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. 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

NOTICE OF APPLICATION

TO: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Justice Gomery at the courthouse at 800 Smithe Street, Vancouver, British Columbia on March 22, 2024 at 9:00 a.m. in person and by MS Teams, for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. An order (the "**Termination Order**"), among other things:

   (a) terminating these CCAA proceedings when (the "**CCAA Termination Time**") Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed Monitor of the Petitioners (in such capacity, the "**Monitor**") files with this court a termination certificate (the "**Termination Certificate**");

(b) approving the conduct and activities of the Monitor as described in the Monitor's Sixth Report to be filed (the "**Sixth Report**");

(c) approving the fees and disbursements of the Monitor (including estimated fees until the completion of these proceedings) as summarized in the Sixth Report and as set out in Affidavit #3 of Mark Wentzell, to be affirmed (the "**Third Wentzell Affidavit**");

(d) approving the fees and disbursements of Cassels Brock & Blackwell LLP ("**Cassels**") (including estimated fees until the completion of these proceedings) in its capacity as counsel to the Monitor, as summarized in the Sixth Report and set out in Affidavit #2 of Forrest Finn, to be affirmed (the "**Second Finn Affidavit**");

(e) discharging the Monitor as at the CCAA Termination Time;

(f) terminating the court-ordered charges made in these CCAA proceedings at the CCAA Termination Time; and

(g) extending the stay of proceedings until the earlier of

1. the date that Monitor files the Termination Certificate, and
2. April 30, 2024; and

2. Such other relief as this Court may deem just.

PART 2: FACTUAL BASIS

A. Overview and Background

3. The full facts in support of this application to the Court are set out in the ninth Affidavit of Aaron Gilbert, affirmed March 12, 2024 (the "**Ninth Gilbert Affidavit**"). All capitalized terms not otherwise defined herein shall have the same meanings prescribed to them in the Ninth Gilbert Affidavit.

4. The Petitioners in this proceeding are listed within Schedule "A" to this application and are collectively referred to herein as the "**Petitioners**" or the "**Company**".

5. The Company is a private, closely-held corporate group that develops, produces and sells motion pictures, series television, and digital media content. It has a complex corporate structure with over 100 entities. This is due to the nature of the Company's global production business, and because the Company manages and operates each film or television production it undertakes through special-purpose entities.

6. Given its liquidity challenges and dire need for stability, the Company, in consultation with its advisors, determined that it was in the best interests of the Company and its stakeholders to initiate these proceedings and seek the Initial Order.

7. The most recent set of orders granted in these proceedings (the "**January 17 Orders**") were the culmination of the court-approved and court-supervised sale and investment solicitation process. The January 17 Orders approved a number of transactions involving the Petitioners, among other things, as follows:

   (a) an order, among other things, approving a global settlement between Access Road Capital LLC ("**Access Road**") and Creative Wealth Media Lending LP 2016 ("**CW Lending**");

   (b) an order, among other things, approving a transaction between Access Road and certain of the Petitioners for certain of the Petitioners' assets;

   (c) an order approving a transaction between CW Lending, by its general partner Creative Wealth Media GenPar Ltd., as purchaser, and certain of the Petitioners for the vast majority of the Petitioners' assets (the "**CW Lending AVO**"); and

   (d) a Second Amended and Restated Initial Order.

8. Following this Court's approval of the transactions on January 17, 2024, the Foreign Representative brought a motion in the U.S. Recognition Proceedings, seeking an order recognizing each of the January 17 Orders. The motion was granted and the January 17 Orders were recognized.

Termination Order and Discharge of Monitor

9. The sale transactions this court approved on January 17, 2024 have closed. The Monitor filed its closing certificates for each transaction, as applicable. These CCAA proceedings have successfully served their purpose.

10. Subject to certain remaining activities to be completed by the Monitor, as will be detailed in the Monitor's forthcoming report to the Court, the Monitor has completed its duties. It is appropriate at this time to discharge GT in its capacity as the Monitor of the Petitioners at the CCAA Termination Time.

11. The following court-ordered charges remain against title to the Petitioners' property (collectively the "**Charges**"), each as defined in the Initial Order:

    (a) the Administration Charge;

    (b) the KERP Charge;

    (c) the Interim Lender's Charge; and

    (d) the Directors' Charge.

