

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-062362-237

DATE: April 4, 2024

BY THE HONOURABLE KAREN M. ROGERS, J.S.C.

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.)

and

WILLIAM M. MELNIK

and
THE MELNIK FAMILY TRUST 2043
and
TAYCO OFFICE FURNISHINGS INC.
Respondents

VERBAL REASONS IN SUPPORT OF AN ORDER ISSUED ON JANUARY 26, 2024
CANCELLING THE SUBSEQUENT TRANSACTION AND OTHER RELIEFS

[1] On January 26, 2024, in the context of CCAA proceedings¹ concerning Ébénisterie St-Urbain Ltée (**EBSU**), Woodlore International inc. (**Woodlore**) and Euro-Rite Cabinets inc. (**ERC**) (collectively "**Debtors**"), the Court judicially cancelled unauthorized and covert transactions pursuant to which parties related to the Debtors² (**Related Parties**), acquired the shares of EBSU and ERC, and knowingly benefitted from a reverse vesting order (**RVO**)³ which had divested the Debtors of unwanted liabilities (**Subsequent Transactions**).

[2] Although verbal reasons were given at the hearing, the Court advised the parties that written reasons would follow.

[3] On June 16, 2023, the Court approved and ratified the Procedures Investment and Sale Solicitation Process (**SISP Procedures**) which 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]*"⁴.

[4] The SISP Procedures are detailed, binding upon all, and set out, among other elements, how and by whom bids were to be solicited, the form and conditions that must be satisfied for a bid to be considered, the bid deadline, the investment criteria that would be considered, etc. The Monitor was to carry out the SISP Procedures in consultation with the Debtors who were all responsible for contacting potential bidders, negotiating with them, etc.⁵

[5] It specifically provides that Monitor, Debtors and Information Agent must be notified if Debtors' Shareholders, Directors or Officers wanted to act as perspective

¹ Proceedings taken under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

² More particularly, Napoléon Boucher and Denis Labrosse who were the directors, officers and, directly or indirectly, controlling shareholders of the Debtors prior to their ongoing restructuring under the CCAA. Other corporations were incorporated for the purpose of the Subsequent Transactions such as 15569621 Canada Inc. and 9501-8222 Québec Inc. ("**LabrosseCo**").

³ The RVO was issued on October 27, 2023.

⁴ Recital G of the SISP Procedures.

⁵ Clauses 1.1 and following of the SISP Procedures.

bidders, in which case, they would no longer receive information regarding the conduct of the SISP.

[6] No such notice was given by the Related Parties.

[7] On October 27, 2023, the RVO was issued concurrently with the Melnik Group⁶ being judicially authorized to acquire the shares of EBSU, Woodlore and ERC according to terms and conditions approved by the Court, including divesting the Debtors of unwanted liabilities, the whole with the confirmation of the Melnik Group's intention "to ensure the uninterrupted continuation of the businesses of the **(Debtors)** ..." ⁷**(Authorized Transaction)**".⁸

[8] At that time, Subsequent Transactions were not brought to the Court's attention. In fact, it is only after the closing of the Authorized Transaction that the Court was made aware by the principal secured creditor, HSBC Bank Canada (**HSBC**), that on the same day the Authorized Transaction closed, the Subsequent Transactions followed.

[9] Discussions and negotiations between the Melnik Group and the Related Parties or their attorneys appear to have been ongoing as of September 2023,⁹ and likely began earlier, and the necessary commercial covenants agreed to prior to the RVO being issued.

[10] The Secured Creditors¹⁰ supported the RVO and the Authorized Transaction, despite the significant loss they would suffer, as they, along with the Court appointed Monitor and the Debtors, recognized that the Authorized Transaction was likely the best commercial deal they could obtain under the circumstances, and the RVO was necessary as, without it, the Melnik Group would not proceed with the Authorized Transaction.

[11] The application for the RVO and approval of the Authorized Transaction was uncontested.

[12] On November 14, 2023, the Monitor issued a certificate confirming the closing of the Authorized Transaction.¹¹

[13] Later, the Secured Creditors found out that on the same day the Authorized Transaction closed, the Melnik Group and the Related Parties entered into the Subsequent Transactions, further to which, control over EBSU and ERC, minus unwanted liabilities, was returned to the Related Parties.

⁶ Melnik Group refers collectively to: Melnik Family Trust 2043 (**Melnik Trust**), William M. Melnik (**Melnik**) Tayco Office Furnishing Inc. (**Tayco**).

⁷ Para 11, 14 and 17 of Mr. Melnik's Affidavit filed at the hearing concerning the RVO.

⁸ See Approval and Reverse Vesting Order of October 27, 2023.

