

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No. 500-11-062601-238

DATE: October 18, 2023

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PRESIDING: THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.

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*IN THE MATTER OF THE RECEIVERSHIP OF:*

**KALOOM INC.**

Debtor

- and -

**KPMG INC.**

Receiver

- and -

**INVESTISSEMENT QUÉBEC**

- and -

**ACG KALOOM LIMITED PARTNERSHIP**

- and -

**SOMEL INVESTMENTS INC.**

- and -

**CAPITAL VISION VENTURES A.G.**

- and -

**9345-9345 QUÉBEC INC.**

Secured Creditors

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**APPROVAL AND VESTING ORDER**

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- [1] **ON READING** the Receiver's *Application for the Issuance of an Approval and Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Receiver dated October 16, 2023 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Receiver's attorneys and the testimony of the Receiver's representative;
- [4] **SEEING** that it is appropriate to issue an order approving the transaction(s) (the "**Transaction**") contemplated by the agreement entitled Asset Purchase Agreement (the "**Purchase Agreement**") by and between the Receiver on behalf of Kaloom Inc. (the "**Vendor**"), as vendor, and **15385105 Canada Inc.** (the "**Purchaser**"), as purchaser, copy of which was filed as Exhibit **A-8** to the Motion, and vesting in the Purchaser the Purchased Assets (as defined in the Purchase Agreement (the "**Purchased Assets**").

**WHEREFORE THE COURT:**

- [5] **GRANTS** the Motion.

**SERVICE**

- [6] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

**SALE APPROVAL**

- [8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Receiver.

**EXECUTION OF DOCUMENTATION**

- [9] **AUTHORIZES** the Receiver and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (Exhibit **A-8**) and any other ancillary document which could be required or useful to give full and complete effect thereto.

**AUTHORIZATION**

- [10] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

## VESTING OF PURCHASED ASSETS

- [11] **ORDERS and DECLARES** that upon the issuance of a Receiver's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, taxes, rights of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable/immovable property and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [12] **DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.
- [13] **ORDERS and DIRECTS** the Receiver to file with the Court a copy of the Certificate, forthwith after issuance thereof.

## CANCELLATION OF SECURITY REGISTRATIONS

- [14] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the hypothecs registered at the Register of Personal and Movable Real Rights listed in **Schedule "B"** in connection with the Purchased Assets in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

## NET PROCEEDS

- [15] **ORDERS** that the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the Receiver and shall be distributed in accordance with applicable legislation.
- [16] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

## **PROTECTION OF PERSONAL INFORMATION**

[17] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past employees insofar only as to former employees of the Debtor that will be rehired by the Purchaser. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

## **VALIDITY OF THE TRANSACTION**

[18] **ORDERS** that notwithstanding

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transactions under the BIA or any other applicable federal or provincial legislation, as against the Debtor, the Purchaser or the Receiver.

## **LIMITATION OF LIABILITY**

[19] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA.

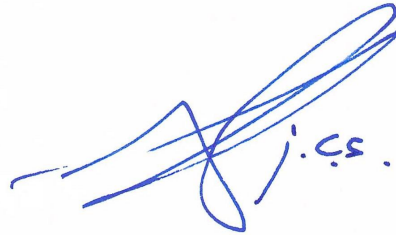
[20] **DECLARES** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.

## **GENERAL**

[21] **ORDERS** that the Purchaser or the Receiver shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

- [22] **ORDERS** that the Offer (Exhibit **A-7**) and the Purchase Agreement (Exhibit **A-8**) be kept confidential and under seal until the issuance and the filing in the Court record of the Receiver's Certificate attesting to the closing of the Transaction.
- [23] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [24] **DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose.
- [25] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and 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.
- [26] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

**THE WHOLE WITHOUT COSTS.**



Digitally signed by  
Michel A. Pinsonnault  
Date: 2023.10.18  
15:57:07 -04'00'

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**MICHEL A. PINSONNAULT, J.S.C.**  
JP1736

Me Jean Legault  
Me Daphné Pomerleau-Normandin  
**Lavery de Billy LLP**  
Attorneys for the Receiver KPMG Inc.

