**C A N A D A**

**PROVINCE OF QUÉBEC**
**DISTRICT OF MONTRÉAL**

N° : 500-11-060613-227

**SUPERIOR COURT**
(Commercial Division)
*Companies' Creditors Arrangement Act*

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. (1985) c. C-36 OF:**

**RISING PHOENIX INTERNATIONAL INC.**
**10864285 CANADA INC.**
**11753436 CANADA INC.**
**CDSQ IMMOBILIER INC.**
**COLLÈGE DE L'ESTRIE INC.**
**ÉCOLE D'ADMINISTRATION ET DE SECRÉTARIAT DE LA RIVE-SUD INC.**
**9437-6845 QUÉBEC INC.**
**9437-6852 QUÉBEC INC.**

Debtors

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**LES CONSULTANTS 3 L M INC.**

Applicant

and

**CAROLINE MASTANTUONO**

and

**CHRISTINA MASTANTUONO**

and

**JOSEPH MASTANTUONO**

Respondents

**PLAN OF ARGUMENT OF THE APPLICANT, LES CONSULTANTS 3 L M INC.**

**(Relating to proceeding # 29)**

## I. INITIAL REMARKS

1. "Appropriateness, good faith and due diligence are baseline considerations that a court must always bear in mind when exercising CCAA authority" (*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60).

2. These CCAA proceedings are anything but a typical commercial insolvency proceeding which consists of the "rehabilitation of an honest but unfortunate debtor" (*Janis P. Sarra, Rescue!: The Companies Creditors Arrangement Act, 2nd ed. (Toronto: Carswell, 2013), at p. 14, [Tab 13]*).

3. To the contrary, Caroline, Christina and Joseph Mastantuono (collectively the "**Mastantuonos**"), the former and current directors of Rising Phoenix International Inc. ("**RPI**"), instigated and caused RPI to unlawfully and fraudulently appropriate millions of dollars of student tuition fees over a lengthy period of time with the intent to cause financial harm to their creditors and to benefit themselves.

4. Furthermore, the Mastantuonos appear to have taken concrete actions to attempt to put their personal assets beyond the reach of their creditors, in addition to having conferred a preference to certain creditors in the days leading up to these proceedings.

5. In these circumstances, it would be entirely inappropriate to allow the Mastantuonos to hide behind the present proceedings and to unjustly benefit from the protections and privileges conferred to "honest but unfortunate" debtors.

6. It is respectfully submitted that the Debtors' invitation for this Court to put on blinders and to consider only the Mastantuonos post-filing conduct, which is self-motivated by the mirage of a release, and to ignore their egregious, dishonest and fraudulent conduct prior to the commencement of these proceedings, is deeply concerning, untenable and is contrary to the baseline considerations that a court must always bear in mind when exercising its CCAA authority.

## II. INTRODUCTION

7. In an arbitral award rendered by Mtre Gordan Kugler (the "**Arbitrator**") on February 17, 2022 (the "**Award**"), the Mastantuonos were personally condemned, *in solidum* with RPI, to pay ISI an amount $2,774,888.38 with interest and legal indemnity since November 27, 2020.

8. In the Award, the Arbitrator found that the Mastantuonos committed serious personal faults of commission and omission in their direction of RPI both prior and

subsequent to their resignation as directors by instigating and causing RPI to fraudulently misappropriate millions of dollars of ISI students' tuition fees.

9. Specifically, the Arbitrator found that, both before and after they were directors and officers of RPI, the Mastantuonos:

> **"instigated and caused RPI to unlawfully appropriate millions of dollars of ISI students' tuition fees over a lengthy period of time, to put the fees beyond the fees beyond the reach of ISI, to remit, transfer, loan or give the funds to related RPI entities controlled by the [Mastantuanos] with the intent to cause financial harm to ISI and to benefit themselves."** [paragraph 133 of the Award]

10. Notwithstanding ISI's demand for payment of the Award, the Mastantuonos have refused and failed to make payment.

11. In addition to being a debt for which the Mastantuonos are personally liable as a result of their extra-contractual liability, the debt owed by the Mastantuonos (and by RPI) to ISI is one that clearly arises out of their wrongful and oppressive conduct and out of fraud, embezzlement and misappropriation. Therefore, the Mastantuonos' debt to ISI cannot be compromised or discharged either in these CCAA proceedings or even in the context of eventual personal insolvency proceedings.

12. Moreover, the evidence submitted in support of the present application (which was initially communicated in support of the Firm Capital Contestation (as defined below), the Mastantuonos also appear to have taken concrete actions to transfer their personal assets to put them out of the reach of their creditors, including ISI, and to confer a preference in favour of other creditors, including their lawyers.

13. If the Court were to allow the Mastantuonos to indirectly benefit from the Debtors' CCAA proceedings, as currently contemplated by the Debtors, ISI would be deprived of substantive rights that would otherwise be available to them either in enforcement proceedings and/or in the context of the Mastantuonos personal insolvency proceedings, including:

a) The right to obtain the Mastantuonos personal balance sheets and to investigate the information provided;

b) Crystalizing the date to be used in the calculation of the "lookback period" set forth under the *Bankruptcy and Insolvency Act* ("**BIA**") for the determination of fraudulent conveyances and/or preferential payments;

c) The right to take a "paulian action" and/or to appoint a trustee of their choosing, which could review and challenge fraudulent transfers and/or preferential payments that may have been made by the Mastanuonos;

d) The right under the BIA to conduct examinations after judgment and/or statutory examinations of the Mastantuonos and other third parties regarding their assets and actions.

14. Respectfully, it is in this context that the Court must consider and decide ISI's *Application de bene esse for a declaration that the stay of proceedings is inapplicable and, in the alternative to lift the stay of proceedings regarding the directors and administrators*, (the "**Application**").

## III. ORDERS SOUGHT

15. In its Application, ISI seeks:

a) a declaration from this Court that the stay of proceedings (the "**Stay**") against the directors and officers declared pursuant to paragraph 11 of the *Amended and Restated Initial Order*, and as reiterated in the *Re-Amended and Restated Initial Order* (the "**Initial Order**") does not apply to the homologation and enforcement Award with respect to the Mastantuonos; or

b) in the alternative, if this Court were to conclude that the Stay applies to the homologation and enforcement of the Award against the Mastantuonos, that the Stay be lifted to allow ISI to proceed with the homologation and enforcement of the Award.

