

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
163(2) OF THE *BANKRUPTCY AND INSOLVENCY ACT*.

**FACTUM OF CATALYST WEALTH MANAGEMENT
MEDIA FUND 1, LLC AND THE AD-HOC GROUP**

February 22, 2024

Tyr LLP
488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

Jason Wadden (LSO#: 46757M)
Email: jwadden@tyrllp.com
Tel: 416.627.9815

Anna White (LSO#: 84663P)
Email: awhite@tyrllp.com
Tel: 437.226.8549

Lawyers for the Applicants, Catalyst
Wealth Management Media Fund 1, LLC
and the Ad-Hoc Group

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PART I - OVERVIEW

1. The Catalyst Fund and the Ad-Hoc Group (both defined below), creditors of the bankruptcy, bring this motion under section 163(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an Order permitting them to examine and obtain production from Adam Davids, given that he has or may have relevant information pertaining to the business and affairs of the bankrupt that will be helpful in the investigation of the administration of the estate of any bankrupt.

2. For the following reasons, explained in greater detail below, the requested order will benefit the administration of the entirety of the estate:

(a) to date, the principal of the bankrupt, Jason Cloth, has refused or failed to provide any documents regarding the bankrupt as he is required to;

(b) what little information has been provided by Cloth about the affairs of the bankrupt has been completely unsubstantiated and contradictory;

(c) the information Adam Davids has is necessary for determining the bankrupt’s assets and the rights of its creditors, and whether there are other avenues of recovery;

(d) the information Adam Davids has is also relevant to knowing which creditors’ funds were used to fund the projects that BRON (defined below) was involved with, which impacts creditors’ rights and the amounts owed to them; and

(e) the proposed order is a benefit to the bankrupt and the body of creditors, since not only will the information assist in the administration of the estate, but the costs will be borne by the Catalyst Fund and the Ad-Hoc Group, and as such will reduce the cost burden on the bankrupt estate and its body of creditors.

PART II - FACTS

A. The Parties and the Loans

3. CWM Finance, now bankrupt, was formerly in the business of raising funds to finance the production and development of various films, television shows, and video games (the “**Productions**”). CWM Finance’s principal and directing mind was Jason Cloth (“**Cloth**”).

4. Many (if not all) of the Productions were produced or financed by, at least in part, by BRON Media Corp and related companies (together, “**BRON**”). Cloth is a former director of BRON.

5. One of BRON’s executives and former senior vice-president of business affairs is Adam Davids (“**Davids**”).

6. Cloth and Davids worked together often, and as a result developed close personal as well as professional relationships. Because Cloth and CWM Finance were raising money for BRON Productions, Davids is in possession of information regarding the ultimate destination of the money from CWM Finance and raised by CWM Finance, how it was being spent, and how it was to be repaid.

7. Over the course of 2020 to 2021, Catalyst provided approximately USD\$29MM (the “**Loans**”) to CWM Finance to fund five animated television series (the “**Catalyst Productions**”) pursuant to term sheets describing each of the five as a “BRON Digital Series” (the “**Term Sheets**”). The Term Sheets described the money raised as loans with terms between 18 and 24 months, all bearing interest at a rate of 10% per annum. BRON Digital is the brand name for the production segment of BRON responsible for creating animation content.

8. Catalyst Productions is a part of an ad-hoc group of over 80 creditors represented by Tyr LLP who also invested in Productions pursuant to Term Sheets or made other investments through promissory notes (the “**Ad-Hoc Group**”).

9. All of the Term Sheets with respect to the Catalyst Productions have now matured and have not been repaid. Moreover, the total amount of the Loans may not have been provided in full to the Catalyst Productions, contrary to the provisions of the Term Sheets.

B. The Insolvencies

10. BRON began proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) on July 19, 2023, pursuant to an order of the Supreme Court of British Columbia on that date. In July 2023, the Court approved a sale and investment solicitation process. On January 17, 2024, the Court approved a sale of nearly all of BRON’s assets and contracts to Creative Wealth Media Lending LP (“**CWM Lending**”).

