

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-11-062362-237

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to
the *Companies' Creditors Arrangement*
Act, R.S.C. 1985, c. C-36)

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT OF:
ÉBÉNISTERIE ST-URBAIN LTÉE**

-and-

WOODLORE INTERNATIONAL INC.

-and-

EURO-RITE CABINETS LTD.

Debtors

-and-

RAYMOND CHABOT INC.

Monitor

-and-

HSBC BANK CANADA

Applicant/Secured Creditor

-and-

NAPOLÉON BOUCHER

-and-

DENIS LABROSSE

-and-

**15569621 CANADA INC. (formerly
9501-8222 Québec Inc.)**

Respondents

**HSBC BANK CANADA'S AMENDED APPLICATION FOR THE CONDEMNATION
OF NAPOLÉON BOUCHER AND DENIS LABROSSE**

**(Sections 11 and 18.6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,
c. C-36)**

**TO THE HONOURABLE KAREN M. ROGERS OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL,
THE APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:**

I. INTRODUCTION

1. The Applicant, HSBC Bank Canada (“**HSBC**” of the “**Bank**”), hereby asks this Court to hold Napoléon Boucher (“**Boucher**”) and Denis Labrosse (“**Labrosse**”) personally liable for the indebtedness of Euro-Rite Cabinets Inc. (“**ERC**”) and Ébénisterie St-Urbain Ltée (“**EBSU**”) towards HSBC that existed prior to the Monitor’s certificate issued on November 14, 2023 as a result of the *Approval and Reverse Vesting Order* (the “**RVO**”) rendered on October 27, 2023.
2. The RVO was rendered on October 27, 2023 and authorized a transaction (the “**Authorized Transaction**”) among EBSU, ERC and Woodlore International Inc. (“**Woodlore**” and, together with EBSU and ERC, the “**Debtors**”) and William M. Melnik (“**Melnik**”), the Melnik Family Trust 2043 (“**Melnik Trust**”) and Tayco Office Furnishings Inc. (“**Tayco**” and, together with Melnik, Melnik Trust, the “**Melnik Group**”). The contemplated transaction closed on November 14, 2023 and the Monitor issued a Monitor’s certificate confirming the closing of the contemplated transaction.
3. The RVO was obtained under false pretences and by concealing from this Court crucial facts which were required to be disclosed. Further, the RVO was obtained on the basis of the consent of the Debtors’ secured creditors, including HSBC, which also obtained under false pretences and by withholding decisive information.
4. Specifically, the Authorized Transaction was presented to this Court, to the Monitor and to the Debtors’ secured creditors as a transaction with an unrelated third party, although an agreement in principle between the Melnik Group, on the one hand, and Labrosse and Boucher, on the other hand, pursuant to which EBSU and ERC would be “flipped” to Labrosse and Boucher, was concealed from this Court and the secured creditors.
5. Labrosse and Boucher (and others) did everything in their power to mislead and deceive the Monitor, the secured creditors and, ultimately, this Court regarding the true nature of their arrangement with the Melnik Group. They did so because they knew full well that HSBC would never have consented to the Authorized Transaction had it known that Labrosse and Boucher would end up owning EBSU and ERC. They also knew that disclosing their arrangement with the Melnik Group would have necessarily called into question the integrity of the SISP.
6. This unconscionable behaviour from Labrosse and Boucher (and others) constitutes a blatant breach of the duty to act in good faith codified at section 18.6 of the CCAA and an extreme lack of candour. Labrosse and Boucher cannot

and should not be permitted to benefit from such an appalling behaviour, especially in a context where all of the Debtors' secured creditors, including first and foremost HSBC, are facing losses of millions of dollars. Leaving this conduct unpunished would bring the administration of justice into disrepute and tarnish the legitimacy of the entire restructuring process.

7. As a result, HSBC submits that this Court should hold Boucher and Labrosse personally liable for the pre-Monitor's certificate indebtedness of ERC and EBSU towards HSBC, i.e. : \$19 076 000,66.
8. On January 24, 2024, HSBC filed an Application for the Cancellation of the Subsequent Transaction and Other Reliefs, which was granted on January 26, 2024, with reasons to be issued at a later date. The Court issued a Cancellation Order, pursuant to which the Court approved a partial settlement term sheet (the "Partial Settlement Term Sheet") and declared that LabrosseCo is no longer a shareholder of EBSU and ERC and that the Melnik Group is the sole owner of all outstanding shares of EBSU and ERC, essentially unwinding the Undisclosed Transaction. Confirmations of ownership of the shares in the capital stock of EBSU and ERC were issued by LabrosseCo on January 26, 2024, confirming the transfer of the shares.
9. Under the terms of the Partial Settlement Term Sheet, HSBC undertook not to seek any relief against the Melnik Group, EBSU, ERC and Woodlore in relation to the Undisclosed Transaction and to amend HSBC's Application for the Partial Revocation of the RVO accordingly; hence, the present amended Application.

II. PROCEDURAL BACKGROUND

10. On May 12, 2023, EBSU and Woodlore obtained an initial order under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), as appears from the Court record.
11. On May 24, 2023, this Court issued an Amended and Restated Initial Order, which, among other things, approved an interim financing term sheet entered into among HSBC, EBSU and Woodlore, providing for an interim financing facility of up to \$3 million, as appears from the Court record.
12. On June 16, 2023, this Court issued a *Second Amended and Restated Initial Order*, pursuant to which, among other things, ERC was added as a debtor in these CCAA proceedings and an interim financing term sheet entered into among HSBC and ERC, providing for an interim financing facility of up to \$1 million was approved, as appears from the Court record.
13. On June 16, 2023, this Court issued an *Order Approving a Sale and Investment Solicitation Process* (the "**SISP Order**"), as appears from the Court record. A copy of the SISP Order is communicated herein as **Exhibit R-1**.

14. On October 4, 2023, HSBC filed applications seeking the appointment of a receiver to the assets of EBSU, Woodlore and ERC, as appears from the Court record. The facts leading to the filing by HSBC of the receivership applications are described at length in such applications.
15. On October 24, 2023, the Monitor filed an application seeking the issuance of an approval and vesting order (the “**RVO Application**”), seeking the approval of a reverse vesting transaction with William M. Melnik, the Melnik Family Trust 2043 and Tayco Office Furnishings Inc., as appears from the Court record. A copy of the RVO Application is communicated herein as **Exhibit R-2**.
16. On October 26, 2023, the day before the hearing on the approval of the Authorized Transaction, and without any prior discussions with HSBC, the Debtors filed an application entitled “*Requête des débitrices pour l’émission d’ordonnances visant à approuver et mettre en oeuvre un plan d’arrangement*”, seeking the issuance of various orders in order to implement a purported plan of arrangement.
17. On October 27, 2023, this Court approved the Authorized Transaction and issued the RVO, as appears from the Court record.
18. On November 14, 2023, the Monitor issued a certificate confirming the closing of the Authorized Transaction, as appears from the Court record.

III. THE SISP ORDER AND THE CONDUCT OF THE SISP

A. THE SISP ORDER

19. As mentioned above, on June 16, 2023, this Court issued the SISP Order.
20. As appears from the SISP Order, the purpose of the SISP was to solicit proposal and bids for a broad range of executable transactions involving the businesses of the Debtors, including restructurings, recapitalizations, refinancings, and the property, undertakings and assets of the Debtors.
21. The SISP Order and the related SISP procedures (the “**SISP Procedures**”) were to “*exclusively* govern the process for soliciting and selecting bids for an investment in the [b]usiness or sale of the [property of the Debtors]”¹.
22. The SISP Procedures provided that the SISP was to be conducted by the Debtors, along with the Monitor:

1.3 The Monitor and the Debtors shall be responsible for contacting Prospective Bidders, communicating with Prospective Bidders and Bidders, negotiating with Bidders, providing them with the Teaser Letter, coordinating the execution of any Confidentiality Agreements executed by a Prospective Bidder pursuant to the

¹ Recital G of the SISP Procedures.