16. As more fully set out below, the Stay does not and cannot extend to the condemnation of the Mastanuonos for personal, extracontractual faults committed against ISI.

17. Indeed, the Stay in favour of directors and officers is exceptional and only applies to *ès-qualités* claims "[…] where it is alleged that any of the directors is under any law liable in such capacity for the payment of such obligation".

18. In the alternative, if this Court finds that the Stay does apply, it is respectfully submitted that the circumstances justify that the Stay be lifted to allow ISI to homologate and enforce the Award.

## IV. PRELIMINARY REMARKS ON THE APPLICATION TO CONTINUE THE ISI APPLICATION

19. On Friday, April 8, 2022, the Debtors filed an *Application for the Continuance* of the ISI Application (the "**Application for Continuance**"), which, on its face, simply requests the postponement of the presentation of ISI's Application.

20. However, ISI is of the view that the Application for Continuance is merely a disguised contestation of the alternative conclusion sought by ISI in its own Application, which is to lift the Stay.

21. Essentially, the Debtors argue that the balance of convenience favours that the Mastanuonos be allowed to continue to benefit from the Stay regardless of whether it actually applies to the homologation and enforcement of the Award.

22. ISI submits that prior to ruling on the Application for Continuance and considering whether it is appropriate to lift the Stay, the Court must first address the primary conclusion sought by ISI, which is a declaration that the Stay simply does not apply to the homologation and enforcement of the Award in respect of the Mastantuonos.

23. By granting the Application for Continuance, without first deciding on whether the Stay actually applies, the substantive rights of ISI, as well as other creditors of the Mastantuonos, could be irreparably harmed.

24. Paragraph 17 of the Initial Order, as amended and restated, provides for a deemed extension of prescription, time or limitation periods equal to the length of the stay period.

- ***Re-amended and restated Initial Order dated March 14, 2022 at para. 17*** **[Tab 1]**

> 17. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Applicants or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Applicants become bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the Applicants, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Applicants in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

25. If the Stay does not apply to the homologation and enforcement Award against the Mastantuonos, ISI may not benefit from deemed extension mechanism at paragraph 17.

26. Indeed, if the Court were to grant the Application for Continuance, but many months later determine that the Stay never applied to the Mastantuonos, the mere passage of time (and inability to benefit from paragraph 17) could potentially result in the lapsing of the statutory "lookback periods" set forth under the Civil of Code of Québec as well as sections 95 and 96 of the BIA in respect of preferential payments and transfers at undervalue, which can be summarized as follows:

| **Remedy** | **Statutory lookback period** | **Statute** |
|---|---|---|
| Paulian action | 1 year | Art. 1631 and *ff.* of the Civil Code of Québec |
| Preferential payment to arm's length party | 3 months prior to initial bankruptcy event | s. 95(1)(a) BIA |
| Preferential payment to non-arm's length party | 12 months prior to the initial bankruptcy event | s. 95(1)(b) BIA |
| Transfer at undervalue to arm's length party | 12 months prior to the initial bankruptcy event | s. 96(1)(a) BIA |
| Transfer at undervalue to non-arm's length party | 1 year before the initial bankruptcy event or 5 years prior to the initial bankruptcy event if the intended to defraud, defeat or delay a creditor | s. 96(1)(b) BIA |

27. The proposed consolation of an undertaking from the Mastantuonos to not dispose of their "assets of value" is therefore entirely insufficient to eliminate the prejudice that may result from a finding that the Stay does not apply. For this reason, ISI submits that it is not merely "status quo" if the Application for Continuance is granted, a satisfactory undertaking is provided and the hearing of ISI's Application is delayed further. There is a real risk that ISI and the Mastantuonos' other creditors' substantive rights may be irreparably harmed.

28. Therefore, the Court must first decide whether the Stay applies in respect of homologation and enforcement of the Award against the Mastantuonos and, only if it concludes that it does, decide whether it should be lifted.

## V. OVERVIEW OF THE FACTS

### A. *The Parties*

29. ISI is a college-level education institution offering various non-university postsecondary programs.

- ***Exhibit I-1, Excerpt from the Registre des entreprises du Québec for Les Consultants 3 L M Inc.***

30. The Mastantuonos are, or were at various relevant times during the litigation that led to the Award, shareholders, officers and/or directors of RPI and various other entities

- ***Exhibit I-2, Except from the Registre des entreprises du Québec for Rising Phoenix International Inc.***

31. It should be noted that, although RPI was also a defendant in the arbitration proceedings, and was also condemned to pay damages to ISI, the present Application only seeks a declaration that the Stay with respect to the Mastantuonos is inapplicable or, in the alternative, a lifting of the Stay should be granted.

## B. *Factual and Procedural Background*

### *i. The Contract*

32. On June 15, 2018, ISI and RPI signed a contract pursuant to which RPI undertook to render various services relating to the recruitment of international students for ISI in exchange for the payment of a commission, the whole as appears from a copy of the contract between the parties (the "**Contract**"), communicated in support of the Application under seal.

- ***I-3, Agreement between ISI and RPI dated June 15, 2018 (the "Contract"), under seal***

- ***I-8, Arbitration Award at paragraphs 12 to 17, under seal***

33. Pursuant to the Contract, RPI was responsible for the management of all tuition fees paid by the students it recruited until the time said students began studying at ISI, at which point the tuition fees were to be paid to ISI. To that end, RPI was to open a separate bank account under the name "ISI International" into which the ISI students would wire transfer their tuition fees.

- ***I-3, Contract, Article 1.5***

- ***I-8, Arbitration Award at paragraphs 17(c), under seal***

34. On November 27, 2020, the Contract was terminated by agreement of the parties, which gave rise to the disagreement and the arbitration proceedings.

35. The Contract contained an arbitration clause which provided that dispute arising from the Contract, which the parties were unable to resolve, would be submitted to binding arbitration.