That sale has not yet closed. Certain of the Catalyst Productions were included in this sale, but not all of them.¹

11. During a hearing held on November 7, 2023, the Court was advised that although there may have been a relationship between CWM Finance and CWM Lending in the past, they had not been connected in the last few years. The Court was also advised that Cloth was no longer involved with CWM Lending.²

12. CWM Finance, CWM Lending, and CWM Lending's general partner Creative Wealth Media Genpar Ltd ("**CWM GenPar**"), all have the same address: 151 Bloor Street West, Suite 700, Toronto, Ontario, Canada, M5S 1S4 (the "**CWM Office**"). An individual named Richard McConnell ("**McConnell**") is listed as the sole director of CWM GenPar.³

13. Two other companies, Creative Wealth Media Lending Inc. and Creative Wealth Media Advisors Inc., both of which list Cloth and McConnell as the sole two directors, are also located at the CWM Office. Cloth and McConnell's addresses for service are also listed as the CWM Office.⁴

14. A few months after BRON's CCAA proceedings began, on October 27, 2023, CWM Finance filed a Notice of Intention to make a Proposal ("**NOI**") indicating, among other things, that Rosen Goldberg Inc. ("**RGI**") would be acting as trustee. The materials filed

¹ Affidavit of Arif Dhanani, sworn February 21, 2024 (the "**Trustee Affidavit**"), para. 34; Affidavit of Jeff Krol, affirmed February 22, 2024 (the "**Krol Affidavit**"), para. 10.

² Krol Affidavit, para. 11.

³ Krol Affidavit, para. 13.

⁴ Krol Affidavit, para. 13.

by CWM Finance in connection with the NOI stated that Catalyst was a creditor of CWM Finance with a claim of \$31,828,890.⁵

15. On November 28, 2023, CWM Finance was deemed bankrupt after CWM Finance failed to file a proposal and failed to seek an extension of time to file a proposal prior to the 30-day deadline to do so. On the statement of affairs filed following the deemed bankruptcy, Cloth swore that CWM Finance had \$67,000,000 in assets. However, he provided no details about these assets were provided in the statement of affairs and did not provide any financial records of any sort to explain or justify this statement (which itself was contrary to information provided during the NOI proceedings). RGI did not respond to requests from Catalyst for such details.⁶

C. The Trustee’s Attempts to Access the Books and Records, CWM Finance’s Inconsistent Statements, and Cloth and CWM Finance’s Refusal to Comply with Their Duties under the BIA

16. On December 15, 2023, the first meeting of creditors for CWM Finance was held and RSM Canada Limited was appointed as trustee in bankruptcy (the “Trustee”). (RSM Canada Limited’s name has been changed to TDB Restructuring Limited effective February 1, 2024.)⁷

17. Soon thereafter, the Trustee contacted RGI to request that it deliver CWM Finance’s books and records to the Trustee. RGI responded to advise that CWM Finance had not provided RGI with any books and records, and attached a copy of RGI’s

⁵ Krol Affidavit, para. 15.

⁶ Krol Affidavit, para. 15.

⁷ Krol Affidavit, para. 17.

preliminary report (the “**Preliminary Report**”), that it had prepared but never delivered to the creditors. In this Preliminary Report, RGI wrote the following:

Pursuant to the sworn Statement of Affairs, the Company estimates that approximately \$67,000,000 will be recovered, as follows:

Bron CCAA \$ 7,000,000

Various productions \$60,000,000

The \$60,000,000 is anticipated to be collected over the next 12 months from Series B, Series D, Series E, Series F and Series H projects.⁸

18. The Trustee has been attempting to access CWM Finance’s books and records since its appointment.⁹

19. On January 15, 2024, counsel for CWM Finance advised the Trustee that “of the \$67M in CWMF receivables, approximately \$50M including interest is in respect of the Conacher Kingston project, and another one called Olympus”. Counsel for CWM Finance has not explained the discrepancy between this explanation and the explanation provided in the sworn Statement of Affairs, despite being asked multiple times by the Trustee.¹⁰

20. On Monday, January 22, 2024, counsel for the Trustee wrote to Cloth requiring his attendance at the CWM Office the following day so the Trustee could obtain the books and records. Cloth replied, saying “There are multiple companies who work out of that space unrelated to CW Media. We gave the books and records to the original monitor. Get them from him.”¹¹

⁸ Trustee Affidavit, para. 20(j)(iii).

