

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE BANKRUPTCY OF:

NO.: 500-11-039451-105

CAROLE MORINVILLE, residing and domiciled at 91, Chemin de la Pointe-Sud, in the City and District of Montreal, Province of Quebec, H3E 1Z9

Bankrupt/Debtor

-and-

LITWIN BOYADJIAN INC., having its head office and principal place of business at 1411 rue Peel, Suite 602, Montreal, Quebec, H3A 1S5

Trustee/Petitioner

-and-

ROBERTO DIANO, residing and domiciled at 91, Chemin de la Pointe-Sud, in the City and District of Montreal, Province of Quebec, H3E 1Z9

Respondent

-and-

THE REGISTRAR OF THE LAND REGISTRATION DIVISION OF MONTREAL, having its principal place of business at 2050, rue de Bleury, Suite RC-10, in the City and District of Montreal, Province of Quebec, H3A 2J5

Mis en cause

**PETITION IN RESPECT OF ILLEGAL AND UNDERVALUE TRANSFERS
OF PROPERTY TO NON-ARMS-LENGTH PERSONS PURSUANT TO
ARTICLES 96 ET SEQ. OF THE *BANKRUPTCY & INSOLVENCY ACT* AND
ARTICLES 1631 ET SEQ. OF THE *CIVIL CODE OF QUEBEC* AND TO
DECLARE INTEREST IN PROPERTY NULL AND VOID AND IN
RECOVERY OF CERTAIN SUMS**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF THE PROVINCE OF QUEBEC SITTING IN MATTERS OF BANKRUPTCY, OR TO THE REGISTRAR THEREOF, THE PETITION OF YOUR PETITIONER RESPECTFULLY REPRESENTS:

A. Background

1. Carole Morinville (“Morinville”) was declared bankrupt by judgment of this Honourable Court dated August 25, 2010 pursuant to Petition in Bankruptcy filed in the present court record on August 11, 2010, the whole as appears from a copy of the said judgment produced as **Exhibit P-1**;
2. Your Petitioner was named as Trustee to the said bankruptcy and was confirmed as Trustee at the first meeting of creditors held on September 14, 2010, the whole as appears from a copy of a procès verbal of the Official Receiver produced as **Exhibit P-2**;
3. At all times relevant, Morinville acted as a sales representative in respect of personal life insurance and group insurance for which she held a permit from the Autorité des marchés financiers (“AMF”) in virtue of the *Loi sur la distribution des produits et services financiers* (L.R.Q., chap. D-9.2);
4. Morinville was as well the President, director and sole shareholder of a company known as 9068-3442 Quebec Inc. (“9068”) doing business under the name of “Agence Carole Morinville”, the whole as appears from a printout of the CIDREQ produced as **Exhibit P-3** and through which corporation Morinville illegally solicited funds from her clients and others, for purposes of fictitious investments, which in effect she was operating a Ponzi scheme as hereinafter described;
5. 9068 was declared bankrupt by judgment of this Honourable Court on August 25, 2010 pursuant to Petition in Bankruptcy filed on August 11, 2010 in record number 500-11-039452-103, the whole as appears from a copy of the said judgment produced as **Exhibit P-4**;
6. Your Petitioner was named as Trustee to the bankruptcy of 9068 and was

confirmed as Trustee at the first meeting of creditors held on September 14, 2010, the whole as appears from a copy of procès verbal of the Official Receiver produced as **Exhibit P-5**;

7. 9068 and Morinville acting together have perpetrated a fraud in respect of their creditors, having operated a Ponzi scheme for a lengthy period of time as hereinafter described, each being the alter ego of the other;
8. Respondent ("Diano") is the husband of Morinville, the two were married in August 2009, and lived together for several years prior thereto;