⁹ Exhibits R-4 to R-8.

¹⁰ HSBC Bank Canada, Fiera Capital Corporation, Investissement Québec, Banque de développement du Canada.

¹¹ See Court Record.

[14] At first, HSBC filed an *Application for the Revocation of a Judgment* in which it sought the partial revocation of the RVO to ensure that EBSU and ERC's liability towards it survived and its security and charges remained unaffected by the RVO. In its application, it alleges, among other facts, the following:

61. 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). This payment was made by electronic transfer from EBSU's bank account at HSBC, using the proceeds of the interim financing provided by HSBC.

62. 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).

63. The Monitor further informed HSBC that neither of these 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.

64. The Monitor and its counsel informed HSBC that, according to the Debtors, these 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.

65. As will be explained below, this explanation was completely false. These payments were rather made in order to secure the financing required in connection with the "flip" of EBSU and ERC to Labrosse and Boucher.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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-24; 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-25.

74. 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)

75. 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).

76. 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).

77. 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-26. At the time when the Maybridge 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.

78. 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;

79. 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-27. The ShareFile link contained a number of closing documents relating to a share purchase transaction among Melnik and Tayco.

80. 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-28. 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.

81. 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-29, R-30 and R-31.

82. 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-32 and R-33.

83. 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.

84. 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-34. 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.

85. On December 19, 2023, Stephen Walters responded to HSBC's letter, as appears from a copy of such response communicated herein as Exhibit R-35. 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.”

86. However, on December 20, 2023, McCarthy Tétrault responded to HSBC's letter, as appears from a copy of such response communicated herein as Exhibit R-36. 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.”

87. 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-37. 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”.

[15] Following the discovery of the Subsequent Transactions, various lawsuits ensued, which remain pending. This created uncertainty as to the sustainability of the Subsequent Transactions which placed ERC and EBSU in a precarious situation, notably:

- A second Secured Creditor, Fiera Private Debt Fund VI LP (**Fiera**) filed a lawsuit against the Related Parties, the Melnik Group and the Debtors in reimbursement of extra-judicial fees and legal costs, punitive damages and further seeks a judicial declaration confirming that Napoléon Boucher and Denis Labrosse are solidarily liable with ERC towards it.
- HSBC sued Pathward and Maynbridge (institutions financing the newly organized ERC and EBSU).
- The landlord of EBSU filed a lawsuit seeking the cancellation of the publication by the Melnik Group of the Subsequent Transaction Hypothec against certain of EBSU's moveable assets.

[16] Concerned by the consequences of the perilous situation EBSU and ERC were in, the Secured Creditors and Melnik Group concerted to negotiate a commercial solution on an urgent basis in the hopes that EBSU and ERC would survive as a going concern. The Related Parties and Monitor were consulted.

[17] The Secured Creditors and the Melnik Group successfully agreed to a commercial arrangement, which included obtaining a Court order reversing the Subsequent Transactions such that all shares and interests in EBSU and ERC would revert back to the Melnik Group.

[18] Thus, on January 26, 2024, with the agreement of the Related Parties, the Monitor and all Secured Creditors, HSBC sought, on an urgent basis, a judicial order which would, among other elements, reverse the Subsequent Transactions:

- I. declare that 15569621 Canada Inc. ("**155 Canada Inc.**") is no longer a shareholder of Ébénisterie St-Urbain Ltée ("**EBSU**") and Euro-Rite Cabinets Inc. ("**ERC**") and that Melnik and Tayco are the sole shareholders of EBSU and ERC, respectively;
- II. order the Melnik Group, EBSU, ERC, Denis Labrosse, Napoléon Boucher and 155 Canada Inc. to execute and deliver any and all documents and agreements required to give effect to the foregoing within five (5) business days following the issuance of the Cancellation Order;
- III. impose certain restrictions on the ability of Melnik and Tayco to dispose of their shares in EBSU and ERC, or to cause EBSU and ERC to sell their assets;
- IV. pray act the Melnik Group's waiver of its right to the reimbursement of any amounts paid to the Monitor on account of cure costs \$222,100; and
- V. pray act of the Melnik Group's, EBSU's, ERC's and Woodlore's acknowledgement that (i) they have no further claims against the Monitor,

the Secured Creditors or the estate in relation to the Authorized Transaction; (ii) they will not object to any relief sought in connection with the reimbursement of amounts in relation to Pathward, Maynbridge, the accrued vacations and Rona, nor will they seek to benefit from any such amounts; (iii) they will not object to the projected distribution of net proceeds from the Authorized Transaction and the reimbursement of funds to the Secured Creditors and the beneficiaries of the CCAA charges by the Monitor; and (iv) they will not object to a full release and discharge of the Monitor upon completion of the foregoing distribution;

- VI. the whole in accordance with the draft *Order to Cancel the Subsequent Transaction* communicated in support hereof as **Exhibit R-1** (the "**Cancellation Order**").

