

Bankruptcy Court File No: 32-158012

Estate No: 32-158012

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

THE HONOURABLE ) TUESDAY THE 25<sup>TH</sup> DAY OF  
M R. JUSTICE CAMERON ) MAY, 2010

**IN THE MATTER OF THE BANKRUPTCY OF**  
**2011791 ONTARIO LTD. o/a TRIPLE M DEMOLITION**  
**OF THE CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO**

**CONSTRUCTION LIEN AND TRUST CLAIMS PROCESS ORDER**

**THIS MOTION**, made by KPMG Inc. in its capacity as Trustee (the "Trustee") of the estate of 2011791 Ontario Ltd. o/a Triple M Demolition ("Triple M" or the "Company"), for, *inter alia*, approval of a construction lien and trust claims process, was heard this day at 330 University Avenue, Toronto, Ontario.

**WHEREAS** pursuant to an assignment in bankruptcy filed by the Company on November 13, 2010 KPMG was appointed as Trustee of the estate of Triple M;

**AND WHEREAS** the Trustee has not adopted or affirmed any contracts or agreements of Triple M, including any contracts with any party (each, a "Claimant") who is entitled to assert a claim for lien or breach of trust (each, a "Claim") under the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "CLA") in respect of the accounts receivable due to Triple M and all projects and contracts carried out and entered into by Triple M (the "Projects").

**AND WHEREAS KPMG** seeks the approval of the process described in the Trustee's First Report dated May 4, 2010 (the "First Report") and described herein for the administration of any such Claim (the "Construction Lien and Trust Claims Process");

**ON READING** the Application Record of KPMG, including the affidavit of Kevin J. Treacy, and the First Report; filed; and on hearing the submissions of counsel for the Trustee; and counsel the interested parties in attendance, and no one else appearing,

**SERVICE**

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

**CLAIMS PROCESS**

2. **THIS COURT ORDERS AND DECLARES** that all Triple M customers (the "Customers") who are indebted to Triple M for services (whether construction, demolition or any other services) provided by Triple M for the period prior to November 13, 2009 are hereby directed to make payment of any and all such debts to the Trustee and, in that regard:
  - a. the Trustee be and it is hereby directed to retain, in its bankruptcy estate trust account, the funds received from the Customers relating to the Triple M invoice(s) being paid by the Customers, which funds shall not be distributed by the Trustee to any party without further Order of this Court on notice to all Customers who have made payment to the Trustee; provided, however, that nothing in the Order nor the retention of funds referred to in this paragraph 2 (a) shall have the effect of giving rights to Customers which did not exist up to the making of this Order;

*W.r on the earlier of: (1) an order of this Court made at the trial of any construction lien action, presently pending, wherein any Customer is a defendant to such action; or (2) agreement being entered into between such Customer and the Trustee.*

*Setting out the amount and terms of the payment to be made by the Customer to the Trustee, JRC.*

- b. the fees and expenses incurred by the Trustee in connection with the carrying out of this Order and the Construction Lien and Trust Claims Process shall form a first charge on such segregated funds; and;
- c. no Triple M supplier or sub-contractor with a valid Claim shall have any recourse against the Customers for having made such payment to the Trustee, and all Customers making such payment to the Trustee shall be deemed to have satisfied in full any and all obligations they may have had to Triple M *and all parties with any such claim! Dill*

3. **THIS COURT ORDERS AND DECLARES** that the Construction Lien and Trust Claims Process is hereby approved and is the exclusive process by which all Claims shall be determined, and all Claims shall attach to the Construction Lien and Trust Claims Process.
4. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to implement and administer the Construction Lien and Trust Claims Process, including the acceptance, revision, disallowance and/or settlement of any Claim by any Claimant, and the Trustee may take any steps which it believes are incidental or necessary for the implementation of the Construction Lien and Trust Claims Process.
5. **THIS COURT ORDERS AND DIRECTS** that all Claims shall be determined and administered by the Trustee under the supervision of this Court pursuant to the Construction Lien and Trust Claims Process and any such determination or disposition of any Claim shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the CLA. The Trustee may retain any consultant or assistant as it may require to assist in the review and determination of any Claim.
6. **THIS COURT ORDERS AND DIRECTS** that in order to be properly filed with the Trustee for purposes of the Construction Lien and Trust Claims Process, a claim for lien, including any sheltered claim for lien must have been preserved and perfected in accordance with the provisions of the CLA (a "Lien

Action") and shall have been served upon the Trustee and all named defendants to such Lien Action in accordance with the CLA.