B. Morinville's Regulatory Problems and Ponzi Scheme

9. Morinville's problems with various regulatory authorities in the area of insurance and financial services date back to 1996;
10. On November 2, 1999, the Quebec Securities Commission ("QSC") rendered a decision in virtue of which it listed the history of the number of irregularities and decisions rendered against Morinville and various companies under her control, the whole as appears from a copy of same produced as **Exhibit P-6**;
11. As appears from the said judgment even after Morinville had lost her registration with the QSC, she continued to act and solicit business as if she had not lost her registration and her actions showed a total disregard and indifference for the obligations imposed upon her by law;
12. Thereafter on July 24, 2003 the Disciplinary Committee of "Chambre de la sécurité financier" ("CDSCF") rendered a decision concerning Morinville ordering her to pay a \$22,000.00 fine, copy of this decision is produced as **Exhibit P-7**;
13. On December 31, 2009 the CDSCF suspended Morinville's registration as an authorized insurance representative for a period of one month, copy of this decision is produced as **Exhibit P-8**;
14. On July 13, 2010 the CDSCF rendered a judgment provisionally radiating Morinville as a result of her misappropriation of various clients' funds, the said misappropriation having been committed through the account of 9068 which Morinville controlled, copy of the said decision is produced as **Exhibit P-9**;
15. On August 2, 2010 the Bureau de décision et de révision ("BDR") following an investigation in respect of Morinville by the AMF issued, on an ex parté basis, various "Blocking Orders" against Morinville, her husband Diano, 9068, 9074-5613 Quebec Inc. ("9074") and 9215-3998 Quebec Inc. ("9215") which provided inter alia:

- a) prohibited them from performing any activity with a view to effecting directly or indirectly any operation in respect of any form of investment subject to the Quebec Securities Act (“LVM”) including activities of a broker as described in Article 5 of the LVM;
- b) prohibited them from exercising the activity of a financial advisor as described in Article 5 of the LVM;
- c) prohibited them from disposing of any funds, securities or other assets which they personally had on deposit or over which they had the custody or control no matter where situated;
- d) prohibited them from withdrawing or appropriating any funds, securities of other assets held under the possession or control of third parties for them.

A copy of this judgment is produced as **Exhibit P-10**.

16. This decision of the BDR (**Exhibit P-10**) makes mention of the following facts:

- a) Up to July 13, 2010, Morinville held a certificate permitting her to act as a representative in the descriptions of “l’assurance de personnes et de l’assurance collective de personnes” registered with the AMF in virtue of the *Loi sur la distribution des produits et services financiers*;
- b) Morinville was not registered to act in virtue of the LVM and held no permit to act thereunder;
- c) Morinville’s permit to act in respect of the insurance matters was inactive since July 13, 2010;
- d) Morinville operated a Ponzi scheme as a result of the fact that she had solicited individuals to make investments with her and 9068 and used these funds to repay other investors;
- e) The investigation of the AMF at that point revealed that Morinville, between the period 2007 to 2010, had solicited at least 28 persons to invest funds with her and 9068 of at least \$1,488,230.00.

17. During the period 2007 to 2010, Morinville carried out her Ponzi scheme by both misappropriating funds from her insurance clients, and by soliciting funds from her clients and acquaintances on the basis that she could invest their funds at significantly higher rates than placing them with insurance companies and that the funds were guaranteed;

18. The proofs of claim produced to date with the Trustee in the bankruptcies of Morinville and 9068 reveal claims of approximately \$3,500,000.00 being primarily the funds lost in this Ponzi scheme;
19. Morinville at no time invested any of the funds solicited for her Ponzi scheme and simply used same for her own benefit and that of Diano, primarily to purchase certain real estate in her name and that of Diano and of her two sons, to live a lavish high life style, to support her husband Diano since September 2009, to fund the operations of a start up business (9015 - Montreal Bagel Box) and to pay certain fictitious interest to investors, by means of using new investors' funds for said purpose;
20. Morinville, in classic Ponzi method, prepared fictitious periodic statements showing each investor's alleged investments and returns, which she sent to the investors periodically, and which she knew were false;
21. Morinville's Ponzi scheme was perpetrated for a lengthy period of time due to the fact that the people who she deceived were either inexperienced investors, or people who had complete trust and faith in Morinville due to her close relationship with them;

