

CANADA

SUPERIOR COURT
(Commercial Division):

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS

NO.: 450-11-000056-139

**IN THE MATTER OF THE RECEIVERSHIP
OF:**

9055-8453 QUÉBEC INC., a legal person, duly constituted and having its principal place of business at 2660 King Street West, in the City of Sherbrooke, District of Saint-François, Province of Québec, J1L 1C5

Debtor

- and -

PRIME RESTAURANTS INC., a corporation, duly constituted under the laws of Ontario, having its principal place of business at 10 Kingsbridge Garden Circle, Suite 600, in the City of Mississauga, Province of Ontario, Canada, L5R 3K6

Petitioner

- and -

RICHTER ADVISORY GROUP INC., a corporation, duly constituted under the laws of Canada, having an office and place of business at 1981 McGill College Avenue, 12th Floor, in the City and District of Montreal, Province of Québec, H3A 0G6

**Proposed Receiver and
Interim Receiver**

**MOTION FOR THE ISSUANCE OF ORDERS APPOINTING
AN INTERIM RECEIVER AND A RECEIVER**
(Sections 47 and 243 of the *Bankruptcy and Insolvency Act* (the "BIA"))

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN BANKRUPTCY, IN AND FOR THE DISTRICT OF ST-FRANCOIS, OR TO THE REGISTRAR THEREOF, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

A. THE PARTIES

1. The Petitioner, Prime Restaurants Inc. ("Prime"), formerly Prime Restaurants of Canada Inc. and Les Restaurants Prime du Québec Inc., is a company doing business in the restaurant field, as appears from an entry in the CIDREQ registry, communicated herewith as Exhibit P-1;
2. Prime is the franchisor of various restaurant concepts, notably operating under and franchising the brand *East Side Mario's*, as appears from Prime's website at www.primerestaurants.com;
3. The Debtor, 9055-8453 Québec Inc. (the "Franchisee"), is a company that currently acts as franchisee and operator of the *East Side Mario's* restaurant located at 2660 King Street West, in Sherbrooke (the "Premises"), as appears from an entry in the CIDREQ registry, communicated herewith as Exhibit P-2;
4. As described below in more detail, the Franchisee, as of this date, has ceased to honour its obligations as they become due;

B. SUMMARY OF THE MOTION

5. By way of this Motion, Prime requests that this Court order the appointment of Richter Advisory Group Inc. ("**Richter**") as receiver of the Franchisee's assets, pursuant to article 243 of the BIA, and as interim receiver of the Franchisee's assets, pursuant to article 47 of the BIA;
6. More specifically, the Petitioner seeks the issuance of an order substantially in the form of the draft receivership and interim receivership orders, communicated herewith, *en liasse*, as Exhibit P-3;

C. INDEBTEDNESS AND SECURITY

(i) *Indebtedness pursuant to the Franchise Agreement*

7. Pursuant to a Franchise Agreement dated March 15, 2004, (the "**Franchise Agreement**") between Prime and the Franchisee, Prime extended the Franchisee's right to operate an *East Side Mario's* restaurant in the Premises in exchange, in particular, for (a) weekly non-refundable and continuous payments of a royalty and service fees representing five percent (5%) of the Franchisee's Gross Revenue, as defined in the Franchise Agreement (the "**Royalty and Service Fees**"), and (b) non-refundable and continuous payments to the Advertising Fund, to be made every four weeks, representing three percent (3%) of the Franchisee's Gross Revenue (the "**Advertising Fund Contributions**"), the whole as

appears from a copy of the Franchise Agreement, communicated herewith as **Exhibit P-4**. Advertising Fund Contributions have been payable weekly, as can be required under the Franchise Agreement, for many years;

8. As security for the payment and discharge of all present and future debts and obligations, the Franchisee granted a hypothec in favour of Prime in the amount of \$1,000,000, charging, in particular, all the movable assets of the Franchisee of any nature whatsoever, both tangible and intangible, present and future (the "**Hypothec**"). This Hypothec was published in the RDPRM on November 3th, 1997, under inscription number 09-0078021-0001, as appears from a copy of the said Hypothec and a copy of an extract from the RDPRM, communicated herewith, *en liasse*, as **Exhibit P-5**;
9. As of March 4, 2013, the total amount owed by the Franchisee to Prime pursuant to the Franchise Agreement for Royalty and Service Fees and Advertising Fund Contributions accruing since 2008 was eighty-six thousand seventy-three dollars and twenty-one cents (\$86,073.21) as appears from the statement of account, communicated herewith as **Exhibit P-6**;