SISP, managing the process of answering all reasonable inquiries from Prospective Bidders and Bidders and arranging for visits, when applicable, by Bidders.

1.4 The Monitor, in consultation with the Debtors, shall review and assess LOIs and Bids. (our emphasis)

23. In order to protect the integrity of the SISP and address the conflict of interest that would necessarily arise in the event that any of the Debtors' shareholders or directors chose to participate in the SISP as a bidders, the SISP also provided that:

17.1 If any of the Debtors' shareholders, directors and officers, or any person related thereto, intends to act as a Prospective Bidder, such person shall notify the Monitor, the Debtors and the Information Agent, in writing, no later than ten (10) days before the LOI Deadline, failing which it shall not be permitted to participate in the SISP. Upon receipt of such notice, the Debtors and its shareholders, directors and officers, and any person related thereto, shall no longer be entitled to receive any information regarding the conduct of the SISP (including without limitation any information regarding the LOIs, the Qualified Investment Bids and the Qualified Purchase Bids received), the Debtors' consultation rights set out in these SISP Procedures shall be immediately terminated and the Monitor shall be authorized to take any action or make decision pursuant to these SISP Procedures that would otherwise be taken or made by, or with the authorization of, the Debtors. (our emphasis)

24. It is worth noting immediately that the notice contemplated in paragraph 17.1 of the SISP Procedures was not given by Denis Labrosse or Napoléon Boucher (or any other person).
25. Pursuant to the SISP Procedures, "only Prospective Bidders who submit an executed Confidentiality Agreement and Written Acknowledgement shall have access to the Data Room and to other confidential information and management presentations, if available"².
26. The SISP Procedures contemplated a two-phase process to be conducted in accordance with the following timeline:
- (i) Commencement Date: June 21, 2023;
 - (ii) Deadline to submit non-binding letters of intent: August 31, 2023 (the "**Phase 1 Deadline**");
 - (iii) Qualification deadline: September 14, 2023;
 - (iv) Deadline to submit binding investment or purchase bids: September 29, 2023 (the "**Phase 2 Deadline**");

² SISP Procedures, par. 4.1 (f).

(v) Target closing date: October 15, 2023.

B. THE CONDUCT OF THE SISP

27. The SISP was launched on June 21, 2023, in accordance with SISP Procedures.
28. By the Phase 1 Deadline, five letters of intent were received. Two additional letters of intent were received on August 31, 2023, after the LOI Deadline (along with the five other LOIs, the “**LOIs**”). A summary of the LOIs is communicated herein as **Exhibit R-3**, *under seal*.
29. From the LOIs:
- (i) Three were for an asset purchase targeting Woodlore;
 - (ii) One was for an asset purchase targeting all of the Debtors;
 - (iii) One was to refinance ERC;
 - (iv) One was to refinance Woodlore; and
 - (v) One was to refinance all of the Debtors.
30. The results of the first phase of the SISP indicated a very low level of interest for EBSU and ERC. Indeed, none of the LOIs received targeting EBSU and ERC contemplated the continuation of the operations.
31. 2000674 Ontario Limited (“**BRC**”), an entity related to the Melnik Group, submitted a LOI to purchase the assets of Woodlore only. Neither BRC nor any other entity related to the Melnik Group submitted an offer for EBSU or ERC. A copy of the LOI submitted by BRC is communicated herein, *under seal*, as **Exhibit R-4**.
32. It is also important to note that Pathward, National Association (“**Pathward**”) also submitted two non-binding financing proposals, one for Woodlore and one for ERC, both received on August 31, 2023, but after the 5:00 P.M. deadline.
33. In the sixth Monitor's report (the “**Sixth Monitor’s Report**”), a copy of which is communicated herewith as **Exhibit R-5**, it is mentioned that:

2.14. Les autres offres initiales et non contraignantes ont été transmises au Contrôleur par les offrants le 30 août 2023. Considérant la volonté des actionnaires des Débitrices de pouvoir déposer un éventuel plan d'arrangement, il avait été convenu avec ces derniers que les conditions des offres initiales reçues ne leur seraient pas partagées. Par ailleurs, les négociations sur les offres reçues ont été menées subséquentement par le Contrôleur, sans impliquer les représentants des Débitrices.

34. At that time, the rationale for not communicating of the conditions of the offers to the Debtors was not disclosed to HSBC. In any event, as can be seen from an email sent by the Monitor on September 1, 2023, “[t]he shareholder/management got an overview of the offers for assets, but no amount have been shared with them in order to preserve the integrity of the process.” A copy of the September 1, 2023 Monitor’s email is communicated herewith as **Exhibit R-6**.
35. During a conference call with the Monitor held on September 1, 2023, Martin Rosenthal of Ernst & Young Inc. (the “**Information Agent**”) learned that the Debtors had engaged Paul Lafrenière, CPA, CIRP to provide support in the accounting department. His role was subsequently expanded to assist Boucher and the other shareholders of the Debtors to secure alternate financing. The Monitor had not been informed of the parties with whom Mr. Lafrenière and Boucher were in discussions with, notwithstanding their request to be provided with this information and to have those discussions take place within the parameters of the SISP.
36. On September 6, 2023, a meeting was held between the secured creditors. On September 7, 2023, a follow-up meeting was held between the secured creditors, the Monitor and Boucher. In that meeting, it was discussed that several groups, namely Accord Financial, DNA Capital and Maynbridge, were in discussions for the previous weeks to offer some kind of financing but never submitted any financing offer. When asked by the Information Agent why there were still discussions ongoing with them, the Monitor answered that there was a possibility to receive an offer from them to buy back the Debtors’ debt.
37. On September 11, 2023, upon learning of what appeared to be a parallel solicitation process conducted without the Monitor’s supervision and outside of the parameters of the SISP, HSBC wrote a letter to the Monitor and Boucher complaining about the alternative financing efforts conducted in parallel with the SISP, as appears from a copy of such letter communicated herewith as **Exhibit R-7**.
38. On September 13, 2023, the Monitor responded to HSBC’s letter, denying the existence of a parallel process, but acknowledging that the Debtors were involved in “direct discussions with DNA Capital, Maynbridge and Accord Financial, with a view to exploring potential opportunities that could lead to potential transactions being implemented outside the confines of the SISP”, as appears from a copy of the letter communicated herewith as **Exhibit R-8**.
39. On September 19, 2023, HSBC responded to the Monitor’s letter stating that it was surprised by the statements contained in the aforementioned letter, which were contrary to previous verbal representations, as appears from a copy of the letter communicated herewith as **Exhibit R-9**.

40. By the Phase 2 Deadline of September 29, 2023, five binding offers were received. An analysis of the binding offers prepared by the Monitor is communicated herein, *under seal*, as **Exhibit R-10**.
41. The five binding offers received included a bidding offer from the Melnik Group (the “**Melnik Offer**”). Contrary to the LOI submitted by the Melnik Group by the LOI Deadline, the Melnik Offer targeted all of the Debtors. A copy of the Melnik Offer is communicated herein, *under seal*, as **Exhibit R-11**.
42. Following the Phase 2 Deadline, on October 12, 2023, a meeting among the secured creditors, the Monitor and the Information Agent took place to go through the binding offers submitted.
43. Following this meeting, the representatives of the secured creditors asked the Monitor to negotiate with the Melnik Group an increase of the purchase price payable in respect of ERC and to obtain clarifications from the Melnik Group regarding the potential involvement of Boucher, Labrosse and any other directors or officers of the Debtors after the closing of the transaction contemplated in the Melnik Offer.
44. On October 12, 2023, a call took place between the Melnik Group and its counsel, the Monitor and Martin Rosenthal of EY, the Information Agent. During this call, Melnik was specifically asked by Martin Rosenthal whether Boucher or Labrosse would have any involvement with the Debtors following the closing of the proposed transaction. It was explained to Melnik that this was a specific concern of all of the secured creditors and they wanted assurances that any potential transaction with Melnik would be with a party unrelated to the current shareholders. It was explicitly communicated to Mr. Rosenthal that there was no deal whatsoever between the Melnik Group and any of the shareholders. There was absolutely no mention of ongoing discussions pursuant to which Labrosse or Napoléon Boucher would acquire an equity interest in any of the Debtors following the closing of the transaction contemplated in the Melnik Offer. Melnik was also very clear and direct in his response – no such agreement was in place, had been discussed or was presently contemplated. Melnik was very conclusive that there had been no communications with Labrosse or Napoléon Boucher regarding the possibility of a transaction.
45. In light of, among other things, the reassurances obtained from the Melnik Group regarding the absence of an agreement between the Melnik Group and Labrosse, Jean Gladu or Boucher, HSBC consented to the transaction contemplated in the Melnik Offer.
46. Following negotiations with the Melnik Group, an amended offer was submitted by the Melnik Group. In the context of these discussions, the Monitor was informed by the Melnik Group that the proposed transaction, which had initially been structured as a straight asset purchase, would need to be structured as a “reverse vesting” transaction.

