District of ONTARIO
Division No. 09 - Toronto
Court File No. BK-24-03003083-0031
Estate File No.: 31-3003083

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)

IN THE MATTER OF THE BANKRUPTC OF CREATIVE WEALTH MEDIA FINANCE CORP.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

AIDE MEMOIRE BRIEF OF JASON CLOTH

(Returnable March 1st, 2024)

Date: February 29, 2024	**BLANEY MCMURTRY LLP** Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 **David T. Ullmann** (LSO # 42357I) Tel: (416) 596-4289 Email: dullmann@blaney.com **Eric Golden** (LSO # 38239M) Email: egolden@blaney.com Lawyers for Jason Cloth

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Introduction

1. We are counsel to Jason Cloth. We were also counsel to the bankrupt Creative Wealth Media Finance Corp ("**CWMF**" or the "**Bankrupt**"), but as a result of the bankruptcy, that assignment is effectively at an end. This Aide Memoire is provided in connection with the motion brought by TDB Restructuring Limited the trustee in bankruptcy of CWMF (the "**Trustee**") for production of the books and records of the Bankrupt. It is the position of Mr. Cloth that the Trustee's motion appears unnecessary and its request disproportionate to the likely costs or the likely value of the exercise it wishes to conduct.

Duties of Mr. Cloth

2. Mr. Cloth does not dispute that the Trustee is entitled to the books and records of the Bankrupt and that he is to take reasonable steps to assist in providing them. In this regard Mr. Cloth has met his obligation by meeting with the Trustee, providing access to the business premises, directed the Trustee to the party who has access to the electronic records, and has hired counsel to assist him in carrying out these obligations and to advise on the extent of same and its intersection with his personal affairs and undertakings. He has also now provided further material information to assist the Trustee, as set out below.

Intermingled Records and Third Party Rights

3. The challenge in this matter to the usually benign request of the Bankrupt to provide books and records is the intermingling between the books and records of the Bankrupt and various other businesses. Also, at least one former employee of the Bankrupt, Ms. Jenifer George, is now an employee of one of these companies.

4. The Trustee identifies some of the intermingled entities in its materials but its list is incomplete. It excluded, for example, the entity Epic Story Media, whose name is on the door of the premises, along with the Bankrupt. It also failed to mention any of Mr. Cloth's other enterprises.

5. The Trustee does not dispute that this intermingling has occurred, and does not dispute that the Trustee has no mandate over any other entities and agrees that the Trustee has no right of access to such entities.

6. I attended the premises personally on January 29th, 2024 to see what more I could to learn about the books and records before the January 31 meeting. Those investigations led to my correspondence to the Trustee advising that a meeting at the premises on January 31, 2024 would likely be of little assistance, which turned out to be the case.

7. Mr. Cloth has interests in several companies which are not known to the Trustee and have nothing to do with the business of the Bankrupt but which do business out of the Premises and may have shared email and other accounts with the Bankrupt. Mr. Cloth maintains an office at the Premises.

8. The intermingling issue was amplified on January 31, 2024 at which counsel for Mr. Cloth and counsel for the Trustee, and the Trustee, met at the business premises of the Bankrupt. Mr. Koscak, in house counsel for at least one of the entities which share space with the Bankrupt, also attended.

9. Mr. Koscak provided his strong objection to the sharing of the books and records or any access to the Bankrupt or for Ms. George, who he said was an employee of one of those entities, to have any communication with the Trustee without counsel.

10. Mr. Cloth also confirmed that the books and records of the Bankrupt were intermingled with some of his personal information, and information about various other companies in respect of which he is involved. He advised that he was not, however, likely to be particularly useful in accessing or searching the digital records of the Bankrupt.

11. It was also discussed that much of the key information required might be with the former Trustee in Bankruptcy, Mr. Rosen.

12. In the only 17 days between the meeting on February 6, 2024 when the Trustee communicated its requests arising from the Jan 31 meeting and February 23rd, 2024, Mr. Cloth and his counsel were in discussions with the other companies, and with the former Trustee in Bankruptcy, to see what records had previously been segregated in the NOI and bankruptcy proceedings. This review was delayed in part by vacations by counsel at the beginning of February, the middle of February by Mr. Koscak and by some minor delay in Creative Wealth Media Lending Inc. retaining and instructing outside counsel (Bennet Jones). The review process was still underway when the Trustee sought its motion on an *ex parte* basis.

13. Matters are further complicated by the fact that the majority, if not all, of the films in question are tied up in the ongoing CCAA proceedings of Bron Media.

Information Recently Provided

14. The principal concern of the Trustee is alleged to be its need to be provided with the books and records of the Bankrupt so that the Trustee can pursue certain receivables which are payable to the Bankrupt from films it financed. Part of the effort since the January 31, 2024 meeting was to try to locate and segregate this information in particular. On February 29, 2024, Mr. Cloth, through its counsel, provided 138 documents related to the films in question. A copy of our letter providing same is attached hereto as **Tab "1"**, without the attachments.

15. The Minute Book of the company was provided to the Trustee at the meeting on January 31, 2024. It was the only part of the books and records of any significance at the premises. For whatever reason the Trustee failed to take it or make a copy. It has also now been provided to the Trustee.

Need for a Protocol?

16. If more documents are to be produced, the parties likely require a protocol to deal with disclosure issues, but it is not clear that an order is required.

17. It appears that the Trustee may have violated protocols with respect to the confidentiality and requirements of the Ontario Securities Commission. In particular, paragraph 28 and Exhibit "S" of the Affidavit of Mr. Dhanani, the representative of the Trustee. It is our understanding that any information related to any investigation or inquiry from the OSC is *prima facie* confidential and should not form part of the records of the Bankrupt or the Bankruptcy.

18. The motion materials provided by Creative Wealth Media Lending also demonstrate the issues which would be created by simply providing access to the Trustee to all electronic records.

19. We can advise that Mr. Cloth also shares these concerns, as it relates to his other companies and undertakings which may be intermingled with the books and records of the Bankrupt.

20. Mr. Cloth objects to being required to pay any of the costs related to segregating these records or the production of same beyond what has been produced. It is not clear why the Trustee requires any books and records from the shared electronic records beyond what has been provided. The proportionality of this request and its cost should be measured against the necessity to the proper administration of this matter.

Partisan Agenda

21. There is also a concern that the Trustee's motion represents, in fact, the personal needs of its inspectors, who the materials recount are engaged in litigation against the Bankrupt. (the "**Litigating Inspectors**")

22. The Court should be concerned that the Litigating Inspectors, at least one of whom had counsel attend at the *ex parte* hearing of this matter on February 23, 2024, are treating the opportunity to seek the books and records from these comingled entities as a fishing expedition. These same entities were the principal parties who substituted

the Trustee in the Bankruptcy process (which created delay) with a party who they presumably believed would be more partisan towards their aims.