(ii) Indebtedness pursuant to the Sublease

10. Pursuant to a lease as amended and extended (the "**Lease**"), Fiducie PLB, the current lessor (the "**Lessor**"), leased to Prime, the lessee, the Premises for a term ending October 31, 2016, with two consecutive five-year options to renew thereafter. The current minimum rent payable under the Lease to the end of the current term is \$121,100.00 per year, payable monthly (the "**Annual Rent**"). In addition, Prime must pay common area costs and realty taxes (the "**Common Expenses**") and business taxes (the "**Business Taxes**"), payable in equal and consecutive monthly installments. The current Common Expenses and Business Taxes are \$3,252.49 per month, and will increase to \$3,614.58 in April 2013. Copies of the Lease and related documents are communicated herewith, *en liasse*, as **Exhibit P-7**. Copies of recent rent statements from the Lessor are communicated herewith, *en liasse*, as **Exhibit P-8**;
11. Pursuant to a Franchise Agreement dated November 3, 1997 (the "**Original Franchise Agreement**"), Prime granted Robert Garneau, Alain Simard, and Charles Caron (the "**Former Owners**") the right to operate an *East Side Mario's* franchise restaurant in the Premises. A copy of the Original Franchise Agreement is communicated herewith as **Exhibit P-9**;
12. Pursuant to a sublease dated November 3, 1997 (the "**Sublease**"), the Former Owners agreed, in turn, to sublet the Premises from Prime to operate an *East Side Mario's* restaurant, in exchange for payment to Prime or its designee of the same amounts in Annual Rent, Common Expenses and Business Taxes as under the Lease. The Former Owners and the Franchisee were instructed to pay the Annual Rent, Common Expenses and Business Taxes directly to the Lessor. A copy of the Sublease is communicated herewith as **Exhibit P-10**;
13. Pursuant to an Assignment to a Commercial Entity dated November 3, 1997, the Former Owners assigned their rights and interest in the Original Franchise Agreement and the

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Sublease to the Franchisee. A copy of the Assignment to a Commercial Entity is communicated herewith as **Exhibit P-11**;

14. Pursuant to an Assignment of Franchise Contract dated November 1, 1999, Prime consented to the assignment of all shares of the Franchisee by the Former Owners to Jean-François Lemieux, current owner and president of the Franchisee. A copy of the Assignment of Franchise Contract is communicated herewith as **Exhibit P-12**;
15. As security for the payment and discharge of all present and future debts and obligations, the Franchisee granted a hypothec in favour of Prime as described in paragraph 8 of the present Motion, as appears from a copy of an extract from the RDPRM, Exhibit P-5;
16. As of February 20, 2013, the total amount owed by the Franchisee to Prime pursuant to the Sublease for Annual Rent and Common Expenses is \$78,198.16, and the total amount owed for Business Taxes is \$15,874.96, as appears from the statement of account, Exhibit P-6, and a copy of an invoice for Business Taxes, communicated herewith as **Exhibit P-13**;

D. THE FRANCHISEE'S DEFAULTS

17. As of March 4, 2013, the total of the Royalty and Service Fees, the Advertising Fund Contributions, the Annual Rent, the Monthly Payments and the Business Taxes, on which the Franchisee has defaulted and which remain owed to Prime, is one hundred and sixty-four thousand two hundred and seventy-one dollars and thirty-seven cents (\$164,271.37) (plus the Business Taxes shown in Exhibit P-14);
18. On or around November 8, 2012, Prime, through its counsel, sent a formal notice of default to the Franchisee (the "**Notice of Default**"), pursuant to the Franchise Agreement, the Sublease and the Hypothec, informing the latter that the amount of \$8,594.18 in outstanding Advertising Fund Contributions and the amount of \$55,452.73 in outstanding Royalty and Service Fees and other debts remained due to Prime, and demanding immediate payment of the amount of \$8,594.18. A copy of the Notice of Default is communicated herewith as **Exhibit P-14**;
19. Despite receipt of the Notice of Default, the Franchisee refused or neglected to pay the amounts due to Prime;
20. On March 5th, 2013, Prime issued and served upon the Franchisee a Notice of Intent to Enforce its Security pursuant to Section 244 of the BIA (the "**244 Notice**"), a copy of which is attached herewith as **Exhibit P-15**;

E. APPOINTMENT OF A RECEIVER

21. Prime respectfully submits that, upon the expiry of the ten- (10) days delay following the issuance of the 244 Notice, it shall be just, timely and convenient that a receiver be appointed pursuant to section 243 of the BIA in respect of the Franchisee's assets;

