IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bron Media Corp. (Re),*
2023 BCSC 1563

Date: 20230728
Docket: S235084
Registry: Vancouver

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

Before: The Honourable Justice Gomery

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners: B.J. Hicks
M. Faheim
A. Iqbal
C. McCord (by video)

Counsel for Creative Wealth Management: M. Shakra
A.J. Froh
E. Golden
B. Bates (by video)

Counsel for Comerica Bank:	J.D. Schultz J.J. Salmas D. Staber
Counsel for Access Road Capital:	P. Bychawski
Counsel for the Monitor:	J.N. Birch F.D. Finn
Counsel for the Directors Guild of America Inc. the Screen Actors Guild and Writers Guild of America West Inc.:	K. Esaw (by video) D. Ahdoot
Counsel for Hudson Private Corp and Hudson Private LP.:	M. Van Zandvoort (by video) J. Suttner
Counsel for Premium Properties Limited:	P. Cho W. Jaskiewicz
Counsel for the DIP lender (via video):	J. Foster
Counsel for Bayshore Capital Advisors (by video):	H. Book
Counsel for Creative Wealth Media (by video):	B. Kosak
Counsel for Bron CFO (by video):	D. Whitney
Place and Date of Trial/Hearing:	Vancouver, B.C. July 27 and 28, 2023
Place and Date of Judgment:	Vancouver, B.C. July 28, 2023

[1] **THE COURT:** The petitioners, whom I will describe collectively as “Bron”, are in the business of developing, producing, and selling films, television series, and digital media content. Their business is conducted through many different companies and project-based entities in Canada, the United States, and elsewhere, and are aptly described by the monitor as a complex web of companies straddling two main business areas (live action and digital). There are multiple secured creditors that have obtained security on differing entities within the corporate group to secure a variety of credit facilities. The entire business is managed by a small executive team from an office in Burnaby, British Columbia.

[2] Bron's business ran into difficulty during and in the aftermath of the COVID pandemic. At present, it has assets valued at US $148 million and liabilities exceeding US $419 million. The assets are largely intangible and difficult to value. There are four secured creditors: Comerica, owed US $4 million; Access Road, owed US $12.5 million; Creative Wealth entities, owed US $50.1 million; and the Royal Bank of Canada, owed $50,000.

[3] Early this year, Access Road commenced proceedings seeking the appointment of a receiver of Bron. The application was allowed by Justice Macintosh, whose order has been stayed pending an appeal by Justice Marchand of the Court of Appeal. The appeal of the receivership order is presently scheduled to be heard on August 17.

[4] On July 19, 2023, Bron sought creditor protection under the *Companies' Creditors Arrangement Act,* R.S.C., 1985, c. C-36 [*CCAA*]. An initial order was made without notice except to the secured creditors. That order received provisional recognition by the US Bankruptcy Court on July 20.

[5] Under the initial order, a Creative Wealth entity is providing interim or DIP financing, without which Bron could not continue to function. Bron sought DIP financing from other potential lenders, including Access Road, and obtained no offers.

[6] Bron now seeks to extend and modify the initial order and a further order establishing a sale and investment solicitation process or SISP. This application is made on notice as provided in the initial order, is supported by the monitor, and is not opposed in principle by any stakeholder. Some stakeholders raise objections to two important aspects of the order sought.

[7] I am of the view that the application should be allowed with some modifications for the following reasons.

[8] The two orders really stand or fall together because the purpose of extending and modifying the initial order is to facilitate the SISP, and the SISP requires the extension and modifications. Broadly speaking, the SISP contemplates the marketing of Bron's assets or some kind of corporate restructuring in a structured manner over a limited time overseen by the monitor. Keeping that in mind, I will address various components of the application individually.

[9] I must address the following objections:

1) Access Road maintains that the order may result in an unfair allocation of costs borne by it, either by virtue of priority charges created by the order, or in the ultimate allocation of the proceeds of the SISP.

2) Unsecured creditors engaged in litigation against Bron entities say that they received insufficient notice of this application to permit a proper evaluation of the SISP and seek a one-week adjournment of this part of the application. Alternatively, they seek assurance that the fairness of the SISP will not be presumed on any future application to approve a transaction generated by the SISP.

3) An unsecured creditor, Premium, seeks a variation of the SISP that would prevent Creative Wealth or any entity associated with Creative Wealth from bidding under the SISP.

[10] I will deal first with matters that are unopposed.