- ***I-3, Contract, Article 8.1***

- ***I-8, Arbitration Award at paragraph 2, under seal***

36. Various legal and arbitral proceedings ensued between the parties, the most relevant of which will be more fully described below.

37. As part of these proceedings, the Mastantuonos challenged the jurisdiction of the Arbitrator to adjudicate the claims of ISI against them personally on the grounds that they were not signatories to the Contract, that they did not agree to submit disputes against them personally to binding arbitration and that they did not agree to waive their right to appeal an unfavourable decision by the Arbitrator.

- ***I-8, Arbitration Award at paragraph 6, under seal***

38. By Arbitral Decision dated September 7, 2021 the Arbitrator decided that he had jurisdiction to adjudicate the claims against the Mastantuonos. By Judgment dated November 18, 2021 rendered by the Honourable Justice Louis J. Gouin, J.S.C., the decision of the Arbitrator on the issue of his jurisdiction to adjudicate the claims against the Mastantuonos was upheld, and this decision was not appealed.

- ***I-8, Arbitration Award at paragraph 7, under seal***

### *ii. The Arbitration Proceedings and the filing of the CCAA Proceedings*

39. The hearing of the arbitration proceedings took place between November 29 and December 17, 2021.

40. On December 17, 2021, the evidence was closed and oral submissions completed. The Arbitrator took the file under advisement.

41. On January 7, 2022, the Arbitrator, ISI, RPI and the Mastantuonos received a notice of stay of proceedings from the Monitor in light of the present CCAA Proceedings.

- ***Exhibit I-4, Notice of Stay of Proceedings***

42. The Award not having been rendered at this point, ISI initiated discussions with the Monitor and the Debtors' counsel as to whether the stay of proceedings prevented the Arbitrator from rendering his award given that the hearing was closed.

43. On January 11, 2022, the Arbitrator wrote to the Monitor in order to obtain clarification and direction as to the applicability of the stay of proceedings provisions to the finalization of the arbitral award. The Arbitrator, among other things, requested that a letter addressed to the Honourable Justice Collier requesting directives and clarification be transmitted to this Court.

- ***I-5, Email from Mtre Gordon Kugler to Andrew Adessky dated January 11, 2022***

44. On January 12, 2022, the Monitor took the position that it would request the Court to restrict itself to the urgent funding debate at the come-back hearing, while reserving the rights of all the parties who wish to debate issues arising from Stay at a later date.

- ***I-6, Email from Mtre Joseph Reynaud to Mtre Gordon Kugler dated January 12, 2022***

45. On January 13, 2022, the representatives of ISI responded to the Monitor's email, taking the position that the Stay did not and should not prevent the Arbitrator from rendering his award.

> ➢ ***I-7, Letter from Mtre Magali Fournier and Mtre Brandon Farber to Mtre Joseph Reynaud of January 13, 2022***

46. Following the receipt of the letter, ISI and RPI agreed allow the Arbitrator to render his decision in order to avoid a debate on this issue at the comeback hearing. Consequently, ISI and the Debtors agreed as follows:

a) A new paragraph 12 would be inserted into the Amended and Restated Initial Order of the Initial Order so as to allow the Arbitrator to render his decision and to reserve all of the parties respective rights in respect of any subsequent homologation and/or enforcement proceedings of an eventual arbitral awards;

b) The words "and the Directors" would be deleted from paragraph 15 of the Initial Order; and

c) In the event that ISI wished to initiate homologation and enforcement proceedings, it undertook to file a *de bene esse* application in order for the issue of the applicability of the Stay in respect of the Mastantuonos, without any admission as to its applicability to the Mastantuonos.

47. It is important to note that ISI provided this undertaking in the context where the arbitral decision had not yet been rendered and it would have therefore been premature, at the comeback hearing, to have a potentially theoretical debate as to whether the Stay would apply to the Mastantuonos, when the result of the arbitration proceedings would be known shortly thereafter. ISI provided the undertaking under strict reserve of all of its rights.

### *iii. The Award*

48. On February 17, 2022, the Arbitrator rendered his Award, in which he ordered RPI and the Mastantuonos, *in solidum*, to pay to ISI the amount of 2 774 888,38 $ with interest and legal indemnity since November 27, 2020.

> ➢ ***I-8, Award, under seal.***

49. The Arbitrator concluded, among other things that "the overwhelming evidence clearly established that RPI acted dishonestly, in bad faith and fraudulently both before and after the Termination Date of the Agreement (November 27, 2020)".

> ➢ ***I-8, Award at para. 89-91, under seal***
>
> 89) The overwhelming evidence clearly established that RPI acted dishonestly, in bad faith and fraudulently both before and after the Termination Date of the Agreement (November 27, 2020).

90) One dictionary defines theft as follows:

"Intentionally taking property of another, without permission or consent, with the intent to convert it to the taker's use.".

91) That is precisely what RPI did with the Tuition Fees which the ISI students had wire transferred to the ISI International Bank Account at RBC, to pay their tuition fees to ISI for the coming semester(s).

50. Indeed, the Arbitrator concluded that the funds which, pursuant to the Contract, should have been placed into the designated "ISI International" bank account had fraudulently been used and misappropriated by RPI.

- ***I-8, Award, at para. 96-97, under seal***

96) Not only did RPI "use" the funds for its own purposes, but it gave, loaned or otherwise remitted the funds to its related entities, with no intention of repatriating the funds to remit them to ISI and thereby unlawfully appropriated a sum of $3,720,527.

97) It is beyond the scope of the present arbitration to determine whether RPI "stole" the Tuition Fees; however, it is the decision of the Arbitration Tribunal that RPI failed to fulfill its obligations of good faith and honesty under the Agreement and committed civil fraud ("dol").

51. With respect to the Mastantuonos personally, the Arbitrator determined that they had committed numerous extracontractual faults, including the fraudulent appropriation of ISI students' tuition fees.

- ***I-8, Award, at para. 127, 131, 133, 135, 142, 143:***

***127) RPI committed numerous contractual faults against ISI, including the fraudulent appropriation of ISI students' tuition fees, which were remitted, loaned, transferred or given to related RPI entities (the "Faults").***

***[…]***

131) At issue is whether the Personal Defendants committed personal, extra contractual faults before and/or after the Termination Date, which engage their personal liability.