23. The court should note that those same parties asked the court in the Bron Media CCAA to investigate the books and records of CMWF, which motion was defeated for being, among other things, too costly and too broad and because it would involve third parties. The decision is attached as **Tab "2"**. The court found:

> [94] The magnitude and funding of the proposed investigation are problematic. It is unclear how the Monitor would investigate the financial affairs of entities outside the scope of this CCAA proceeding. It is not unrealistic to think that it might require a month or two. It would require continuation of the stay under the ARIO and, in light of the conclusion I have come to refusing approval of the proposed transaction, it is not at all clear that continuation of the stay is warranted.
>
> [95] The Monitor estimates the cost of the proposed investigation at $497,000 per month. The Ad Hoc Group are not offering to pay the cost. If the stay is to be continued with the Bron companies remaining on life support while an investigation takes place, there will be a dissipation of assets that could be distributed to creditors...

24. It is also noted that while the Trustee has actively pursued the agenda of the Litigating Inspectors, the Trustee has acknowledged that it has not responded to legitimate and material issues raised more than two months ago that impact the bankruptcy as a whole, and the validity on spending estate funds on the agenda of these Litigating Inspectors, who are not in fact creditors of the estate.

Next Steps

25. Depending on the nature of the issues connected to the OSC, it may be the case that nothing further should be done with respect to document production until those issues are resolved.

26. Once there is clear direction from the Court as to the impact of the OSC issue on this matter, it is the position of Mr. Cloth that the Trustee should review the materials recently provided to it and determine what further information, if any, is required for

the legitimate goals of the bankruptcy. It should also respond meaningfully to the questions asked of it by Mr. Golden.

27. If the Trustee determines thereafter that more information is genuinely required, it should then meet with the affected third parties and work out a protocol. The court only need to be engaged if the parties are unable to reach an agreement.

28. The motion should be adjourned to be returnable on 7 days notice to the parties, to be brought back on if such a consensual protocol cannot be reached.

29. In the interim, while there is no basis to the suggestion that there is any risk to the books and records and no evidence was provided that there has been any attempt to remove or delete the books and records, Mr. Cloth does not object to the continuation of the protection order to preserve the status quo.

ALL OF WHICH IS HEREBY SUBMITTED THIS 29th DAY OF FEBRUARY 2024 BY:

David Ullmann

TAB 1

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February 29, 2024

SENT BY EMAIL TO: Michael.nowina@bakermckenzie.com

Mr. Michael Nowina
Baker & McKenzie LLP
Barristers & Solicitors
Brookfield Place Bay/Wellington Tower
181 Bay Street
Suite 2100
Toronto, ON M5J 2T3

Dear Mr. Nowina,

RE: Bankruptcy of Creative Wealth Media Finance Corp. ("CWMF")

We are in receipt of your motion record and will attend tomorrow and make our submissions in respect of same. While we disagree with your motion or that it needed to be brought, I think your record highlights why the issues with the delay in providing books and records are not the fault of Mr. Cloth or the bankrupt.

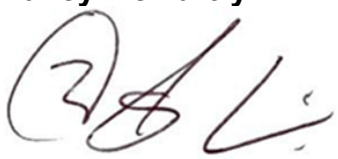
In any event, as it seems the principal concern in your letters is to accumulate information regarding the receivables owing to the bankrupt, we provide the following. Set out below is a Share File link to all of the records Mr. Cloth has been able to assemble, which relate to the films in respect of which collections were anticipated. I expect it also includes many of the film titles you listed in schedule A.1 of your draft order. It is my understanding, and as Mr. Cloth advised your client on January 22, 2024, that most or all of this information was provided to Mr. Rosen. Because we were not able to recover this from Mr. Rosen, we have taken the time to recreate it and now send it to you.

We are also sending you today a copy of the Minute Book which your motion record revealed to us you failed to take with you after our meeting on the 31st. I don't know why that was the case, but in any event, it is now being provided to you under separate cover.

With respect to the banking arrangements with TD Bank, we confirm again as I believe we did at the meeting on January 31, 2024, that the banking relationship with TD has been terminated by TD. As such, it is my understanding that online access to the accounts was also terminated which hampers our ability to have our client provide the

statements from the bank you require. We trust the trustee has, in any event, been in contact with TD with respect to the bankrupt's accounts and can now get that information itself. Mr. Golden provided your client with the bank account numbers in his email of January 15, 2024. If there is any remaining issue in that regard, please advise.

Yours very truly,
Blaney McMurtry LLP



David T. Ullmann
DTU/ab

c.: Eric Golden

TAB 2

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bron Media Corp. (Re),*
2023 BCSC 2109

Date: 20231129
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

Reasons for Judgment

In Chambers

Counsel for the Petitioners:	D. Ward B.J. Hicks A. Iqbal M. Faheim
Counsel for Access Road Capital:	P. Bychawski M. Greyell, Articled Student
Counsel for the Directors Guild of America Inc. the Screen Actors Guild and Writers Guild of America West Inc:	K. Esaw
Counsel for the Monitor, Grant Thornton Limited:	J.N. Birch F.D. Finn

Hudson Private Corp. and Hudson LP	M. Van Zandzoort (November 7 only)
Counsel for Premium Properties Limited and an Ad Hoc Group of Investors:	W. Jaskiewicz
Counsel for Three Point Capital Holdings, LLC:	C. Hildebrand
Counsel for Hercules Film Investors:	T. Jeffries (November 7 only)
Catalyst Growth Media Fund I LLC	J. Wadden
Counsel for Creative Wealth Media Lending LP 2016:	D. Gruber M. Shakra
Union of BC Performers	D. Cieloszczyk (November 7 only)
Desert Media Partners LLC	D. Michaud S. Mosonyi
Bayshore Capital Advisors, LLC, GCA Alternative Income Fund LP, and Rocking T. Ranch LLP	H. Book W. McLennan
Media Res Studio, LLC	R. Schwill (November 24 only)
James Richardson and Niink Holdings Inc.	R. Taylor
William Morris Endeavor Entertainment, LLC	D.J. Miller
C&C Financial Services Lending II, LLC	S. Kiefer
Place and Date of Hearing:	Vancouver, B.C. November 7 & 24, 2023
Place and Date of Judgment:	Vancouver, B.C. November 29, 2023

Introduction

[1] The petitioners, collectively "Bron", are insolvent. They applied for relief under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. 36 [*CCAA*]. On July 19, 2023, I made an initial order, and on July 28 I amended and restated the initial order (the "ARIO"). On October 11, I approved a sales and investment solicitation process ("SISP") for the marketing of Bron's assets. The hearings on July 28 and October 11 were vigorously contested. My reasons on both occasions have been published and are indexed at 2023 BCSC 1563 and 2023 BCSC 1906. I will only repeat background provided in those reasons to the extent necessary to explain this decision.