Extension of the Stay

[11] Under the initial order, the stay of proceedings against the companies which lies at the heart of a proceeding under the *CCAA* expires on July 29, 2023, and an extension is sought to October 18, 2023. This application is governed by s. 11.02(2) of the *CCAA*. The circumstances must make the order appropriate, and the applicant must satisfy the court that the applicant has agented and is acting in food faith and with due diligence.

[12] Having read the materials, I am satisfied of Bron's good faith and due diligence. Bron is engaged in a genuine and reasonable attempt to restructure its affairs in order that its businesses may continue in some altered form or to some more limited extent.

[13] Bron has undertaken since the filing date steps to create and implement a communication plan to advise key stakeholders of these proceedings, assess outstanding litigation against related entities, communicate with employees, creditors, vendors, customers, and other stakeholders, develop a key employee retention plan or KERP in consultation with the monitor, develop a SISP in consultation with the monitor and Creative Wealth, seek and obtain recognition of these proceedings in the United States, as I have already noted, participate in a daily call with the monitor, and establish protocols with the monitor for reporting and monitoring purposes.

[14] I find that the continuation of the stay is appropriate because there is a reasonable prospect of a sale of assets or a capital restructuring as contemplated in the proposed SISP order. That prospect requires that the stay remain in effect, and the alternative is a chaotic insolvency that would lead to worse results for most if not all stakeholders.

[15] Bron has secured sufficient DIP financing from its largest secured creditor, Creative Wealth, in an amount sufficient with court approval to fund its operations through to the end of the extended stay period.

<u>Increase in the Borrowing Limit for the DIP Loan and Associated Charge</u>

[16] The DIP loan is approved in the initial order and is secured by a priority charge under the initial order. Bron is seeking an increase in the amount of the loan and charge from US $1.75 million to US $6.2 million. The increase is necessary to meet anticipated cash flow needs through the end of the extended stay. This part of the application is governed by s. 11.2 of the *CCAA* , and I must consider the factors listed in sub (4).

[17] Taking those factors into account, I conclude that the increase of the DIP financing limit in the DIP charge is appropriate. In particular, I note that the petitioners propose to complete the SISP with the receipt of final bids by September 8, 2023, followed by court approval, and to pay out the DIP financing by the end of the stay period on October 18. Bron will continue to be managed by its existing senior management team, subject to supervision by the monitor, the DIP lender, and as necessary by the court.

[18] None of Bron's major creditors is opposed to the proposed financing. The financing will enable pursuant of the SISP for the benefit of all creditors. Bron's property consists substantially of intangible assets in the form of projects that are presently underway, that are not obviously or reasonably exigible for the benefit of creditors, and whose value will most likely be realized through a SISP facilitated by the financing. There is no evidence that any creditor is likely to suffer material prejudice, and the monitor supports the increase in financing.

<u>Administration Charge</u>

[19] The initial order provides for an administration charge of up to $250,000. The charge secures the fees of the monitor and professionals engaged by Bron in connection with the restructuring.

[20] Bron seeks to increase the charge to $500,000. This part of the application is governed by s. 11.52 of the *CCAA*. I am satisfied that the increase is appropriate in light of the complexity of the proposed restructuring, the experience and importance

of the professionals whose fees are to be secured to the ongoing process, the length of time the process will require, and the monitor's recommendation taking into account that the monitor is not entirely disinterested on this point.

The Directors' Charge

[21] The initial order provides for directors and officers to be indemnified against liabilities they may incur as a result of their involvement with Bron during the restructuring period, to the extent that those liabilities are not insured to a maximum of $250,000.

[22] Bron seeks an increase in the charge to $742,000. This part of the application is governed by s. 11.51 of the *CCAA*.

[23] I am satisfied that the increase is appropriate in light of: the exposure of directors and officers to claims for unpaid wages during the period of the extended stay, the charge's support by the monitor, and the exclusion from the charge of obligations incurred as a result of the gross negligence or willful misconduct of an officer or director.

KERP

[24] Bron seeks approval of a KERP, providing for payment of up to $234,000 to 13 key employees and an associated priority charge. This part of the application is governed by the court's general authority under s. 11 of the *CCAA* to make any order that is appropriate for the furtherance of a restructuring contemplated by the *Act*; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586, at paras. 66 to 71.

