

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 (Verdun), Province of Quebec, H3E 1Z9

-and-

YVES JUNEAU, residing and domiciled at 1191 rue Panet, Apartment 101, City and District of Montreal, Province of Quebec, H2L 2Y6

Respondents

-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 FOR
DECLARATION OF AN ILLEGAL AND SIMULATED CONTRACT IN
RESPECT OF AN OWNERSHIP INTEREST IN PROPERTY WHICH MAY
NOT BE SET UP AGAINST THE TRUSTEE**

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 Yves Juneau and Diano (Principal Residence)

24. Yves Juneau ("Yves") is one of the sons of Morinville, issue of a prior marriage to that of Diano;
25. On May 8, 2009 Morinville and Yves on a 50/50 basis purchased a condominium unit known as apartment number 101, 1191 Panet Street, Montreal, Quebec, H2L 2Y6 for the sum of \$182,500.00, the whole as appears from a notarial Deed of Sale executed before Notary Rielle Dagenais under her minute number 330 and

published at Montreal on May 11, 2009 under number 16 151 324, copy of which is produced as **Exhibit P-12** (the “1191 Panet #101 Property”);

26. On May 8, 2009 Morinville and Yves entered into a notarial Deed of Hypothecary Loan for the sum of \$167,535.00 with the Toronto Dominion Bank (“TD”) and granted a first ranking hypothec to the TD for the said sum on the 1191 Panet #101 Property, the whole as appears from a Deed of Loan and Hypothec entered into before Notary Rielle Dagenais under her minute number 331 and published at Montreal on May 11, 2009 under number 16 151 326, produced as **Exhibit P-13**, the said loan proceeds were used to pay the Vendor of the 1191 Panet #101 Property in virtue of **Exhibit P-12** (the “1191 Panet #101 Hypothecary Loan”);
27. The difference between the purchase price in **Exhibit P-12** and the hypothecary loan in **Exhibit P-13** in the sum of approximately \$14,965.00 was paid primarily by Morinville, and the hypothecary loan and taxes for the 1191 #202 Property have since inception been paid for from the bank account of Morinville with funds stolen from investors;
28. On July 6, 2010 at a time when she and Diano knew or should have known Morinville was insolvent, or with a willful blindness and total disregard for the creditors of Morinville, transferred her interest in the 1191 Panet #101 Property to Diano without payment of any sum whatsoever, the whole as appears from a copy of a notarial Deed of Transfer entered into before Notary Pierre Dagenais under his minute number 19,120 and published at Montreal on July 7, 2010 under number 17 360 308, copy of which is produced as **Exhibit P-14** (the “Morinville 1191 Panet #101 Transfer to Diano”). This transfer was made at the same time as Morinville transferred her 50% interest in her principal residence situated at 91 Chemin de le Pointe-Sud, Nun’s Island, Quebec to Diano without consideration and at the same time as she transferred her 50% interest in her other son’s condominium situated at 1191 rue Panet, #202 to Diano without consideration and for which separate proceedings have been instituted;
29. As previously stated, in July 2010 Diano was unemployed and had no means of supporting the 1191 Panet #101 Hypothecary Loan, and he has admitted that since acquisition of the 1191 Panet #101 Property up until just prior to her bankruptcy, Morinville has made all hypothecary loan payments in respect of the 1191 Panet #101 Hypothecary Loan, taxes, etc.;
30. The 1191 Panet #101 Property was purchased with and supported by funds which were stolen from the creditors of Morinville’s bankruptcy and Diano and Yves have no legal or valid interest in the 1191 Panet #101 Property;
31. The Morinville 1191 Panet #101 Transfer to Diano of Morinville’s interest in the 1191 Panet #101 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;