47. In the Sixth Monitor’s Report (Exhibit R-5), it is mentioned that:

1.43. Concurrément, entre le 18 et 25 octobre 2023, des appels ont été tenus entre le Contrôleur, son procureur, le procureur d’HSBC ainsi que l’Agent d’information relativement au doute des créanciers sur le fait qu’il puisse y avoir une entente entre Bill Melnik et l’un ou l’autre des représentants des Parties liées pour une quelconque entente post-transaction. À cet effet, à plusieurs reprises, le Contrôleur mentionne qu’il est au fait qu’il existe des discussions entre Bill Melnik et les personnes ci-haut énumérées, mais qu’il n’en connaît pas la teneur et leur implication future, le cas échéant.

48. The discussions referred to were in in the context of performing due diligence and in ensuring a smooth transition. Indeed, it was mentioned that the previous shareholders could be called to provide services to the Debtors as employees or consultants in order to facilitate the transition of the businesses.

49. At no time the Bank understood or was given reasons to believe that there could be a subsequent transaction pursuant to which Labrosse and/or Boucher would acquire an equity interest in EBSU and ERC.

50. On October 24, 2023, an investment agreement was executed among the Melnik Group and the Debtors (the “**Investment Agreement**”), a copy of which is communicated herein as **Exhibit R-12**. It is worth noting that the Investment Agreement was executed by Boucher on behalf of the three Debtors.

51. The Bank also wishes to specify that it learned on January 5, 2024, through the Sixth Monitor’s Report, that Paul Lafrenière had contacted the other secured creditors in connection with a possible plan of arrangement:

1.10. En août, des représentants des créanciers garantis (BDC, IQ et Fiera) nous avaient mentionné que Paul Lafrenière (consultant retenu par les Débitrices) avait communiqué avec eux pour leur parler d’un plan de relance dans le cadre d’un plan d’arrangement éventuel, dans lequel il agirait comme CFO. Afin de préserver l’intégrité du processus, le Contrôleur a demandé à Napoléon Boucher et Paul Lafrenière de ne pas communiquer d’autres informations que celles qui étaient communiquées par le Contrôleur à toutes les parties concernées. À ce moment, Napoléon Boucher et Paul Lafrenière ont assuré au Contrôleur que seuls les documents dans le dataroom étaient communiqués.

IV. THE APPROVAL OF THE AUTHORIZED TRANSACTION UNDER FALSE PRETENCES

52. On October 24, 2023, the Monitor filed the RVO Application.

53. On October 25, 2023, the Monitor filed a report in support of the RVO Application (the “**RVO Report**”).

54. As appears from the RVO Application and the RVO Report, the existence of an agreement pursuant to which Labrosse and/or Boucher would end up acquiring an equity interest in EBSU and ERC was not disclosed to the Court or the Debtors' stakeholders.
55. To the contrary, in the RVO Application and the RVO Report, the proposed transaction was clearly portrayed as a transaction with an independent third party, without any involvement of the Debtors' shareholders or directors. Specifically, the RVO Application allege that:
- (i) *"The Transaction results from **arms' length negotiations** led by the Monitor in the context of the sale and investment solicitation process (the "SISP")"* (par. 2);
 - (ii) *"As part of Phase 2, five (5) Qualified Bids were submitted. These bids were analyzed by the Monitor and the Debtors and were also submitted to the Consultation Parties"* (par. 24);
 - (iii) *"A reorganization of each of the Debtors (the "Pre-closing Reorganization") is to take place in accordance with the Agreement and will result in (i) **Melnik owning all of the equity interest of EBSU**, (ii) **Melnik Trust owning all of the equity interest of Woodlore** and (iii) **Tayco owning all of the equity interest of ERC**, and the Debtors will emerge from the CCAA proceedings (the EBSU Group after having emerged, being the "Reorganized EBSU Group")"* (par. 29);
 - (iv) *"Pursuant to the Transaction and the Reorganization, holders of the Debtors' Existing Shares will be redeemed for no consideration as part of the Reorganization and will not receive any payments for, or distribution on, their shares in connection with the CCAA proceedings"* (par. 37);
 - (v) *"The SISP conducted by the Monitor, in collaboration with the Debtors, was reasonable and appropriate in the circumstances";* (par. 38 (a));
56. In the context of the RVO Application, Melnik submitted an affidavit in order to, among other things, justify the need to resort to a reverse vesting transaction, a copy of which is communicated herein as **Exhibit R-13**.
57. In his affidavit Mr. Melnik solemnly affirms that the facts alleged at paragraphs 23 to 41 of the RVO Application are true to the best of his knowledge.
58. Further, Mr. Melnik's affidavit clearly implies that he intends to operate ERC and EBSU. By way of example, the affidavit contains the following statements:
- (i) *"In support of my request to proceed by way of RVO, it is essential to understand the practical elements of these businesses to be managed to complete the transaction proposed to the Court and to ensure the*

uninterrupted continuation of the businesses of the Companies after that closing” (par. 11);

- (ii) *“Despite the cooperation of the Monitor, I have had limited time to complete due diligence in respect of the businesses of the Companies. In that time, I have identified some, but not all, of the component parts that must be assembled for the successful continuation of the businesses and, given the limited time between acceptance and closing of the proposed transaction, it is not reasonable or practical, given the number of matters which must be brought into compliance, to require that new applications be submitted, licenses be obtained or consents secured before closing to ensure the uninterrupted continuation of the businesses in compliance with the laws and other requirements applicable to the businesses”* (par. 14);
- (iii) *“If the Court were to require an AVO instead of an RVO, it would result in a greatly extended start up time for each of the businesses, likely extending into months, during which time I would be submitting (sic) applications, applying for licences and seeking consents to ensure that the businesses were operating in compliance with applicable law. As a result, it is likely that one or more of the individual businesses will fail to restart and retain its employees”* (par. 17);

59. These statements are clearly misleading, at best, because as will be demonstrated below, Melnik had no intention whatsoever to operate these businesses personally. Further, the reference to the limited time to complete due diligence is also disingenuous because Mr. Melnik knew full well that both ERC and EBSU would be “flipped” to Labrosse and/or Boucher immediately after closing of the proposed transaction, both of whom have an intimate knowledge ERC’s and EBSU’s businesses.

60. Needless to say, the existence of an agreement pursuant to which the Melnik Group would “flip” EBSU and ERC to Labrosse and/or Boucher was not disclosed orally to this Court during the hearing on the RVO Application.

61. On October 27, 2023, the Court issued the RVO, as appears from the Court record.

62. The Monitor’s certificate confirming the closing of the Authorized Transaction was issued on November 14, 2023, as appears from the Court record.

V. THE DISCOVERY OF THE REAL NATURE OF THE TRANSACTION

63. On November 3, 2023, HSBC was informed by the Monitor and its counsel that EBSU had paid an amount of \$50,000 to Maynbridge Capital Inc. (“**Maynbridge**”) on October 30, 2023 (i.e. one business day following the issuance of the RVO) (the “**Maynbridge Payment**”). This payment was made by electronic transfer

from EBSU's bank account at HSBC, using the proceeds of the interim financing provided by HSBC.