[2] Bron carried on business developing films and video games through a multitude of project-based entities in various jurisdictions. Management was centralized in an office in Burnaby, B.C. Bron financed many projects through project-specific loans. The projects were individually risky, but held out the prospect of substantial rewards if the result was a successful film or video game. Most of the Bron entities did not prepare financial statements unless and until a project proved successful. The most up-to-date financial statements are found in a worksheet as at March 31, 2023 containing unconsolidated financial information of 7 higher-level Bron entities. There are well more than 100 Bron entities in total. All these features of Bron's business make it unusually difficult to value Bron's assets and the positions of secured creditors.

[3] At present, there are two secured creditors: Creative Wealth Media Lending LP 2016 ("Creative Wealth"), and Access Road Capital, LLC. Under the ARIO, Creative Wealth is the interim or "DIP" lender and is the beneficiary of a priority charge to the extent of $6.2 million. It claims priority over Access Road in respect of the DIP loan and other financing. Access Road challenges Creative Wealth's claim to priority in respect of certain Bron entities. Creative Wealth says that it is owed more than US$85 million. Access Road says that it is owed more than US$14.5 million.

[4] Initially, Comerica Bank was also a substantial secured creditor. Creative Wealth has purchased Comerica's position and acceded to a special priority position afforded Comerica under the ARIO.

[5] An Ad Hoc Group of Investor Creditors (the "Ad Hoc Group") claim as persons who made project loans to Bron entities with the intention of participating in project tax credits or project revenues. These loans were financed through "lender entities" with security held by the lender entity in trust for the investor creditors. The lender entities were Creative Wealth Media Finance Corp ("CWMF"), Creative Wealth Lending LP 2016 ("CWML") or a Bron entity with CWMF or CWML. The Ad Hoc Group say that they are owed collectively approximately US$23 million, not including interest.

[6] CWMF has recently filed a notice of intention to make a proposal and claims against it are therefore stayed pursuant to the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3 [*BIA*].

[7] Despite the nomenclature, I am advised that Creative Wealth does not share common beneficial ownership with CWMF or CWML. It is a limited partnership with a Canadian pension fund as the sole limited partner and Creative Wealth Media GenPar Ltd. as the general partner. The general partner is a subsidiary of Creative Wealth Holdings Ltd. It would appear that the general partner is affiliated in some way with CWMF and CWML. One of its two directors is Jason Cloth, who was associated with CWMF and has served as a director of a high-level Bron entity, Bron Media Corp.

[8] Through the SISP, the Monitor and Bron considered various offers to purchase Bron's assets. They concluded that the best of these offers was a credit bid from Creative Wealth, and they ask the court to grant an approval and vesting order ("AVO") and an assignment order giving effect to a sale of almost all Bron assets to Creative Wealth. The consideration for the proposed sale is forgiveness of the secured debt owed by Bron entities to Creative Wealth, the assumption by Creative Wealth of certain ongoing obligations and liabilities of Bron entities, and

$9,500. The AVO and assignment order would convey the assets sold to Creative Wealth free and clear of the rights and security held by Access Road. The obvious consequence is that, as the Monitor puts it with some understatement, Access Road is likely to suffer a significant shortfall in respect of the amounts owed to it by Bron.

[9] Bron and the Monitor seek certain consequential amendments to the ARIO. These include an amendment to add 19 additional Bron entities as petitioners, the removal of certain non-petitioner UK entities from a schedule, and an extension of the stay of proceedings to January 26, 2024.

[10] Unsurprisingly, Creative Wealth supports the application.

[11] Access Road opposes the application. Broadly speaking, it contends that the *CCAA* does not authorize the court to nullify its rights. Moreover, the proposed sale requires the addition of new Bron entities as petitioners in this proceeding, and Access Road submits that a statutory precondition to the addition of new petitioners is not satisfied. Alternatively, if the AVO is an order that can be made pursuant to ss. 11 and 36 of the *CCAA,* Access Road submits that it is not a fair and appropriate order in the circumstances.

[12] The Ad Hoc Group also oppose the application, though they seek a postponement rather than an outright refusal of the orders sought. They submit that the information submitted in support of the orders is insufficient to permit a proper analysis of the orders' effect on their rights, and the overall fairness of the proposed transaction. They challenge the adequacy of the SISP and maintain that Creative Wealth's bid does not comply with requirements of the order establishing the SISP. They further submit that the consideration for the assets to be acquired by Creative Wealth is grossly insufficient. They ask the court to order that certain matters be investigated by the Monitor.

[13] The Ad Hoc Group's opposition is supported by Bayshore Capital Advisors, Desert Media Partners, and C&C Financial Services, all of which are similarly situated.

Issues

[14] The issues are as follows:

1. Can the court make the proposed AVO pursuant to the provisions of the *CCAA*?

2. Does the *CCAA* permit joinder of 19 additional Bron entities as petitioners?

3. Is the information before the court sufficient to enable the exercise of the court's discretion under ss. 11 and 13 of the *CCAA*?

4. Are the AVO and assignment orders fair and appropriate in the circumstances?

5. Should the court order the Monitor to investigate?

Implementation of the SISP and Creative Wealth's offer

[15] The Monitor prepared a confidential information memorandum and established a virtual data room containing 2,390 documents. Within the data room, information was organized by project. An information package was sent to 340 known potential bidders, and 38 potential bidders executed non-disclosure agreements and qualified to obtain access. Potential bidders were given access to the data room starting on August 7, 2023, 20 of them prior to August 17, and 18 between August 18 and August 31.

[16] The Monitor retained an independent industry expert as a consultant to review letters of intent and final bids from qualified bidders. It took steps to prevent Creative Wealth or other bidders from obtaining a competitive advantage through access to information concerning competing bids.

[17] The Monitor fielded requests for further information from potential bidders and established procedures to ensure that Bron's replies were made available to all

potential bidders. There were some requests for information that Bron was unable to provide.

[18] Notably, Bron was blocked in providing financial information relating to three slates of motion pictures because Creative Wealth was unwilling to release information described by the Monitor as "necessary to allow potential bidders to conduct a net present value calculation to establish a value of the Carried Interest of the relevant Petitioner(s)" in each of the slates. Creative Wealth describes the information it would not provide as internally prepared estimates which would be highly conditional and subject to material revision based on market conditions and film performance. It says that it would be inappropriate for other bidders to rely on its information. The Monitor says that, so far as it can tell, it does not appear as if the Carried Interests had significant value.