22. In light of the above, it is manifestly obvious that the Franchisee is insolvent as it has now been in default towards Prime for several months pursuant to the Franchise Agreement and the Sublease, and has refused or failed to respond to the Notice of Default;
23. Consequently, it is clear that the Franchisee no longer has any intention and/or capacity to abide by its contractual obligations;
24. Despite this, the Franchisee continues to operate and to occupy the Premises, thus financing its own operations at Prime's expense;
25. In light of the above, Prime respectfully submits that the appointment of a receiver is necessary to ensure that the conservation, management and disposal of the Franchisee's assets will maximize the proceeds of sale;
26. Such an appointment of a receiver is in the best interests of the Franchisee's creditors in general;
27. It is submitted that Richter will be an appropriate choice as Receiver, and Richter has confirmed it is in a position to accept such appointment;

F. MANAGEMENT OF OPERATIONS

28. In order to ensure that the value of the secured assets is protected and in order to protect the value of the *East Side Mario's* brand, Prime considers it essential that operations at the Premises continue and that the quality of products and services offered be maintained;
29. To this end, an agreement has been prepared whereby Prime has agreed to act on Richter's behalf as operator and manager of the Franchisee's assets as of the time the Receiver is named and until such time as the secured assets are sold, the whole as appears from a copy of the Management Agreement, attached herewith as **Exhibit P-16**;
30. It is submitted that execution of the said agreement, Exhibit P-16, is in the best interest of all stakeholders, as Prime is in the best position to operate the restaurant in light of its intimate knowledge of the *East Side Mario's* brand and business model;
31. Prime therefore requests that this Court authorize Richter to execute the said agreement, as set forth at Paragraph 11.2(b) of the draft Order Appointing a Receiver, Exhibit P-3;

G. APPOINTMENT OF AN INTERIM RECEIVER

32. Prime respectfully submits that it is necessary that an interim receiver be appointed, pursuant to section 47 of the BIA, during the ten- (10) day period following the issuance of the 244 Notice;

33. Prime has lost confidence in the Franchisee and its owner, and has significant concerns about the ability and willingness of the Franchisee to continue to operate during the aforementioned ten- (10) day notice period;
34. As the Franchisee has simply failed or refused to remit payments as they came due, and as the Franchisee has continued to operate at the Premises without remitting any rent, Prime considers that additional measures must be taken in order to protect the secured assets and ensure that the reputation of the *East Side Mario's* brand does not suffer;
35. Prime wishes to ensure that the restaurant continues to be operated, that employees and suppliers are paid (on a going forward basis) and that the books and records are available for remittance to the receiver to the extent the motion for the appointment of a receiver is granted by this Honourable Court;
36. Prime also wishes to have a Court-appointed officer in place in order to control receipts and disbursements during the said ten- (10) day period, in order to ensure that the value of the secured assets is not further deteriorated;
37. In this instance, Richter has confirmed to Prime that it is willing and able to act as Interim Receiver of the Franchisee's property;
38. The present request is urgent given the situation enunciated above.

WHEREFORE, THE PETITIONER PRAYS THAT, BY JUDGMENT TO INTERVENE HEREIN, THIS HONOURABLE COURT:

ON THE MOTION FOR THE ISSUANCE OF AN ORDER APPOINTING AN INTERIM RECEIVER:

GRANT the present *Motion for the Issuance of an Order Appointing an Interim Receiver*;

ISSUE an order appointing Richter as interim receiver to the assets of 9055-8453 Québec Inc., substantially in the form of the draft order, communicated as **Exhibit P-3** in support of the present motion;

ORDER the provisional execution of the Orders notwithstanding appeal;

ON THE MOTION FOR THE ISSUANCE OF AN ORDER APPOINTING A RECEIVER:

GRANT the present *Motion for the Issuance of an Order Appointing a Receiver*;

ISSUE an order appointing Richter as receiver to the assets of 9055-8453 Québec Inc., substantially in the form of the draft order, communicated as **Exhibit P-3** in support of the present motion;

ORDER the provisional execution of the Orders notwithstanding appeal;

THE WHOLE without costs, save in case of contestation.

TRUE COPY


STIKEMAN ELLIOTT LLP

MONTREAL, March 5th, 2013

[sgd] Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners
Prime Restaurants Inc.

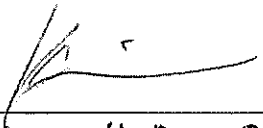
AFFIDAVIT

I, the undersigned, Brian Elliot, of the City of Kitchener, Province of Ontario, having a place of business at 10 Kingsbridge Garden Circle, Suite 600, in the city of Mississauga, Province of Ontario, solemnly declare:

1. I am the Vice President of Financial Services of Prime Restaurants Inc.;
2. All the facts alleged in the present motion are true.

