No. S235084
Vancouver Registry

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

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 Directors Guild of America, Inc., the Screen Actors Guild - American Federation of Television and Radio Artists, the Writers Guild of America, West, Inc. and the Motion Picture Industry Pension and Health Plans (collectively, the "**Application Respondents**" or the "**Guilds**").

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 Respondents consent 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 Respondents oppose 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 Respondents take 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

<u>The Priority Indebtedness in Favour of the Guilds</u>

1. The Petitioners seek an approval and vesting order (the "**AVO**") approving the Asset Purchase Agreement dated October 24, 2023 among Creative Wealth Media Lending LP 206, by its general partner, Creative Wealth Media GenPar Ltd. (the "**Purchaser**") and certain of the Petitioners (collectively, the "**Vendors**") (the "**APA**"), which, among other things, will transfer the Purchased Assets (as such are defined in the APA) free and clear of all Encumbrances (as defined in the AVO), save the Permitted Encumbrances (which as defined in the AVO differs from the definition in the APA).

2. The Guilds have reviewed the AVO and request that it be corrected to accurately conform with the terms of the APA, applicable law and normal course entertainment industry practices with respect to the interests of the Guilds.

3. Many of the motion pictures included in the APA were produced subject to one or more collective bargaining agreements (collectively, "**CBAs**") and related "Financial Assurances" embedded in, and/or required by, the CBAs, including, without limitation, security agreements, collection account management agreements, assumption agreements, intercreditor agreements, interparty agreements, cash deposits or reserves, and guaranty agreements (collectively, "**Permitted CBA Encumbrances**") in favor of the Guilds.

4. In the APA, the Purchaser will assume all obligations to the Guilds in accordance with the *Companies Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended (the "**CCAA**") and intends to maintain normal course entertainment industry practices, but there is a potential inconsistency with the APA's broad assumption of Guild obligations and the present structure of the AVO, particularly with respect to the provisions for Permitted Encumbrances. Moreover, both the APA and the AVO fail to acknowledge the contract assumption process embedded in each of the CBAs.

5. Several weeks ago, the Guilds provided the Petitioners with language that would address this concern, reflecting normal course entertainment industry practices adopted and enforced by Bankruptcy Courts across the United States of America ("**CBA Language**").[1] The Language proposed by the Guilds was provided in the APA and the AVO so that the two documents would be complementary to each other. The Purchaser accepted the language from the APA but, allegedly through inadvertence, did not include the language in the AVO, being the CBA Language. The Purchaser continues to consider the CBA Language, but until this issue is corrected in the AVO the Guilds must object to preserve their rights.

6. Subsection 2.3(e) of the APA confirms that the Purchaser shall assume and perform, discharge and pay when due all Assumed Liabilities of the Vendors, broadly including:

> all obligations owing from any Vendor to 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

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[1]*See e.g.*, Submission of Prepackaged Solicitation Materials at 35-37, *In re RHI Entertainment, Inc.*, Case No.10-16536 (Bankr. S.D.N.Y. Dec. 10, 2010) D.I. 20-2; Chapter 11 Plan / Notice of Filing of (I) Plan Proponents' Fourth Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code and (II) Certain Exhibits Thereto at 14, 53, *In re Relativity Fashion, LLC*, Case No. 15-11989 (Bankr. S.D.N.Y. Feb. 8, 2016), D.I. 1572; Notice of Results of Auction for All or Substantially All of Debtors Assets Held and Concluded on September 3, 2014, and Declarations in Support of Sale, *In re Inverness Distribution Limited*, Case No. 11-15939 (Bankr. S.D.N.Y. Sept. 8, 2014), D.I. 263-1; Debtor's Second Amended Chapter 11 Plan of Reorganization at 94-95, *In re Persik Productions, LLC*, Case No. 10-12122 (Bankr. C.D. Cal. Mar. 11, 2011), D.I. 221; Morgan Creek Productions, Inc.'s Submission of (1) Asset Purchase Agreement for the Franchise Assets, (2) Redline of Asset Purchase Agreement Against FPLAC APA, and (3) Binding Letter of Intent for the SPE Assets at 16-17, *In re Franchise Pictures, LLC,* Case No. 05-13855 (Bankr. C.D. Cal. Aug. 22, 2016), D.I. 625; Order (I) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests, Encumbrances and Other Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (III) Granting Related Relief at 24, *In re The Weinstein Company Holdings LLC, et al.*, Case No. 18-10601 (Bankr. D. Del. May 9, 2018), D.I. 846; Order (A) Approving the Asset and Equity Purchase Agreement, (B) Authorizing the Sale of Assets, (C) Authorizing the Assumption of Contracts and Leases, and (D) Granting Related Relief at 34, *In re Vice Group Holding Inc.*, Case No. 23-10738 (Bankr. S.D.N.Y. June 23, 2023), D.I. 214.