[19] The evidence consisted in sworn statements, exhibits and testimonial evidence from Mr. John Borch, Assistant Vice President at HSBC, involved in the Debtors' file since April 2023, Mr. Melnik, the representative of the Melnik Group and the Court appointed Monitor.

[20] The Secured Creditors, EBSU's Landlord, the Melnik Group, Monitor and Mr. Labrosse made representations through their respective attorneys. All parties confirmed the matter was urgent. The Application was uncontested, and the evidence confirmed that the Related Parties agreed to relinquish their interest in EBSU and ERC to the Melnik Group upon Court Order.

ANALYSIS

1. UNDERLYING OBJECTIVES OF THE CCAA

[21] One of the fundamental objectives of the CCAA is to allow an insolvent debtor to attempt to reorganize under judicial supervision in the hope that it will be able to carry on business and avoid the social and economic costs of liquidating its assets.¹²

[22] In furtherance of the CCAA's purpose, Courts supervising a CCAA are afforded large judicial discretion which can take many forms. At the outset, the Court must provide conditions under which the debtor can reorganize which generally includes staying enforcement actions by creditors and preserving the debtor's *status quo* so that it may continue to operate while trying to reorganize. Courts have been called upon to be innovative and to sanction measures not explicitly authorized under the CCAA.

[23] Section 11 of the CCAA confirms the explicit discretionary authority of the Court to make any order it considers appropriate under the circumstances upon application of an interested person and subject to the restrictions of the CCAA. The applicant has the

¹² *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 R.C.S. 379, para 12 and following.

burden of satisfying the Court that circumstances exist that make the orders sought appropriate and that it has acted and is acting in good faith and with due diligence.¹³

[24] The order will be “appropriate” if it is useful in avoiding the social and economical costs associated with liquidation of the debtor.

[25] Furthermore, the CCAA imposes upon interested persons to act in good faith with respect to the proceedings, failing which upon application of an interested person “...the court may make any order that it considers appropriate in the circumstances”.¹⁴

2. APPROPRIATENESS OF THE ORDER AND DUE DILIGENCE OF HSBC (SECTION 11.02 CCAA)

[26] The Secured Creditors, the Melnik Group, counsel for Mr. Labrosse and the Monitor, all agree that it was urgent and necessary that the orders sought in HSBC’s application be issued to give EBSU and ERC a chance to avoid liquidation.

[27] The situation is unusual, the interested persons do not share all the same interests, but they nonetheless came together, made compromises, with the purpose of seeking appropriate judicial orders, on an urgent basis, to enhance EBSU and ERC’s chances for a successful reorganisation.

[28] Furthermore, HSBC acted diligently.

[29] Clearly the criteria under section 11 of the CCAA are met and the Court had the judicial authority to issue the orders it did.

3. GOOD FAITH OF THE RELATED PARTIES (SECTIONS 18.6 CCAA)

[30] The Debtors made no evidence at the hearing. As mentioned above, applications against the Related Parties relating to their involvement in the Subsequent Transactions are pending.

[31] The undisclosed back-channel negotiations between the Related Parties and the Melnik Group leading up to the Subsequent Transactions, done in tandem with their involvement in the SISF Procedures, is disturbing to the Court.

[32] Debtors, availing themselves of the protection of CCAA procedures, giving the appearance of actively participating in the SISF procedures in the best interest of all interested persons, expressing to the Court their support of the RVO, knowing that an important percentage of the Debtors’ debt owed to the Secured Creditors will be wiped off the books, while clandestinely negotiating with the potential retained bidder under the

¹³ Section 11.02 (3) CCAA.

¹⁴ Section 18.6 CCAA.

SISP procedures to buy back EBSU and ERC, free of unwanted liabilities, is also extremely disturbing to the Court.

[33] The attorney for Mr. Labrosse argued that his client's actions are justified by his desire to maintain all Debtors as going concerns. He adds that nothing prohibited his client from buying back the assets.

[34] For the Court, the problematic issue is the nondisclosure by Mr. Boucher, Mr. Labrosse, and the Melnik Group of their parallel strategy in which they used the CCAA proceedings to acquire a significant gain by the retention of the Melnik Group's bid, the issuance of the RVO and the approval of the Authorized Transaction. A second significant undisclosed fact is that the Related Parties would acquire Debtor Companies void of unwanted debt.