32. On July 7, 2010 Morinville wrote a letter to all of her clients and victims advising that she was taking a year's sabbatical and advising that Mr. Steve Corsi and Philippe Dubuc would be servicing them from that point on, a copy of this letter is produced as **Exhibit P-15**;
33. By letter dated September 21, 2010, your Trustee called upon Diano to retrocede his interests in the 1191 Panet #101 Property to your Trustee es qualité the bankruptcy of Morinville, a copy of this letter is produced as **Exhibit P-16**;
34. By letter dated September 24, 2010, counsel for Diano, , without legal basis, has elusively refused to accede to your Trustee's demands made pursuant to **Exhibit P-16**, a copy of this letter is produced as **Exhibit P-17**, although in proceedings before the BDR he has stipulated that he will retrocede the said interest;
35. That the Trustee believes that at the date of the 1191 Panet #101 Transfer to Diano, the 1191 Panet #101 Property had a value of \$220,000.00, and that the sum of \$20,000.00 constitutes the difference between the value of the consideration received by the Debtor and the value of the consideration given by the Debtor;
36. The present proceedings have been authorized by resolutions of the Inspectors to the Bankruptcy of Morinville on September 21, 2010 and October 14, 2010, certified copy of the resolutions of the Inspectors are produced as en liasse as **Exhibit P-18**;

**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 19,120 and published on the Land Registry Office at Montreal on July 7, 2010 under number 17 360 308 be declared to be null and void and cannot be set up against the Trustee, and that 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 subsidiarily it be declared that the transfer described in section 2 of the

conclusions herein was a transfer under value, and that Diano be condemned to pay the difference between the value of interest transferred and the value of the consideration received by Morinville (ø) which the Trustee stipulates is \$20,000.00;

4. THAT it be declared that Yves Juneau has no interest in the Immoveable Property hereinafter described, same having been acquired principally from funds stolen from the creditors of Morinville and the hypothecary loan and taxes in respect of same since inception having been paid for from sums stolen from the creditors of Morinville, the Deed of Sale entered into before Notary Rielle Dagenais on May 8, 2009 under her minute number 330 and published on the Land Registry for Montreal on May 11, 2009 under number 16 151 324, wherein Yves Juneau acquired a 50% interest in the Immoveable Property hereinafter described being a simulated act in respect of the proportionary interest of Yves Juneau which may not 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 Yves Juneau therein described;
5. THAT the Immoveable Property referred to as the 1191 #101 Property is known and legally described as follows:

“Une fraction d’un immeuble tenu en copropriété connue et désignée comme étant composé de :

- a) de la partie privative, étant le lot numéro **TROIS MILLIONS SEPT CENT QUATRE-VINGT MILLE QUATRE CENT QUATRE-VINGT-CINQ (3 780 485)** au **Cadastre du Québec**, circonscription foncière de **Montréal**; et
- b) d’une case de rangement, partie commune à usage restreint, à être identifiée; et
- c) tous les droits et quotes-parts afférents à la partie privative ci-dessus décrite des parties communes dudit immeuble, le tout tel que plus amplement décrit à la déclaration de copropriété ci-après mentionnée.

Adresse: 1191 rue Panet, appartement 101, Montréal, province de Québec, H2L 2Y6.”

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

Yves Juneau
1191, rue Panet
Apt. 101
Montreal, Quebec
H2L 2Y6

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 for Declaration of an Illegal and Simulated Contract in respect of an Ownership Interest in Property which may not be set up against the Trustee* 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

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DISTRICT OF MONTRÉAL

IN THE MATTER OF THE BANKRUPTCY OF:

NO.: 500-11-039451-105

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

-and-

YVES JUNEAU, residing and domiciled at 1191 rue Panet, Apartment 101, City and District of Montreal, Province of Quebec, H2L 2Y6

Respondents

-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 April 1, 2009 before Notary Rielle Dagenais under her minute number 330.
- Exhibit P-13:** Copy of notarial Deed of Hypothecary Loan dated April 1, 2009 before Notary Rielle Dagenais under his minute number 331.

- Exhibit P-14:** Copy of notarial Deed of Transfer dated July 6, 2010 before Notary Pierre Dagenais under his minute number 19,120.
- Exhibit P-15:** Copy of letter from Carole Morinville to her clients/victims dated July 7, 2010.
- Exhibit P-16:** Copy of letter dated September 21, 2010 from Litwin Boyadjian Inc. to Roberto Diano.
- Exhibit P-17:** Copy of letter dated September 24, 2010 from Roberto Diano's counsel.
- Exhibit P-18:** Copy of resolutions of the Inspectors of the bankruptcy of Carole Morinville.

MONTREAL, October 22, 2010

(SGD) **STEIN & STEIN INC.**

STEIN & STEIN INC.
Attorneys for Trustee/Petitioner