



Estate/Court File No. 33-2929085

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE
JUSTICE KERSHMAN

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WEDNESDAY, THE 19th
DAY OF APRIL, 2023

**IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY ACT*
R.S.C., 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF LA SALLE MOTEL CO. (KINGSTON) LTD., A
CORPORATION INCORPORATED UNDER THE LAWS OF THE
PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by La Salle Motel Co. (Kingston) Ltd. (the "**Applicant**") for an order pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), was heard this day by judicial videoconference via Zoom.

ON READING the Notice of Motion, the Affidavit of Gina Karkoulis, affirmed April 17, 2023, and the Exhibits thereto (the "**Karkoulis Affidavit**"), filed, the Affidavit of Sandra Noe, sworn April 17, 2023, and the Exhibits thereto (the "**Noe Affidavit**"), the First Report of Link & Associates Inc, in its capacity as Proposal Trustee (the "**Proposal Trustee**"), dated April 14, 2023 (the "**First Report**"), filed, and on reading the Applicant's cash-flow statement, appended to the First Report, and on being advised that the secured creditor of the Applicant who is likely to be affected by the charges created herein were given notice of the motion for this Order, and on hearing the submissions of counsel to the Applicant, counsel for the Proposal Trustee, counsel for the Bank of Montreal ("**BMO**"), and such other counsel that were present, no one appearing for any other party, although duly served as appears from the Affidavits of Service sworn April 17, 2023, both filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF TIME TO MAKE A PROPOSAL

2. **THIS COURT ORDERS** that the time within which to make a proposal pursuant to section 62(1) of the BIA and the corresponding stay of proceedings provided for in section 69 of the BIA, be and are hereby extended in accordance with section 50.4(9) of the BIA to and including June 19, 2023.

INCREASE COMPANY'S EXISTING CREDIT FACILITY

3. **THIS COURT ORDERS** that the Applicant is hereby authorized to execute and deliver to BMO such credit agreements and other documents as may be reasonably required by BMO to increase the amount of credit to be made available by BMO to the Applicant under its current revolving lending facility (the "**Increased Credit Availability**"), and the Applicant is hereby authorized and empowered to perform its obligations thereunder and to make the borrowings permitted thereunder from BMO, as lender, in order to finance the Applicant's working capital requirements (including those of its operating facilities), these proposal proceedings, and other general corporate purposes and capital expenditures, provided that borrowing under such credit facility shall not exceed \$450,000.00, unless permitted by further order of this Court.

4. **THIS COURT ORDERS** that the Increased Credit Availability shall be on the terms and conditions set forth in the Letter of Agreement – Amendment & Restatement dated June 18, 2020 made between the Applicant and BMO, as amended by the Letter of Agreement – Amendment ("**Letter of Agreement – Amendment**") attached to this Order as **Schedule "A"**, subject to such further amendments as may be agreed between the Applicant and BMO.

5. **THIS COURT ORDERS** that the Increased Credit Availability shall be secured under the security previously granted by the Applicant to BMO and that BMO shall also be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on the property and assets of the Applicant, which DIP Charge shall not exceed \$150,000, for all amounts advanced by it under the Increased Credit Availability, plus interest thereon. The DIP Charge shall have the priority set out in paragraph 9 of this Order and shall be enforceable against any trustee in bankruptcy of the Applicant or its property.

6. **THIS COURT ORDERS** that, unless agreed by BMO, BMO shall be treated as unaffected in any proposal filed by the Applicant, with respect to any advances made under the Increased Credit Availability.

ADMINISTRATION CHARGE

7. **THIS COURT ORDERS** that that the Proposal Trustee, the Proposal Trustee's counsel, and the Applicant's counsel, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings, both before and after the making of this Order. The Applicant is hereby authorized to pay the accounts of the Proposal Trustee, the Proposal Trustee's counsel and the Applicant's counsel as accounts are rendered from time to time, provided that the accounts of the Proposal Trustee and the Proposal Trustee's counsel as paid are passed from time to time, and for this purpose the accounts are hereby referred to a judge of the Ontario Superior Court of Justice at Ottawa, Ontario.

8. **THIS COURT ORDERS** that the Proposal Trustee, the Proposal Trustee's counsel and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the current and future assets, undertakings and properties of the Applicant of every nature and kind whatsoever (including all real and personal property), and wherever situate including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$100,000.00, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order.

VALIDITY AND PRIORITY OF THE CHARGES CREATED BY THIS ORDER

9. **THIS COURT ORDERS** that the priorities of the Administration Charge, and the DIP Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First - Administration Charge (up to the maximum amount of \$100,000.00); and

Second – DIP Charge (up to a maximum amount of \$150,000).

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

11. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any individual, firm, corporation, governmental body or agency, or any other entities notwithstanding the order of perfection or attachment.

12. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Proposal Trustee and the chargees entitled to the benefit of such Charges (collectively, the "**Chargees**"), or further Order of this Court.

13. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the

general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Letter of Agreement – Amendment shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Letter of Agreement – Amendment, the creation of the Charges, or the execution, delivery or performance of the Letter of Agreement - Amendment; and
- c. the payments made by the Applicant pursuant to this Order, the Letter of Agreement - Amendment, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

BOOKS, RECORDS AND PROPERTY OF THE COMPANY

14. **THIS COURT ORDERS** and hereby directs all of the Company's former directors, officers, current and former employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") to forthwith advise the Company of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage

media containing any such information (the foregoing, collectively, the "Records") and/or Property in that Person's possession or control, and deliver said Records and/or Property to the Company. *within 10 days. #*

APPROVAL OF FIRST REPORT

15. **THIS COURT ORDERS** that the First Report and the activities of the Proposal Trustee, as applicable, referred to therein, be and are hereby approved.

SERVICE AND NOTICE

16. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website)¹ shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the "Rules"). Subject to Rule 3.01(d) of the Rules and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

17. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable (including, without limitation, due to COVID-19), the Applicant and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

¹See <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservicecommercial/>

18. **THIS COURT ORDERS** that the Applicant and the Proposal Trustee and each of their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

GENERAL

19. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

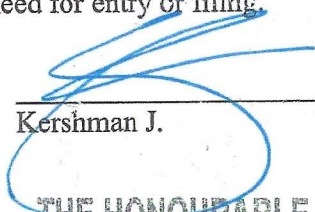
20. **THIS COURT ORDERS** that the Applicant or the Proposal Trustee may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties under this Order or in the interpretation or application of this Order. *within 7 days notice. 8*

21. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, receiver, receiver and manager, or trustee in bankruptcy of the Applicant or the Property.

22. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal or any judicial, regulatory, or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory, or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states of other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Applicant, the Proposal Trustee, BMO and any other party or parties likely to be affected by the Order sought or upon such other notice as this Court may order.

24. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.



Kershman J.

**THE HONOURABLE JUSTICE
STANLEY J. KERSHMAN**

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ONTARIO

**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Ottawa

ORDER

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