64. On November 7, 2023, HSBC learnt from the Monitor's counsel that EBSU made another payment of \$40,000 to another private lender, Pathward, on October 27, 2023 (i.e. the day of the issuance of the RVO) (the "Pathward Payment", and together with the Maynbridge Payment, the "Payments").
65. The Monitor further informed HSBC that neither of the Payments had been authorized by the Monitor. In fact, on November 8, 2023, the Monitor's counsel sent letters to Maynbridge and Pathward requiring them to reimburse the amounts received from EBSU, as appears from a copy of such letter communicated herein as **Exhibits R-14 and R-15**.
66. The Monitor and its counsel informed HSBC that, according to the Debtors, the Payments to Maynbridge and Pathward were made in order to secure a financing in support of a purported plan of arrangement to be filed by the Debtors.
67. As will be explained below, this explanation was completely false. The Payments were rather made in order to secure the financing required in connection with the "flip" of EBSU and ERC to Labrosse and Boucher.
68. On December 6, 2023, however, HSBC noticed the following:
 - (i) effective as at November 14, 2023 (the day of the closing of the Authorized Transaction), Labrosse is registered as the sole director of EBSU and ERC at the *Registraire des entreprises*, as appears from an extract of the *Registraire des entreprises* pertaining to EBSU and ERC, communicated herewith as **Exhibits R-16 and R-17**, respectively;
 - (ii) the sole shareholder of EBSU and ERC is 9501-8222 Québec Inc. ("**LabrosseCo**"), a corporation formed on October 23, 2023, with Denis Labrosse registered as the sole shareholder and director, as appears from an extract of the *Registraire des entreprises* pertaining to LabrosseCo, communicated herewith as **Exhibit R-18**. LabrosseCo was initially incorporated under the Québec *Business Corporations Act* but was subsequently continued under the *Canada Business Corporations Act*, under the name 15569621 Canada Inc. as appears from a *Certificat de changement de regime* communicated herein as **Exhibit R-19**; and
 - (iii) security in favour of William Melnik, Woodlore and Tayco Office Furnishings Inc. had been registered against the assets of EBSU (on November 28, 2023) and ERC (on November 20, 2023), as appears from a copy of an extract of the RPMRR and the British Columbia personal property registry, communicated herewith, *en liasse*, as **Exhibit R-20**.
69. On December 7, 2023, HSBC sent letters to counsel to the Melnik Group, the Monitor and McCarthy Tétrault, as former counsel to EBSU, ERC and Woodlore,

asking for a copy of all closing agenda(s) and all closing documents for all transactions directly or indirectly related to EBSU, ERC and Woodlore and the minute books of EBSU, ERC and Woodlore, as appears from a copy of such letters communicated herewith, *en liasse*, as **Exhibit R-21**.

70. On December 10, 2023, counsel to the Monitor responded to HSBC's letter of December 7, 2023, confirming that the Monitor was only involved in the transaction approved by the RVO and sent a copy of the closing agenda and the closing documents related to such transaction. A copy of this response is communicated herewith as **Exhibit R-22**.
71. The closing documents provided by counsel to the Monitor did not provide for the subscription by LabrosseCo of shares of EBSU and ERC, nor for the appointment of Denis Labrosse as director of EBSU and ERC.
72. Given the foregoing, it was clear that a subsequent transaction had taken place immediately after the closing of the transaction contemplated by the Investment Agreement.
73. On December 11, 2023, counsel to the Melnik Group responded to HSBC's letter of December 7, 2023, admitting that a subsequent transaction involving Denis Labrosse had taken place, but refused to provide any documents in respect of such subsequent transaction, as appears from a copy of such letter communicated herewith as **Exhibit R-23**. In that letter, it is alleged that:

“Mr. Melnik was clear in advising Mr. Rosenthal that there had been a number of inquiries from third parties in respect of the acquisition to be completed by the Investors, and that the interest included inquiries from Denis Labrosse and Jean Gladeau. (sic)”
74. On December 12, 2023, counsel to HSBC replied to the December 11, 2023 letter, specifying that, during the call of October 12, 2023, it had been expressly indicated to the Information Agent that there was no deal between the Melnik Group and Denis Labrosse, Jean Gladu or Napoléon Boucher and therefore it was completely inaccurate to state that full disclosure was made of the interest of Denis Labrosse. HSBC also voiced its concerns about the integrity of the SISP process, as appears from a copy of such letter communicated herewith as **Exhibit R-24**.
75. On December 11, 2023, the Bank filed an *Application for a Condemnation Against Napoléon Boucher and Denis Labrosse in Relation to Unlawful Payments*, the whole in relation to, *inter alia*, the Payments.
76. On December 12, 2023, HSBC filed an *Application to Compel the Communication of Documents*, which was presented on December 13, 2023, as appear from the Court record.

77. During the hearing held on December 13, 2023, two term sheets were produced as exhibits:

- (i) a term sheet dated November 1, 2023 issued by Maybridge and accepted by LabrosseCo and/or 1000688382 Ontario Inc. (a corporation incorporated under the laws of Ontario with Denis Labrosse as sole director) (the “**Maynbridge Term Sheet**”), a copy of which is communicated herein as **Exhibit R-25**; and
- (ii) a term sheet dated October 20, 2023 issued by Pathward and accepted by Denis Labrosse, on behalf of “Acquire Company (legal name TBD) of the assets of, Euro-Rite Cabinets Ltd. and Ebenisterie St-Urbain Ltee” (the “**Pathward Term Sheet**”), a copy of which is communicated herein as **Exhibit R-26**.

78. Contrary to the representations made by the Debtors to the Monitor, the Maynbridge Term Sheet and the Pathward Term Sheet do not contemplate a plan of arrangement to be filed by the Debtors. Rather, they clearly contemplate an acquisition of EBSU and ERC (or their assets) by an entity owned by Denis Labrosse. The Pathward Term Sheet is particularly clear in this regard:

“Purpose of Loan: To provide working capital and together with Machinery and Equipment term loan of at least \$2,300,000 to provide for the acquisition proceeds for the assets of Euro-Rite Cabinets Ltd. and Ebenisterie St-Urbain Ltee.” (p. 1 of the Pathward Term Sheet)

79. The Maynbridge Term Sheet and the Pathward Term Sheet also clearly show that Napoléon Boucher would have a significant equity interest in the entity that would own EBSU and ERC (or their assets):

“Conditions Precedent to Closing:

Fully executed copy of the Investment Agreement, dated October 24, 2023, and entered into by EBSU, Woodlore International Inc., ERC, William M. Melnik, the Melnik Family Trust 2043 and Tayco Office Furnishings Inc.;

Fully executed copy of the binding Offer to Purchase, dated October 26, 2023 and entered into by Denis Labrosse, William M. Melnik, the Melnik Family Trust 2043 and Tayco Office Furnishings Inc.;

Fully executed copy of the share purchase agreement to be executed between Napoléon Boucher and Denis Labrosse;

An organization chart, satisfactory to the Lender, demonstrating that the Purchasing Entity is owned 80% by Napoléon Boucher and 20% owned by Denis Labrosse;” (p. 3 of the Maynbridge Term Sheet) (Our emphasis)

