") until one of the following events comes to pass:

- [a] The sale of all the assets and property of the Debtor; or
- [b] The issuance of an order by the Court terminating the mandate of the Receiver;

[10] **DECLARES** that the order (the "**Order**") and its effects shall survive the filing by the Debtor of a notice of intention to make a proposal or of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies' Creditors Arrangement Act* (the "**CCAA**") or the bankruptcy of the Debtor;

[11] **AUTHORIZES** the Receiver to exercise the following powers:

- [a] To take possession of all of the Debtor's assets and property and to exercise upon them, as well as on the Debtor's business, complete control and, without limiting the generality of the foregoing and **GRANT** the following powers which, at the Receiver's sole discretion, may be utilized as follows:
- [i] All the powers necessary for the preservation and for the protection of the property of the Debtor, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in;

- [ii] All the powers necessary for the preservation and for the protection of all the inventory, accounts receivable and claims of the Debtor, wherever situated, and regardless of whose possession they may be in;
(hereinafter collectively the "Property");
- [iii] All the powers necessary to control the Property, the place of business and the premises occupied by the Debtor;
- [iv] All the powers necessary to grant the Receiver access, at all times, to the place of business and to the premises of the Debtor, to the Property, and to change the locks granting access to such premises and place of business of the Debtor;
- [v] All the powers necessary to grant the Receiver access to all of the accounting records of the Debtor as well as to any document, contract, register of any kind or whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "Records");
- [vi] All the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- [vii] All the powers necessary to undertake an analysis of the Debtor's Records;
- [viii] All the powers necessary to enable the Receiver to carry on, all or any part of the Debtor's operations;
- [ix] All the powers necessary to collect all the accounts receivable and all the other claims of the Debtor and to transact in respect of same as well as to sign any document for this purpose;
- [x] All the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole in order to cash any item payable to the Debtor, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations;
- [xi] All the powers necessary to negotiate, enter into, terminate or continue any agreement or contract with respect to the Debtor's operations, business, assets and Property, with the consent of Petitioner;

- [xii] All the powers necessary to carry out the sale or the disposition of the Property in the ordinary course of business of the Debtor, to transact in that regard, to sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;
- [xiii] All the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
- [xiv] All the powers necessary to take safeguard measures in order to prevent that the Debtor's squanders its assets and/or erodes the value of the security of Petitioner;
- [xv] Any other power necessary to the taking of safeguard measures regarding all of the Debtor's assets and operations;
- [12] **ORDERS** the Receiver to petition the Court for authorization to sell all or any part of the Debtor's Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;
- [13] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;
- [14] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfill its functions;
- [15] **AUTHORIZES** the Receiver to institute any appropriate legal proceedings, as the case may be. Moreover, such Receiver shall be entitled to file any motion for directions within the meaning of Section 34 of the BIA as if it were a trustee and if necessary to execute any necessary document to place the Debtor into bankruptcy;
- [16] **GRANTS** the Receiver the power and authority to act on behalf of the Debtor to place the Debtor in bankruptcy, by executing any necessary document or in filing an assignment in bankruptcy pursuant to Sections 49 and following of the BIA;
- [17] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the place of business and to the premises of the Debtor, as well as to the Records;

- [18] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
- [19] **ORDERS** the Debtor not to dispose, alienate, encumber or otherwise transact in any manner whatsoever with regard to the Property, other than in the ordinary course of business, and this, without first obtaining the written authorization of the Receiver;
- [20] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revindication, or any other enforcement process shall be commenced or enforced against the Property;
- [21] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court;
- [22] **ORDERS** that any person having any oral or written agreement with the Debtor, as well as any supplier of goods or services to the Debtor, is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver, in its sole discretion, and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case at the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;
- [23] **AUTHORIZES** the Receiver to continue to engage the services of the Debtor's employees until the Receiver, acting for and on behalf of the Debtor, terminates the employment;
- [24] **AUTHORIZES** the Receiver to continue to engage the services of the Debtor's employees until the Receiver, acting for and on behalf of the Debtor, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *B/A* other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *B/A* or under the *Wage Earner Protection Program Act*;

- [25] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver;
- [26] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph 11 of the Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *B/A*;
- [27] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;
- [28] **DECLARES** that section 215 of the *B/A* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;
- [29] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$75,000 (the "**Administration Charge**");
- [30] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;
- [31] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all the Debtor's Property present and future;

[32] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of the Petitioner and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to the Order and the granting of the Administration Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtor;

[33] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

[34] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;

[35] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

[36] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtor's and the Receiver's counsel and to any other party who may request such delivery;

[37] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the *BIA*, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Debtor and the Receiver and has filed such notice with the Court;

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- [38] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days' notice to the Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [39] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [40] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [41] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [42] **RENDERS** any other remedy appropriate in the circumstances;
- [43] **THE WHOLE** without costs, save in case of contestation.

/s/ Me Chantal Flamand, registraire

REGISTRAR

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COPIE COMPOSÉE

Ellyson
Greffier adjoint, C.S.M.