[…]

133) The Arbitration Tribunal is satisfied that the Personal Defendants, both before and after they were Directors and Officers of RPI, instigated and caused RPI to unlawfully appropriate millions of dollars of ISI students' tuition fees over a lengthy period of time, to put the fees beyond the reach of ISI, to remit, transfer, loan or give the funds to related RPI entities controlled by the Personal Defendants with the intent to cause financial harm to ISI and to benefit themselves.

[…]

135) The Arbitration Tribunal is also satisfied that the Personal Defendants committed numerous faults after the Termination Date which engage their liability (Article 1457 CCQ).

> […]
>
> 142) Caroline, Christina, and Joseph individually and collectively committed serious personal faults of commission and omission in their direction of RPI both prior and subsequent to their resignation as directors and officers.
>
> 143) The Arbitration Tribunal is satisfied that the Personal Defendants instigated and caused RPI to breach the Agreement and to commit the faulty/fraudulent acts enumerated above and they will be condemned with RPI, in solidum, to the payment to ISI of the sum of $2,774,888.38. […]

52. On March 1, 2022, ISI sent a demand letter to the Mastantuonos demanding payment of the amounts due pursuant to the Award.

- ***I-9, Demand Letter dated March 1, 2022***

53. To this day, the Mastantuonos have refused to pay these amounts.

## VI. ARGUMENTS

### A. *The Stay Does not apply to the homologation and enforcement of the Award with Respect to the Mastantuonos*

54. As will be more fully explained below, neither paragraph 11, nor paragraph 56 of the Initial Order apply to prevent the homologation and, eventually, the enforcement of the Award against the Mastantuonos.

#### *i. Paragraph 11 of the Initial Order does not apply*

55. The Initial Order, as amended and restated, stays proceedings against directors "in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Applicants where it is alleged that any of the Directors is <u>under any law liable in such capacity</u> for the payment of such obligation"

- ***Initial Order,*** **[Tab 1]**

> « 11. ORDERS that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any former, present or future director or officer of the Applicants nor against any person deemed to be a director or an officer of the Applicants under subsection 11.03(3) CCAA (each, a "Director", and collectively the "Directors") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Applicants <u>where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation</u>. »
>
> [Our underlining]

56. Indeed, this paragraph of the Initial Order mirrors section 11.03, which also distinguishes between the directors' liability *ès qualités*, and their liability personally.

- ***Section 11.03, Companies' Creditors Arrangement Act, RSC 1985 c. C-36***

> Stays — directors
>
> 11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.
>
> Exception
>
> (2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.
>
> Persons deemed to be directors
>
> (3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

57. The Stay therefore only applies to claims against directors *ès qualités* under law (i.e. statutory liability), and does not apply to the directors with respect to their personal, extracontractual liability.

- ***Bear Creek Contracting Ltd. v Pretium Exploration Inc., 2020 BCSC 1523*** **[Tab 2]**

> [127] Nevertheless, I agree with Bear Creek that its proposed new claims against the Directors are not stayed by the terms of Hainey J.'s orders. Bear Creek does not allege that the Directors are liable under any law in their capacity as directors and officers for the payment of a Rokstad obligation. Rather, Bear Creek alleges that they are liable for a Rokstad obligation in their personal capacity by virtue of their wrongful conduct. In other words, the fact that they also happened to be directors and officers of Rokstad at the time is not the basis for the alleged liability, so as to bring those claims under the rubric of the stay.

- ***Magasin Laura (PV) inc./Laura's Shoppe (PV) Inc. (Arrangement relatif à), 2015 QCCS 4716*** **[Tab 3]**

> [24] Pursuant to subsection 11.03 (1) CCAA, the proceedings against directors are stayed if they relate to their liability under the law, in their capacity as director, for the payment of the obligations of the debtor company.
>
> [25] Subsection 11.03(1) CCAA thus applies to the liability which is independent from the will of the director and exists by law, as a result of his (her) position as a director of the debtor company.
>
> [26] In the case at hand, the Conrad Action against Mr. Fisher does not relate to his statutory liability in his capacity as director of Laura. It rests on the Personal Guarantee which Mr. Fisher executed in August 2014.

> [27] Subsection 11.03(1) CCAA therefore does not stay the Conrad Action against Mr. Fisher.
>
> […]
>
> [30] As mentioned above, section 11.03 CCAA indeed distinguishes between proceedings seeking the director's personal liability under the law, in his (her) capacity as director, (subsection 11.03(1) CCAA) and proceedings seeking the director's personal liability pursuant to a personal contract which he (she) gave to guarantee the obligations of the debtor company (subsection 11.03(2) CCAA).
>
> [31] Accordingly, proceedings against the directors shall be stayed if their liability results from the law. For sound and valuable reasons, the CCAA treats the situation differently and provides that the stay does not apply if the alleged personal liability of the director results from a personal commitment which he (she) made out of his (her) own volition, over and above his (her) legal obligations in his (her) capacity as director of the debtor company.

58. As an analogy, courts have held that a stay of proceedings does not prevent a creditor from taking enforcement proceedings against a director who had personally guaranteed the debtor's obligations.

- ***Industrial Properties Regina Ltd. v Midtdal, 2020 SKQB 47*** **[Tab 4]**

> [23] The CCAA order related to the restructuring of the defendant's companies. Subsection 11.03(2) of the CCAA specifically states that the protections provided to companies under s. 11.03(1) do not apply to guarantees given by a director relating to the company's obligations.
>
> [24] In other words, if a stay of proceedings pursuant to the CCAA is ordered, it does not prevent a creditor from taking enforcement proceedings against a director who had personally guaranteed the debtor's obligations. Pursuant to s. 11.03(1) of the CCAA, proceedings against directors are stayed if they relate to their liability under the law, in their capacity as director, for the payment of obligations of the debtor company.
>
> [25] Thus, despite the CCAA stay of proceedings, an action may be initiated or continued against the director of a debtor company, if such proceedings arise from such director's contractual commitment to personally guarantee the obligations of the debtor company. That is what happened here. To the extent that the defendant claims the stay prevented an action on the guarantee, there is no merit to such a defence. (See also: Century Services Corp. v LeRoy, 2018 BCCA 279, 424 DLR (4th) 755; Magasin Laura (PV) inc./Laura's Shoppe (PV) Inc., 2015 QCCS 4716; CIT Financial Ltd. v Lambert, 2005 BCSC 1779, 18 CBR (5th) 51).