C. Roberto Diano

22. As stated above, Respondent Diano is the husband of Morinville and prior to September 2009 was employed as the Used Car Manager of Civic Honda D.D.O. Inc.;
23. As appears from a copy of a Motion supported by Affidavit of Diano dated February 25, 2010, Diano was dismissed from his position as Used Car Manager at the beginning of September 2009, following which he suffered a severe depression/mental breakdown and has not been able to be gainfully employed since that time; in fact as of date hereof, Diano is not gainfully employed, copy of the said Motion and Affidavit are produced as **Exhibit P-11**;

D-I. Transactions In Respect of Diano (Principal Residence)

24. On March 24, 2009 Morinville and Diano allegedly on a 50/50 basis purchased the immovable property situated at 91, Chemin de Pointe-Sud, Montreal (Verdun), Nun's Island, Quebec and more fully described in the conclusions hereof, for the sum of \$595,000.00, the whole as appears from a copy of a notarial Deed of Sale entered into before Notary Pierre Dagenais on March 24, 2009 under his minute number 18,427 and published at Montreal on March 25, 2009 under number 16 034 453, produced as **Exhibit P-12** (the "Nun's Island Property");

25. On March 24, 2009 Morinville and Diano entered into a notarial Deed of Hypothecary Loan before Notary Pierre Dagenais under his minute number 18,426 with the Caisse Desjardins des Sources Lac-St-Louis, whereby they borrowed the sum of \$542,720.00 and granted a first ranking hypothec for said sum upon the Nun's Island Property, same being published at Montreal on March 25, 2009 under number 16 034 451 produced as **Exhibit P-13** (the "Nun's Island Hypothecary Loan");
26. The proceeds of the Nun's Island Hypothecary Loan were used solely to pay the Vendor of the Nun's Island Property in virtue of **Exhibit P-12** and the difference in the purchase price for same, subject to adjustments, in the approximate sum of \$52,280.00 was paid for by Morinville;
27. On July 6, 2010, at a time when Morinville and Diano knew or should have known Morinville was insolvent, or with a willful blindness and total disregard for the creditors of Morinville, Morinville transferred her interest in the Nun's Island Property to Diano without payment of any sum whatsoever, the whole as appears from a copy of the notarial Deed of Transfer entered into before Notary Pierre Dagenais under his minute number 19,122, and published at Montreal on July 7, 2010 under number 17 363 702, copy of which is produced as **Exhibit P-14** (the "Morinville Nun's Island Transfer to Diano"). This transfer was made at the same time as Morinville transferred her 50% interest in her two sons' condominiums to Diano without consideration and for which separate proceedings have been instituted by the Trustee against Diano;
28. As previously stated, in July 2010 Diano was unemployed and had no means of supporting the Nun's Island Hypothecary Loan and has admitted that since his loss of employment in September 2009 to just prior to the Morinville's bankruptcy, she alone made the hypothecary loan payments, taxes, etc. Since the said bankruptcy, the hypothecary loan payments have not been paid;
29. On July 20, 2010, Morinville and Diano accepted a third party offer to sell the Nun's Island Property for the sum of \$755,000.00, copy of same is produced as **Exhibit P-15** and same is now scheduled to close in mid-November 2010, this pursuant to listing to sell the property which they had been previously granted by Morinville and Diano;
30. The Nun's Island Property was purchased with and supported by funds which were stolen from the creditors of Morinville's and 9068's bankruptcies, and Diano has no legal or valid interest in the Nun's Island Property, 9068 being the alter ego of Morinville;
31. The Morinville Nun's Island Transfer to Diano of Morinville's interest in the Nun's Island Property is illegal, null and void, entered into without consideration, under value and constitutes a fraudulent transfer of property to

Diano with intent to defraud the creditors of Morinville;

