

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

**IN THE MATTER OF THE BANKRUPTCY OF
GRAFIKOM GENERAL PARTNER INC.
OF THE CITY OF TORONTO, PROVINCE OF ONTARIO**

**MOTION RECORD
*CONSOLIDATION OF PROCEEDINGS***

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**MOTION RECORD
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TAB A

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

**IN THE MATTER OF THE BANKRUPTCY OF
GRAFIKOM GENERAL PARTNER INC.
OF THE CITY OF TORONTO, PROVINCE OF ONTARIO**

NOTICE OF MOTION

RSM Richter Inc. ("**Richter**"), in its capacity as Trustee in Bankruptcy (the "**Trustee**") of each of Grafikom Limited Partnership ("**LP**"), Grafikom General Partner Inc. ("**GP**") and Grafikom.Grenville Limited ("**Grenville**"), will make a motion to a judge presiding over the Commercial List on Monday, February 2, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR an order substantially in the form attached as Schedule "1" to this Notice of Motion including, *inter alia*, for the following relief:

- (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and validating the form of service effected;
- (b) providing for the procedural consolidation of the estates in bankruptcy of LP, GP and Grenville as follows:
 - (i) assigning a single Court File number of 31-OR-207609-T and title of proceeding of "In the Matter of the Bankruptcy of Grafikom Limited

Partnership, of the City of Toronto, Province of Ontario" to the proceedings in the bankrupt estates of LP, GP and Grenville;

- (ii) authorizing the Trustee to administer the bankrupt estates of LP, GP and Grenville as if such bankrupt estates were a single bankrupt estate for the purpose of carrying out its administrative duties and responsibilities as trustee under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") with respect to the administration of bankrupt estates generally, including without limitation:
 - (A) allowing meetings of creditors and inspectors in the bankrupt estates of LP, GP and Grenville to be convened through one combined advertisement and conducted jointly, provided that the results of any creditors' vote shall be separately tabulated for each such bankrupt estate;
 - (B) authorizing the use of a consolidated form of proof of claim which directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;
 - (C) authorizing the Trustee to issue consolidated reports in respect of the bankrupt estates of LP, GP and Grenville;
 - (D) authorizing a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of LP, GP and Grenville required under the BIA;
 - (E) providing for the election of a single group of inspectors for the consolidated bankrupt estates of LP, GP and Grenville, unless an objection is raised at the first meeting of creditors in which case separate groups of inspectors shall be elected for the bankrupt estate(s) in which an objection was raised;

- (F) authorizing the Trustee to open a single consolidated estate bank account for LP, GP and Grenville;
 - (G) authorizing the Trustee to conduct all such other administrative duties and responsibilities to be carried out by a trustee in the administration of a bankrupt estate; and
 - (iii) authorizing and directing the Trustee to file all documents in any of LP, GP and Grenville's bankrupt estates in the Court file for the bankrupt estate of LP, being Court file number 31-OR-207609-T, and to file a copy of this order in the Court file for each of LP, GP and Grenville bankrupt estates.
- (c) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Rule 3.02 of the *Rules of Civil Procedure*.
2. Section 183 of the BIA.
3. Pursuant to bankruptcy orders made by this Honourable Court against LP, GP and Grenville on January 27, 2009, Richter was appointed Trustee of the bankrupt estates of LP, GP and Grenville.
4. Richter was also appointed as Trustee in the bankrupt estate of Grafikom.Speedfast Limited ("**Speedfast**", collectively with LP, GP and Grenville, "**Grafikom**"), a related company based in Alberta, pursuant to a bankruptcy order of The Court of Queen's Bench of Alberta, Judicial District of Edmonton, made on January 27, 2009.
5. Pursuant to an order of this Honourable Court made on November 10, 2008 (the "**Receivership Order**"), Richter was also appointed the interim receiver and receiver and manager (the "**Receiver**") of all of the property, assets and undertakings of Grafikom, pursuant to Section 47(1) of the BIA and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

6. All assets of Grafikom are being realized upon by the Receiver.
7. The majority of Grafikom's assets were subject to two going-concern transactions (the "**Sale Transactions**"), which closed on December 18, 2008. The particulars of the Sale Transactions were more fully described by the Receiver in the First Report to Court of the Receiver dated December 11, 2008, which has been previously filed with this Honourable Court in the receivership proceedings, Court File No. 08-CL-7840. Both Sale Transactions were approved by this Honourable Court pursuant to orders made in the receivership proceedings on December 18, 2008.
8. Pursuant to an order made by this Honourable Court on January 28, 2009 in the receivership proceedings (the "**Distribution Order**"), the Receiver is authorized and directed to distribute, from the funds currently held by the Receiver, the amounts of:
 - (a) \$15 million to the major secured creditor of Grafikom, Bank of Montreal, as Agent for a lending syndicate comprised of Bank of Montreal, The Bank of Nova Scotia and Alberta Treasury Branches (the "**Lending Syndicate**"), which has a charge on all of the business and assets of Grafikom; and
 - (b) \$8.4 million, inclusive of goods and services tax, to CIT Financial Ltd. ("**CIT**"), which has a charge on certain equipment included in one of the two Sale Transactions.
9. The Receiver has received an opinion from its counsel Osler Hoskin & Harcourt LLP, that subject to the assumptions and qualifications contained therein, the security interests of the Lending Syndicate and of CIT are valid and as such are enforceable as against a Trustee in Bankruptcy.
10. As at the date of the Receivership Order, the Lending Syndicate was owed by Grafikom approximately \$49 million.
11. The costs of the administration of the bankrupt estates of Grafikom are being borne by the Lending Syndicate, which will likely suffer a significant financial shortfall, leaving no funds available for unsecured creditors.