59. It is also clear that the stay cannot apply to shield directors from liability for their wrongful conduct. In *Liberty Oil & Gas Ltd. Re,*, the Alberta Court of Queen's Bench confirmed that, pursuant to the CCAA, claims against directors which fall within the scope of section 5.1 (2) of the CCAA (being claims based on misrepresentation, unjustified or abusive conduct on the directors' part) cannot be included in the compromise or arrangement, and as such, should not be subject to the stay of proceedings.

- ***Liberty Oil & Gas Ltd. Re*, 2002 ABQB 949, para. 4-6 [Tab 12]**

> 4 In the case at bar, a draft Statement of Claim has been placed before the court wherein the prospective Plaintiffs, two shareholders of the petitioning company, claim financial loss and damage caused by alleged reliance upon fraudulent or negligent misrepresentations as to the value of the shares of the company by the proposed Defendant, a director.
>
> 5 While there may be room for argument as to whether the prospective Plaintiffs are "creditors" within the meaning of subsection (b), it seems clear that the claims are based upon allegations of wrongful or oppressive conduct, to wit, fraudulent or intentional misrepresentation. On my reading of the section in the context of the Act as a whole, claims against directors based upon allegations of such conduct are not to be included in the compromise or arrangement, whether brought by a "creditor" or any other party. Parliament has clearly excluded them.
>
> 6 It follows, therefore, that the order of June 28, 2002 should be amended to reflect the exclusion set out in Section 5.1(2) and I direct accordingly. A similar conclusion was reached by Paperny J. of this court (as she then was) in Canadian Airlines Corp., Re, 2000 ABQB 442, [2000] A.J. No. 771 (Alta. Q.B.), Action No. 0001-05071 (para.90).

60. As appears from the Award, Exhibit I-8, the Mastantuonos' liability in this case is extracontractual personal liability (s. 1457 of the *Civil Code of Québec*) arising out of their fraudulent acts, rather than *ès qualités* under the law. As such, the Stay provided for in paragraph 11 of the Initial Order does not apply to the homologation and enforcement of the Award against the Mastantuonos.

### *ii. Leave is not required pursuant to paragraph 56 of the Initial Order*

61. Paragragh 56 of the Initial Order requires that leave of this Court be obtained prior to any proceedings against current and former directors of the Debtors "in relation to the Business or Property" of the Debtors.

- ***Initial Order, paragraph 56* [Tab 1]**

> 56. **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisors of the Applicants or of the Monitor in relation to the Business or Property of the Applicants, without first obtaining leave of this Court, upon five (5) days written notice to the Applicants' counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

62. ISI is not seeking to bring any proceedings against the Mastantuonos "in relation to the Business or Property" of RPI, but is rather seeking to homologate the Award with a view of enforcing it personally against the Mastantuonos and their personal assets in relation to the personal, extracontractual faults committed by the Mastanuonos arising out of fraud.

63. The mere fact that the Mastantuonos may have been directors or officers of RPI at the time that they committed the faults, does not mean that leave is required to institute proceedings against them. Paragraph 56 of the Initial Order must not be interpreted to broaden the scope of the Stay in favour of the directors and officers.

64. In contrast, in *Magasin Laura (PV) inc./Laura's Shoppe (PV) Inc. (Arrangement relatif à),* the Court held that leave of the Court was required because it pertained to "a personal commitment of its director to ensure, inter alia, the continued supply of goods to Laura" and was therefore "in relation to the business" of Laura.

- ***Magasin Laura (PV) inc./Laura's Shoppe (PV) Inc. (Arrangement relatif à), 2015 QCCS 4716*** **[Tab 3]**

> [16] Conrad's de bene esse Motion is made as per paragraph 58 of the Initial Order, which provides that leave of this Court is necessary before commencing proceedings against directors of Laura in relation to the Business or Property of Laura.
>
> [17] In the Initial order, the "Business" of Laura is defined as Laura's business operations and activities.
>
> […]
>
> [19] Leave of this Court is thus necessary to pursue the Conrad Action against Mr. Fisher. This action indeed is in relation to the Business of Laura, as it pertains to a personal commitment of its director to ensure, inter alia, the continued supply of goods to Laura for the 2014 and 2015 seasons.
>
> [20] The decision to grant or refuse leave to continue the Conrad Action against Mr. Fisher first requires a determination of whether such action is already stayed in accordance with the terms of the Initial Order or of the specific provision of the CCAA. A further ruling is required to determine whether the stay should be limited or extended regarding this action.

65. As such, the Mastantuonos cannot benefit from the leave requirement afforded by paragraph 56 of Initial Order and no leave is required.

66. ISI is of the view that Debtors were well aware that provisions of the Initial Order did not and would not protect the Mastantuonos from the eventual homologation and enforcement of the Award, which is why the words "and the Directors" had initially been inserted and included in the first-day initial order, only to be removed at the request of ISI prior to the comeback hearing.

➢ ***First day initial order dated January 6, 2022 at para. 15*** **[Tab 5A]**

> 15. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "**Person**") against or in respect of the Applicants and the Directors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

➢ ***Blackline to the Amended and Restated Initial Order rendered January 17, 2022 compared to*** **the January 6, 2022 version), [Tab 5B]**

> ~~15.~~16. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "**Person**") against or in respect of the Applicants ~~and the Directors~~, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

67. Subsidiarily, even if the Court were to conclude that leave under paragraph 56 is required in the present matter, ISI submits that it should be authorized to homologate and enforce the Award for the reasons argued throughout this plan of argument.

## B. *In the Alternative, the Stay Must be Lifted*

68. In the alternative, ISI submits that the Stay must be lifted so as to allow the homologation and enforcement of the Award.