D-II. Transactions Involving 9215 and Diano

32. As appears from a CIDREQ for 9215-3998 Quebec Inc., Diano appears a Director and sole shareholder of same, copy of same is produced as **Exhibit P-16**;
33. 9215 was a company originally incorporated in October 2009 by Diano for purposes of operating a used car business which never came to fruition;
34. As appears from the CIDREQ **P-16**, 9215 operated under the trade names Boite Bagel Mtl, MTL Bagel Box, MTL Bagel Cie and MTL Bagel Co.;
35. As appears from an Agreement dated March 10, 2010, Morinville claimed to have developed a new method to make bagel chips and that 9215 was a company of which Morinville and Diano had created to commercialize this new process for making bagel chips and Morinville agreed to grant to 9215 an exclusive licence for this purpose, copy of this Agreement with 4282-2612 Canada Ltd. which was to be an investor/partner in the project is produced as **Exhibit P-17** (the “Bagel Project”);
36. In fact, Diano has alleged that 9215 purchased all rights to this concept from the developer of same (Julie Raymond) for a sum of \$10,000.00, and that it was 9215 during the year 2010 which began to commercialize the Bagel Project, a sample of certain marketing material for same is produced as **Exhibit P-18**;
37. 9215 showed its address and telephone number as that of Morinville’s office then situated at 4115 Sherbrooke Street West, Suite 200, Montreal, Quebec, H3Z 1K9 on all marketing material for the Bagel Project;
38. As appears from an opening balance sheet of 9215, as at May 1, 2010, there appears thereon a shareholders’ loan of \$67,837.00 due to Diano (sole shareholder), the said loan allegedly being payments made by the shareholder for and on behalf of 9215 supposedly in respect of the commercialization of the Bagel Project, copy of the said opening balance sheet is produced as **Exhibit P-19**;
39. All payments representing the aforesaid shareholders’ loan were made by Morinville or her alter ego 9068 and not by Diano and accordingly Diano owes Morinville the sum of \$67,837.00 together with such further sums as were advanced on behalf of 9215 by Morinville and/or her alter ego 9068 subsequent to May 1, 2010, for which the Trustee/Petitioner reserves its rights to amend upon obtaining all bank statements for 9068;
40. Morinville destroyed, hid or never maintained any banking records, accounting

journals and any other records in respect of 9068 and moreover has at all times filed tax returns showing that 9068 had no assets or liabilities and no income or expenses, copies of same for the years 2005-2009 are produced as **Exhibit P-20**, the said corporation being a sham and nothing than the alter ego of and prôt nom of Morinville;

41. To date, the Trustee has been provided with cheques from 9068 payable to Diano in the sum of \$48,700.00 for which no consideration of payment exists, or could exist, due to the fact that 9068 is and was nothing more than a sham and alter ego of Morinville, the Trustee has the right to and does claim repayment from Diano of said sum, the Trustee/Petitioner reserving its right to amend the present claim upon receiving the bank statements and cheques for 9068;
42. By letter dated September 21, 2010, your Trustee called upon Diano to retrocede his interests in the Nun's Island Property to your Trustee es qualité the bankruptcy of Morinville, copy of this letter is produced as **Exhibit P-21**;
43. By letter dated September 24, 2010, counsel for Diano, without legal basis, has elusively refused to accede to the Trustee's demands made pursuant to **Exhibit P-21**, a copy of this letter is produced as **Exhibit P-22**, although in proceedings before the BDR he has stipulated that he will retrocede the said interest;
44. The present proceedings have been authorized by resolutions of the Inspectors of the bankruptcy of Morinville under dates of September 21, 2010 and October 14, 2010, certified copies of which resolutions are produced en liasse as **Exhibit P-23**;

WHEREFORE PETITIONER PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN:

