

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

**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**

**APPLICATION RECORD**  
**(Returnable May 25, 2010)**

Date: May 5, 2010

**DEVRY, SMITH & FRANK LLP**  
Barristers and Solicitors  
95 Barber Greene Road, Suite 100  
Toronto, Ontario M3C 3E9

Mark Mancini  
LSUC 51082N

Tel.: 416-449-1400  
Fax: 416-449-7071

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



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**NOTICE OF APPLICATION**  
**(Returnable May 25, 2010)**

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"), will make an application to a Judge of the Commercial List at 10:00 a.m. on May 25, 2010, or as soon after that time as the Motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion will be heard orally.

**THE MOTION IS FOR ORDERS in the form attached hereto as Schedule "A"**

- (a) abridging the time for service of the Notice of Motion and the Motion Record herein and dispensing with further service thereof;
- (b) directing the customers of Triple M to make payment to the Trustee;
- (c) establishing a claims process for construction lien and trust claims that have been

or may be asserted by the sub-trades of Triple M against various properties upon which Triple M worked throughout Ontario and accounts receivable due to Triple M;

- (d) approving the First Report of the Trustee;
- (e) giving directions with respect to the treatment of certain Wage Claims made by the Union; and
- (f) such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) Triple M has registered liens pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30 as amended (the "CLA") against the following projects:
  - a. Trent University Athletics Complex, 1600 West Bank Drive, Peterborough, Ontario; and
  - b. Milton Properties Ltd., 2999 James Snow Parkway, Milton, Ontario;
- (b) Most of Triple M's customers (the "Customers") have not paid their outstanding receivable because there are unpaid Triple M suppliers and sub-trades (the "Claimants") who have completed work in relation to the specific contracts/jobs between Triple M and the Customers and the Customers are concerned they will be required to satisfy the unpaid invoices of the Claimants;
- (c) Some of the Claimants have registered liens pursuant to the *CLA*;
- (d) Some Claimants may elect to assert claims pursuant to the trust provisions of the *CLA*;
- (e) A formal claims process is necessary to provide for equitable and cost efficient

uncertain, since they include amounts withheld from the Union Members' pay on behalf of the Union as well as contributions which should have been made by Triple M directly.

- (g) The definition of "wages" under the BIA and Wage Earner Protection Program Act, S.C. 2005, c. 47 ("WEPPA") was recently considered by the British Columbia Court in *Re: Ted Leroy Trucking Ltd.*, which is helpful in determining the issue, but not a binding decision. The quantum of the secured portion of the Wage Claims is therefore uncertain and respectfully request the direction of this Honourable Court.
- (h) The grounds as further set out in the First Report of the Trustee; and
- (i) such further and other grounds as counsel may advise and this Honourable Court may permit,

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The pleadings and proceedings herein;
- (b) The Affidavit of Kevin J. Treacy, sworn May 7, 2010, and the exhibits thereto;
- (c) The First Report of the Trustee; and
- (d) such further and other material as counsel may advise and this Honourable Court permit.

Date: May 5, 2010

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TO: 2011791 ONTARIO LTD. o/a  
TRIPLE M DEMOLITION OF THE CITY  
OF BRANTFORD, IN THE PROVINCE  
OF ONTARIO.

TAKE NOTICE that an Application for  
Bankruptcy Order be made in respect of  
your property will be heard before the  
presiding Bankruptcy Judge (or, if  
unopposed, before the Registrar in  
Chambers), at 330 University Avenue, in  
the City of Toronto, on the 25 day of  
May, 2010, at the hour of 10:00 o'clock  
in the forenoon, or so soon thereafter as  
the Application can be heard;

AND TAKE NOTICE that if notice of  
cause against the Application is not  
filed in Court and a copy thereof served  
on the solicitor for the Applicant at least  
two days before the hearing, the Court  
may make an Application for Bankruptcy  
Order on such proof of the statements in  
the Application as the Court shall think  
sufficient.

DATED at Toronto this 5<sup>th</sup> day of  
May, 2010.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

Court File No. 32-158012

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**IN THE MATTER OF THE  
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**NOTICE OF APPLICATION**

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