[25] The proposed KERP was developed with input from the monitor. On the monitor's advice, it was extended from 10 to 13 employees for the same maximum total payment. I accept the monitor's assessment that the KERP is appropriate considering:

a) the number of key employees is proportionately reasonable to the size and nature of the business;

b) the amounts being paid to the key employees appear reasonable both on an individual basis relative to each key employee's usual salary as well as an aggregate;

c) the key employees have specialized expertise and familiarity with the business and are critical to maintain the petitioner's continued operations and to support the monitor in gathering information and responding to bidder inquiries for the successful conduct of the issues, which should assist to reduce professional fees;

d) identifying replacement employees with the requisite sector experience and knowledge of the underlying business and projects is not practical in the circumstances;

e) the monitor has compared the proposed KERP with those in other recent restructuring proceedings under the *CCAA* and the *Bankruptcy and Insolvency Act* , R.S.C. 1985, c. B-3, and is satisfied that the quantum of the KERP payments and the terms of the KERP are commercially reasonable and are not off market in the circumstances; and

f) the KERP has been approved by the interim lender.

[26] I turn to the controversial matters.

Priorities Issue

[27] This part of the application is governed by s. 11.2 of the *CCAA* and, in relation to other charges, s. 11.52. These sections authorize the court to grant specified charges priority over the claims of existing secured creditors. The purpose is to facilitate restructurings from which all creditors will benefit; *Canada v. Canada North Group Inc.*, 2021 SCC 30, at paras. 30 to 31.

[28] The priority afforded the DIP charge and the other priority charges under the initial order was limited by a carve-out to the extent of security held by one secured creditor, Comerica. Bron seeks continuation of a modified version of the carve-out.

[29] Access Road, which is both a secured creditor and an unsecured judgment creditor, complains that the carve-out offends the principle of fair and equal treatment of creditors by giving Comerica special treatment. However, Access Road's solution is not to eliminate the Comerica carve-out; it is to extend the carve-out to Access Road.

[30] The proposed carve-out is complicated. It applies only in respect of property that is subject to an encumbrance in favour of Comerica. I am told that it applies to only three entities. Where it applies, it distinguishes between two kinds of charge held by Comerica: priority collateral, and second priority collateral. The priority collateral is security over revenues, tax intensives, or proceeds derived from or related to three named motion pictures. The priority collateral is afforded full priority over all the charges created by the proposed order. Second priority collateral is afforded priority over charges to secure the KERP payments, DIP financing, and directors charge, but not the administration charge.

[31] The proposed carve-out was the subject of what I gather were intense negotiations involving Bron, Creative Wealth, Comerica, and the monitor. The reason for carving out the priority collateral was that its nature is such that it is unlikely to be realized while the *CCAA* proceedings are ongoing. Rather, it will be paid out over years from revenues generated by the films in question. The reason for carving out the second priority collateral seems to have been pragmatic, grounded in part in collateral agreements between Comerica and Creative Wealth.

[32] As I have noted, Access Road does not object to the Comerica carve-out. It wishes to be afforded a carve-out of its own that is subordinate to the Comerica carve-out, so that all the security held by Access Road would take priority over all the charges created by the proposed order. Access Road submits that to do otherwise is in effect to consolidate the debts of the various Bron entities without satisfying the requirements of consolidation as set out in *Redstone Investment Corporation (Re)*, 2016 ONSC 4453, at para. 47. It submits that the rights of individual secured creditors to execute against assets held by individual entities

must be protected by ring-fencing each entity. Otherwise, Access Road may end up bearing expenses associated with various priority charges, when those expenses were incurred solely for the benefit of entities in respect of which Comerica is the secured lender in first position. In a word, Access Road says that this is unfair.

[33] The starting point is that there are more than 40 Bron entities, all subject to collective treatment in this proceeding and under the order. This is sensible because all are managed from a single executive office and are to be marketed collectively through the SISP. The priority charges under the order -- the administration charge, KERP charge, DIP charge, and directors charge -- all relate to collective expenses not easily or obviously allocable to any one entity. Access Road concedes that collective administration of an insolvent economic group of companies is proper under the *CCAA*.

[34] I agree with Access Road that in the case of a group insolvency, the economic impact of priority charges must be fairly distributed as among the secured creditors. I do not think that the imposition of a collective charge can only be justified on the same basis as would support an equitable consolidation of debts, as discussed in *Redstone*. The question is one of the allocation of charges created by the court for the appropriate management of a *CCAA* proceeding. It involves the exercise of a broad statutory discretion for the furtherance of the purposes of the *CCAA.*

[35] I am not persuaded that the charges created by the order should be subordinated to the Access Road security as proposed by Access Road. Special treatment of Access Road is not justified by the special treatment afforded to Comerica because Comerica's security and situation are substantially different. Its debt is much smaller, and much of its collateral is unrealizable in the near term as a practical matter.