1. THAT its Petition be granted with both judicial and extrajudicial costs, including the costs of all expertise made necessary by contestation of the present proceedings;
2. THAT the transfer by Carole Morinville to Roberto Diano of Morinville's interest in the Immoveable Property hereinafter described pursuant to notarial Deed entered into on July 6, 2010 before Notary Pierre Dagenais under his minute number 19,122 and published on the Land Registry Office at Montreal on July 7, 2010 under number 17 363 702 be declared to be null and void and may not be set up against the Trustee es qualité the bankruptcy of Carole Morinville, and that the Trustee es qualité the bankruptcy of Carole Morinville be declared and registered as the owner of the interest therein illegally transferred;
3. THAT it be declared that Roberto Diano has no interest in the Immoveable Property hereinafter described, same having been acquired from funds stolen from the creditors of Morinville, and the hypothecary loan and taxes in respect of

same since inception having been paid from the same stolen funds that the Deed of Sale entered into before Notary Pierre Dagenais on March 24, 2009 under his minute number 18,427 and published on the Land Registry Office at Montreal on March 25, 2009 under number 16 034 453 which Roberto Diano acquired a 50% interest in the Immoveable Property hereinafter described be declared to be a simulated act in respect of the proprietary interest of Roberto Diano which cannot be set up against the Trustee, and that the Trustee es qualité the bankruptcy of Morinville be declared and registered as the owner of the interest of Roberto Diano therein described;

4. THAT Roberto Diano be condemned to pay the Trustee es qualité the sum of \$116,537.00 together with interest and additional indemnity from date of institution of the present proceedings;
5. THAT the Immoveable Property referred to as the Nun's Island Property is known and legally described as follows:

“Un immeuble tenu en copropriété situé en la Ville de Montréal (arrondissement Verdun), comprenant :

- a) la partie privative, étant l'unité d'habitation, connue et désignée comme étant le lot numéro **TROIS MILLIONS TROIS CENT SOIXANTE MILLE DEUX CENT QUARANTE-HUIT (3 360 248)** au **Cadastre du Québec**, circonscription foncière de **Montréal**, et
- b) tous les droits et quotes-parts afferents à la partie privative ci-dessus décrite des parties communes dudit immeuble, le tout tel que plus amplement décrit à la déclaration de copropriété et amendement ci-après mentionnés.

Adresse: 91 Chemin de la Pointe-Sud, Montréal (arrondissement Verdun), province de Québec, H3E 1Z9. “

6. That the Registrar for the Land Registry Office be called upon to take cognizance of the judgment to intervene herein and to effect all changes to the ownership interests in the aforesaid Immoveable Property as may be rendered by judgment herein.

MONTREAL, October 22, 2010

(SGD) STEIN & STEIN INC.

STEIN & STEIN INC.

Attorneys for Trustee/Petitioner

AFFIDAVIT

I, the undersigned, **NOUBAR BOYADJIAN, C.A.**, Trustee, practicing my profession at 1411 rue Peel, Suite 602, District of Montreal, Quebec, H3A 1S5, do solemnly declare as follows:

1. **THAT** I am the President of Litwin Boyadjian Inc., Trustee to the bankruptcies of Carole Morinville and 9068-3442 Quebec Inc.;
2. **THAT** all the facts alleged in the Petition annexed hereto are true and correct.

AND I HAVE SIGNED

(SGD) NOUBAR BOYADJIAN

NOUBAR BOYADJIAN, C.A.

Solemnly declared before me at Montreal
this 22nd day of October, 2010.

(SGD) MÉLANIE BOURDON, #136,735

**Commissioner of Oaths
for the District of Montreal**

NOTICE OF PRESENTATION

TO: **Roberto Diano**
91, Chemin de le Pointe-Sud
Montreal (Verdun), Quebec
H3E 1Z9

**The Registrar of the Land
Registration Division of Montreal**
2050, rue de Bleury
Suite RC-10
Montreal, Quebec
H3A 2J5

TAKE NOTICE that the of the *Petition in Respect of Illegal and Under Value Transfers of Property to Non-Arms-Length Persons pursuant to Articles 96 et seq. of the Bankruptcy and Insolvency Act and Articles 1631 et seq. of the Civil Code of Quebec and to Declare Interest in Property Null and Void and in Recovery of Certain Sums* will be presented for adjudication before one of the Judges of the Honourable Superior Court, District of Montreal, in **Room 16.10** at **9:00 a.m.** on the **4th day of November 2010**, or so soon as Counsel may be heard thereafter.