80. Tellingly, the Maynbridge Term Sheet also provides that both Labrosse and Boucher would be required to personally guarantee the indebtedness to Maynbridge. However, a hand-written note on the Maynbridge Term Sheet states that “Denis Labrosse will be released when Napoléon Boucher exercises *his option*” (our emphasis).
81. It is important to remember that, on August 28, 2023, Fiera Private Debt Fund VI LP (“**Fiera**”) had filed a petition in bankruptcy against Boucher, a copy of which is communicated herein as **Exhibit R-27**. At the time when the Maynbridge Term Sheet was issued, this petition was pending. This seems to explain why the Maynbridge Term Sheet contemplates the eventual exercise of an option by Boucher.
82. Following the hearing of December 13, 2023, this Court issued an order compelling the Melnik Group, EBSU, ERC, LabrosseCo, Boucher and Labrosse to communicate the following documents to the Monitor, as appears from the Court record:
- (i) All closing agenda(s) and all closing documents for all transactions involving EBSU, ERC and Woodlore;
 - (ii) The minute books of EBSU, ERC and Woodlore; and
 - (iii) Any and all agreement among Labrosse, 9501-8222 Québec Inc., Boucher, Melnik, the Melnik Family Trust 2043 and Tayco Office Furnishings Inc. regarding ERC, EBSU and Woodlore;
83. On December 14, 2023, HSBC’s counsel sent a letter to representatives of Pathward and Maynbridge to request communication of documents related to the Pathward Term Sheet and the Maynbridge Term Sheet, a copy of which is communicated herein, as **Exhibits R-28** and **Exhibit R-29**.
84. On December 15, 2023, the Monitor sent a letter and a ShareFile link to the counsel for the Debtors’ secured creditors, a copy of which is communicated herein as **Exhibit R-30**. The ShareFile link contained a number of closing documents relating to a share purchase transaction among Melnik and Tayco.
85. The closing documents communicated on December 15, 2023 included a share purchase agreement entered into as of November 14, 2023 pursuant to which LabrosseCo acquires all of the issued and outstanding shares of EBSU and ERC, a copy of which is communicated herein, *under seal*, as **Exhibit R-31**. The share purchase agreement (the “**SPA**”) explicitly describe the parties’ intention as follows:

WHEREAS *immediately upon the closing of the Primary Transaction, the Parties wish to implement the Transactions (as defined herein) contemplated under this Agreement pursuant to which the Purchaser will*

purchase all of the Purchased Shares, the whole upon and subject to the terms and conditions of this Agreement. (Our emphasis)

86. Under the SPA, the Purchase Price (as such term is defined in the SPA) is entirely payable by the issuance of promissory notes to Melnik and Tayco, which are secured by a general security agreement against the assets of ERC and by a movable hypothec over the assets of LabrosseCo and EBSU, a copy of which is communicated herein, *under seal*, as **Exhibits R-32, R-33** and **R-34**.
87. The performance of LabrosseCo's obligations under, among others, the promissory notes are secured by a guarantee granted by EBSU, ERC as well as LabrosseCo and a personal guarantee granted by Boucher, as appears from guarantee agreements communicated herein, *under seal*, as **Exhibit R-35** and **R-36**.
88. Certain key documents appeared to be missing from the closing documents received from the Monitor on December 15, 2023. For example, as mentioned above, the Maynbridge Term Sheet refers to a "*binding Offer to Purchase, dated October 26, 2023 and entered into by Denis Labrosse, William M. Melnik, the Melnik Family Trust 2043 and Tayco Office Furnishings Inc.*" No such document was included in the package received from the Monitor.
89. Therefore, on December 19, 2023, HSBC sent a letter to McCarthy Tétrault, Stephen Walters (representing the Melnik Group), Neil Peden (who represents Boucher) seeking essentially a copy of all agreements referred to in the Maynbridge Term Sheet and in the Pathward Term Sheet, as appears from a copy of such letter communicated herein as **Exhibit R-37**. HSBC also sought a copy of any agreement pursuant to which Boucher would have an option to acquire an equity interest in LabrosseCo and/or either of EBSU or ERC.
90. On December 19, 2023, Stephen Walters responded to HSBC's letter, as appears from a copy of such response communicated herein as **Exhibit R-38**. Mr. Walters stated that "*[n]o term sheet, letter of intent, memorandum of understanding or other prior document was exchanged between any of the Investors [i.e. the Melnik Group] and/or 9501-8222 Québec (now known as 15569621 Canada Inc.), EBSU or ERC in relation to the Share Purchase Agreement. There is only the Share Purchase Agreement, as provided.*"
91. However, on December 20, 2023, McCarthy Tétrault responded to HSBC's letter, as appears from a copy of such response communicated herein a **Exhibit R-39**. As concerns the "binding offer to purchase" referred to in the Maynbridge Term Sheet, McCarthy Tétrault stated that:

"Un document intitulé Binding Offer a été signé par Denis Labrosse le 26 octobre 2023, et transmis à MM. Melnik et Walters pour leur revue et signature par M. Melnik. Or, également le 26 octobre 2023, M. Melnik a répondu qu'il avait des commentaires sur le document et ne l'a ni approuvé

ni signé. Suite à cette date, plusieurs versions du Binding Offer ont été échangées entre les parties, notamment le 31 octobre, les 1er, 2 et 3 novembre 2023, et les discussions se sont poursuivies. Toutefois, le document en question n'a jamais été finalisé ni signé et, le ou vers le 8 novembre 2023, les parties ont plutôt convenu de procéder directement avec la négociation d'une convention d'achat d'actions. Cette convention d'achat d'actions a finalement été conclue et signée par les parties les 20 et 23 novembre 2023, bien qu'elle porte la date du 14 novembre 2023."

92. Also on December 20, 2023, Neil Peden responded to HSBC's letter, as appears from a copy of such response communicated herein as **Exhibit R-40**. As concerns HSBC's request to obtain a copy any agreement pursuant to which Boucher would have an option to acquire an equity interest in LabrosseCo, EBSU or ERC, Neil Peden stated that "[n]either Mr. Boucher nor any related person or entity has any such option or is a party to any such agreement".
93. On January 10, 2024, HSBC filed an *Application Seeking to Compel the Communication of Documents and to Conduct Examinations* in relation to the Undisclosed Transaction, as appears from the Court record.
94. On January 10, 2024, HSBC filed an application seeking the partial revocation of the RVO such that EBSU and ERC would remain liable for the indebtedness that they had towards HSBC prior to the closing of the Authorized Transaction and that the previous shareholders of the Debtors, Labrosse and Boucher, would be personally liable for the pre-RVO indebtedness of ERC and EBSU towards HSBC ("**HSBC's Application for the Partial Revocation of the RVO**"), as appears from the Court record.
95. On January 11, 2024, Fiera filed an application seeking an order condemning Napoléon Boucher, Denis Labrosse, 155 Canada Inc., EBSU, ERC, Melnik, Melnik Trust and Tayco, to pay the sum of \$175,000 to Fiera ("**Fiera's Application to Recover Damages**"), as appears from the Court record.
96. On January 15, 2024, a hearing was held before this Court. The Court granted HSBC's *Application Seeking to Compel the Communication of Documents and to Conduct Examinations* and rendered the following order:

[1] ORDERS *Napoléon Boucher, Denis Labrosse, Paul Lafrenière, 9501-8222 Québec Inc. (now known as 15569621 Canada Inc.), 1000688382 Ontario Inc., William M. Melnik, The Melnik Family Trust 2043 ant Tayco Office Furnishings Inc. to provide to HSBC Bank Canada ("**HSBC**")*, within ten (10) days from this Order, a copy of:

*(i) any agreement pursuant to which Napoléon Boucher (or any related person or entity) would have an option to acquire an equity interest in 9501-8222 Québec Inc. (now known as 15569621 Canada Inc.) and/or either of Ébénisterie St-Urbain Ltée ("**EBSU**") or Euro-Rite Cabinets Inc.*

("ERC") and any correspondence between Denis Labrosse and Napoléon Boucher in relation thereto;

(ii) any term sheet, letter of intent, or any drafts or prior documents exchanged between Napoléon Boucher or Denis Labrosse or 9501-8222 Québec Inc. or 1000688382 Ontario Inc. and William M. Melnik, the Melnik Family Trust 2043 and Tayco Office Furnishings Inc. in relation to the Share Purchase Agreement, including but not limited to the document entitled "Binding Offer" signed by Denis Labrosse on October 26, 2023, and its subsequent draft versions exchanged notably on October 31, November 1, 2 and 3, 2023 and any correspondence between Denis Labrosse, Napoléon Boucher and William M. Melnik in relation thereto.

