No. S-235084
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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

Application response of: Creative Wealth Media Lending LP 2016 (the "**Respondent**" or the "**DIP Lender**").

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 consents to the granting of the orders set out in subparagraphs 1(a)-(f) and paragraph 2 of Part 1 of the notice of application on the terms set out therein.

Part 2: ORDERS OPPOSED

The Respondent does not oppose the granting of the orders set out in subparagraphs 1(a)-(f) and paragraph 2 of Part 1 of the notice of application on the terms set out therein.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Respondent takes no position on the granting of the orders set out in subparagraph 1(g) of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

Background

1. Given their significant liquidity challenges and need for stability and protection from their creditors, the Petitioners sought and, on July 19, 2023 obtained an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2. Details concerning the Petitioners' financial circumstances and urgent need for relief under the CCAA are set out the first Affidavit of Aaron Gilbert sworn July 18, 2023, the second Affidavit of Aaron Gilbert sworn July 25, 2023 and the First Report of the Monitor dated July 26, 2023 (the "**First Report**"). These details are not repeated herein.

3. Among other things, the Initial Order:

(a) granted a stay of proceedings (the "**Stay of Proceedings**") in favour of the Company up to and including July 29, 2023;

(b) appointed Grant Thornton Limited as monitor of the Petitioners (in such capacity, the "**Monitor**");

(c) approved a debtor-in-possession financing facility (the "**DIP Loan**") made pursuant to an agreement dated July 18, 2023 (the "**DIP Term Sheet**") between the sole party from which interim financing materialized and the Petitioners' largest secured creditor, the Respondent; and

(d) granted a charge over the Petitioners' Property (as defined in the Initial Order), save for any Property subject to an Encumbrance (as defined in the Initial Order) in favour of Comerica Bank, to secure the Petitioners' obligations under the DIP Loan up to a maximum amount of USD$1,751,409 (the "**DIP Lender's Charge**").

The Relief Sought

4. On the within Application, the Petitioners seek to supplement the limited relief granted under the Initial Order, obtain the liquidity necessary to advance their restructuring objectives and

pursue a broad sale and investment solicitation process for the benefit of their numerous stakeholders ("**SISP**"). Such relief is proposed to be granted pursuant to:

(a) an amended and restated Initial Order (the "**ARIO**"), among other things, extending the Stay of Proceedings to and including October 18, 2023, increasing the borrowing limit under the DIP Loan up to the maximum amount of USD$6.2 million and granting a corresponding increase to the DIP Lender's Charge; and

(b) an order (the "**SISP Order**") approving the SISP in respect of all of the assets, undertaking and business of the Petitioners and the Non-Petitioner Entities (as defined in the Initial Order).

5. Pursuant to the DIP Term Sheet, the Third DIP Advance (as defined in the DIP Term Sheet) under the DIP Loan is conditional upon the ARIO, the SISP Order and the SISP being in form and substance satisfactory to the DIP Lender, in its sole discretion. Each of the ARIO, the SISP Order and the SISP as proposed by the Petitioners is satisfactory to the DIP Lender.

6. For the reasons articulated in the First Report, the ARIO, the SISP Order and the SISP are supported by the Monitor in the forms proposed by the Petitioners.

The Objection of Access Road Capital, LLC

7. On July 27, 2023, Access Road Capital, LLC, a secured creditor of certain of the Petitioners and a judgement creditor of BRON Media Corp., served an Application Response (the "**AR Application**") and the first supporting secretarial affidavit of Sandra Brown-John in support thereof at 8:27 a.m.

8. The AR Application raises several objections to the relief sought by the Petitioners on the within Application. Certain of the assertions raised in the AR Application merit response.

Part 5: LEGAL BASIS

There is No Need to "Ring Fence" the Petitioners' Estates

1. Neither the CCAA nor the common law dictates that a debtor companies' assets be "ring fenced" in part or at all when granting a charge securing debtor-in-possession financing. What is

more, the use of "ring fencing" is not appropriate in the instant case or at this critical juncture in the Petitioners' CCAA Proceedings.

1. The CCAA Does not Require nor Contemplate "Ring Fencing"

2. The CCAA plainly does not require nor contemplate "ring fencing" the assets of debtor companies or the allocation of super-priority charges granted thereunder among such assets.