[19] Also, one of the petitioners, Bron Ventures 1 LLC, holds a 24.85% interest in a third party, Media Res Studio LLC. Media Res objected to having its financial statements made available to potential bidders and they were not included in the data room. Media Res is party to agreements with Bron and Access Road that are important to Access Road's objection to the AVO.

[20] An initial deadline for submission of letters of intent by potential bidders was extended from August 28 to September 1, 2023, and a deadline for the submission of final bids was extended from September 8 to 15.

[21] The Monitor received 11 letters of intent by the September 1 deadline and deemed all of them qualified. The Monitor received one additional letter of intent on September 5, after the deadline, and advised that potential bidder that it could not accept the bid.

[22] Between September 5 and 15, the Monitor entered into discussions with qualified bidders. The Monitor reports that considerable discussions ensured concerning various Bron assets "with particular emphasis on the Slate Projects".

[23] The Monitor received eight final bids. All were asset bids. One was from Creative Wealth. Another was a credit bid from Comerica Bank which became moot when Comerica sold its security to Creative Wealth part-way through the process. Creative Wealth's bid was clearly superior to the other six remaining bids, all of which fell well short of paying out the secured debt owed to either Creative Wealth or Access Road.

[24] None of the bids addressed some assets being marketed through the SISP and, on October 12, the Monitor solicited further bids for those assets from qualified bidders who had submitted a final bid. Creative Wealth expanded its bid to include those assets, adding a cash component of $9,500 to the consideration offered.

[25] Creative Wealth concluded an asset purchase agreement dated October 24, 2023 with the petitioners. It is the agreement sought to be approved and implemented by the AVO and assignment order. It requires the joinder of 19 previously unnamed Bron entities as petitioners, in order that they may be included in the sale and made a party to the DIP loan.

[26] The Monitor submits that the sale process leading to the asset purchase agreement has been fair, reasonable, and compliant with the requirements of the SISP order. In its view, the market for Bron's assets was adequately canvassed and the asset purchase agreement, if approved, will assure recoveries to certain secured creditors and stakeholders not otherwise likely to be achieved in the circumstances. It notes that Creative Wealth will assume liabilities under contracts with investors that will preserve their secured entitlements to project revenues. The Monitor states:

> 161. Overall, the SISP canvassed the market and the value of bids received reflects the market's view of the value of Bron's assets.
>
> 162. If the [Creative Wealth asset purchase agreement] is approved and an approval order and assignment order are granted, [Creative Wealth] through the DIP facility will fund an orderly transfer of assets to it. This will allow for the preservation of value of those assets.
>
> 163. The Monitor has concluded that, based on the information available to it, the Purchased Assets would achieve a lower value if sold in a bankruptcy or liquidation compared with the purchase price set out in the [Creative Wealth asset purchase agreement].

> 164. In conclusion, the Monitor believes that the SISP was a reasonable process and that it led to the maximization of value in the circumstances. The Monitor supports the transaction contemplated by the [Creative Wealth asset purchase agreement], including the vesting of assets in [Creative Wealth], and the assignment of specified contracts to [Creative Wealth], pursuant to an assignment order.

Analysis

1. Can the court make the proposed AVO pursuant to the provisions of the CCAA?

[27] The petitioners rely on ss. 11 and 36 of the *CCAA.* They give the court a broad discretionary power to make appropriate orders in proceedings under the statute. They provide as follows:

> **General power of court**
>
> 11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
>
> **Restriction on disposition of business assets**
>
> 36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.
>
> …
>
> **Factors to be considered**
>
> (3) In deciding whether to grant the authorization, the court is to consider, among other things,
>
> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the Monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the Monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[28] Broadly speaking, Access Road puts forward three reasons why it says the court cannot make the proposed orders.

The separate corporate entities objection

[29] Access Road's first reason is that the proposed transaction does not respect the separate corporate personality of separate corporate entities and their separate stakeholder groups. The Ad Hoc Group takes this point as well. Both maintain that Creative Wealth is unsecured against much of the asset base it proposes to acquire, and the proposed transaction would allow it to leverage unsecured or undersecured debt to displace their secured entitlements. They suggest that the transaction presupposes a substantive consolidation of the assets and liabilities of the Bron group, but the considerations that would justify a substantive consolidation are not present, citing *Northland Properties Ltd., Re,* 1988 CanLII 2924 at para. 37 and *Redstone Investment Corporation (Re),* 2016 ONSC 4453 at para. 47.

[30] This point is not without substance. In a supplement to its third report, at para. 64, the Monitor remarks that "different secured creditors have different security over different assets". It suggests that "a receivership sale is not attractive given that there would have to be multiple receiverships, with multiple sets of costs". No one argues that a substantive consolidation is justified.

[31] On the other hand, Creative Wealth is secured against substantially all of the petitioners' assets at least to the extent of the DIP loan. Under the sale authorized by the proposed orders, it would also satisfy the other priority indebtedness secured against all the petitioners' assets under the ARIO. It would assume and pay other liabilities of Bron entities as I will describe later, and is independently secured as against at least some of the assets it would acquire.

[32] The DIP loan and other priority charges do not cover the 19 entities now sought to be added. Each is associated with a film project with little or no revenues

and many expenses. None attracted interest from bidders when marketed through the SISP. There is no evidence to suggest that these are valuable assets.

[33] Creative Wealth submits that the total value of the assets proposed to be acquired is less than the value it would be giving up of the security over those assets presently held by it. It says that the results of the SISP demonstrate this proposition because, following extensive marketing supervised by the Monitor as an independent officer of the court, no one was willing to make a better offer for the assets, whether individually or collectively.

[34] On balance, I am unpersuaded by the argument that the sale to Creative Wealth cannot be approved because it is not a secured creditor in respect of some of the assets it would acquire. Its security extends to all the assets, other than the 19 entities to be added, by virtue of the charges approved in the ARIO. What is left is an argument as to the value of the offer, and that pertains to the overall fairness and appropriateness of the proposed sale, not the court's jurisdiction to approve it.

The objection to displacement of contractual rights

[35] Access Road's second point is a submission that, while it is possible for the rights of a secured creditor to be vested off by an AVO, the court has no power under the *CCAA* to ignore, displace, or expropriate contractual rights of an assignee under an absolute assignment. Access Road relies on its status as the assignee of the right to receive payments from various project entities and cites *Alberta (Treasury Branches) v. Canada M.N.R.; Toronto-Dominion Bank v. M.N.R.,* [1996] 1 S.C.R. 963 at paras. 22 and 35 and *Pythe Navis Adjusters Corporation v. Abakhan & Associates Inc.,* 2014 BCCA 262.

