No. S-235084
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

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

Application response of: Access Road Capital, LLC. (the "**Respondent**" or "**Access Road**").

This is a response to: the notice of application (the "**Application**") of the petitioners filed on July 25, 2023.

Part 1: ORDERS CONSENTED TO

The Respondent does not consent to any of the orders sought in Part 1 of the Application.

Part 2: ORDERS OPPOSED

The Respondent opposes the orders sought in subparagraph sub-paragraph 1(f) of the Application, and the corresponding sub-paragraph 1(h) of the without notice petition filed by the petitioners on July 18, 2023, with respect to only the priority that is to be afforded to the charges referenced therein.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Respondent takes no position on the orders sought in subparagraphs sub-paragraphs 1(a) – (e), 1(g), and 2 of the Application other than as addressed herein.

Part 3: FACTUAL BASIS

Access Road

1. Access Road is a secured creditor of six of the petitioners, including BRON Studios Inc., BRON Ventures 1 (Canada) Corp., BRON Ventures 1, LLC, BRON Animation Inc., Henchman Productions Inc., and Windor Production BC Inc., among other entities in the "**BRON Group**" of companies.

2. Access Road is also an unsecured judgment creditor of the petitioner BRON Media Corp. ("**BRON Media**") pursuant to a "**Consent Judgment**" of this Court entered on October 6, 2022 and a judgment creditor of the petitioners BRON Ventures 1 (Canada) Corp., BRON Ventures 1 LLC, and BRON Media Holdings USA, Corp. pursuant to a judgment on the Supreme Court of the State of New York (Commercial Division) granted on May 24, 2022.

3. The amount subject to Access Road's security is the same amount that is subject to the Consent Judgment and judgments.

4. Based on the description of secured creditors set out in paragraphs 99 – 127 of Affidavit #1 of Aaron Gilbert ("**Gilbert #1**"), the approximately US $12.5 million in secured obligations that is owed to Access Road makes it the largest "non-insider" secured creditor of the petitioners.

The Receivership Order

5. On March 10, 2023, Access Road, in its capacity as a judgment creditor of BRON Media, a petitioner in this proceeding, obtained from this Court a conditional "**Receivership Order**" with respect to BRON Media only that would come into effect on May 8, 2023 only if BRON Media did not repay the amount owing to Access Road under the Consent Judgment by May 1, 2023.

Access Road Capital, LLC v Bron Media Corp., 2023 BCSC 497.

The Interim Lender's Appeal of the Receivership Order

6. BRON Media did not seek leave to appeal the Receivership Order.

7. On April 12, 2023, Creative Wealth Media Lending LP 2016 ("**CWL**"), the interim lender to the petitioners in these *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings, sought leave to appeal the Receivership Order in its capacity as a secured creditor of BRON Media.

8. CWL is an insider of the BRON Group. The "Creative Wealth Media" group, of which CWL is a part, was founded by an individual who up until the months immediately preceding the commencement of these CCAA proceedings was a BRON Media director who (a) has since 2014 held a key strategic financial and investor management role within the BRON Group; (b) holds himself out as the CEO of CWL (i.e., the interim lender); (c) has produced more than half of the BRON Group's feature films; and (d) remains a director of various BRON Group entities.

Affidavit #1 of Sandra Brown-John, Exhibits "A" – "E".

9. On May 4, 2023, the Court of Appeal granted an interim stay of the Receivership Order pending a decision on CWL's application for leave to appeal of the Receivership Order.

10. On May 19, 2023, the Court of Appeal granted CWL leave to appeal the Receivership Order and a stay of the Receivership Order pending the hearing of the appeal.

Creative Wealth Media Lending LP 2016 v. Access Road Capital, LLC, 2023 BCCA 208

11. Among other positions advanced on the appeal, CWL is taking the position before the Court of Appeal that it was an error of law for this Court to grant in the Receivership Order a priority charge in favour of the receiver for its fees and expenses properly incurred in discharging its duties in the interest of all stakeholders (including CWL) if CWL did not expressly consent to such priority being granted.

Notice of the Commencement of CCAA Proceedings

12. The Petition commencing these CCAA proceedings is expressly stated to be without notice. This is appropriate. Access Road's counsel was only emailed a copy of the Petition on Tuesday, July 18, 2023, at 4:37 PM. This was less than one business day before the scheduled hearing of the Petition at 9:00 AM on Friday, July 19. The Petition was effectively heard *ex parte*.

13. The "**Initial Order**" granted by this Court on July 19, 2023 set the "comeback hearing" for the Petition for 9:00 AM on Thursday, July 27 and continuing at 9:00 AM on Friday, July 28.

14. Pursuant to paragraph 58 of the Initial Order, this Court granted leave to hear any application in these proceedings on two (2) clear days' notice. The petitioners did not comply with this requirement with respect to the Application, having served the Application at 4:25 on Tuesday, July 25, and offer no evidence in support of their being urgency necessitating abridged notice.