3. Subsection 11.2(1) of the CCAA vests this Honourable Court with jurisdiction to grant a charge (an "**Interim Charge**") securing amounts advanced under a debtor-in-possession financing facility over "all or part" of a debtor company's property upon consideration in "equal measure" of those non-exhaustive factors enumerated under subsection 11.2(4). Pursuant to subsection 11.2(2) of the CCAA, such charge may rank "in priority over the claim of any secured creditor of the company".[1]

2. The Common Law Does not Require the "Ring Fencing"

4. To allay concerns raised by certain of the debtor companies' 34 separate mortgage lenders, in respect of an Interim Charge in *Re League Assets Corp.*, the *debtor companies proposed* allocation provisions. Though observing that allocation provisions could alleviate certain of the secured creditors' concerns as to how the Interim Charge would ultimately be borne in the circumstances, Fitzpatrick J. did not express nor intimate that such allocation was necessary. Indeed, Fitzpatrick J. merely noted that "it remains to be seen, of course, whether any allocation issues will in fact arise as that will be dependent on the success of the restructuring".[2]

5. In *Re Sunrise/Saskatoon Apartments Limited Partnership*, the debtor companies and their stakeholders, which comprised of "an extensive secured creditor group" holding "different levels of security on the various projects or buildings", *consensually* "agreed to a concept of 'ring

---

[1] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 s 11.2(1), s 11.2(2), s 11.2(4) [CCAA]; *Miniso International Hong Kong Limited v Migu Investments Inc.*, 2019 BCSC 1234 at para 75; *Re League Assets Corp.*, 2013 BCSC 2043 at paras 24, 51 [*League Assets*].
[2] *League Assets, ibid* at paras 12, 55; *Re League Assets Corp.*, 2015 BCSC 42 at para 11.

fencing'". Such concept was employed to preserve the "cash flows" – of which there are none in the instant case – and the "costs associated with each of the individual properties".[3]

6. Neither *Re League Assets Corp.* nor *Re Sunrise/Saskatoon Apartments Limited Partnership* support the "ring fencing" of the Petitioners' assets, many of which are intangible and none of which are real property, among the Petitioners' limited secured creditor constituency.

7. The value of the Petitioners' assets in this case will be determined in the proposed SISP to be conducted by the Monitor. Any issues with respect to the allocation of the DIP Charge to such assets may and ought to be determined in connection with their Court-approved sale. Put simply, it should be determined having regard to, and the benefit of, the 'success of the restructuring'.

Concerns Regarding the Equal and Fair Treatment of Creditors are Misplaced

8. The CCAA's remedial objectives include the avoidance of the social and economic costs of liquidating a company's assets wherever possible, and the fair and *equitable* treatment of the claims made against a debtor. The priority charges proposed under the ARIO, including the DIP Lender's Charge advance, rather than detract from such objectives. [4]

9. Here, the Petitioners require the DIP Loan to avoid the significant and detrimental impacts of a liquidation and maximize value for their various stakeholders through the proposed SISP. The Petitioners' ability to do so is contingent upon their ability to continue to draw under the DIP Loan, which, in turn, is conditional upon the satisfaction of the conditions set out in the DIP Term Sheet. These conditions include that the proposed ARIO be satisfactory to the DIP Lender.

10. The structure of the DIP Lender's Charge reflects the contractual arrangements between the DIP Lender and the Petitioners and thus provides a principled basis for the *equitable* treatment proposed under the ARIO.

Part 6: MATERIAL TO BE RELIED ON

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

---

[3] *Re Sunrise/Saskatoon Apartments Limited Partnership*, 2017 BCSC 808 at paras 2, 6.

[4] *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras 40-42. See also, *Grafton-Fraser Inc. v Cadillac Fairview Corp.*, 2017 ONSC 2496 at paras 21-24.

2. Affidavit #2 of Aaron Gilbert dated July 25, 2023;

3. The First Report of the Monitor to the Court dated July 26, 2023;

4. Any supplemental to the First Report of the Monitor to the Court, to be filed; and

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

The Respondent estimates that the application will take 2 hours.

Dated: July 27, 2023

Signature of Andrew Froh
☐ Application respondent
☒ Lawyer for application respondent

THIS APPLICATION RESPONSE is prepared and delivered by Andrew Froh of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Respondent, whose address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. froha@bennettjones.com.