[36] It appears unlikely that the Comerica carve-out affecting only three entities will have much effect on Access Road's overall position. I accept that Access Road, together with other creditors, will benefit substantially from collective marketing of

Bron's business through the charges created by the order. In that light, the subordination of its security to the charges is not unfair, even though Comerica receives somewhat more favourable treatment. In short, I refuse Access Road's primary objection to the order.

[37] Access Road proposes two modifications to the draft order with a view to laying a foundation for future discussion of the fair allocation of proceeds obtained through the SISP. I agree that Access Road's proposed addition at paragraph 28(h), with the modification discussed in oral argument, is appropriate. Access Road and Bron propose different versions of paragraph 48. Both versions appropriately provide for future applications in relation to the allocation of charges among the property recovered by the order. Bron's version includes a proviso that any such allocation must provide for the payment in full of all amounts and obligations secured by the charges created by the order. I doubt that the proviso makes a difference because I think it is axiomatic that charges secured by the order as a first priority must be paid in full. I see no harm in its inclusion.

The SISP

[38] The other two objections concern the SISP.

[39] The SISP provides for the dissemination of information required by bidders, establishes a timetable for the solicitation and consideration of letters of intent and bids, fixes requirements broadly framed for their consideration, and sets out who may see letters of intent and bids as they are received. It contemplates that Creative Wealth as DIP lender may submit a bid, but if it does, its participation in the process will be limited in certain respects.

[40] The monitor describes the SISP as appropriate in the circumstances in providing wide exposure and flexibility to it to solicit the market for restructuring, recapitalization, or another form of re-organization of Bron's business and affairs for a sale of all or substantially all of its assets.

[41] In *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107, Justice Fitzpatrick stated at para. 20:

> [20] Approvals of SISPs are a common feature in *CCAA* restructuring proceedings. The Walter Canada Group refers to *CCM Master Qualified Fund v. Blutip Power Technologies*, 2012 ONSC 1750. At para. 6, Brown J. (as he then was) stated that in reviewing a proposed sale process, the court should consider:
>
> > (i) the fairness, transparency and integrity of the proposed process;
> >
> > (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
> >
> > (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[42] I agree with the monitor that the process proposed by Bron and the monitor satisfies these criteria. On its face, it is fair, transparent, possesses integrity and commercial efficacy, and is likely to optimize recovery for stakeholders, including unsecured creditors and possibly shareholders. The timeline is short, but cash flow considerations necessitate a process that is not drawn out. At present, there is no better alternative in sight. On the other hand, I must take into account that this application has been brought on very short notice, and various unsecured creditors have not had a proper opportunity to gather evidence that might put a different perspective on the matter.

[43] An adjournment of the application for the SISP order, even for just one week, would give rise to substantial difficulty. Marketing is supposed to begin on August 1 and would be delayed. What is already an abbreviated timeline of five weeks would be cut down to four weeks. Creative Wealth is not committed to advancing funds required for the next week's operations until the SISP is approved. In light of these difficulties, I refuse the request for an adjournment.

[44] On the other hand, in view of the short notice of this application afforded the unsecured creditors, I find that the fairness of the SISP should not be presumed on any future application for approval of a transaction generated by the SISP.

[45] I turn to Premium's request for a modification that would prevent Creative Wealth of any entity associated with Creative Wealth from bidding under the SISP. I do not think that such a term is justified. I accept that the role of Mr. Cloth, a senior officer of at least some Creative Wealth entities and until recently a director of senior Bron entities, gives rise to an impression of cozy dealings. It is not clear whether this is anything more than an impression. Mr. Cloth resigned as a director of the Bron entities in May before the *CCAA* proceedings were commenced. Bron's present dealings with Creative Wealth are supervised by the monitor. If the monitor becomes aware of anything that is untoward, I am sure it will be reported to the stakeholders and the court.

[46] Creative Wealth is an obvious candidate to bid under the SISP because it is already involved with Bron and is familiar with its business. So long as the process is fair and the property is adequately exposed to the market, excluding a potential bidder from contention is not likely to yield the best outcome.

[47] Premium points to evidence that in some of their financing of Bron's films, Creative Wealth entities have participated as trustees for Premium and its affiliates. Premium says that Creative Wealth is in a conflict of interest. This is a matter between Premium and Creative Wealth. To the extent that Creative Wealth is in a conflict of interest, it may be under obligation to Premium, in which case Premium would have a strong case to take the benefit of whatever profit Creative Wealth is able to extract from its investment in Bron. Creative Wealth's apparent status as a trustee does not support an argument that it should be excluded from bidding under the SISP.

[48] For these reasons, I approve the amended and restructured initial order as presented, with the modifications as described, and I approve the SISP order.

"Gomery, J."