[36] Access Road points to s. 11.3 of the *CCAA,* which authorizes the court to make an order assigning the rights and obligations of a debtor company under a contract to which the company is a party. The result must be that all contractual rights and obligations are acquired by the assignee; *Aeropostale Re Canada Corp.,* 2018 ONSC 1468 at para. 2 (decided under equivalent wording in s. 84.1 of the *BIA*). Access Road complains that, contrary to s. 11.3, the proposed orders would

have Creative Wealth acquire rights but not the associated obligations to Access Road.

[37] However, s. 11.3 is not an obstacle to a vesting order that would eliminate contractual rights that confer a security interest. A security interest is one granted to secure payment or performance of an obligation; *Personal Property Security Act,* R.S.B.C. 1996, c. 359, s. 1(1). It is contingent in nature and ceases to exist when the payment is made or obligation performed.

[38] Access Road relies upon “Irrevocable Payment Instruction Letters” issued by Bron entities requiring that certain film revenues be paid to Access Road. It submits that these instructions were absolute assignments, conferring more than a security interest and giving rise to rights that could not be eliminated by a vesting order.

[39] I find that, read in the context of the dealings between Access Road and Bron, the Instruction Letters were granted to secure Bron’s indebtedness to Access Road. They were not intended to survive repayment of Bron’s debt to Access Road. Rather, they conferred a security interest by giving effect to an assignment contained in a pledge and security agreement dated May 29, 2020 between Bron entities and Access Road, entered into in connection with a loan agreement of the same date, and were specifically contemplated in a second forbearance agreement pertaining to the loan indebtedness and dated July 23, 2021.

[40] The Instruction Letters expressly contemplated revision by a written instrument executed jointly by Bron and Access Road. In *Winnipeg Enterprises Corp. v. 4133854 Manitoba Ltd.,* 2008 MBCA 23, at paras. 35-36, the court found that similar irrevocable orders to pay created security interests, commenting that an express reference to the possibility of revocation with the consent of the beneficiary of the intended payments was only compatible with their being understood as security documentation, and not as absolute assignments.

[41] Accordingly, I reject Access Road’s second objection that the AVO would displace its contractual rights.

The objection based on Access Road's right to be paid by Media Res

[42] Access Road's third point is specific to its right to receive payments owing by Media Res to certain Bron entities. It submits that the AVO would wrongfully deprive it of this right.

[43] Media Res and several Bron entities are parties to a Transactions and Settlement Agreement dated October 27, 2021 (the "TSA"). The TSA contemplates that Media Res will purchase the Bron parties' units in Media Res for approximately US$7.5 million. Under an Acknowledgement Agreement dated October 29, 2021 between the Bron Parties, Access Road, and Media Res, the Bron Parties have assigned to Access Road their right to be paid by Media Res. This is an assignment Access Road relies upon as affording it an absolute right that could not be displaced by a court order under the *CCAA.*

[44] I think it is clear from the language of the assignment in clause 2 of the Acknowledgement Agreement that the right conferred on Access Road is a contingent right in the nature of a security interest. I come to this conclusion having regard to several features of the language of assignment:

a) Clause 2 begins, "Unless and until the Access Road Loan Agreement has been repaid in full …";

b) The assignment is expressly limited in effect by clause 4; it is not to be "construed to give Access Road or any of its Affiliates any legal or equitable right, benefit or remedy of any nature whatsoever against the Company [Media Res] or any of its Affiliates under or in respect of the [TSA]";

c) The assignment terminates if Access Road delivers to Media Res binding written notice that the Access Road Loan Agreement has been repaid in full.

[45] In a third forbearance agreement dated December 20, 2021 between Bron Ventures and Access Road, the parties agreed that Bron Ventures "has a validly perfected, first priority security interest in and to the Media Res Receivable".

[46] In short, by its terms, the assignment contained in the Acknowledgement Agreement exists to secure repayment of Bron's indebtedness to Access Road, it continues only until the indebtedness is repaid, and it lacks the particular feature of an absolute written assignment that it transfers to the assignee the right to sue to collect the debt once the debtor has notice of the assignment; *Law and Equity Act,* R.S.B.C. 1996, c. 253, s. 36.

[47] Accordingly, I reject Access Road's submission that its rights under the Acknowledgement Agreement cannot be displaced by an appropriate order made pursuant to ss. 11 and 36 of the *CCAA.*

2. Does the CCAA permit joinder of 19 additional Bron entities as petitioners?

[48] Access Road submits that 19 additional Bron entities cannot be added because the petitioners have not put forward financial statements in respect of these entities. It relies on s. 10(2) of the *CCAA,* which states:

> **Documents that must accompany initial application**
>
> (2) An initial application must be accompanied by
>
> (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
>
> (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
>
> (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

[49] In a supplement to its third report, the Monitor states that these project-based entities did not prepare financial statements but did prepare cost reports, which it attaches to the supplementary report.

[50] Section 10(2) does not expressly state what should be the consequence if no financial statements at all are available and should be interpreted in light of its purposes. The requirement of a projected cash flow is intended to enable the court to assess the immediate financial consequences of a stay of proceedings against the petitioning company. The requirement that copies of financial statements be provided puts the court and interested parties in a position to evaluate the implications of the stay and such steps as may be taken in the course of the *CCAA* proceeding.

[51] Section 10(2)'s purposes are served by the cost reports appended to the Monitor's supplementary report. These cost reports are more than was available in relation to other Bron entities when the initial order was made and then restated in July 2023. Access Road did not object to the absence of financial statements at the time. To interpret s. 10(2)(c) as imposing a strict requirement that financial statements be provided without exception, would unnecessarily limit the court's ability to make an initial order where one may be warranted.

[52] I therefore reject Access Road's formal objection to the joinder of additional petitioners in the absence of financial statements from each. Section 10(2) permits the court to make an initial order in the absence of financial statements, if none are available, and the information provided is sufficient to enable a proper exercise of the court's discretion.

[53] In its written materials, Access Road submits as well that the 19 additional Bron entities cannot be joined because there is no evidence that they are insolvent and require protection under the *CCAA*. I disagree. They are project based entities which have incurred significant expenses and are, in the absence of a solvent parent, without visible means to continue paying expenses as they come due.

3. Is the information before the court sufficient to enable the exercise of the court's discretion under ss. 11 and 13 of the *CCAA*?

[54] The order sought engages consideration of the criteria listed in s. 36(3) of the *CCAA*. Some of these criteria are of no moment in this case. The Monitor has approved the process leading to the proposed sale, and has filed a report recommending it as more beneficial than a sale or disposition in a bankruptcy. There has been substantial consultation with creditors other than Access Road, and Access Road's opposition was so clear that neither side attempted consultation. In contrast, controversy surrounds the following criteria:

- The reasonableness of the SISP process in the circumstances (sub-s. (a));
- The effects of the proposed sale on Access Road and the Ad Hoc Group (sub-s. (e)); and
- Whether the consideration to be received is reasonable and fair, taking into account the market value of the assets (sub-s. (f)).