Part 4: LEGAL BASIS

Petitioners Have the Burden of Establishing the Appropriateness of the Relief Sought

15. As stated above, the Petition for the Initial Order was expressly stated to be "without notice." This comeback hearing ought properly to be heard on a *de novo* basis with the petitioners having the onus of justifying to this Court the appropriateness of all provisions in the Initial Order on which submissions are made in this application response in accordance with section 11.02(3) of the CCAA.

League Assets Corp. (Re), 2013 BCSC 2043, para. 18(a).

The Need for "Ring Fencing" the Petitioners' Estates to Protect Stakeholder Interests

16. The Monitor advises that these proceedings affect "multiple secured creditors that have obtained security on differing (petitioner) entities within the corporate group to secure a variety of credit facilities." It is apparent that the rights and interests of the petitioners and their creditors are also separated across jurisdictions and subject to distinct national laws.

First Report of the Monitor, para. 81.

17. The Monitor also advises that it presently lacks balance sheets for the entities within the BRON Group necessary to obtain a full understanding of the assets and liabilities affected by the commencement of these proceedings.

First Report of the Monitor, para. 17.

18. Notwithstanding the acknowledgment of the corporate and operational separateness of the petitioners, and the separate legal rights and commercial interests of their stakeholders, and in the absence of any application for substantive consolidation, the petitioners have requested that the administration charge, the interim lender's charge, the directors' charge, and the key employee retention plan charge (collectively, the "**Charges**") be granted on a consolidated basis without any regard to the separateness of the petitioners' estates and the rights of their distinct creditors.

19. The consolidated structure of the Charges creates significant potential prejudice to creditors. Absent protective measures, the distinct creditors of separate entities within the petitioners' corporate group are in effect being compelled to subsidize and cross-collateralize assets across the petitioners' corporate group in various jurisdictions and to secure the Charges without any regard to the actual costs and benefits derived therefrom.

20. The risk of prejudice is particularly heightened in the context of these proceeding where the interim lender is an insider of the petitioners' corporate group.

21. To protect the integrity of the petitioners' separate estates, and to protect the interests of distinct stakeholder groups, it is necessary and appropriate to "ring fence" the petitioners' separate estates to trap operational and sale proceeds and costs, and to allow payment of obligations arising within the entities holding those assets.

League Assets Corp. (Re), 2015 BCSC 42, para. 10(b).
Sunrise/Saskatoon Apartments Limited Partnership (Re), 2017 BCSC 808, para. 6.

22. In addition, the proceeds of the interim financing sought to be approved by the petitioners must be made subject to a specific allocation as against specific assets, with general costs (such as overhead and professional costs) being allocated on a principled and transparent methodology.

League Assets Corp. (Re), 2015 BCSC 42, para. 10(b).

23. The need to respect the integrity of the petitioners' separate estates and the distinct interests of their stakeholders is also crucial in the context of the proposed sales and investment solicitation process. It is not appropriate for the petitioners to be able to sell their separate and distinct assets, whether individually or *en bloc*, without (a) granting reasonable consent and consultation rights to the primarily affected secured creditor with an interest in such assets, and (b) implementing reasonably required protective measures to ensure that purchasers of distinct assets held by one member of the petitioners' corporate group are not being compelled to pay out costs secured by Charges that were incurred by separate petitioners for the benefit of stakeholders with interests in other assets.

In the Matter of Pure Gold Mining Inc., BCSC No. S-228723, SISP and Sales Agent Approval Order, Schedule "B", para. 38; *In the Matter of Trevali Mining Corportion.*, BCSC S-226670, SISP and Sales Agent Approval Order, Schedule "B", para. 35; *In the Matter of 0989705 B.C. Ltd., et al.*, BCSC No. S-222758, Approval of Sales and Investment Solicitation Process, Schedule "B", para. 29.

The Need for Equal and Fair Treatment of Creditors

24. Equal treatment of creditors, subject to the priorities set out in legislation, is a recognized principle of insolvency law. It is fundamental that like creditors be treated equally and fairly in terms of their expected recovery in an insolvency scenario. The jockeying of creditors to obtain a better and bigger piece of the pie is anything but in the best interest of stakeholders generally.

Arrangement relatif à Métaux Kitco inc., 2017 QCCA 268, para. 62.
League Assets Corp. (Re), 2015 BCSC 42, paras. 2 and 97.

25. The petitioners' and CWL's "wheeling and dealing" in terms of who will be sought to be judicially subordinated by them to the Charges and who will be allowed by them to rank in priority to the Charges is unprincipled and contrary to the doctrine of the equal treatment of creditors.

Proposed *Amended and Restated Initial Order*, para. 42 and 44(ii).