⁹ Trustee Affidavit, paras. 13, 16.

¹⁰ Trustee Affidavit, para. 20(j)(iv).

¹¹ Trustee Affidavit, para. 20(a).

21. Cloth's counsel also replied, suggesting moving the attendance to later in the week, and stated that it was his position that, "[g]iven that this bankruptcy has been outstanding for months, I can't imagine how anybody's statutory obligations would be impacted by waiting a few more days to ensure that a meeting is as productive as possible. As a starting point, I haven't even been able to speak to Mr. Cloth about this and I have no idea if the records you're seeking are at the premises you've suggested you are going to attend."¹²

22. Due to Cloth's schedule, the attendance was postponed until January 31, 2024.¹³

23. On January 31, 2024, the Trustee, counsel for the Trustee, counsel for Cloth and CWM Finance, counsel for CWM Lending, and Cloth met at the CWM Office. Cloth advised that there were no material hard copy books and records at the CWM Office because all of the books and records were digitized and stored on the cloud. The Trustee requested access to the books and records on the cloud, which was not provided. Counsel for CWM Finance and Cloth advised that his office would be sending a letter setting out CWM Finance's position on providing access to the books and records. No such letter has been received by the Trustee and/or the Trustee's counsel.¹⁴

24. Counsel for CWM Finance and Cloth further advised that there are no separate email accounts for CWM Finance and CWM Lending, that the email accounts would be used to conduct business for multiple companies, and that the books and records of CWM Finance were intermingled with the books and records of CWM Lending and other

¹² Trustee Affidavit, Exhibit N.

¹³ Trustee Affidavit, Exhibit N.

¹⁴ Trustee Affidavit, para. 24(f).

companies. Counsel for CWM Lending confirmed that CWM Lending's records are on the same cloud account and asserted privilege over them.¹⁵

25. Cloth advised that there are separate folders containing documents for each of the films that CWM Finance provided funding to and that these documents are segregated, but the Trustee was not given access to these documents or folders either.¹⁶

26. The Trustee requested the contact information for Jenifer George, whom it was advised was the person who manages the information stored on the cloud, but counsel for CWM Lending refused this request.¹⁷

27. Cloth was asked to provide information on the \$67 million in receivables that are listed as an asset of CWM Finance on the Statement of Affairs sworn by Cloth and counsel for CWM Finance and Cloth advised that Cloth had no information to share and that his office would send a letter setting out CWM Finance and Cloth's position on sharing information with the Trustee concerning the \$67 million in receivables.¹⁸

28. The Trustee advised all present that its position was that it was entitled to take possession of the books and records and that the appropriate course of action would be to permit the Trustee to take custody of all the records on the cloud but with an undertaking not to access them until the issue of how to exclude the records of CWM

¹⁵ Trustee Affidavit, para. 20(c).

¹⁶ Trustee Affidavit, para. 20(d).

¹⁷ Trustee Affidavit, para. 20(e).

¹⁸ Trustee Affidavit, para. 20(f).