[55] The cases stress consideration of the interests of all parties, and the efficacy and integrity of the sale process; *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A). It is not simply a matter of obtaining the best price.

[56] Bron, the Monitor, and Creative Wealth all press the point that Bron's assets have been exposed to the market through the SISP, the market has spoken, and they are worth no more than Creative Wealth is willing to pay. In effect, they say that the absence of a better alternative to the proposed transaction is all the court needs to know.

[57] Access Road and the Ad Hoc Group collectively make the following submissions in response:

a) Marketing Bron's assets through the SISP did not properly test the market because the timelines were compressed;

b) Creative Wealth's offer does not comply with the SISP;

c) Creative Wealth sat on important financial information of interest of potential bidders pertaining to the slate films and thereby discouraged alternative bids;

d) Information essential to valuing Bron's interest in Media Res was not disclosed; and

e) The Monitor has declined to investigate material questions such as the status of the project loans furnished by the members of the Ad Hoc Group, the source of Bron's indebtedness to Creative Wealth and the adequacy of the security claimed by it, and the dealings between Bron and Creative Wealth through Mr. Cloth.

[58] In my view, the first two points carry little weight and the other three are matters to be considered in the exercise of my discretion, but are not obstacles to the exercise of my discretion to make the order sought.

[59] I am not persuaded that the conduct of the SISP between August 7, when access was provided to the data room, and September 5, the deadline for receipt of letters of intent, imposed a timeline that was too compressed to properly test the market. Bron was a prominent participant in the film development industry. The market for its assets was limited to sophisticated entities with an appetite for risk. This proceeding was undoubtedly well publicized, and the information package introducing the SISP was widely distributed to potential bidders. That 38 potential bidders went to the trouble of signing non-disclosure agreements to obtain access to the data room reflects substantial interest. The winnowing down to eight qualified bidders was to be expected.

[60] The Ad Hoc Group submits that Creative Wealth's offer fails to comply with clauses 34 and 35 of the SISP dealing with credit bidding, in that it:

a) Provides for the acquisition of assets over which Creative Wealth does not hold security; and

b) Does not allocate cash in respect of unencumbered assets.

[61] The SISP does not prohibit the acquisition of unencumbered assets by a credit bid. What clause 34 requires is that:

> … (i) the secured claim portion of the such Credit Bid cannot exceed the aggregate value of the Secured Party's secured claim; and (ii) such Credit Bid must include at least sufficient cash consideration to satisfy any priority payment required to be paid that ranks ahead of such Secured Party's secured claim or otherwise assume or satisfy such obligations.

[62] It is not clear that Creative Wealth's offer fails to satisfy these conditions. Under clause 3.1 of the asset purchase agreement, the purchase price includes payment of an amount equal to "Assumed Liabilities", which are defined as including "Priority Indebtedness". Priority Indebtedness means certain indebtedness that ranks prior to Creative Wealth's interests in its capacity as interim lender under the ARIO, "in each case solely to the extent applicable and necessary to satisfy the Credit Bid Amount in accordance with paragraph 34 of the SISP". Creative Wealth is obliged to satisfy the Assumed Liabilities by "assuming, performing and/or discharging such Assumed Liabilities as and when they become due" (s. 3.3(d)). To this extent, together with Creative Wealth's further obligation to make a cash payment of $9,500, the bid is not a credit bid.

[63] The SISP requires in clause 35 that a cash purchase price be allocated to unencumbered assets over which it does not hold security. Clause 3.2 of the asset purchase agreement provides that the parties shall agree upon the allocation of the purchase price in respect of the purchased assets within 30 days following closing. In my view, this is sufficient compliance with the clause 35.

[64] There is substance to the other three complaints advanced by Access Road and the Ad Hoc Group. Creative Wealth's refusal to provide information in its possession relevant to an assessment of the value of the carried interest of Bron entities in each of three slates of motion pictures placed other bidders at a disadvantage. Mr. Cloth's involvement on the boards of both Bron entities and Creative Wealth entities and a history of close dealings between Creative Wealth and Bron open the door to an inference that Creative Wealth knew more and was in a position to purchase assets of uncertain value with greater confidence than a wholly independent purchaser could be. Media Res' objection to making its financial information available limited the ability of all bidders to assess the value of a potentially significant asset.

[65] In my view, these are matters to be taken into consideration in my assessment of the fairness and appropriateness of the proposed transaction. They are not reasons to refuse outright to consider the proposed sale, with the result that the sale would presumably collapse, the *CCAA* process may well come to an end, and proceedings under the *BIA* or receivership proceedings would ensue. If that is to be the result, it should be because I am not satisfied of the fairness and appropriateness of the sale on its merits.

4. Are the AVO and assignment orders fair and appropriate in the circumstances?

[66] As Bron, the Monitor and Creative Wealth have emphasized, a strong consideration favouring the proposed orders is that the SISP has tested the market and no better transaction has emerged. The proposed sale of substantially all of Bron's assets to Creative Wealth would allow Bron's projects to carry on. Bron has terminated all of its employees, but there are contracting parties, including writers, actors, directors, and many others engaged in making films and video games under development by Bron, whose interests would be protected and secured. Creative Wealth would accede to Bron's position in connection with project loans such as those extended by the Ad Hoc Group, with the likely result that loans to successful

projects would be repaid, just as would have been the case had Bron stayed in business.

[67] The Ad Hoc Group objects that it is not clear that Creative Wealth is committing to repayment of their loans. In my view, this objection is mistaken. The effect of the AVO and assignment order are fairly described by the Monitor in its third report, as follows:

> 170. The majority of the proposed assignments involve [Creative Wealth] and the Permitted Assignee generally acquiring the overall rights of the relevant Petitioners to a series of productions at various stages of development. These assignments allow [Creative Wealth] and the Permittee to step into the shoes of the relevant Petitioners and to respect existing arrangements (including the entitlement of prior-ranking creditors to payment of monies owed to them on productions), rather than vesting out the interests of those parties/creditors. Accordingly, these assumptions benefit prior-ranking creditors … who will retain their ability to receive payment in priority to the relevant Petitioners.
>
> …
>
> 172. The Monitor does not believe that the requested assignments will create an unfair imposition upon or interference with third-party rights. In many cases, given that BRON is insolvent and unable to perform a number of the assigned contracts (such as those relating to productions that are at an early stage and which might never otherwise be developed), the proposed assignment to a known, operating industry player will be of benefit to counter-parties.