Date of hearing: October 18, 2023

**SCHEDULE "A"**  
**DRAFT CERTIFICATE OF THE RECEIVER**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
File: No: 500-11-062601-238

SUPERIOR COURT  
Commercial Division

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

**KALOOM INC.** Debtor

- and -

**KPMG INC.** Receiver

- and -

**INVESTISSMENT QUÉBEC**  
- and -

**ACG KALOOM LIMITED PARTNERSHIP**  
- and -

**SOMEL INVESTMENTS INC.**  
- and -

**CAPITAL VISION VENTURES A.G.**  
- and -

**9345-9345 QUÉBEC INC.**

Secured Creditors

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**CERTIFICATE OF THE RECEIVER**

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**RECITALS:**

**WHEREAS** on July 14, 2023, the Superior Court of Quebec (the "**Court**") issued a Receivership Order (the "**Order**") pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**") in respect of Kaloom Inc.;

**WHEREAS** pursuant to the terms of the Order, KPMG Inc. (the "**Receiver**") was named Receiver of the Debtor Kaloom Inc.; and

**WHEREAS** on October 18, 2023, the Court issued an Order (the “**Vesting Order**”) thereby, *inter alia*, authorizing and approving the execution by the Receiver of an agreement entitled *Asset Purchase Agreement* (the “**Purchase Agreement**”) by and between the Receiver, as vendor (the “**Vendor**”) and 15385105 Canada Inc., as purchaser (the “**Purchaser**”), copy of which was filed in the Court record, and into all the transactions contemplated therein (the “**Transaction**”) with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Receiver.

**WHEREAS** the Vesting Order contemplates the issuance of this Certificate of the Receiver once the (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

**THE RECEIVER CERTIFIES THE FOLLOWING:**

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Receiver at 5:00PM**[TIME]** on October 19, 2023 **[DATE]**.

**KPMG INC.** in its capacity as Receiver, and not in its personal capacity.



**Name:** Stéphane De Broux

**Title:** Partner

**SCHEDULE “B”**  
**Hypothecs to be reduced**

<b>Creditor</b>	<b>Security</b>
Investissement Québec	Hypothec in the amount of \$3,480,000 charging the universality of Kaloom’s present and future movable property and published in the Register of Personal and Movable Real Rights (the “RPMRR”) on October 5, 2018, under number <b><u>18-1106651-0001</u></b>
	Hypothec in the amount of \$21,000,000 charging the universality of Kaloom’s present and future movable property and published in the RPMRR on July 13, 2022, under number <b><u>22-0768745-0001</u></b>
	Hypothec in the amount of \$42,000,000 charging the universality of Kaloom’s present and future movable property and published in the RPMRR on February 13, 2023, under number <b><u>23-0172586-0001</u></b>
ACG Kaloom Limited Partnership	Hypothec in the amount of \$56,160,000 charging all of Kaloom’s tangible and intangible, present and future property, including its intellectual property, and published in the RPMRR on December 29, 2021, under number <b><u>21-1394254-0001</u></b>
	Hypothec in the amount \$63,960,000 charging all of Kaloom’s tangible and intangible property, including its intellectual property, and published in the RPMRR on July 13, 2023, under number <b><u>22-0768745-0002</u></b>
Somel Investments Inc.	Hypothec in the amount of \$4,274,550 charging all of Kaloom’s tangible and intangible property, and published in the RPMRR on February 6, 2023, under number <b><u>23-0142401-0001</u></b>
Capital Vision Ventures A.G.	Hypothec in the amount of \$1,831,950 charging all of Kaloom Inc.’s tangible and intangible, present and future property and published in the RPMRR on February 6, 2023, under number <b><u>23-0142401-0003</u></b>
9345-9345 Québec Inc.	Hypothec in the amount of \$234,000 charging all of Kaloom’s movable tangible and intangible property, present and future, including its intellectual property, and published in the RPMRR on March 17, 2022, under number <b><u>22-0274724-0001</u></b>