



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-24-03003083-0031

DATE: June 4th, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: **CREATIVE WEALTH MEDIA FINANCE CORP. v BAKER &
MCKENZIE LLP et al. BK-24-03003083-0031**

BEFORE JUSTICE: **CAVANAGH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jason Berall	CREATIVE WEALTH MEDIA FINANCE LENDING.	berallj@bennettjones.com
Natalia Vandervoort	BORDEN LADNER GERVAIS LLP	nvandervoort@blg.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
David Ullmann	Jason Cloth et al	dullmann@blaney.com
Andrew Sahai	Creative Wealth Media Lending Inc.	sahaia@bennettjones.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Michael Nowina Bryan Tannenbaum	TBD Restructuring	michael.nowina@bakermckenzie.com btannenbaum@tdbadvisory.ca
Arif Dhanani	Trustee of Creative Wealth Media Finance Corp.	adhanani@tdbadvisory.ca

ENDORSEMENT:

- [1] Borden Ladner Gervais LLP (“BLG”) formerly acted for the bankrupt, Creative Wealth Media Finance Corp. (“CWMF”), in a joint retainer with the bankrupt’s principal, Jason Cloth, in relation to a confidential matter unrelated to the within bankruptcy.
- [2] The joint retainer was terminated at the time that TDB Restructuring Limited was appointed as the bankruptcy trustee for CWMF (the “Trustee”). BLG did not in does not act as counsel to the Trustee. BLG continues to act as counsel to Mr. Cloth in relation to the confidential matter unrelated to the bankruptcy.
- [3] In the course of its retainer, BLG received CWMF records including emails (the “CWMF emails”) and CWMF records, documents and contracts (the “CWMF Records”).
- [4] The Trustee has requested records from BLG. On February 10, 2024, BLG informed the Trustee’s counsel during a telephone conference that it would moving for directions from the court in relation to production of any records in BLG’s possession to the Trustee.
- [5] The Trustee’s request is limited to the following records:
- a. 50,490 emails that including the sand and/or received using the @cwmoviefund.ca email domain for the period between January 1, 2021 and August 2022;
 - b. 13,182 emails that BLG received from CWMF’s U.S. counsel for the period between August 1, 2017 and April 28, 2022; and
 - c. CWMF agreements.
- [6] Penny J. heard a motion by the Trustee seeking orders granting the Trustee access to the books and records of CWMF and establishing protocols for the delivery of these books and records to the Trustee. In his endorsement, Penny J. identified the substantial problem at the heart of the dispute which arises from the fact that CWMF is one of several Creative Wealth Management (“CWM”) affiliated companies, and only it is in bankruptcy. All of the CWM group share office space in Toronto and the books and records for the entire group are, literally, intermingled. Justice Penny concluded that the necessary path forward was to extract the CWMF books and records from the intermingled records of the other CWM entities so that the Trustee will have unimpeded access to them.
- [7] Kroll was appointed as the independent forensic investigator to conduct the investigation to extract the CWMF books and records from the intermingled records.
- [8] With respect to category (a), the Trustee agrees that these emails can be delivered to Kroll, subject to an order from the court. With respect to category (c), BLG has provided the Trustee, as well as counsel to CWML and counsel to Mr. Cloth, with an index listing standalone CWMF agreements that BLG has in its file (the “CWMF Agreements”). BLG does not believe that there are any commingling issues in relation to the CWMF Agreements as CWMF is a party to each agreement. CWML, Mr. Cloth, and the Trustee have agreed that the CWMF Agreements can be delivered to the Trustee, subject to an order from the court.

- [9] With respect to category (b), the emails were received by BLG from CWMF's U.S. counsel for the purposes of responding to a third-party confidential request, which has now been withdrawn by that third party.
- [10] BLG's evidence is that the entirety of the CWMF emails it received from U.S. counsel has not been reviewed by BLG. Its understanding is that the CWMF records may be commingled vis-à-vis (a) other Creative Wealth Media entities that are third parties to this bankruptcy proceeding, including Creative Wealth Media Lending Inc. (CWML") which use the same email domain as CWMF; (b) potentially privileged emails and records; and (c) emails and records personal to Mr. Cloth.
- [11] CWML and Mr. Cloth oppose delivery of the item (b) emails and attachments by BLG to the Trustee. They submit that these emails came from a source of commingled documents and, pursuant to the endorsement of Penny J., and as a matter of principle, they must be provided to Kroll for review to ensure that records of third parties which should not properly be given to the Trustee, if any, are identified.
- [12] The Trustee submits that BLG reviewed the category (b) emails for privilege and was ready to provide the documents to the third party in response to a request for documents from CWMF. The Trustee submits that these records are either CWMF emails or emails that relate in some way to the property or affairs of CWMF and, therefore, are records that CWMF or third parties are required to produce to the Trustee and that the Trustee is entitled to receive.
- [13] On the evidence before me including the affidavit of Eun Ji Yoon, a law clerk at BLG, I am unable to determine that the category (b) emails do not include emails of third parties that are not related in any way to the property or affairs of CWMF, the bankrupt, and that the Trustee is not entitled to receive.
- [14] I direct that the category (b) emails be provided to Kroll to be dealt with in the same way as the category (a) emails. This is consistent with the endorsement of Penny J. and with applicable legal principles.
- [15] I ask counsel to provide me with an approved form of order that is consistent with this endorsement.
- [16] If the parties are unable to resolve costs after diligent efforts to do so, brief written submissions may be made (2 pages, excluding costs outline; 1 page for reply, if any) according to a timetable to be agreed upon by counsel and approved by me.

Cavanagh J.