agreements, collection account management agreements, assumption agreements, intercreditor agreements, interparty agreements, guarantee agreements and any cash deposits or reserves held by any Guild.

7. The APA, at Subsection 2.1(a) also provides that the Purchased Assets will be sold free and clear of all encumbrances, except for the "Permitted Encumbrances," which is defined in Article 1.1 of the APA as "all security interests and other interest arising exclusively from the Assumed Liabilities."

8. Pursuant to APA provisions, 2.3(e) and 1.1, the Permitted CBA Encumbrances are "Permitted Encumbrances" as defined by the APA.

9. Notwithstanding these provisions of the APA, the AVO could be read to vest all of the Purchased Assets in the Purchasers free and clear of all encumbrances save the "permitted encumbrances, easements and restrictive covenants listed in Schedule "E" thereto", also defined as "Permitted Encumbrances". Schedule "E" does not include any of the Permitted Encumbrances defined in the APA, but simply reads "Nil".

10. The language in the AVO is inconsistent with the language in the APA, which raises material uncertainty for the Guilds as to the treatment of their interests post-closing of the transaction contemplated by the APA (the "**CWM Transaction**"). As presently drafted, the AVO could be interpreted to extinguish Permitted CBA Encumbrances, notwithstanding the terms of the APA, and therefore, the Guilds seek to have this error in the AVO modified to accurately reflect the APA, in conformance with applicable law and normal course practices in the entertainment industry.

The Assumed Contracts

11. Under paragraph 12 of the AVO, the Petitioners seek to have all Assumed Contracts (as defined in the APA) remain in full force and effect.

12. Schedule "B" to the APA purports to list all Assumed Contracts, however the Guilds seek to ensure that any contracts between and among the Petitioners and the Guilds inadvertently left off such list are not extinguished.

13. The Petitioners also seek an order assigning the Assumed Contracts (the "**Assignment Order**") to the Purchaser**.**

14. The APA contemplates that cure costs will be paid for all Assumed Contracts requiring consent (the "**Cure Costs**"). Schedule "D" to the Assignment Order purports to be an exhaustive list of all contracts which require consent for assignment. However, it excludes certain contracts between and among the Vendors and the Guilds which require consent. The Application Respondents seek to ensure that all Cure Costs are paid.

15. The Purchaser has not confirmed that it will pay all Cure Costs.

16. The Petitioners, the Purchaser and the Guilds are involved in ongoing discussions to address the amounts of owed to the Guilds in regards to their prefiling claims on the Purchaser's assumed obligations.[2] The Petitioners have taken the position that minimal amounts are due, or that third parties or Collection Account Management Agreements (collectively, "**CAMAs**") may be responsible for the obligations.[3] However, the Guilds disagree and the diligence surrounding these issues remain ongoing.

17. With respect to pre-filing claims which the Petition assert may, or could be, satisfied by third parties or the existing CAMAs which are being assumed (collectively, "**Third Party Liabilities**"), the AVO, as currently drafted, could be interpreted as extinguishing Guild pre-filing claims related to these Third Party Liabilities, without ensuring that such claims will be satisfied.

