

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED AND *THE BUSINESS CORPORATIONS ACT*, R.S.O. 1990,
C. B.16, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BRON
MEDIA CORP. AND THE ENTITIES LISTED AT **SCHEDULE "A"**

PETITIONERS

APPLICATION RESPONSE

FILED BY the Union of British Columbia Performers (the "**Application Respondent**" or "**UBCP**" or the "**Union**").

THIS IS A RESPONSE TO the notice of application of the Petitioners herein dated October 24, 2023 (the "**Sale and Assignment Application**").

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Sale and Assignment Application on the following terms: Nil.

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in paragraphs 1-3 of Part 1 of the Sale and Assignment Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in paragraphs 4 and 5 of Part 1 of the Sale and Assignment Application.

Part 4: FACTUAL BASIS

Summary: Resolving Ambiguity between APA and AVO regarding Union Obligations

1. Much like the objection of the Guilds, filed on November 2, 2023, and resolved at the SISP hearing on November 7, 2023, UBCP's objection arises from a potential ambiguity between Article 2.3(e) of the Asset Purchase Agreement ("APA") and paragraph 12 of the Approval and Vesting Order ("AVO") that could adversely impact UBCP's right to pursue residuals in respect of the Canadian Vendor, Windor Productions BC Inc. ("Windor BC") against the purchaser, Creative Wealth Media Lending ("CWML"), contrary to the intentions of the APA language.
2. Article 2.3(e) of the APA indicates that CWML will assume the collective agreement obligations of any labour union associated with a Canadian or US Vendor. However, paragraph 12 of the AVO, while largely mirroring Article 2.3(e), inadvertently fails to include any reference to UBCP. As a result, the AVO could be read as allowing CWML to purchase the assets of Windor BC, free and clear of any obligations arising from UBCP's collective agreement, including the obligation to pay residuals and UBCP's security agreement, despite the commitment to uphold these obligations in Article 2.3(e).
3. The results of this ambiguity, if left uncorrected, are two troubling potential implications: 1) CWML gets to exploit the ongoing revenue from Solitary (Windor) without paying for the labour of BC performers; and 2) since CWML has agreed to respect the collective agreement obligations and encumbrances of the Guilds, UBCP is arbitrarily singled-out.
4. Accordingly, UBCP seeks to have its name included in Article 2.3(e) of the APA, and paragraph 12 of the AVO, as one of the "Guilds", to avoid inadvertently extinguishing UBCP's collective agreement encumbrances and entitlement to pursue residuals with CWML. UBCP is unaware of any pre-closing liabilities owing on Windor BC to UBCP. UBCP expects that any amendments to the APA and AVO language will reflect CWML's go-forward obligations to UBCP under Article 2.3(e)

Background

5. UBCP represents performers in British Columbia who were involved in about 15 titles related to the Petitioners.
6. Only two of those 15 productions are directly part of this CCAA proceeding (Windor BC (as a Petitioner) and Drunk Parents Production Services Inc. (a Non-Petitioner)), and only one of those productions, Windor BC, is being purchased through the SISP.
7. In British Columbia, a part of Solitary was produced through Windor BC. Windor BC was a signatory to UBCP's collective agreement (the "Master Production Agreement").

8. Consistent with UBCP's industry practice and Master Production Agreement, Windor BC signed a general security agreement in favour of UBCP to secure its obligation to make payments due to performers under the Master Production Agreement.
9. Article A3606 of the Master Production Agreement requires Windor BC to pursue a Purchaser's Assumption Agreement from CWML when Windor BC is sold or transferred to any purchaser that is not a distributor. Failing this, Windor BC remains liable for any obligations to UBCP under the Master Agreement.
10. The Purchaser's Assumption Agreement contemplates that the purchaser will be bound by all of the production's obligations under the Master Agreement, including UBCP's security interest. The production is only relieved of any Master Production Agreement obligations when the purchaser signs the Purchaser's Assumption Agreement.