7. **THIS COURT ORDERS AND DIRECTS** that all Claimants shall prove their Claim by July 30, 2010 (the "Claims Bar Date") and in proving a Claim, all Claimants shall include:

- (a) a copy of the contract or subcontract including any change orders, amendments, purchase orders, or other related documents on which such Claim is asserted;
- (b) the names of the parties to the contract or subcontract;
- (c) the contract price and/or agreed billing rates for personnel and machinery and a statement of account, including the dates and amounts of payments received;
- (d) a copy of any labour and material payment bond or otherwise posted by a subcontractor with a contractor or by a subcontractor with a subcontractor; and
- (e) any other documents or information as the Trustee may reasonably request for the purpose of assessing and determining any Claims in accordance with paragraphs 3 and 4 of this Order.

#### **NO DEFAULT PROCEEDINGS OR DEFENCES**

- 8. **THIS COURT ORDERS** that no default or enforcement proceedings shall be commenced against any defendant in any Lien Action unless authorized by further Order of this Court.
- 9. **THIS COURT ORDERS** that the requirement for the Trustee or any defendant in any Lien Action to file a statement of defence, or any other pleading is hereby dispensed with subject to any further Order of this Court.

## DETERMINATION OF CLAIMS

10. **THIS COURT ORDERS** that the Trustee shall accept, revise and/or disallow the Claim as set out in a Claimant's Statement of Claim by delivering a notice of determination including the reasons for such determination (a "Notice of Determination"), and all documentation, if any, referred to in the notice of determination to such Claimant on or before August 31, 2010. Any Claimant who files a Notice of Dispute with respect to a Notice of Determination of the Claims of another Claimant may request, and the Trustee shall provide, any documentation referred to in such Notice of Determination.

## DISPUTE NOTICE AND APPEALS

11. **THIS COURT ORDERS** that a Claimant may appeal the acceptance, revision and/or disallowance (as the case may be) of any Claim as set out in a Notice of Determination by delivering a Dispute Notice to KPMG substantially in the form attached to this *Order* as **Schedule "A"** ("Dispute Notice"), no later than October 15, 2010. Any Claimant who does not deliver a Dispute Notice by October 15, 2010 shall be deemed to have accepted the Trustee's determination as set out in the Notice of Determination, which shall be final and binding, and that portion, or the whole, of the Claim so disallowed (as the case may be), shall be forever barred and extinguished pursuant to this Order.
12. **THIS COURT ORDERS AND DIRECTS** that any appeal of a Notice of Determination as set out in a Dispute Notice shall be referred to a claims officer (with construction lien expertise), as appointed by further Order of this Court or by reference by Order of this Court to a Construction Lien Master or Case Management Master. Any appeal of a Notice of Determination shall be conducted as a hearing *de novo* and any appeal (or motion to oppose confirmation of a report), of a claims officer, Construction Lien Master or Case Management Master, shall be heard by this Court on a timetable agreed to by the parties to that proceeding and approved by this

Court and shall be final and binding on all parties with no further appeal thereof.

### **CLAIMS BAR PROVISIONS**

13. **THIS COURT ORDERS** that any:

- a. claim for lien which is not preserved and perfected pursuant to the provisions of the CLA and served in accordance with paragraph 6 of this Order with all accompanying documentation as required by paragraph 7 hereof; or
- b. Claim which is not filed with the Trustee by the Claims Bar Date in accordance with paragraph 7 hereof; or
- c. Claim for which a Dispute Notice is not delivered by a Claimant disputing a Notice of Determination with respect to its Claim to the Trustee by October 15, 2010;

shall be forever barred and extinguished and such Claimant shall be forever estopped and enjoined from asserting or enforcing any further Claims against the Projects, Triple M or the Trustee, and such Claimant shall not be entitled to receive further notice of these proceedings, and in any event, all claims of any nature against the Trustee, are hereby forever barred and extinguished.

### **NO PROCEEDINGS AGAINST THE TRUSTEE**

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against the Trustee in respect of this matter, or anything relating to this matter in any way whatsoever, except with written consent of the Trustee or with leave of this Court.