12. To the extent possible, the Trustee is seeking to minimize the cost of administering the bankruptcies of LP, GP and Grenville.

13. The procedural consolidation of the bankrupt estates of LP, GP and Grenville, would allow the Trustee to avoid performing, *inter alia*, the following separate actions in respect of each of LP, GP and Grenville, thereby reducing certain administrative expenses:

- (a) convening and conducting meetings of creditors and inspectors;
- (b) making, filing, advertising and distribution of all filings and notices required under the BIA;
- (c) appointing separate groups of inspectors;
- (d) opening separate bank accounts; and
- (e) conducting all such other administrative duties and responsibilities to be carried out by a trustee in the administration of a bankrupt estate.

14. If the Trustee is required to perform a separate body of work, as described above, in respect of each of LP, GP and Grenville separately, the expenses of the bankruptcy administration of these bankrupt estates would be increased and the realization by the Lending Syndicate would be reduced, thereby diminishing the already faint possibility of any recovery to the unsecured creditors.

15. A procedural consolidation of the bankrupt estates of LP, GP and Grenville will enable the Trustee to administer the estates as one and to take the actions described in paragraph 13 above only once, significantly reducing the costs of administration of such bankrupt estates.

16. A procedural consolidation of the bankrupt estates of LP, GP and Grenville will not result in prejudice to any of the creditors.

17. The Trustee is not requesting that Speedfast be subject to the Order sought herein as Speedfast is the Alberta based company and the administration of the bankrupt estate of Speedfast will be carried on by the Trustee in Alberta.

18. Such further and other grounds as counsel may advise and this Honourable Court may consider.

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

1. First Report of the Trustee, dated January 28, 2009 (filed separately); and
2. Such further and other material as counsel may advise and this Honourable Court permit.

January 28, 2009

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as Trustee in Bankruptcy of Grafikom Limited
Partnership, Grafikom General Partner Inc. and
Grafikom.Grenville Limited

TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE)	FRIDAY, THE 2 nd DAY
MR. JUSTICE WILTON-SIEGEL)	
)	OF FEBRUARY, 2009

IN THE MATTER OF THE BANKRUPTCY OF
GRAFIKOM GENERAL PARTNER INC.
OF THE CITY OF TORONTO, PROVINCE OF ONTARIO

ORDER

THIS MOTION, made by RSM Richter Inc. ("**Richter**") in its capacity as trustee in bankruptcy (the "**Trustee**") of Grafikom Limited Partnership ("**LP**"), Grafikom General Partner Inc. ("**GP**") and Grafikom.Grenville Limited ("**Grenville**") (collectively, the "**Bankrupts**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of Richter in its capacity as Trustee in bankruptcy of the Bankrupts (the "**Trustee**") dated January 28, 2009 (the "**First Report**") and on hearing the submissions of counsel to the Trustee, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and it is hereby abridged, if necessary, that the motion is properly returnable today, that further service thereof be and is hereby dispensed with and that all parties entitled to receive service of the Notice of Motion have been duly served.

2. **THIS COURT ORDERS** that the Trustee may administer the bankrupt estates of LP, GP and Grenville on a consolidated basis, as follows:

- (a) A single court file number of 31-OR-207609-T and title of proceeding of "In the Matter of the Bankruptcy of Grafikom Limited Partnership, of the City of

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Toronto, Province of Ontario” shall be assigned to the proceedings in the bankrupt estates of LP, GP and Grenville;

- (b) The Trustee is authorized to administer the bankrupt estates of LP, GP and Grenville as if such bankrupt estates were a single bankrupt estate for the purpose of carrying out its administrative duties and responsibilities as trustee under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) with respect to the administration of bankrupt estates generally, including without limitation:
- (i) meetings of creditors and inspectors in the bankrupt estates of LP, GP and Grenville may be convened through one combined advertisement and conducted jointly, provided that the results of any creditors’ vote shall be separately tabulated for each such bankrupt estate;
 - (ii) the Trustee is authorized to use a consolidated form of proof of claim which directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;
 - (iii) the Trustee is authorized to issue consolidated reports in respect of the bankrupt estates of LP, GP and Grenville;
 - (iv) the Trustee is authorized to perform a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of LP, GP and Grenville required under the BIA;
 - (v) a single group of inspectors shall be the inspectors for the consolidated bankrupt estates of LP, GP and Grenville, unless an objection is raised at the first meeting of creditors in which case separate groups of inspectors shall be elected for the bankrupt estate(s) in which an objection was raised;
 - (vi) the Trustee is authorized to open a single consolidated estate bank account for LP, GP and Grenville; and

(vii) the Trustee is authorized to conduct all such other administrative duties and responsibilities to be carried out by a trustee in the administration of a bankrupt estate.

(c) The Trustee is authorized and directed to file all documents in any of LP, GP and Grenville's bankrupt estates in the Court file for the bankrupt estate of LP, being Court file number 31-OR-207609-T, and to file a copy of this order in the Court file for each of LP, GP and Grenville bankrupt estates.

3. **THIS COURT ORDERS** that this procedural consolidation is not intended to be a substantive consolidation of the bankrupt estates of LP, GP and Grenville, and will automatically terminate if the Trustee is replaced as trustee of any but not all of the estates.

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IN THE MATTER OF THE BANKRUPTCY OF GRAFIKOM GENERAL PARTNER INC.
OF THE CITY OF TORONTO, PROVINCE OF ONTARIO

Ontario
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Proceeding commenced at Toronto

ORDER

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Court File No. 31-OR-207607-T

Ontario
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Proceeding commenced at TORONTO

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