[68] Nevertheless, I am not persuaded that the AVO and assignment order are fair and appropriate. In my view, the fundamental difficulty is that approval of the AVO would cause a readjustment of priorities over a receivable from Media Res as between Access Road and Creative Wealth. This is not what the statute was intended to accomplish, and it would give rise unfairness. As Deschamps J., speaking for a majority, explained in *Century Services Inc. v. Canada (Attorney General),* 2010 SCC 60 at para. 23, the *CCAA* and the *BIA* converge when it comes to priorities and "the *BIA* scheme of liquidation and distribution necessarily supplies the backdrop for what will happen if a *CCAA* reorganization is ultimately unsuccessful". She rejected an argument for a Crown priority that would arise under the *CCAA* but not in bankruptcy. At para. 47, she said that it would give rise to "a strange asymmetry".

[69] Bron and Creative Wealth dispute that the AVO would displace Access Road's priority over a receivable from Media Res.

[70] Bron submits that there is no such receivable and Access Road maintains that there is. The dispute turns on the interpretation of clause 1 of the TSA. Bron Media Corp and Bron Ventures I LLC are parties to the TSA. It states that Media Res shall repurchase 218 units in it held by Bron Ventures:

> … following the Initial Closing in one or a series of subsequent closings (as determined by the Company [Media Res] in its sole discretion) … but no later than December 31, 2022 (collectively, the "Repurchase Transactions). To effect the purchase of Units at any Subsequent closing, the Company shall deliver written notice to Bron Ventures at least five business days prior to the date of such Subsequent Closing (as designated by the Company), specifying the date of the Subsequent Closing, the number of Units to be purchased and the aggregate purchase price for such Units, each in accordance with this Section 1. Notwithstanding anything in the foregoing to the contrary, Repurchase Transactions may occur after December 31, 2022; provided, however, that in the event that the Company shall fail for any reason to complete the Repurchase Transactions on or before December 31, 2022, then as compensation for such failure and delay, the parties agree that the portion of the Purchase Price unpaid as of such date shall thereafter bear simple interest at the rate of 8% per year, accruing from (but not including) December 31, 2022 through (and including) the date such portion is actually paid.
>
> [Emphasis added.]

[71] The Monitor overlooked the December 31, 2022 deadline in its description of the TSA. At para. 91 of its third report, it states:

> The TSA contemplated that MediaRes would acquire the remaining 218 units but only pursuant to one or more subsequent closings, which would only occur after MediaRes gave notice that it wished to undertake such closings. MediaRes had not taken steps to complete any further closings and therefore [Bron Ventures I] continues to hold 248 units of MediaRes subject to whatever rights MediaRes may still have to complete further closings pursuant to the TSA.
>
> [Emphasis added.]

[72] Consistently with the Monitor's report, Bron submits that Media Res is not obliged to purchase the remaining 218 units contemplated for sale under the TSA, because a purchase only occurs at a closing on a date designated by Media Res in

its sole discretion. Bron is compensated by the accrual of interest since December 31, 2022 and, according to this argument, that is its only right, no matter how much time passes without designation of a closing date by Media Res.

[73] In my opinion, this is an untenable interpretation of the clause. Media Res' discretion to designate a closing date is not unlimited. It is constrained by the December 31, 2022 deadline. According to Bron's interpretation, the closing may be postponed indefinitely, but that would defeat the purpose of the TSA that a sale take place and money be paid by Media Res. As stated in recital C, Bron Ventures shall sell and Media Res shall purchase the units for an agreed price. Clause 1 begins:

> 1. Bron Repurchase Transactions. Subject to the terms and conditions of this Agreement, Bron Ventures hereby agrees to sell and transfer to the Company, and the Company agrees to purchase from Bron Ventures, an aggregate of 220 Units, for an aggregate purchase price of $7,557,075 (or $34,350.34 per Unit) ("Purchase Price") as follows: …

[74] Media Res' obligation to pay interest after December 31, 2022 is not inconsistent with the existence of a deadline that may be enforced by Bron Ventures. It is merely an additional incentive to timely completion of the purchase contemplated by the TSA.

[75] I conclude that Bron Ventures has had the right, since December 31, 2022, to sue Media Res to compel payment of approximately US$7.5 million payable under the TSA. There is nothing in the record that would suggest a defence to such a claim, or that Media Res would be unable to pay.

[76] In a brief submission, Media Res asked that the court's order be clear as to which party Media Res must pay. It did not intimate any doubt that money is owing.

[77] By virtue of clause 2 of the Acknowledgment Agreement, money payable by Media Res to any Bron party under the TSA must be paid to Access Road while Bron remains indebted to Access Road, although Access Road has no direct right of action against Media Res to force it to make the payment.

[78] Access Road is a judgment creditor of Bron Media Corp in an amount exceeding US$10.9 million. Prior to the commencement of this *CCAA* proceeding, Access Road sought the appointment of a receiver. A receiver could have taken the steps that Access Road could not to recover money from Media Res. On March 13, 2023, Macintosh J. ordered that a receiver be appointed on May 8 if Access Road were not paid out by May 1; *Access Road Capital, LLC v. Bron Media Corp,* 2023 BCSC 497. On May 4, on an application by Creative Wealth, Justice Marchand of the Court of Appeal granted leave to appeal and stayed Macintosh J.'s order (*Creative Wealth Media Lending LP 2016 v. Access Road Capital*, *LLC.*, 2023 BCCA 208). That stay was still in effect when this proceeding was begun.

[79] Accordingly, as of the commencement of this proceeding, Access Road had a priority claim to the Media Res receivable, but that is not the end of the matter, because, in its credit bid, Creative Wealth assumes responsibility for claims afforded priority by ARIO. The question is whether those claims entirely or substantially displace Access Road's priority. It is necessary to address the value of the Media Res receivable, and the magnitude of the priority claims against it under the ARIO.

[80] On the face of it, the Media Res receivable is worth US$7.6 million. It is possible that it is worth less than this, as a practical matter.

[81] The priority claims under the ARIO are:

a) An administration charge of up to US$500,000;

b) A KERP charge of $234,460;

c) A DIP charge of up to US$6.2 million; and

d) A directors' charge of up to US$742,000.

[82] The amount outstanding on the DIP loan is US$5.37 million, and further draws are not expected through to mid-January 2024. The KERP charge funded the retention of key employees and I assume those funds were fully utilized. Having regard to the positive financial progress of the companies by comparison to initial

forecasts, it is not clear that the directors' charge and administration charge will prove necessary. Conservatively, I think it is unlikely that the priority liabilities under the ARIO that Creative Wealth has assumed will exceed US$6.5 million.