**NOTICES AND COMMUNICATION**

15. **THIS COURT ORDERS** that, except as otherwise provided herein, the Trustee may deliver any notice or other communication to be given under this Order to Claimants or other interested parties by forwarding true copies thereof by ordinary mail, courier, personal delivery, facsimile or e-mail to such Claimants or parties at the address last shown on the books and records of Triple M, and that any such service or notice by ordinary mail, courier, personal delivery, facsimile or e-mail 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 within Ontario, the fifth business day after mailing within Canada, and the tenth business day after mailing internationally.
16. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Claimant to the Trustee shall be in writing in substantially the form, if any, provided for in this Order and will be effective only if delivered by registered mail, courier, personal delivery, e-mail or facsimile transmission addressed to:

**KPMG INC.** Trustee of the estate  
of 2011791 Ontario Ltd. o/a Triple  
M Demolition

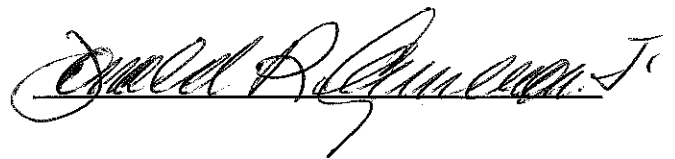
**Attention: John Athanasiou**  
21 King Street West, Suite 510  
Hamilton ON, L8P 4W7  
Fax: 905-523-2200  
Email: [jathanasiou@kpmg.ca](mailto:jathanasiou@kpmg.ca)

**-with a copy to:**

**DEVRY, SMITH & FRANK**  
LLP Barristers & Solicitors  
**Attention: Mark Mancini**  
95 Barber Greene Road, Suite 100  
Toronto ON M3C 3E9  
Fax: 416-449-7071  
Email: [mark.mancini@devrylaw.ca](mailto:mark.mancini@devrylaw.ca)

**AID AND ASSISTANCE OF OTHER COURTS**

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court or any judicial, regulatory or administrative body in any province or territory 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 or any Court or any judicial, regulatory or administrative body 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.
  
18. **THIS COURT ORDERS** that, notwithstanding the terms of this Order, any party may apply to this Court from time to time for direction with respect to the Construction Lien and Trust Claims Process and/or such further order or orders as this Court may consider necessary or desirable to amend, supplement or replace this Order, including, but not limited to, any Order for the delivery of information pursuant to section 39 of the CLA and the process for determination of holdback and priorities in distribution of any proceeds of sales.



*Donald R. Cameron, J.*

**SCHEDULE "A"**

**Dispute Notice of 2011791 Ontario Ltd. o/a Triple M Demolition ("Triple M")**

Defined terms not defined within this Dispute Notice form have the meaning ascribed thereto in the Construction Lien and Trust Claims Process Order dated May 25, 2010. Pursuant to paragraph 12 of the Construction Lien and Trust Claims Process Order, we hereby give you notice of our intention to dispute the Notice of Determination bearing Reference Number \_\_\_\_\_ and dated \_\_\_\_\_, 2010 issued by the Trustee of Triple M in respect of our Claim.

*Name of Creditor:* \_\_\_\_\_

*Reasons for Dispute (attach additional sheet and copies of all supporting documentation, if necessary):*

*Signature of Individual/Authorized Signing Officer:* \_\_\_\_\_

*Date:* \_\_\_\_\_

*(Please print name)* \_\_\_\_\_

Telephone Number: (    ) \_\_\_\_\_

Facsimile Number: (    ) \_\_\_\_\_

Full Mailing Address:

**THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY REGISTERED MAIL, PERSONAL SERVICE, E-MAIL, FACSIMILE OR COURIER TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED NO LATER THAN 30 DAYS AFTER RECEIPT OF THE NOTICE OF DETERMINATION TO:**

**KPMG INC.** Trustee of the estate  
of 2011791 Ontario Ltd. o/a Triple  
M Demolition

**Attention: John Athanasiou**  
21 King Street West, Suite 510  
Hamilton ON, L8P 4W7  
Fax: 905-523-2200  
Email: [jathanasiou@kpmg.ca](mailto:jathanasiou@kpmg.ca)

**-with a copy to:**

**DEVRY, SMITH & FRANK**  
LLP Barristers & Solicitors  
**Attention: Mark Mancini**  
95 Barber Greene Road, Suite 100  
Toronto ON M3C 3E9  
Fax: 416-449-7071  
Email: [mark.mancini@devrylaw.ca](mailto:mark.mancini@devrylaw.ca)

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

Proceeding commenced at: TORONTO

**CONSTRUCTION LIEN AND TRUST**  
**CLAIM PROCESS ORDER**

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Mark Mancini  
L.S.U.C. #51082N

(416) 449-1400  
(416) 449-7071 (Facsimile)

Solicitors for KPMG Inc., Trustee of  
2011791 Ontario Ltd. o/a Triple M Demolition