26. There is also no evidentiary or legal basis for the petitioners' proposed granting of priority status to the security held by some preferred creditors over certain of the Charges but not to other similarly situated secured creditors who are not preferred by the petitioners or CWL.

27. For example, neither the petitioners nor the Monitor have provided any evidence or principled analysis rooted in section 11.2 of the CCAA or otherwise for subordinating the Charges (other than the administration charge) with respect to BRON Studios Inc. to the security of Comerica Bank but not that of Access Road. Nor is there any evidence or principled analysis rooted in section 11.2 of the CCAA or otherwise for granting special preference (at CWL's discretion) to the creditors listed in paragraph 44(ii) of the proposed Amended and Restated Initial Order but not to others.

28. Such arbitrary conduct on the part of the petitioners and CWL, in addition to being unprincipled, is unworkable. This is evident in considering the situation of BRON Studios Inc. where the effect of the petitioners' and CWL's approach appears to be the judicial reordering of priorities in an unworkable manner. The evidence and analysis with respect to the potential legal and financial consequences of the preferential treatment set out in paragraph 44(ii) of the proposed Amended and Restated Initial Order is lacking.

Affidavit #1 of Sandra Brown-John, Exhibit "F".

29. In any event, whether workable or not, this Court does not have an at-large equitable jurisdiction to reorder priorities or to grant remedies as between creditors.

U.S. Steel Canada Inc. (Re), 2016 ONCA 662, para. 82.

Part 5: MATERIAL TO BE RELIED ON

30. Affidavit #1 of Sandra Brown-John, made on July 27, 2023.

31. Such further and other materials as counsel may advise and this Court allows.

The Respondent estimates that the Application will take two hours.

THIS APPLICATION RESPONSE is prepared and delivered by Peter Bychawski of the firm Blake, Cassels & Graydon LLP, Barristers & Solicitors, counsel for Access Road Capital, LLC, whose ADDRESS FOR SERVICE is Suite 2600, Three Bentall Centre, 595 Burrard Street, Vancouver, BC V7X 1L3; Email: Vancouver.service@blakes.com / peter.bychawski@blakes.com

Date: July 27, 2023

Signature of Peter Bychawski
Lawyer for Access Road Capital, LLC

Schedule "A"

List of Petitioners

	Debtor Company	**Jurisdiction**
1.	BRON Animation Inc.	British Columbia
2.	BRON Creative Corp.	Ontario
3.	BRON Developments Inc.	British Columbia
4.	BRON Media Corp.	British Columbia
5.	BRON Media Holdings Intl. Corp.	British Columbia
6.	BRON Media Holdings USA Inc.	British Columbia
7.	BRON Releasing Inc.	British Columbia
8.	BRON Studios Inc.	British Columbia
9.	BRON Ventures 1 (Canada) Corp	British Columbia
10.	BRON Everest Productions Inc.	Ontario
11.	Fables Productions BC Inc.	British Columbia
12.	Gossamer Productions BC Inc.	British Columbia
13.	Hench 2 BC Productions Inc.	British Columbia
14.	Henchmen Productions Inc.	British Columbia
15.	Robin Hood Digital PC BC Inc.	British Columbia
16.	Windor Productions BC Inc.	British Columbia
17.	BRON Creative USA, Corp.	Nevada
18.	BRON Digital USA, LLC	Delaware
19.	BRON Life USA Inc. (BRON Legacy USA Inc.)	Delaware
20.	BRON Media Holdings USA Corp.	Delaware
21.	BRON Releasing USA Inc.	Delaware
22.	BRON Studios USA Inc.	Nevada

23.	BRON Ventures 1, LLC	Delaware
24.	BRON Studios USA Developments Inc.	Nevada
25.	Bakhorma, LLC	Washington
26.	Drunk Parents, LLC	New York
27.	Fables Holdings USA, LLC	Delaware
28.	Fables Productions USA Inc	Delaware
29.	Gossamer Holdings USA, LLC	Delaware
30.	Gossamer Productions USA Inc.	Delaware
31.	Harry Haft Productions, Inc.	New York
32.	Heavyweight Holdings, LLC (previously Harry Haft Films, LLC)	Delaware
33.	I Am Pink Productions, LLC	Delaware
34.	Lucite Desk, LLC	Delaware
35.	National Anthem Holdings, LLC (f. k. a. BCDC Holdings, LLC)	Delaware
36.	National Anthem ProdCo Inc.	New Mexico
37.	Oakland Pictures Holdings, LLC	Delaware
38.	Pathway Productions, LLC	Delaware
39.	Robin Hood Digital PC USA Inc.	Delaware
40.	Robin Hood Digital USA, LLC	Delaware
41.	Solitary Holdings USA, LLC	Delaware
42.	Surrounded Holdings USA LLC	Delaware
43.	Welcome to Me, LLC	California