12. The Petitioners ask the court to terminate the Charges as of the CCAA Termination Time.

13. Since cash was a purchased asset in the CW Lending sale transaction, amounts secured under the Administration Charge will have to be appropriately secured before the sale transactions close. In that regard, paragraph 6 of the CW Lending AVO authorizes the Petitioners to hold back from the cash to be transferred to CW Lending on closing the following sums:

    (a) the projected operating expenses of the Petitioners and the fees of the Monitor, its counsel and counsel for the Petitioners, all as set out in the cash flow of the Petitioners up to March 29, 2024 that was appended to the Monitor's Fifth Report (the "**Cash Reserve**"); and

(b) a further $100,000 to cover fees and expenses of the Monitor, its counsel, and counsel for the Petitioners after March 29, 2024 to complete the proceedings and to have the Monitor discharged (the "**Case Termination Reserve**").

14. The Petitioners propose to pay the Cash Reserve and the Case Termination Reserve to the Monitor to be held in trust and then disbursed for the purposes described above. Any remaining portion of the Cash Reserve and Case Termination Reserve that remains after Case Termination occurs will be remitted to CW Lending or the Permitted Assignee.

15. Upon filing and service of the Termination Certificate, GTL will be discharged from its duties as Monitor, but will continue to have the benefit of any of the rights, approvals, releases, and protections in favour of the Monitor as set out in the Orders in the CCAA proceedings and the Termination Order.

16. Notwithstanding its discharge as Monitor, GTL shall have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to the CCAA proceedings as may be required.

PART 3: LEGAL BASIS

17. The Petitioners rely on

(a) the CCAA;

(b) the *Supreme Court Civil Rules,* BC Reg. 241/2010;

(c) the inherent and equitable jurisdiction of this Honourable Court; and

(d) such further and other legal basis as counsel may advise and this Honourable Court may allow.

CCAA Termination Order is Appropriate

18. Section 11 of the CCAA provides this Court with broad discretion to make "any order that it considers appropriate in the circumstances." It must be exercised in furtherance of CCAA's remedial objectives. And courts consider whether:

(a) the order sought is appropriate in the circumstances;

(b) the debtor company is acting in good faith; and

(c) the debtor company is acting with due.[1]

19. An order under section 11 of the CCAA will be appropriate where it "advances the policy objectives underlying the CCAA." These objectives include maximizing creditor recovery and providing a "timely, efficient and impartial resolution of a debtor's insolvency."[2]

20. In furtherance of the remedial objectives of the CCAA, this Court has routinely granted orders akin to the proposed CCAA Termination Order—terminating a debtor company's proceedings under the CCAA and discharging the court-appointed monitor.[3] Prior CCAA Termination Orders have also provided for a variety of additional relief to assist in the interim and subsequent periods surrounding the termination of the CCAA proceedings.

21. Having regard to the foregoing considerations, it is appropriate for this Court to terminate these CCAA proceedings in the manner contemplated by the Termination Order given that

(a) the Petitioners have no ongoing business operations as the contemplated transactions approved by the January 17 Orders have now closed;

(b) since the granting of the Initial Order, the Petitioners have acted, and continue to act, in good faith and with due diligence;

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[1] *9354-9186 Quebec Inc v Callidus Capital Corp*, 2020 SCC 10 at para 49.

[2] *9354-9186 Quebec Inc v Callidus Capital Corp*, 2020 SCC 10 at paras 40 and 46.

[3] See, for example, *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp.*, CCAA Distribution and Termination Order (February 15, 2022), Toronto, CV-21-00673304-00CL.

(c) all matters requiring resolution within the ambit of the CCAA proceedings, including the Monitor's remaining activities, will have been completed by the CCAA Termination Time, and there are no outstanding amounts owing in relation to the Charges that have not been reserved for in the Case Termination Reserve; and

(d) the Monitor supports the termination of the CCAA proceedings on the terms set out in the proposed Termination Order.

Monitor's Report and Activities Approval

22. The Sixth Report outlines the specific activities taken by the Monitor from the time of Monitor's Fifth Report (the "**Fifth Report**") to the present, and the Monitor seeks approval for its conduct and activities as set out in the Sixth Report.

23. A request to approve a monitor's report "is not unusual".[4] There are policy and practical reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during the CCAA proceedings. Specifically, Court approval

(a) allows the Monitor to move forward with next steps in the CCAA proceedings;

(b) brings the Monitor's activities before the Court;

(c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

(d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;

(e) provides protection for the Monitor not otherwise provided by the CCAA; and

(f) protects the creditors from the delay and distribution that would be caused by

1. re-litigation of steps taken to date; and

[4] *Re Target Canada Co*, 2015 ONSC 7574 at para 2.