APA Language Affecting UBCP

11. Under Article 2.3(e) of the APA, CWML agreed to assume, perform, discharge, and pay any collective agreement obligations associated with the Vendors, which include Windor BC:

all obligations owing from any Vendor to the Directors Guild of America, Inc., the Screen Actors Guild – American Federation of Television and Radio Artists and the Writers Guild of America, West., Inc., and to any other labour union (collectively, the "Guilds") arising from a collective bargaining agreement between any Vendor or Vendors and any one or more of the Guilds, including but not limited to all obligations owing from any Vendor to one or more Guilds for the payment of residuals, including, without limitation, security agreements, collection account management agreements, assumption agreements, intercreditor agreements, interparty agreements, guarantee agreements, and any cash deposits or reserves held by any Guild. [Emphasis added]

12. After this language was negotiated without input from UBCP, UBCP asked the Petitioner and CWML to directly name UBCP in Article 2.3(e) to avoid any doubt that it applied to UBCP, instead of relying on inclusion through the language of "any other labour union".

Ambiguity between APA and AVO

13. While Article 2.3(e) of the APA applies to "any other applicable union" in respect of the Vendors, paragraph 12 of the AVO fails to make the same reference, and/or include mention of UBCP as one of the Guilds. As a result, the AVO could be read as inadvertently extinguishing UBCP's Master Production Agreement rights to pursue residuals against CWML, and any related Master Production Agreement encumbrances, including but not limited to security agreements.

Part 5: LEGAL BASIS

1. UBCP objects to the proposed transaction until the above inconsistency and issues are rectified, as there is a material inconsistency that may adversely impact the rights of UBCP.
2. To resolve the potential inconsistency and issues above, UBCP says that “the Union of British Columbia Performers” should be inserted into the definition of Guilds in Article 2.3(e) of the APA and paragraph 12 of the AVO to reflect the original intention of the transaction.

Part 6: MATERIAL RELIED ON

1. The pleadings and proceedings herein; and
2. Such further and other materials as counsel may advise and this Honourable Court may accept.

The Application Respondent estimates that the application will take 15 minutes.

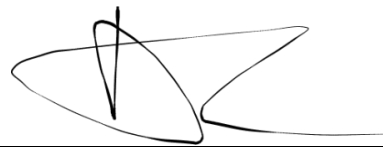
The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent’s ADDRESS FOR SERVICE is:

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Dated: November 14, 2023



Signature of Dawid Cieloszczyk, counsel
for Application Respondent

**Schedule “A”
List of Petitioners**

1. BRON Animation Inc.
2. BRON Creative Corp.
3. BRON Developments Inc.
4. BRON Media Corp.
5. BRON Media Holdings Inti. Corp.
6. BRON Media Holdings USA Inc.
7. BRON Releasing Inc.
8. BRON Studios Inc.
9. BRON Ventures 1 (Canada) Corp.
10. BRON Everest Productions Inc.
11. Fables Productions BC Inc.
12. Gossamer Productions BC Inc.
13. Hench 2 BC Productions Inc.
14. Henchmen Productions Inc.
15. Robin Hood Digital PC BC Inc.
16. Winder Productions BC Inc.
17. BRON Creative USA, Corp.
18. BRON Digital USA, LLC
19. BRON Life USA Inc. (BRON Legacy USA Inc.)
20. BRON Media Holdings USA Corp.
21. BRON Releasing USA Inc.
22. BRON Studios USA Inc.
23. BRON Ventures 1, LLC
24. BRON Studios USA Developments Inc.
25. Bakhorma, LLC
26. Drunk Parents, LLC
27. Fables Holdings USA, LLC
28. Fables Productions USA Inc.
29. Gossamer Holdings USA, LLC
30. Gossamer Productions USA Inc.
31. Harry Heft Productions, Inc.
32. Heavyweight Holdings, LLC (previously Harry Haft Films, LLC)
33. I Am Pink Productions, LLC
34. Lucite Desk, LLC
35. National Anthem Holdings, LLC (f.k.a. BCDC Holdings, LLC)
36. National Anthem ProdCo Inc.
37. Oakland Pictures Holdings, LLC
38. Pathway Productions, LLC
39. Robin Hood Digital PC USA Inc.
40. Robin Hood Digital USA, LLC
41. Solitary Holdings USA, LLC
42. Surrounded Holdings USA, LLC
43. Welcome To Me, LLC