(iii) any agreement or draft agreement between EBSU and/or ERC and any commercial lenders as referred to in clause 3.3 d) of the share purchase agreement entered into as of November 14, 2023.

(iv) any draft share purchase agreement to be executed between Napoléon Boucher and Denis Labrosse as mentioned in the term sheet issued by Maynbridge Capital Inc. ("Maynbridge") and any correspondence between Napoléon Boucher and Denis Labrosse in relation thereto; and

(v) any agreement of draft agreement pursuant to which Napoléon Boucher will have an option to exercise as mentioned in the term sheet issued by Pathward, National Association ("Pathward");

(vi) the plan of arrangement communicated to Business Development Bank of Canada, Investissement Québec and Fiera Private Debt Fund VI LP in August 2023 and all correspondence and documents in connection therewith.

(vii) any agreements entered with RONA Inc. ("RONA") regarding cure costs and any correspondence between the Debtors and RONA in relation thereto.

[2] ORDERS that the documents communicated pursuant to this order be communicated to Me Denis Ferland at his office who has undertaken to share the communicated documents with the order secured creditors and with the monitor.

[3] ORDERS Napoléon Boucher, Denis Labrosse, Paul Lafrenière and William M. Melnik to submit to an examination in relation to all aspects of the CCAA procedures, the sales process, the negotiations and draft agreements, including notably the payments made to Maynbridge and Pathward as well as the subsequent transaction that occurred with respects to EBSU and ERC.

97. On January 25, 2024, at 9:10 p.m., counsel for the Melnik Group sent to HSBC's counsel a link to a platform containing, among other things, draft documents and correspondence related the Undisclosed Transaction, as well as to the agreements entered with RONA regarding cure costs (the "**Melnik Documents**").
98. On January 25, 2024, at 11:29 p.m., counsel for Mr. Napoléon Boucher and Mr. Denis Labrosse sent to HSBC's counsel an email containing zip files comprising of, among other things, draft documents and correspondence related to the Undisclosed Transaction, as well as to the agreements entered with RONA regarding cure costs (the "**Boucher/Labrosse Documents**"). A letter was accompanying the communication of the documents, a copy of which is communicated herein as **Exhibit R-41**.
99. On January 24, 2024, HSBC filed an *Application for the Cancellation of the Subsequent Transaction and Other Reliefs*, which reflected a partial settlement of HSBC's Application for the Partial Revocation of the RVO and some related disputes and outstanding issues surrounding the Undisclosed Transaction.
100. On January 26, 2024, a hearing was held before this Court. The Court granted *HSBC's Application for the Cancellation of the Subsequent Transaction and Other Reliefs* and issued a Cancellation Order approving the Partial Settlement Term Sheet with reasons to be issued at a later date.
101. Specifically, the email exchanges received as part of the Melnik Documents and the Boucher/Labrosse Documents show that communications regarding the Undisclosed Transaction began at least as early as September 27, 2023. Indeed, as per an email dated September 27, 2023, counsel for the Debtors confirms to counsel for the Melnik Group that they were "working towards a transaction that would ensure the continuity of the businesses", as appears from a copy of such email communicated herein as **Exhibit R-42**.
102. It was also in September 2023 that the HSBC learned that the Debtors were conducting alternative financing efforts in parallel with the SISF, the whole with the implication of Paul Lafrenière. On that matter, the Monitor specifically mentioned "direct discussions with DNA Capital, Maynbridge and Accord Financial, with a view to exploring potential opportunities that could lead to potential transactions being implemented outside the confines of the SISF" (Exhibit R-6).
103. On February 6, 2024, counsel for HSBC sent a letter to counsels for the Melnik Group, counsel for Messrs. Napoléon Boucher and Denis Labrosse, and Mr. Denis Labrosse as director of EBSU, ERC, LabrosseCo and 1000688382 Ontario Inc. asking for some documents that were missing from the Melnik Documents and the Boucher/Labrosse Documents pursuant to the January 15, 2024 Court order. A copy of the letter is communicated herein as **Exhibit R-43**.

104. On February 8, 2024, at 5:40 p.m., William M. Melnik sent to HSBC's counsel a link to a platform containing some of the missing draft agreements of the closing documents in relation to the Undisclosed Transaction.
105. On February 14, 2023, at 8:23 a.m. HSBC's counsel received a letter from Boucher and Labrosse's counsel and a zip file containing some of the additional documents requested in relation to the Undisclosed Transaction. A copy of the letter is communicated herein as **Exhibit R-44**.
106. In the February 14, 2023 letter, counsel for Boucher and Labrosse writes that, for most of the requested documents, "No responsive elements have been found", although the same requested documents had already been found and communicated on February 8, 2024 by Mr. Melnik.

VI. BOUCHER AND LABROSSE MUST BE HELD PERSONALLY LIABLE FOR THE PRE-MONITOR'S CERTIFICATE INDEBTEDNESS OF EBSU AND ERC TOWARDS HSBC

107. In light of the above, HSBC respectfully submits that Boucher and Labrosse should be held personally responsible for EBSU and ERC's pre-Monitor's Certificate indebtedness towards HSBC.
108. In the days following closing of the Authorized Transaction, another transaction took place pursuant to which EBSU and ERC were "flipped" to LabrosseCo.
109. The email exchanges received as part of the Melnik Documents and the Boucher/Labrosse Documents show that communications regarding the Undisclosed Transaction began at least as early as September 27, 2023. Indeed, as per an email dated September 27, 2023, counsel for the Debtors confirms to counsel for the Melnik Group that they were "working towards a transaction that would ensure the continuity of the businesses" (Exhibit R-42).
110. At the time of the issuance of the RVO, Napoléon Boucher and Denis Labrosse had already secured a portion of the financing (Pathward, since the Pathward Term Sheet was issued on October 20, 2023) required to purchase the shares of EBSU and ERC from the Melnik Group and had even made a payment of \$40,000 to Pathward in order to secure such financing.
111. It is also clear that an agreement in principle had been reached between the Melnik Group and Boucher and Labrosse regarding the purchase and sale of the shares of EBSU and ERC at the time of the issuance of the RVO. Indeed, a draft version of the Binding Offer dated October 19, 2023 includes the following comment from Mtre Stephen Walters:

"LP, we have reviewed your changes to Section 7 "Costs", and your changes don't reflect the essence of what Bill is looking for.

Bill will be incurring expenses to acquire assets in which he has no interest. Those assets will be transferred to your client. To the extent that Bill incurs expenses to acquire assets for the benefit of your client, he should be reimbursed.

I encourage you, on behalf of your client, to take as active a role as possible, whether directly or indirectly (visibility to be determined on an issue by issue basis), to do as much work as possible on behalf of your client to ensure that your client, through the Primary Transaction and the Acquisition, acquires all that they require.

You have the expertise in this area, and as a large firm, you have greater resources. Please engage to do as much of the work required as possible for your client, and to assist Bill in doing as much of the work that Bill is required to do on behalf of your client, through the Primary Transaction and to completion of the Acquisition.

To the extent, however, that Bill incurs expenses attributable to the acquisition and transfer of EBSU and ERC to your client, Bill should be reimbursed.” (Our underlining and emphasis)

A copy of the October 19, 2023, draft Binding Offer is communicated herein as Exhibit R-45.

112. If the agreement in principle between the Melnik Group, Boucher and Labrosse had been disclosed to this Court at the time of the approval of the RVO, these questions would have been raised and addressed before this Court. Crucially, the Court would have been able assess the impact of this situation on the integrity of the SISF.
113. Had it known of the agreement in principle between the Melnik Group and Boucher and Labrosse, HSBC would not have consented to the Authorized Transaction.
114. EBSU and ERC’s pre-Monitor’s Certificate indebtedness amounted to \$19 076 000,66 as of November 14, 2023, to be perfected.
115. The existence of an agreement in principle between the Melnik Group, Napoléon Boucher and Denis Labrosse should clearly have been disclosed to the Court, the Monitor and the secured creditors before the issuance of the RVO.
116. The failure to disclose this agreement in principle was not a simple inadvertence on the part of Boucher and Labrosse (and others). To the contrary, Boucher and Labrosse (and others) did everything in their control to conceal the existence of discussions with the Melnik Group from this Court, the Monitor and the secured creditors. This behaviour included misleading the Monitor on the real purpose of the Payments made to Maynbridge and Pathward and refusing to communicate

the closing documents of the second transaction until they were ordered to do so by this Court.