[83] Creative Wealth has assumed the Comerica indebtedness totalling approximately US$4 million at the start of this proceeding. The ARIO gives the Comerica security priority over priority charges secured by the ARIO (according to a formula whose details are unimportant) but only to the extent of the property secured. The Comerica security does not encompass Bron Ventures' claim to the Media Res receivable. It is irrelevant to an assessment of Access Road's claim to the receivable.

[84] I conclude that, if the Media Res receivable is worth US$7.6 million, Access Road is likely to recover at least some of it in the event of a receivership or bankruptcy.

[85] While the Media Res receivable may be worth less than US$7.6 million, it would be unreasonable to assume that most or all of the priority indebtedness under the ARIO would be attributed to Bron Ventures, in the event of a receivership or bankruptcy. It is only one among many Bron entities. Bron has recorded two unanticipated receipts totalling US$2.3 million since this proceeding began in July 2023. It still has many irons in the fire, in the form of films in distribution. At the end of the day, the priority charges will fall to be satisfied on an equitable basis from all of the assets charged, not just Bron Ventures.

[86] Bron and Creative Wealth submit that the other Bron entities may not be worth very much because no bidder could be found who would attribute substantial value to Bron's assets. The proposition that the proposed sale defines market value is critical for reasons outlined by the Monitor in its supplementary report. It states:

> 56. The Monitor has not performed a valuation analysis for the following reasons. First, the assets are intrinsically unique in nature given they are not tangible/hard assets that are easy to ascribe value to. For example, this is not a situation where the Monitor could hire an appraiser to value equipment or land based on comparable asset values in the market. Bron's assets include productions at various stages of development/completion, minority

> interests in portfolio companies, residual interests in productions whose value depends on how quickly prior-ranking creditors are paid, and digital assets where large sums have been spent on development but there is no clear market demand or proven revenue stream.
>
> 57. Second, assessing the value of Bron's assets would have been complicated by the 2023 SAG-AFTRA strike and the Writers Guild of America strike, both of which were "black swan" events that had a material impact on the film and television industry and related asset values.
>
> 58. Third, even if a valuation were possible, the cost of valuing so many assets held by the more than 50 Petitioners and non-Petitioner entities would be substantial and the valuations would take some time to complete. (To be clear, the Monitor has not identified any parties that would be able to provide a valuation if asked.) At the time of filing, BRON was unable to meet its payroll obligations and had limited resources to conduct a valuation in the circumstances. A valuation and the time associated with [undertaking] a valuation were not accounted for in the DIP budget.
>
> 59. Fourth, and most importantly, the best gauge of value is what purchasers on the open market are prepared to pay. The Monitor is of the view that the SISP exposed the assets to the market and was ultimately the key indicator of the value of the assets.
>
> [Emphasis added.]

[87] However, the complaints by Access Road and the Ad Hoc Group that I have already reviewed give rise to some doubt that the market has truly spoken, because significant information was entirely unavailable or unavailable to parties other than Creative Wealth. Potential bidders without prior involvement in Bron's projects faced all the difficulties listed by the Monitor in deciding how much to offer. They were confronted with documentation describing a myriad of projects in various stages of development. Through Mr. Cloth and a long-time working relationship with Bron's principal, Aaron Gilbert, Creative Wealth had a better feel for what it would be buying. It must have understood the challenges faced by outside bidders.

Conclusion

[88] In brief, I am not satisfied that the AVO and assignment order are fair and appropriate in the circumstances of this case. The dominant consideration is that the AVO would unfairly divest Access Road of its secured entitlement to the Media Res receivable. On a balance of probabilities, I find that Access Road's secured entitlement has significant value. The Media Res receivable is an asset of

substance. The claims in priority to Access Road's entitlement are most unlikely to exceed US$6.5 million and it is likely that only some portion of them will fall to be satisfied from the receivable.

5. Should the court order the Monitor to investigate?

[89] By cross-application, the Ad Hoc Group seeks an order that consideration of the proposed sale to Creative Wealth be delayed and the Monitor directed to investigate the loans, repayments, and security interests in 12 transactions to which they were parties, as well as the transaction proposed by Creative Wealth generally. The application is opposed by Bron and Creative Wealth.

[90] The Monitor does not oppose the cross-application, but offers the following observations. The loans advanced by the members of the Ad Hoc Group were advanced through CWMF or CWML, mostly CWMF. Some of the Group have sued CWMF and CWML and obtained discovery in the civil actions. All of them may request information through the trustee under CWMF's proposal in bankruptcy. If the cross-application is dismissed, they will not be without recourse.

[91] Creative Wealth opposes the cross-application. It maintains that funding of an investigation from Bron's funds would constitute an immediate event of default under the terms of the DIP loan.

[92] I am not persuaded that an investigation should be ordered, for the following reasons.

[93] I agree with Bron that that some aspects of the proposed investigation, such as the nature of the assets held in trust by CWMF, are clearly matters to be addressed through the proposal trustee. Three of the 12 transactions to be investigated involved projects undertaken by a Bron entity that is not a petitioner, and four of them involve projects undertaken by an entity that was not part of the Bron group.

[94] The magnitude and funding of the proposed investigation are problematic. It is unclear how the Monitor would investigate the financial affairs of entities outside the scope of this *CCAA* proceeding. It is not unrealistic to think that it might require a month or two. It would require continuation of the stay under the ARIO and, in light of the conclusion I have come to refusing approval of the proposed transaction, it is not at all clear that continuation of the stay is warranted.

[95] The Monitor estimates the cost of the proposed investigation at $497,000 per month. The Ad Hoc Group are not offering to pay the cost. If the stay is to be continued with the Bron companies remaining on life support while an investigation takes place, there will be a dissipation of assets that could be distributed to creditors. It would be unfair to require the secured creditors with priority to pay for an investigation of transactions in which they were not involved and from which they would take no benefit.

[96] Finally, the parties seeking an investigation are not without recourse. They may obtain information from CWMF's trustee. They may seek Bron's permission or, if necessary, leave of the court to share information obtained on discovery in the civil proceedings that have taken place to date.

Disposition

[97] The application and cross-application are dismissed. The stay of proceedings under the ARIO expires on December 11, 2023. If Bron wishes to seek an extension of the stay for the purpose of putting forward some other application, I will hear counsel on short notice at a time to be scheduled through the registry.

"Gomery, J"

District of ONTARIO
Division No. 09 - Toronto
Court File No. BK-24-03003083-0031
Estate File No.: 31-3003083

IN THE MATTER OF THE BANKRUPTCY OF CREATIVE WEALTH MEDIA FINANCE CORP. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AIDE MEMOIRE BRIEF OF
JASON CLOTH
(Returnable March 1st, 2024)

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