18. Until there is a resolution, the Guilds object to the proposed extinguishment of the Guilds' pre-filing claims, unless: 1) the Cure Costs owed to the Guilds are paid in full, or 2) a sufficient reserve is to established to cover all potential Cure Costs, or 3) the Guilds' pre-filing claims are preserved to be addressed by the Purchasers in the ordinary course subsequent to the CWM Transaction, and, in any event, 4) with respect to any Third Party Liabilities, such pre-filing claims are preserved and remain unmodified, so that the

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[2] Fifth Affidavit of Aaron Gilbert dated October 24, 2023 ("Fifth Gilbert Affidavit") at para 41.

[3] Fifth Gilbert Affidavit at para 41.

Application Respondents are able to process those claims against non-Purchaser entities and structures.

The Americana Transaction

19. The Petitioners also seek an order (the "**Americana Transaction Approval Order**") approving the term sheet dated July 28, 2023 (the "**Americana Term Sheet**") regarding the distribution rights for the motion pictures "Americana" between the Petitioner National Anthem Holdings LLC and Lions Gate Entertainment Corporation (the "**Distributor**").

20. The Americana Transaction Approval Order, at paragraph 5, states that "[a]ll proceeds from the transaction contemplated by the Americana Term Sheet (the "**Americana Transaction**") shall be paid and distributed in accordance with terms of the applicable Collection Account Management Agreement unaffected by these CCAA Proceedings and the orders of this Court granted therein" ("**Americana CAMA**").

21. "Americana" was produced subject to Permitted CBA Encumbrances, and the Guilds are parties to the Americana CAMA (collectively, "**Americana Guild Encumbrances**"). Petitioners have represented to the Guilds that the Americana Transaction will not disturb any of Americana Guild Encumbrances, and the Americana Term Sheet confirms that Distributor's interests are subject to the obligations of the Guilds, including Distributor's execution of Guild assumption agreements, in accordance with normal course entertainment industry practices.

22. The Americana Transaction Approval Order is silent on whether the Americana Guild Encumbrances will remain unaffected by these CAA Proceedings, similar to the Americana CAMA. The Guilds seek to ensure that the Americana Transaction Approval Order is modified to confirm that the Americana Guild Encumbrances are unaffected by these CAA Proceedings.

Part 5: LEGAL BASIS

Permitted Encumbrances

1. The APA as drafted includes the Permitted CBA Encumbrances as "Permitted Encumbrances" that will not be vested off. However, this is not reflected in the AVO.

2. The Permitted CBA Encumbrances should be preserved in a transaction pursuant to the CCAA and their status should not be uncertain due to ambiguous and unclear language in the AVO.

3. The Guilds request that this Schedule “E” to the AVO be revised to reflect the definition of “Permitted Encumbrances” set out in the APA.

Assumed Contracts

4. Paragraph 12 of the AVO incorporates by reference Schedule “B” to the APA, which purports to include all Assumed Contracts.

5. Pursuant to Subsection 11.3(4) of the CCAA, the Court must be satisfied that monetary defaults in relation to any agreement to be assigned will be remedied on or before the date fixed by the Court.

6. The Purchaser has not yet confirmed that it will pay all Cure Costs.

7. The Guilds request that paragraph 12 of the AVO be revised such that all Guild contracts will be and remain in full force and effect and are otherwise granted the protections granted in paragraph 12.

8. Schedule “D” to the Assignment Order fails to include all contracts between and among the Petitioners and the Guilds requiring consent.

9. The Guilds request Schedule “D” to the Assignment Order be revised to include all such contracts.

The Americana Transaction

10. The Americana Transaction Approval Order provides that the proceeds from the Americana Transaction will be distributed in accordance with the terms of the applicable Collection Account Management Agreement but is silent with respect to the Americana Guild Encumbrances.

11. The Guilds request that the Americana Transaction Approval Order be amended to be clear that, similar to the Americana CAMA, the Americana Guild Encumbrances continue to remain unaffected by these CCAA proceedings.

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 estimate(s) that the application will take 30 minutes.

The Application Respondents have filed in this proceeding a document that contains the Application Respondents' address for service.

Dated: November 1, 2023

Kathryn Esaw

Signature of Mary Buttery, K.C./
Kathryn Esaw, 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