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2. potential indemnity claims by the Monitor.[5]

24. In addition, the approval sought is not a general approval of the Monitor's activities to date but is the approval of the specific activities taken by the Monitor from the Fifth Report to date, all of which are detailed in the Sixth Report.

Fees and disbursements of the Monitor and its counsel

25. The Amended and Restated Initial Order pronounced July 28, 2023 (the "**ARIO**") provides that the Monitor and its counsel shall be paid their reasonable fees and disbursements at their standard rates and charges.

26. Paragraph 34 of the ARIO provides that the Monitor and its legal counsel shall pass their accounts from time to time:

> 34. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

27. The Monitor and its counsel have been paid their fees and disbursements at their standard rates and charges by the Petitioners from time to time, in accordance with the terms of the ARIO. The Monitor's invoices for the period from January 2, 2024 to March 13, 2024, including an estimate of fees and disbursements to completion are set out in the Third Wentzell Affidavit. Cassels's invoices for the period from January 1, 2024 to March 13, 2024, including an estimate of fees and disbursements to completion are set out in the Second Finn Affidavit.

28. It is not necessary for the Court to go through the supporting documentation for the fees and disbursements line by line to determine what the appropriate fees and disbursements

[5] *Re Target Canada Co*, 2015 ONSC 7574 at paras 12, 22, 23.

are. Nor is the Court to second-guess the amount of time spent by a monitor unless it is clearly excessive or overreaching.[6]

29. The Petitioners seek approval of the fees and disbursements incurred by the Monitor and its counsel, Cassels, for the following reasons:

(a) **The fees are fair and reasonable**: In considering the "overriding principle of reasonableness" and the overall value contributed by the Monitor and its counsel, the fees and disbursements incurred, and the estimated fees and disbursements, are fair and reasonable in the circumstances.[7]

(b) **Factors Support Reasonableness Assessmen**t: The Court has recognized certain non-exhaustive factors which apply in this case,[8] including: (i) the complexity of the issues and the competing interests of multiple stakeholders; and (ii) the material, positive impact of the Monitor and its counsel's efforts on advancing the CCAA proceedings.

(c) **Time incurred**. The time spent, and the fees and disbursements, are commensurate with the significant role, responsibilities and activities undertaken.

(d) **Knowledge, Experience and Skill**. The Monitor and its counsel have significant knowledge, experience and skill in complex restructuring matters.

(e) **Diligence and Thoroughness Displayed**. The breadth of matters detailed in the Sixth Report and the Monitor's other reports to Court demonstrate the diligence and thoroughness displayed by the Monitor and its counsel throughout the CCAA proceedings.

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[6] *Bank of Nova Scotia v Diemer*, 2014 ONSC 365 at para 19 (aff'd 2014 ONCA 851).

[7] *Nortel Networks Inc.*, 2022 ONSC 6680 at para 10; Also see *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at paras 15 and 21; also, see *Vantreight v Vantreight*, 2007 BCSC 1345 at para 43 and *Street v Sather Ranch Ltd*, 2021 BCSC 1090 at para 50.

[8] *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 33

(f) **Responsibilities Assumed**. The Monitor, with the assistance of its counsel, assumed significant responsibilities and carried out extensive activities, which are detailed in the Sixth Report.

(g) **Results achieved**. The efforts of the Monitor and its counsel, including the contribution to the completion of several critical steps in these proceedings, were integral to advancing the CCAA proceedings.

(h) **Cost of Comparable Services**. The Monitor and its counsel billed amounts at each firm's standard/regular hourly rates, which are consistent with the hourly rates charged by other firms of comparable size and expertise for the provision of similar services.

30. Accordingly, the fees and disbursements of the Monitor and its counsel, including the estimate of fees and disbursements to completion of the CCAA proceedings are fair and reasonable in the circumstances and ought to be approved.

PART 4: MATERIAL TO BE RELIED ON

31. Affidavit #1 of Aaron Gilbert dated July 18, 2023;

32. Affidavit #9 of Aaron Gilbert dated March 12, 2024;

33. The Sixth Report of the Monitor to the Court; and

34. Such further and other materials as counsel may advise and this Honourable Court may allow.

The Petitioners estimate that the application will take 30 minutes.

TO THE PERSONS RECEIVING NOTICE OF THIS APPLICATION:

Date: March 12, 2024

Signature of Asim Iqbal
Lawyers for the Petitioners

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To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs ____________________ of Part 1 of this Notice of Application.

[ ] with the following variations and additional terms:

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Date: ....

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Signature of [ ] Judge [ ] Master

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