69. The CCAA does not set out a specific test identifying the circumstances in which the stay of proceedings should be lifted. The supervising judge in a CCAA Proceeding has discretion to decide whether a proposed action should be allowed to proceed.

➢ ***Re Puratone et al, 2013 MBQB 171*** **[Tab 6]**

> [13] The CCAA does not set out a specific test identifying the circumstances in which the stay of proceedings should be lifted. Rather, it is in the discretion of the supervising CCAA judge whether a proposed action should be allowed to proceed. Apart from giving the judge the authority to grant the stay, the only guidelines

expressed in the CCAA respecting such a stay order are found in section 11.02(3) which says:

> (3) The court shall not make the order unless
>
> (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
>
> (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[14] In ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd., 2007 SKCA 72, 9 W.W.R. 79, the Saskatchewan Court of the Appeal indicated that there must be "sound reasons", consistent with the scheme of the CCAA, to relieve against the stay. In the search for "sound reasons", the court suggested the following considerations:

a) the balance of convenience;

b) the relative prejudice to the parties; and

c) the merits of the proposed action.

It also indicated that, "The supervising CCAA judge should also consider the good faith and due diligence of the debtor company as referenced in s. 11(6)".

- ***Timminco Limited (Re), 2014 ONSC 3393*** **[Tab 7]**

[50] The lifting of a stay is discretionary. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of (a) the balance of convenience; (b) the relative prejudice to the parties; and (c) where relevant, the merits of the proposed action: Canwest Global Communications Corp., Re, 2011 ONSC 2215, 75 C.B.R. (5th) 156, at para. 27.

70. As set out below, each of the factors set forth in the above case law favours that the Stay be lifted in respect of the Mastantuonos, namely:

a) The claim of ISI against the Mastantuonos is liquidated, final and binding and there is no evidence whatsoever that the homologation of the Award would not be obtained;

b) ISI will suffer prejudice if it is not allowed to pursue the homologation and enforcement of the Award arising out of the fraudulent acts of the Mastantuonos; and

c) The Mastantuonos have clearly not acted good faith and with due diligence; and

d) The balance of convenience favours ISI.

### *i. The Merits of the "Proposed Action"*

71. The present matter differs from the vast majority of the cases where a party seeks to lift the stay of proceedings to pursue an unliquidated claim and where the court must determine whether the underlying action or claim is meritorious.

72. Indeed, the claim of ISI has been liquidated through arbitration and is final and binding on the parties, including the Mastantuonos.

73. Moreover, despite what appears to be alluded to in the Application for Continuance, a court seized of an application for the homologation of an arbitration award cannot review the merits of the dispute.

- ***Article 645 of the Code of Civil Procedure***

> 645. A party may apply to the court for the homologation of an arbitration award. As soon as it is homologated, the award acquires the force and effect of a judgment of the court.
>
> The court seized of an application for the homologation of an arbitration award cannot review the merits of the dispute. It may stay its decision if the arbitrator has been asked to correct, supplement or interpret the award. In such a case, if the applicant so requires, the court may order a party to provide a suretyship.

74. The merits of ISI's claim against the Mastantuonos therefore easily satisfy this first prong since its claim has already liquidated.

75. Moreover, homologation of the Award can be sought at any time after the issuance of the award.

- ***Chambre des notaires du Québec c. Gauthier, SOQUIJ AZ-99036386*** **[Tab 8]**

> Quant au délai de présentation d'une requête en homologation, il peut être exercé en tout temps selon ce qu'enseigne Sabine Thuilleaux dans (sic) son ouvrage "L'arbitrage commercial au Québec"([1]). L'action en annulation d'une sentence arbitrale se prescrit, elle, par trois ans et, le jugement d'homologation par dix ans (art. 2924 C.c.Q.).

76. There is also no evidence whatsoever that the Mastantuonos have any grounds to challenge the homologation and enforcement of the Award.

### *ii. ISI will suffer a prejudice from a Postponement of the Homologation*

77. The final and binding Award unequivocally concludes that the Mastantuonos acted in bad faith, dishonestly and committed fraudulent acts with respect to ISI and the ISI students by embezzling nearly $4 million that was to be held in a bank account in ISI's name and exclusively used to pay ISI students' tuition and insurance.

78. The term "fraud" is indeed employed on at least four occasions in the Award to characterize RPI's and the Mastantuonos' actions.

79. As such, it is overwhelmingly clear that the debts owed by the Mastantuonos (and RPI) pursuant to the Award arise from fraud, and cannot be compromised or released as part of a restructuring process, whether it be pursuant to the CCAA or the *Bankruptcy and Insolvency Act*.

- ***Companies' Creditors Arrangement Act, 5.1 (2) and 19(2)(c)***

> 5.1(2) A provision for the compromise of claims against directors may not include claims that
>
> (a) relate to contractual rights of one or more creditors; or
>
> (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.
>
> [..]
>
> **19 (2)** A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:
>
> […]
>
> c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of other;

- ***Also see s. 178 of the BIA***

80. Canadian courts have regularly lifted the stay of proceedings to allow claims for which "a debt to which a discharge would not be a defence" to proceed on the basis that such claimants would suffer material prejudice as a result of being "forced to wait".

- ***Gagnon (Re), 2021 ABQB 583 at para. 83 to 91*** **[Tab 9]**

81. In *Gagnon,* in the context of the respective proposal proceedings of each of the company and its director, the Alberta Court of Queen's Bench (ACQB) recently lifted the stay and allowed the creditor to pursue its fraud-based claims against the debtor and its director. Unlike in the present case, both the corporate debtor and its director, Mr. Gagnon, filed a proposal and therefore both benefited from a stay under the BIA.

