IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bron Media Corp. (Re),*
2023 BCSC 1906

Date: 20231011
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. B16, 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 A. Iqbal M. Faheim
Counsel for Access Road Capital:	P. Bychawski
Counsel for the Directors Guild of America Inc. the Screen Actors Guild and Writers Guild of America West Inc:	K. Esaw
Counsel for Bayshore Capital Advisors:	H. Book
Counsel for the Monitor:	J.N. Birch F.D. Finn

Counsel for Comerica Bank:	J.D. Schultz J.J. Salmas
Counsel for Premium Properties Limited:	P. Cho
Counsel for Three Point Capital Holdings:	C. Hildebrand
Counsel for Hercules Film Investors:	T. Jeffries
Counsel for Certain Investors in Creative:	L. Graham
Counsel for Creative:	J. Foster M. Selenes D. Gruber
Place and Date of Trial/Hearing:	Vancouver, B.C. October 11, 2023
Place and Date of Judgment:	Vancouver, B.C. October 11, 2023

[1] **THE COURT:** The Bron group of companies find themselves in financial difficulty and apply for relief under the *Companies' Creditors Arrangements Act,* RSC 1985, c. C-36 [*CCAA*]. On July 19, 2023, they sought creditor protection in this Court without notice except to secured creditors, and I made an initial order.

[2] On July 28, following a substantial hearing on notice to all interested parties, I made an amended and restated initial order ("ARIO"), and an order approving the sale and investments solicitation process ("SISP"). I gave oral reasons which have been transcribed and are indexed at 2023 BCSC 1563. In these reasons, for the most part, I will not repeat background that is found in those reasons.

[3] The ARIO stayed proceedings against named Bron entities through October 18, 2023. The SISP order contemplates a process overseen by the monitor culminating in asset dispositions closing on October 6.

[4] The monitor reports that the SISP has gone well, with substantial interest shown by 11 qualified bidders. Bron and the monitor extended the bid deadline, and received eight final bids. Confidential discussions concerning those bids are ongoing. They have established a revised deadline of October 13 at 5:00 p.m. with negotiation of final agreements, which will require court approval on notice to all stakeholders.

[5] The SISP cannot be completed before October 18, and Bron seeks an extension of the stay under the ARIO through November 8, 2023. The monitor supports the application. Cash flow to date has been positive by comparison to the forecast at the time of the ARIO, and it is anticipated that Bron can continue to operate through November 8 within the limits of the $6.2 million DIP credit facility established under the ARIO.

[6] The application is not outright opposed, but is challenged by a secured creditor, Access Road, which seeks terms as to what will happen next. As it turns out, for the most part, that has now been resolved by counsel. However, I will address some of the arguments made by Access Road.

[7] Access Road asks that copies of any final agreements accepted by the petitioners be provided to stakeholders on October 13 or forthwith following acceptance, and that stakeholders receive no less than 10 business days notice of an application to approve the proposed disposition of assets. Access Road submits that Bron and the monitor have failed to cooperate and consult with it and other stakeholders and forecasts that the proposed disposition may be highly controversial. The conditions sought by Access Road were supported in argument by Premium Properties and also by TPC, which is an affiliate of Access Road but under separate management.

[8] The application to extend the stay is governed by s. 11.02(2) of the *CCAA*. The circumstance must make the order appropriate, and the applicant must satisfy the court that the applicant has acted and is acting in good faith and with due diligence.

[9] I am satisfied that both requirements are satisfied. Access Road's complaint about good faith and due diligence is muted. It is directed at least as much towards the monitor as at Bron, and it focuses on their conduct of the SISP vis-à-vis Access Road. It complains that the monitor has administered the SISP in a manner that is rigid and highly technical. It does not allege noncompliance with the SISP order. It does not allege an absence of good faith and due diligence generally. Indeed, Access Road's position that the continuation of the stay is warranted, albeit on terms, would be inconsistent with an absence of good faith and due diligence on Bron's part.

[10] In view of Access Road's complaint that the monitor has taken an adversarial position where there should have been cooperation and consultation, I will add that, in my view, the correspondence exchanged between counsel reveals a certain prickliness on both sides. Access Road accepts that it may well be that what it describes as a lack of consultation has not prejudiced it. It seems to me that this submission amounts to a concession that its argument about a lack of consultation is premature. At this stage I need not say anything more about it.

[11] I find that the extension of the stay is appropriate because there is a reasonable prospect of a sale of assets where capital restructuring is contemplated in the proposed SISP order. The prospect requires that the stay remain in effect and the alternative is, as I have mentioned before, a chaotic insolvency that would lead to worse results from most, if not all, stakeholders.

[12] I turn to consideration of terms, and here I am advantaged by the agreement counsel have provided to me.

[13] The application to approve final agreements and any cross applications, should be set for hearing on November 7, 2023. Any application by the monitor for approval of its actions and its fees may also be set for hearing on November 7, but will only be heard on that date if time permits.

[14] I direct that materials will be exchanged in advance of the application according to the schedule which counsel have reached. That schedule should be incorporated into the court's order.

[15] Bron also seeks an order pursuant to s. 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, establishing that certain Bron entities are former employers within the contemplation of the *Act*. The effect of the declaration is to qualify employees of those entities whose employment has been terminated to receive termination payments from the federal government.

[16] Former employees are qualified if all of the employees in Canada have been terminated, other than any retained to wind down the business operation. *Wage Earner Protection Program Regulations*, SOR/2008-222, s. 3.2.

[17] In an affidavit made today, Aaron Gilbert sets out employee terminations that have taken place and the employers who terminated those employees. The employers are Bron Studios Inc., Bron Animation Inc., Bron Media Corp, Fables Productions BC Inc., Gossamer Productions BC Inc., and Robin Hood Digital PC BC Inc.

[18] Bron did not make severance payments to the terminated employees. I find that the Bron entities I have listed are qualified employers within the contemplation of s. 5(5) 5 of the *Wage Earner Protection Program Act* and an order may go accordingly as sought by Bron.

"Gomery, J"