[35] These are significant facts which would have given pause for thought and would have likely impacted the outcome of the application for the issuance of the RVO and approval of the Authorized Transaction. Furthermore, the lack of transparency and intentional nondisclosure of these facts clearly undermines the CCAA proceedings.

[36] As stated in its brief verbal reasons given on January 26, 2024, the Court considers Mr. Boucher's, Mr. Labrosse's and the Melnik Group's concerted and intentional omission to inform the interested persons and the Court of the gain they sought to achieve through the RVO and the Authorized Transaction to be inconsistent with the obligations of good faith incumbent upon them when engaged in CCAA Proceedings. They could not assume that knowledge of the Subsequent Transactions and their interest therein would not have influenced the Court's decision or the position of all interested parties. This is even more obvious when you consider the important losses the Secured Creditors would have to accept and the equivalent gain the Related Parties would benefit from.

[37] As such, the order rendered by the Court on January 26, 2024 is also appropriate under section 18.6 CCAA.

[38] The finding that Section 18.6 CCAA applies does not infer any liability on the part of the Related Parties. That determination will be made later, when, and if, the matter is brought before the Court, and will be based on the evidence made.

[39] On a final note, given the urgency of the matter, it is reasonable that the provisional execution of the Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever be declared.

[40] For ease of reference, the Court attaches as Annex A to these written Reasons the Order rendered on January 26, 2024 granting the HSBC Bank Canada's Application for the Cancellation of the Subsequent Transaction and Other Reliefs.



KAREN M. ROGERS, J.C.S.

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Date of hearing: January 26, 2024

ANNEX A

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-11-062362-237

DATE: January 26, 2024

PRESIDING : THE HONOURABLE KAREN M. ROGERS, J.C.S.

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

ÉBÉNISTERIE ST-URBAIN LTÉE

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TAYCO OFFICE FURNISHINGS INC.

Respondents

**HSBC BANK CANADA'S APPLICATION FOR THE CANCELLATION OF THE
SUBSEQUENT TRANSACTION AND OTHER RELIEFS
(Sections 11 and 18.6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.
C-36)**

ON READING the Applicant's *Application for the Cancellation of the Subsequent Transaction* (the "**Application**") pursuant to sections 11 and 18.6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), the affidavit and the exhibits in support thereof;

SEEING the notice of the Application;

SEEING the submissions of Applicant's attorneys;

SEEING the consent or absence of contestation of the relevant parties;

SEEING the provisions of the CCAA;

SEEING that it is appropriate to render an order to cancel the subsequent transaction pursuant to which the shares of *Ébénisterie St-Urbain Ltée* ("**EBSU**") and *Euro-Rite Cabinets Inc.* ("**ERC**") were sold to 15569621 Canada Inc. ("**155 Canada Inc.**") without

disclosure to the Court (the "**Subsequent Transaction**") immediately after the Court issued a reverse vesting order (the "**RVO**") authorizing a transaction pursuant to which William M. Melnik ("**Melnik**"), Tayco Office Furnishings Inc. ("**Tayco**") and the Melnik Family Trust 2043 ("**Melnik Trust**" and, together with Melnik, Tayco, the "**Melnik Group**") were to acquire the shares of EBSU, Woodlore International Inc. ("**Woodlore**") and ERC, respectively (the "**Authorized Transaction**");

WHEREFORE THE COURT:

[1] **GRANTS** the Application;

SERVICE

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

EFFECTIVE TIME

[3] **DECLARES** that this Order and all of its provisions shall take effect as of 12:01 a.m. Montreal time, Province of Quebec, on the date of Order (the "**Effective Time**");

CANCELLATION OF THE SUBSEQUENT TRANSACTION

[4] **APPROVES** the term sheet filed as Exhibit R-2, *under seal*, which provides for a partial settlement of the claims, disputes and outstanding issues surrounding the Subsequent Transaction (the "**Term Sheet**");

[5] **ORDERS** the Melnik Group and the HSBC Bank Canada ("**HSBC**"), Business Development Bank of Canada ("**BDC**"), Investissement Québec ("**IQ**"), Fiera Private Debt Fund VI LP ("**Fiera**" and, together with HSBC, BDC and IQ, the "**Secured Creditors**") as well as Denis Labrosse, Napoléon Boucher and 155 Canada Inc. to comply with their respective obligations and undertakings set out therein,