- ***Gagnon (Re), 2021 ABQB 583*** **[Tab 9]**

82. In *Gagnon*, the ABQB distinguished between the status of creditors holding dischargeable claims and those holding non-dischargeable claims:

- ***Gagnon (Re), 2021 ABQB 583 at para. 65 to 73*** **[Tab 9]**

> [65] For creditors with dischargeable (non-surviving) claims (and assuming no other Advocate Mines exceptions apply), no independent or incremental benefit could arise from continuation of their claims. The BIA provides a process for proving their claims (s. 121) and for determining any disputes over their quantum (s. 135).
>
> [66] After that, such creditors "wait in the corral" for any dividends. And once the bankrupt (if an individual) is discharged, the unpaid balances of their claims are released (ss. 178(2)).
>
> [67] But things are different for surviving creditors.
>
> [68] Their claims are not released, meaning they are free, after the bankrupt's discharge, to commence or continue their claims and seek recovery of the unpaid balance i.e. after giving credit for any dividends received during the bankruptcy.
>
> [69] Such creditors have the best of both worlds: they can prove their claims in the bankruptcy (and receive any dividends generated by it) and pursue the unpaid balance after bankruptcy.
>
> [70] Thus, we see the critical difference between dischargeable and surviving claims and also the rationale for finding prejudice in the latter being subjected to the bankruptcy stay. For dischargeable claims (and again assuming no other Advocate Mines exceptions apply), there is no "life after bankruptcy" and thus no reason for actions to continue.
>
> [71] For surviving claims, by definition, there is "life after bankruptcy."
>
> [72] The core prejudice to a surviving or may-survive claimant is being forced, if the stay operates, to wait until the bankruptcy (or, here, the proposal) is completed before being able to commence or continue with its claim.
>
> [73] With the stay in place, such a creditor is effectively told: "Your claim will not go away; you will be able to pursue it in time. But in the meantime, you must put it on hold."

83. Typically, a creditor that is raising a "will survive claim" must show that it has "some prospect of success in proving fraud, false pretences, or other "survival" grounds. However, this does not apply to a case where a creditor already has a judgment.

- ***Gagnon (Re), 2021 ABQB 583 at para. 104*** **[Tab 9]**

> [104] A creditor asserting a "will survive" claim, who has not already obtained a judgment, is obliged to show that it has at least some prospect of success in proving fraud, false pretenses, or other "survival" grounds.

84. In the case at hand, not only will ISI (and its students) be prejudice by simply being "forced to wait" to seek homologation and enforcement of the Award, but there is

also strong evidence, which was initially alleged by Firm Capital Mortgage Fund Inc.'s ("**Firm Capital**") *Contestation the Applicants' Request for an Amended and Restated Initial Order* (the "**Firm Capital Contestation**"), that the Mastantuonos may have been making transfers at undervalue to defraud their creditors as well as making preferential payments to certain creditors.

85. Firstly, we note that on March 26, 2021, Caroline Mastantuono gifted a property she personally owned located at 39-41, 1st Street, in the City of in Saint-Adolphe-d'Howard (the "**St-Adolphe Property**") valued at 750,000 to the "Caroline Mastantuono Trust";

- ***Exhibit I-10, Deed of inter vivos gift of an immovable***

86. Secondly, it appears that on December 7, 2021, Caroline Mastantuono and Guiseppe Mastantuono, as trustees of the Caroline Bonneville Trust, together with 11707868 Canada Inc. ("**11707868**") hypothecated two unencumbered properties, the St-Adolphe Property along with an additional property they own, in favour of their lawyers, Kauffman Lawyers LLP for an amount of $750,000 plus an additional hypothec of $150,000, the whole in order to secure RPI's present and future obligations (the "**Kaufman Hypothec**")

- ***I-12, Deed of Hypothec dated December 7, 2021***

87. The purpose of the Kauffman Hypothec is to secure an existing indebtedness of $200,000 plus "the payment of all future professional fees and any all obligations, direct and indirect, present and future, of any nature whatsoever, incurred by the Debtor (RPI), whether alone or with others, as the principal debtor, guarantor, or in any other capacity, towards the Creditor (Kaufman Lawyers LLP)

- ***I-12, Deed of Hypothec dated December 7, 2021, section 3***

88. The amounts owed and secured by the Kauffman Hypothec have likely increased significantly since the registration of the Hypothec, and are subject to further increases. Indeed, as appears from the Monitor's report dated March 10, 2022, professional fees owed by the Debtors, which includes the fees owed to Kauffman, have not been paid for the past two months.

- ***Fifth Report of the Monitor Richter Inc. dated March 10, 2022, page 12*** **[Tab 10]**

89. ISI submits that it is highly inappropriate that Kaufman intends on arguing that ISI should not be entitled to "race to the assets" of the Mastantuonos, while having required the Mastantuonos to grant security over their personal assets to secure RPI's indebtedness less than 30 days before the filing of these CCAA proceedings.

90. Finally, 11707868, a company which is owned by Giuseppe (Joseph) Mastantuono, but not a debtor subject to these proceedings, sold real estate worth $2,966,000 since the end of 2020:

| Address | Lot | Acquisition | Purchase Price | Sale | Selling Price |
|---|---|---|---|---|---|
| 139 Larente Street | 1930932 | 17-Jan-20 | $ 393,000.00 | 16-Dec-20 | $ 356,000 |
| 517-519 Oka Street | 1930706 | 17-Jan-20 | $ 615,000.00 | 16-Dec-20 | $ 675,000 |
| 7506 Chouinard Street | 4666969 | 16-Mar-20 | $ 695,000.00 | 03-May-21 | $ 710,000 |
| 2376 Chopin Street | 1451126 | 08-May-20 | $ 505,000.00 | 12-Mar-21 | $ 540,000 |
| 1976 Pigeon Street | 4680598 | 10-Jul-20 | $ 615,000.00 | 02-Jun-21 | $ 685,000 |
| | | **Total:** | **$ 2,823,000.00** | **Total:** | **$ 2,966,000.00** |

- ***I-13, Indexes of immovables for these properties, en liasse***

91. As was highlighted in the Firm Capital Contestation, the existence of 11707868, its relation to RPI and its significant disposition of assets over the past two years was not disclosed to this Court.

92. Therefore, there is a strong prima facie case that being "forced to wait" in the present case may actually result in ISI being deprived of the benefit of the Award against the Mastantuonos, who appear to have already taken steps to avoid its enforcement.