MONTREAL, October 22, 2010

(SGD) STEIN & STEIN INC.

STEIN & STEIN INC.
Attorneys for Trustee/Petitioner

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE BANKRUPTCY OF:

NO.: 500-11-039451-105

CAROLE MORINVILLE, residing and domiciled at 91, Chemin de la Pointe-Sud, in the City and District of Montreal, Province of Quebec, H3E 1Z9

Bankrupt/Debtor

-and-

LITWIN BOYADJIAN INC., having its head office and principal place of business at 1411 rue Peel, Suite 602, Montreal, Quebec, H3A 1S5

Trustee/Petitioner

-and-

ROBERTO DIANO, residing and domiciled at 91, Chemin de la Pointe-Sud, in the City and District of Montreal, Province of Quebec, H3E 1Z9

Respondent

-and-

THE REGISTRAR OF THE LAND REGISTRATION DIVISION OF MONTREAL, having its principal place of business at 2050, rue de Bleury, Suite RC-10, in the City and District of Montreal, Province of Quebec, H3A 2J5

Mis en cause

LIST OF EXHIBITS

- Exhibit P-1:** Copy of Judgment in record number 500-11-039451-105 dated August 25, 2010.
- Exhibit P-2:** Copy of procès verbal of the Official Receiver dated September 14, 2010.
- Exhibit P-3:** Copy of CIDREQ printout for 9068-3442 Quebec Inc.
- Exhibit P-4:** Copy of Judgment in record number 500-11-039452-103 dated August 25, 2010.
- Exhibit P-5:** Copy of procès verbal of the Official Receiver dated September 14, 2010 re. bankruptcy of 9068-3442 Quebec Inc.
- Exhibit P-6:** Copy of Decision rendered by the Quebec Securities Commission on November 2, 1999.
- Exhibit P-7:** Copy of Decision rendered by the Disciplinary Committee of the "Chambre de la sécurité financier" ("CDSCF") on July 23, 2003.
- Exhibit P-8:** Copy of Decision rendered by the CDSCF on December 31, 2009.
- Exhibit P-9:** Copy of Decision rendered by the CDSCF on July 13, 2010.
- Exhibit P-10:** Copy of Judgment rendered by the Bureau de décision et de révision on August 2, 2010.
- Exhibit P-11:** Copy of Motion and Affidavit of Roberto Diano dated February 25, 2010.
- Exhibit P-12:** Copy of notarial Deed of Sale dated March 24, 2009 before Notary Pierre Dagenais under his minute number 18,427.
- Exhibit P-13:** Copy of notarial Deed of Hypothecary Loan dated March 24, 2009 before Notary Pierre Dagenais under his minute number 18,426.

- Exhibit P-14:** Copy of notarial Deed of Transfer dated July 6, 2010 before Notary Pierre Dagenais under his minute number 19,122.
- Exhibit P-15:** Copy of offer for the Nun's Island Property dated July 20, 2010.
- Exhibit P-16:** Copy of CIDREQ for 9215-3998 Quebec Inc.
- Exhibit P-17:** Copy of Agreement dated March 10, 2010.
- Exhibit P-18:** Copy of sample marketing material for Bagel Project.
- Exhibit P-19:** Copy of opening balance sheet dated May 1, 2010 for 9215-3998 Quebec Inc.
- Exhibit P-20:** Copy of income tax returns for 9068-3442 Quebec Inc. for the years 2005-2009.
- Exhibit P-21:** Copy of letter dated September 21, 2010 from Litwin Boyadjian Inc. to Roberto Diano.
- Exhibit P-22:** Copy of letter dated September 24, 2010 from Roberto Diano's counsel.
- Exhibit P-23:** Copy of resolutions of the Inspectors of the bankruptcy of Carole Morinville.

MONTREAL, October 22, 2010

STEIN & STEIN INC.
Attorneys for Trustee/Petitioner