[6] **DECLARES** that 155 Canada Inc. is no longer a shareholder of EBSU and ERC and that the Melnik Group (or any third party unrelated, directly or indirectly, to Denis Labrosse or Napoléon Boucher, Michel Boucher or Jean Gladu, a "**Third Party Purchaser**") is the sole shareholder of EBSU and ERC and therefore that the Melnik Group (or any Third Party Purchaser) is the sole owner of all issued and outstanding shares of EBSU and ERC and **CANCELS, ANNULS** and **DELETES** all outstanding options, warrants, pre-emptive rights and any other entitlements and/or rights to acquire any shares or securities or any other rights or interests of any class or category whatsoever in the capital stock of EBSU and ERC or as may otherwise be created or issued;

- [7] **ORDERS** the Melnik Group or any Third Party Purchaser, for a period of five (5) years following the issuance of this Order, (i) not to dispose of their shares in EBSU and ERC, and not to cause EBSU and ERC to issue shares, to or in favour of Denis Labrosse, Napoléon Boucher, Michel Boucher or Jean Gladu, or any person or entity directly or indirectly related thereto, (ii) not to cause EBSU and ERC to sell any of their assets to Denis Labrosse, Napoléon Boucher, Michel Boucher or Jean Gladu or any person or entity directly or indirectly related thereto, and (iii) along with EBSU, ERC or Woodlore, not to provide or agree in any form, that any of Denis Labrosse, Napoléon Boucher, Michel Boucher or Jean Gladu, or any person or entity, directly or indirectly, related thereto, shall be employed, perform services, manage, operate, participate, own or have an interest or options in, or assist in any way either EBSU, ERC or anyone related thereto, with the exception of what is specifically permitted in relation to Denis Labrosse in the Term Sheet;
- [8] **DECLARES** that Melnik and Tayco are to be authorized to dispose of their interest in shares of EBSU and ERC, to cause EBSU and ERC to issue shares, or to cause EBSU and ERC to sell some or all of their assets, to or in favour of a Third Party Purchaser, provided that, among other things, a ten (10) days prior written notice is given to the Secured Creditors setting out the details of the proposed transaction and the identity of the Third Party Purchaser;
- [9] **DECLARES** that EBSU and/or ERC are permitted to enter into an employment agreement with Denis Labrosse, the whole according to the terms of the Term Sheet;
- [10] **DECLARES** that Denis Labrosse may act as a director of EBSU and/or ERC;
- [11] **ACKNOWLEDGES** that the Melnik Group irrevocably waives any right that it may have to the reimbursement of any amount paid on account of cure costs in the context of the Authorized Transaction up to \$222,100 (\$207,100 referred to in Stikeman Elliott's letter of December 20, 2023 increased by \$15,000), which amount has subsequently been adjusted to \$287,413;
- [12] **ORDERS** Melnik Group, EBSU, ERC, Denis Labrosse, Napoléon Boucher and 155 Canada Inc. to execute and deliver any and all documents and agreements required to give effect to the foregoing and to provide a copy of such documents to the Secured Creditors and the Monitor within five (5) business days following the issuance of this Order;
- [13] **PRAYS ACT** of the Melnik Group's, EBSU's, ERC's and Woodlore's acknowledgement that (i) they have no further claims against the Monitor, the Secured Creditors or the estate in relation to the Authorized Transaction; (ii) they will not object to any relief sought in connection with the reimbursement of amounts in relation to Pathward, Maynbridge, the accrued vacations and Rona, nor will they seek to benefit from any such amounts; (iii) they will not object to the projected distribution of net proceeds from the Authorized Transaction and the reimbursement of funds to

the Secured Creditors and the beneficiaries of the CCAA charges by the Monitor; and (iv) they will not object to a full release and discharge of the Monitor upon completion of the foregoing distribution;

- [14] **PRAYS ACT** of the Secured Creditors' undertaking not to seek any relief (including punitive damages or the reimbursement of legal fees) against the Melnik Group, EBSU, ERC and Woodlore in relation to the Subsequent Transaction or any documents or other agreements executed in connection with the Subsequent Transaction, any discussions, undertakings or agreements preceding the Subsequent Transaction or the SISP process, including, (i) in the case of Fiera, pursuant to Fiera's *Amended Application to Recover Damages From Napoléon Bouhcer, Denis Labrosse, 15569621 Canada Inc., Ébénisterie St-Urbain Ltée, Euro-Rite Cabinets Ltd., Woodlore International Inc., William M. Melnik, The Melnik Family Trust 2043 and Tayco Office Furnishings Inc.* filed on January 17, 2024; and (ii) in the case of HSBC, pursuant to the *Application for the Revocation of a Judgment* filed on January 10, 2024;

GENERAL

- [15] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [16] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada, any Canadian federal court or administrative body, any federal or state court or administrative body in the United States of America, and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [17] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [18] **THE WHOLE**, without costs.