### *iii. The Mastanuonos bad Faith*

93. As demonstrated above, the Mastantuonos were found to have fraudulently misappropriated funds which should have been used to pay ISI's students tuition and insurance. They cannot be said to have acted in bad faith.

94. Furthermore, as more fully explained at paragraphs 84 and following, the evidence demonstrates that they have already taken numerous steps to shield their assets from seizure by their creditors.

95. It is clear that the Mastantuonos acted in the utmost bad faith prior to the commencement of the CCAA proceedings and should not be granted with the privilege of benefiting from the Stay.

96. ISI submits that very little weight must be given to the Mastantuonos' post-filing conduct, particularly given that the Mastantuonos are desperately seeking to reduce their personal liabilities, including their personal liability to ISI, and, notwithstanding the clear terms of the CCAA and BIA, are somehow under the impression that they may obtain a release from all liabilities, including the non-dischargeable ISI debt, in the context of an eventual plan of arrangement.

### *iv. The Balance of Convenience Favours Lifting the Stay*

97. In the Application for Continuance, the Mastantuonos essentially advance the following arguments in favour of their position that the Stay should not be lifted:

a) they generally argue that they must be allowed to concentrate their energies on the restructuring process of the Applicants.

b) they wish to avoid a race for their assets;

c) they would like for a claims process to be implemented;

d) they submit that ISI's claim may be compromised as part of an eventual plan of arrangement.

98. Aside from generally claiming that their involvement is necessary, the Debtors have failed to identify any particular tasks for which their involvement is critical, and how the fulfilment of those tasks would be impacted by the homologation and enforcement of the Award.

99. With respect to the necessity of avoiding a "race for the assets of the Directors and Officers", ISI submits that this consideration is entirely irrelevant since the personal assets of the Mastantuonos are not protected by the Stay. If the Mastantuonos do not have sufficient funds or assets to pay the debts owed to ISI and/or to other personal creditors, then they are insolvent and should institute the appropriate proceedings. Indeed, in arguing that the homologation of the Award could lead to a "race to [the Mastantuonos] assets", the Mastantuonos are implying that they are already insolvent and do not have sufficient assets to pay ISI and/or their other creditors. If the Mastantuonos had sufficient assets to pay all their creditors then it would not matter who is "first" to their assets.

100. Lastly, with respect to the argument that a claims process could be implemented, and that the debt owed pursuant to the Award could be compromised by a plan of arrangement, this position is unfounded in law for the following reasons:

a) s. 5.1(2) of the CCAA expressly prohibits a release in favour of a director for any "wrongful or oppressive conduct". The Mastantuonos therefore simply cannot be released from their debt to ISI under any circumstances other than by way of payment of the debt in full or a private release granted by ISI.

b) s. 19(2) of the CCAA unequivocally provides that claims against the debtor (not a director) arising out of fraud or embezzlement cannot be compromised in a plan of arrangement, other than by consent of that creditor;

c) Courts have indeed held that creditors holding claims for fraud or embezzlement pursuant to section 178 of the *Bankruptcy and Insolvency Act* (the "BIA"), the equivalent of section 19(2) of the CCAA, "stand on a higher plateau than the general body of unsecured creditors".

- ***Jerrard v. Peacock, 1985 CanLII 1148 (ABQB), para. 47*** **[Tab 11]**

d) These arguments ignore the fact that the Award is a final and binding decision pursuant to which the Mastantuonos were held liable towards ISI for fraud in an amount of 2,774,888.38$. To claim otherwise would be an attempt to indirectly appeal the merits of the Award, which is prohibited under the Code of Civil Procedure;

e) Contrary to what is being alleged at paragraph 35 of the Application for Continuance, allowing the homologation of the Award to proceed will not "only" benefit ISI given that:

i) ISI's students whose tuition fees were fraudulently misappropriated will also benefit from such homologation;

ii) Any monies recovered by ISI personally from the Mastantuonos will reduce its claim in the CCAA proceedings and therefore benefit all of RPI's creditors;

iii) ISI will be in position to take all necessary measures to identify and locate the Mastantuonos assets and, if necessary, challenge any transfers at undervalue or preferential payments, which may benefit all of the Mastantuonos' creditors.

101. Last, but certainly not least, the balance of convenience is certainly in ISI's favour given that the Mastantuonos appear to have began transferring their assets more than a year ago in an apparent strategy to shield their assets from seizure by their creditors. ISI therefore has strong reasons to believe that the mere delaying of the homologation and enforcement of the Award could allow the Mastantuonos more time to transfer assets or further shield themselves from execution of the Award.

## VII. CONCLUSIONS

102. ISI respectfully submits that the present Application should be granted, so as to allow the homologation and the enforcement of the Award to proceed.

Montréal, this April 11, 2022

Fasken Martineau DuMoulin LLP

**Fasken Martineau DuMoulin LLP**
Attorneys for the Applicant

800 Victoria Square, Suite 3500
P.O. Box 242
Montréal, Quebec H4Z 1E9
Fax number: +1 514 397 7600

**Mtre Brandon Farber**
Phone number: +1 514 397 5179
Email: bfarber@fasken.com

**Mtre Éliane Dupéré-Tremblay**
Phone number: +1 514 397 7412
Email: edtremblay@fasken.com

N° : 500-11-060613-227

PROVINCE OF QUEBEC
SUPERIOR COURT
(commercial Division)
DISTRICT OF MONTREAL
LOCALITY OF MONTREAL

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. (1985) c. C-36 OF:**

**RISING PHOENIX INTERNATIONAL INC. AND AL.**
Debtors

and

**RICHTER ADVISORY GROUP INC.**
Monitor

and

**LES CONSULTANTS 3 L M INC.**
Applicant

and

**CAROLINE MASTANTUONO AND AL.**
Respondents

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# PLAN OF ARGUMENT OF THE APPLICANT, LES CONSULTANTS 3 L M INC.

ORIGINAL

**Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.**
800, rue du Square-Victoria, bureau 3500
C. P. 242
Montréal (Québec) H4Z 1E9

**Me Brandon Farber** Tél. +1 514 397 5179
bfarber@fasken.com Fax. +1 514 397 7600