SOLEMNLY DECLARED before me in AND I HAVE SIGNED
Mississauga, Ontario, this 5th day of
March 2013

Notary Public


H. ROSS R. BAIN


BRIAN ELLIOT

ATTESTATION OF AUTHENTICITY
(Article 82.1 of the *Code of Civil Procedure*)

I, the undersigned, MATTHEW LIBEN, attorney, practicing my profession at Stikeman Elliott LL.P., located at 1155 René-Lévesque Boulevard West, Suite 4000, in the City and District of Montreal, Province of Québec, H3B 3V2, do hereby solemnly affirm as follows:

1. I am an attorney at the law firm of Stikeman Elliott LLP;
2. On March 5th, 2013, at 10:55 A.M., I received an affidavit signed by Brian Elliot, C Vice President of Financial Services of Prime Restaurants Inc., in support of the Petitioner's "*Motion for the Issuance of Orders Appointing a Receiver and an Interim Receiver*";
3. The above-mentioned affidavit was sent to me from Mississauga, Ontario, via email (rbain@primerestaurants.com) from Ross Bain, Executive Vice-President, Legal Counsel and Secretary of Prime Restaurants Inc.;
4. The copy of this affidavit attached hereto is a true copy of the Affidavit received in PDF format on March 5th, 2013 from Ross Bain;
5. The facts alleged herein are true.

Solemnly declared before me, at Montreal,
Quebec, this 5th day of March, 2013

[sgd] Marie-Chantal Casey (172,390)

Commissioner of Oaths for the all judicial
district(s) of the Province of Québec

AND I HAVE SIGNED

[sgd] Matthew Liben

MATTHEW LIBEN

TRUE COPY



STIKEMAN ELLIOTT LLP

NOTICE OF PRESENTATION

TO: 9055-8453 QUÉBEC INC.
2660 King Street West
Sherbrooke, Québec
J1L 1C5

Debtor

AND TO: RICHTER ADVISORY GROUP INC.
1981 McGill College Avenue
12th Floor
Montreal, Québec
H3A 0G6

Proposed Receiver and Interim Receiver

TAKE NOTICE that the "*Motion for the Issuance of an Order Appointing an Interim Receiver*" will be presented for adjudication before one of the Honourable Judges of Superior Court or before the Registrar, sitting in commercial division in and for the District of Saint-François, in room 10, of the Sherbrooke Courthouse, located at 375 King Street West, Sherbrooke, Québec, J1H 6B9, on Thursday, March 7th, 2013 at 2:00 P.M. or soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

TRUE COPY

MONTRÉAL, March 5th, 2013


STIKEMAN ELLIOTT LLP

[sgd] Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners
Prime Restaurants Inc.

NOTICE OF PRESENTATION

TO: 9055-8453 QUÉBEC INC.
2660 King Street West
Sherbrooke, Québec
J1L 1C5

Debtor

AND TO: RICHTER ADVISORY GROUP INC.
1981 McGill College Avenue
12th Floor
Montreal, Québec
H3A 0G6

Proposed Receiver and Interim Receiver

TAKE NOTICE that the "*Motion for the Issuance of an Order Appointing a Receiver*" will be presented for adjudication before one of the Honourable Judges of Superior Court or before the Registrar, sitting in commercial division in and for the District of Saint-François, in **room 2**, of the Sherbrooke Courthouse, located at **375 King Street West, Sherbrooke, Québec, J1H 6B9**, on **Monday, March 18th, 2013 at 9:00 A.M.** or soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

TRUE COPY

MONTREAL, March 5th, 2013


STIKEMAN ELLIOTT LLP

[sgd] Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners
Prime Restaurants Inc.

N°: 450-11-000056-139

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

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

IN THE MATTER OF THE RECEIVERSHIP OF:
9055-8453 QUÉBEC INC.

Debtor
and

PRIME RESTAURANTS INC.

Petitioner
and

RICHTER ADVISORY GROUP INC.

Proposed Receiver and
Interim Receiver

BS0350 Our File : 104681-1050

MOTION FOR THE ISSUANCE OF ORDERS
APPOINTING AN INTERIM RECEIVER
AND A RECEIVER
(Sections 47 and 243 of the *Bankruptcy and Insolvency*
Act (the "BIA"))

COPY FOR RICHTER ADVISORY GROUP INC.
1981 McGill College Avenue, 12th Floor
Montreal, Québec, H3A 0G6

Me Matthew Liben (514) 397-3115
Fax: (514) 397-3636

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Montreal, Québec, H3B 3V2

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