117. Indeed, they acted in a clear conflict of interest, by being both the directors and/or officers of the Debtors sold through the Authorized Transaction and the ultimate purchasers of the EBSU and ERC through the undisclosed subsequent transaction. The Debtors' counsel admission that a document entitled "binding offer to purchase" signed by Labrosse had been sent to Melnik on October 26, 2023, the day before the hearing on the approval of the Authorized Transaction, clearly demonstrates that an agreement in principle had been reached at the time of the issuance of the RVO, which further substantiates that Boucher and Labrosse (and others) acted deceitfully and dishonestly before the Court. Mtre Stephen Walters' comment on the October 19, 2023 Binding Offer draft further substantiates that even if the exact terms of the undisclosed subsequent transaction were not set in stone, the intent was clearly to "flip" EBSU and ERC back to Boucher and Labrosse.
118. Labrosse and Boucher's egregious conduct blatantly breaches the duty of good faith codified at s. 18.6 of the CCAA. Boucher and Labrosse cannot be allowed to take advantage of their bad faith and their deceitfulness with respect to the Court, the Monitor and the secured creditors. Such a conduct must be sanctioned by this Court.

VII. SEALING OF CONFIDENTIAL DOCUMENTS

119. Certain exhibits filed in support of this Application contain commercially sensitive information related to the affairs of the Debtors and/or HSBC.
120. It is respectfully submitted that the confidentiality of such information should be preserved and that it should be ordered that Exhibits R-3, R-4, R-10, R-11 and R-31 to R-36 of the Application be kept confidential and filed under seal until further order of this Court.
121. It is in the best interest of the Debtors that such exhibits be kept confidential and under seal. The disclosure of same would cause undue prejudice to the Debtors and/or HSBC.
122. The HSBC also wishes to underline the fact that it has obtained Exhibits R-31 to R-36, R-42 and R-45 following the orders rendered by this Court on December 13, 2023, January 15, 2024, and February 14, 2024.
123. The present Application is well founded in fact and law.

THEREFORE MAY PLEASE THIS HONOURABLE COURT TO:

- [1] GRANT** the present application;

- [2] **DECLARE** that Napoléon Boucher and Denis Labrosse are jointly and severally liable of EBSU and ERC's pre-Monitor's Certificate indebtedness towards HSBC and, as a result, **CONDEMN** Napoléon Boucher and Denis Labrosse to pay an amount of \$19 076 000,66, to be perfected, to HSBC Bank Canada;
- [2] **RESERVE** the rights of HSBC Bank Canada as against any other party;
- [4] **ISSUE** any other order that this Court considers appropriate in the circumstances;

THE WHOLE, with costs.

Montréal, March 19, 2024

Davies Ward Phillips & Vineberg LLP

Davies Ward Phillips & Vineberg LLP
Attorneys for the Applicant HSBC Bank
Canada

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-062362-237

S U P E R I O R C O U R T
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT OF:
ÉBÉNISTERIE ST-URBAIN LTÉE**

-and-

WOODLORE INTERNATIONAL INC.

-and-

EURO-RITE CABINETS LTD.

Debtors

-and-

RAYMOND CHABOT INC.

Monitor

-and-

HSBC BANK CANADA

Applicant/Secured Creditor

-and-

NAPOLÉON BOUCHER

-and-

DENIS LABROSSE

-and-

**15569621 CANADA INC. (formerly 9501-8222
Québec Inc.)**

Respondents

AFFIDAVIT OF JOHN BORCH

I, the undersigned, John Borch, exercising my occupation at 16 York Street, suite 600 in the City of Toronto, province of Ontario, solemnly declare as follows:

1. I am an Assistant Vice President for the Applicant, HSBC Bank Canada;

2. All the facts alleged in the present *HSBC Bank Canada's Amended Application for the Condemnation of Napoléon Boucher and Denis Labrosse* are true to the best of my knowledge, with the exception of paragraphs 35, 44 and 48.

AND I HAVE SIGNED:



John Borch

SOLEMNLY AFFIRMED before me in the city of Ste-Anne-de-Bellevue, province of Québec, this 19th day of March 2024 by John Borch, whose oath was taken in the city of Markham, province of Ontario, and received in the city of Ste-Anne-de-Bellevue, province of Québec, the whole by technology means and in accordance with the memorandum of the Québec Ministry of Justice dated March 20, 2020



Commissioner for Oaths for Québec and for outside Québec



CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-062362-237

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HSBC BANK CANADA

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-and-

NAPOLÉON BOUCHER

-and-

DENIS LABROSSE

-and-

**15569621 CANADA INC. (formerly 9501-8222
Québec Inc.)**

Respondents

AFFIDAVIT OF MARTIN ROSENTHAL

I, the undersigned, Martin Rosenthal, exercising my occupation at 900 boul. Maisonneuve Ouest, suite 2300 in the City of Montréal, solemnly declare as follows:

1. I am a Managing Partner for Ernst & Young Inc.;
2. I am the Information Agent appointed by the Court in the current proceedings;

3. I have been provided with the present application entitled *HSBC Bank Canada's Amended Application for the Condemnation of Napoléon Boucher and Denis Labrosse*;
4. All the facts alleged in paragraphs 35, 44 and 48 of the *HSBC Bank Canada's Amended Application for the Condemnation of Napoléon Boucher and Denis Labrosse* are true to the best of my knowledge. Indeed:

(par. 35) During a conference call with the Monitor held on September 1, 2023, Martin Rosenthal of Ernst & Young Inc. (the "**Information Agent**") learned that the Debtors had engaged Paul Lafrenière, CPA, CIRP to provide support in the accounting department. His role was subsequently expanded to assist Boucher and the other shareholders of the Debtors to secure alternate financing. The Monitor had not been informed of the parties with whom Mr. Lafrenière and Boucher were in discussions with, notwithstanding their request to be provided with this information and to have those discussions take place within the parameters of the SISP.

(par. 44) On October 12, 2023, a call took place between the Melnik Group and its counsel, the Monitor and Martin Rosenthal of EY, the Information Agent. During this call, Melnik was specifically asked by Martin Rosenthal whether Boucher or Labrosse would have any involvement with the Debtors following the closing of the proposed transaction. It was explained to Melnik that this was a specific concern of all of the secured creditors and they wanted assurances that any potential transaction with Melnik would be with a party unrelated to the current shareholders. It was explicitly communicated to Mr. Rosenthal that there was no deal whatsoever between the Melnik Group and any of the shareholders. There was absolutely no mention of ongoing discussions pursuant to which Labrosse or Napoléon Boucher would acquire an equity interest in any of the Debtors following the closing of the transaction contemplated in the Melnik Offer. Melnik was also very clear and direct in his response – no such agreement was in place, had been discussed or was presently contemplated. Melnik was very conclusive that there had been no communications with Labrosse or Napoléon Boucher regarding the possibility of a transaction.

(par. 48) The discussions referred to were in in the context of performing due diligence and in ensuring a smooth transition. Indeed, it was mentioned that the previous shareholders could be called to provide services to the Debtors as employees or consultants in order to facilitate the transition of the businesses.

AND I HAVE SIGNED:

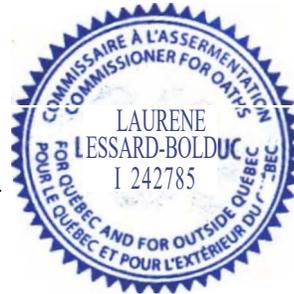
Martin Rosenthal

Martin Rosenthal

SOLEMNLY AFFIRMED before me in the city of Ste-Anne-de-Bellevue, this 19th day of March 2024 by Martin Rosenthal, whose oath was taken in the city of Montréal, and received in the city of Ste-Anne-de-Bellevue, the whole by technology means and in accordance with the memorandum of the Québec Ministry of Justice dated March 20, 2020

Laurene Lessard-Bolduc

Commissioner for Oaths for Québec and for outside Québec



CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-062362-237

S U P E R I O R C O U R T
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT OF:**

ÉBÉNISTERIE ST-URBAIN LTÉE

-and-

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HSBC BANK CANADA

Applicant/Secured Creditor

-and-

NAPOLÉON BOUCHER

-and-

DENIS LABROSSE

-and-

**15569621 CANADA INC. (formerly 9501-8222
Québec Inc.)**

Respondents

AMENDED LIST OF EXHIBITS

- Exhibit R-1** Copy of the Order Approving a Sale and Investment Solicitation Process dated June 16, 2023
- Exhibit R-2** Copy of the Reverse Vesting Order Application dated October 24, 2023
- Exhibit R-3** Copy of the summary of the Letters of Intent, *under seal*

- Exhibit R-4** Copy of the Letter of Intent submitted by 2000674 Ontario Limited, *under seal*
- Exhibit R-5** Copy of the Sixth Monitor's Report
- Exhibit R-6** Copy of the Monitor's email, dated September 1, 2023
- Exhibit R-7** Copy of the letter from HSBC to the Monitor and Napoleon Boucher, dated September 11, 2023
- Exhibit R-8** Copy of a letter from the Monitor in response to HSBC's letter, dated September 13, 2023
- Exhibit R-9** Copy of a letter sent by HSBC to the Monitor dated September 19, 2023
- Exhibit R-10** Copy of the analysis of the binding offers prepared by the Monitor, *under seal*
- Exhibit R-11** Copy of the Melnik Offer, *under seal*
- Exhibit R-12** Copy of an investment agreement executed among the Melnik Group and the Debtors, dated October 24, 2023
- Exhibit R-13** Copy of William M. Melnik's affidavit
- Exhibit R-14** Copy of the letter from the Monitor's counsel to Maynbridge, dated November 8, 2023
- Exhibit R-15** Copy of the letter from the Monitor's counsel to Pathward, dated November 8, 2023
- Exhibit R-16** Copy of an extract of the *Registraire des entreprises* pertaining to EBSU
- Exhibit R-17** Copy of an extract of the *Registraire des entreprises* pertaining to ERC
- Exhibit R-18** Copy of an extract of the *Registraire des entreprises* pertaining to 9501-8222 Québec Inc.
- Exhibit R-19** Copy of a *Certificat de changement de régime* pertaining to 9501-8222 Québec Inc.
- Exhibit R-20** Copy of an extract of the RPMRR and the British Columbia personal property registry, *en liasse*
- Exhibit R-21** Copy of letters sent by HSBC to counsel of the Melnik Group, the Monitor and McCarthy Tétrault, dated December 7, 2023, *en liasse*
- Exhibit R-22** Copy of a letter from the counsel of the Monitor in response to HSBC's letter of December 7, 2023, dated December 10, 2023

- Exhibit R-23** Copy of a letter from the counsel of the Melnik Group in response to HSBC's letter of December 7, 2023, dated December 11, 2023
- Exhibit R-24** Copy of the letter from HSBC's counsel in response to the December 11, 2023 letter, dated December 12, 2023
- Exhibit R-25** Copy of a term sheet dated November 1, 2023 issued by Maybridge
- Exhibit R-26** Copy of a term sheet dated October 20, 2023 issued by Pathward
- Exhibit R-27** Copy of a petition in bankruptcy against Napoleon Boucher from Fiera Private Debt Fund VI LP, dated August 28, 2023
- Exhibit R-28** Copy of the letter from HSBC's counsel to Pathward to request documents related to the Pathward Term Sheet, dated December 14, 2023
- Exhibit R-29** Copy of the letter from HSBC's counsel to Maynbridge to request documents related to the Maynbridge Term Sheet, dated December 14, 2023
- Exhibit R-30** Copy of the letter sent by the Monitor, dated December 15, 2023
- Exhibit R-31** Copy of the share purchase agreement entered into as of November 14, 2023, *under seal*
- Exhibit R-32** Copy of the general security agreement against the assets of ERC, *under seal*
- Exhibit R-33** Copy of the movable hypothec over the assets of 9501-8222 Québec Inc., *under seal*
- Exhibit R-34** Copy of the movable hypothec over the assets of EBSU, *under seal*
- Exhibit R-35** Copy of the guarantee granted by EBSU, ERC and 9501-8222 Québec Inc., *under seal*
- Exhibit R-36** Copy of personal guarantee granted by Napoléon Boucher, *under seal*
- Exhibit R-37** Copy of a letter from HSBC to McCarthy Tétrault, Stephen Walters and Neil Peden, dated December 19, 2023
- Exhibit R-38** Copy of a letter from Stephen Walters in response to HSBC's letter, dated December 19, 2023
- Exhibit R-39** Copy of a letter from McCarthy Tétrault in response to HSBC's letter, dated December 20, 2023
- Exhibit R-40** Copy of a letter from Neil Peden in response to HSBC's letter, dated December 20, 2023

- Exhibit R-41** Copy of the letter from Neil Peden, dated January 25, 2024
- Exhibit R-42** Copy of the email dated September 27, 2023
- Exhibit R-43** Copy of the letter from HSBC's counsel asking for the missing documents from the Melnik Documents and the Boucher/Labrosse Documents, dated February 6, 2024
- Exhibit R-44** Copy of the letter from Neil Peden, dated February 14, 2024
- Exhibit R-45** Copy of the draft Binding Offer, dated October 19, 2023

Montréal, March 19, 2024

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Applicant, HSBC Bank
Canada

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-062362-237

S U P E R I O R C O U R T
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT OF:**

ÉBÉNISTERIE ST-URBAIN LTÉE

-and-

WOODLORE INTERNATIONAL INC.

-and-

EURO-RITE CABINETS LTD.

Debtors

-and-

RAYMOND CHABOT INC.

Monitor

-and-

HSBC BANK CANADA

Applicant/Secured Creditor

-and-

NAPOLÉON BOUCHER

-and-

DENIS LABROSSE

-and-

**15569621 CANADA INC. (formerly 9501-8222
Québec Inc.)**

Respondents

NOTICE OF PRESENTATION

TAKE NOTICE that the attached *HSBC Bank Canada's Amended Application for the Condemnation of Napoléon Boucher and Denis Labrosse* will be presented for adjudication before the Honourable Karen M. Rogers of the Superior Court of Québec, sitting in the Commercial Division, in and for the judicial District of Montréal, at the Montréal Courthouse located at 1 Notre-Dame Street, in the City of Montreal, Province of Québec, on April 4, 2024 in a room and at a time to be confirmed subsequently.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, March 19, 2024

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Applicant, HSBC Bank
Canada

No. 500-11-062362-237
SUPERIOR COURT
(Commercial Division)
District of Montréal

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT OF:
ÉBÉNISTERIE ST-URBAIN LTÉE
and
WOODLORE INTERNATIONAL INC.
-and-
EURO-RITE CABINETS LTD.**

Debtors

and
RAYMOND CHABOT INC.

Monitor

and
HSBC BANK CANADA

Applicant/Secured Creditor

and
**NAPOLÉON BOUCHER
and
DENIS LABROSSE**

and
15569621 CANADA INC. (formerly 9501-8222 Québec Inc.)

Defendants

**HSBC BANK CANADA'S AMENDED
APPLICATION FOR THE CONDEMNATION
OF NAPOLÉON BOUCHER AND DENIS
LABROSSE, AFFIDAVITS OF JOHN BORCH
AND MARTIN ROSENTHAL, AMENDED LIST OF
EXHIBITS AND NOTICE OF PRESENTATION**

ORIGINAL

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