Lending and the other companies was determined. Both counsel for CWM Finance and Cloth and counsel for CWM Lending advised that this would not be acceptable.¹⁹

29. As of February 22, 2024, neither the Trustee nor the Trustee's counsel has received a letter explaining why it is CWM Finance and Cloth's position that the Trustee can have no information on CWM Finance's receivables or access to its books and records.²⁰

D. There is Sufficient Cause for the Examination of Davids and Related Production of Documents

30. Catalyst understands that the Trustee is pursuing its options to obtain the information and access it is entitled to from Cloth and CWM Finance. However, it has been months since CWM Finance first filed its NOI and Catalyst does not know how long it will take for the Trustee to obtain that information and access. Catalyst is concerned about the status of the Catalyst Productions and the Loans and has, like the Trustee, been unable to obtain any information from Cloth or CWM Finance.

31. However, CWM Finance is not the only party with relevant information about the Catalyst Productions and the Loans. Although the Loans were initially advanced to CWM Finance, the ultimate destination of the Loans was always intended to be the Catalyst Productions, which were BRON Digital projects. BRON therefore has relevant information regarding the Loans. Similarly, the funds advanced by the other members of the Ad-Hoc

¹⁹ Trustee Affidavit, para. 20(h).

²⁰ Trustee Affidavit, paras. 24-27.

Group were also supposed to be used for, or directed to, productions for which BRON was involved as producer, lender or other capacity.²¹

32. Moreover, Davids has previously provided Catalyst with information suggesting that the Catalyst Productions did not receive the amounts that Catalyst believed they would receive, and representatives of the other members of the Ad-Hoc Group that the funds they advanced might not have been used as intended. Davids likely possesses information that can shed light on this issue.²²

33. As there are many other creditors who provided funds to CWM Finance with the intention of funding BRON productions, the examination of Davids will be for the benefit of the other members of the Ad-Hoc Group, as well as for the benefit of the bankrupt's other creditors and the general administration of CWM Finance's estate.²³

PART III - ISSUES

34. The only issue on this motion is that an order pursuant to section 163(2) of the BIA in respect of Adam Davids should be granted.

PART IV - LAW AND ARGUMENT

35. Section 163(2) of the *Bankruptcy and Insolvency Act* ("**BIA**") provides that a upon a motion by a creditor, and on sufficient cause being shown, an order may be made for the examination under oath of a person named in the order for the purpose of investigating the administration of the estate of any bankrupt, and the court may further order any person liable to be so examined to produce any books, documents, correspondence or

²¹ Krol Affidavit, para. 6.

²² Krol Affidavit, para. 20.

²³ Krol Affidavit, para. 20.

papers in the person's possession or power relating in all or in part to the bankrupt or any creditor, and the costs of the examination and investigation to be in the discretion of the court.²⁴

36. In *Josipovicz (Re)*²⁵, Justice Brown (as he then was) rejected the proposition stated by some Courts that a creditor had to show that something was “amiss” before obtaining an order for an examination and production of documents under section 163(2). Justice Brown noted that the bar for an order is “low”²⁶ and further held that an order may be appropriate where an examination is required to “reconcile, or shed further light on, conflicting information gather by the trustee, and that nothing may be “amiss” but that an inquiry is needed:

[15] Although some of the cases have suggested that an order should not be granted under section 163(2) unless the creditor demonstrated that something was “amiss”, that word risks deflecting the focus of the judicial inquiry on such a motion. Certainly, if something is “amiss”, further investigation may be merited. But, equally, an investigation may be appropriate where an examination is required to reconcile, or shed further light on, conflicting information gathered by the trustee. In such a case nothing may be “amiss”, but an inquiry is needed. So, where an order is sought under section 163(2) against a third party – i.e. neither the bankrupt nor the trustee – the focus should be on whether the examination likely will secure information required by the trustee to continue with or complete the administration of the estate of the bankrupt.²⁷

²⁴ BIA, section 163(2).

²⁵ *Josipovicz (Re)* [2012 ONSC 5361](#)

²⁶ *Josipovicz (Re)* [2012 ONSC 5361](#) at para. 14

²⁷ *Josipovicz (Re)* [2012 ONSC 5361](#) at para. 15

37. Other Courts have similarly held that the bar for showing or establishing “sufficient cause” under section 163(2) is a low.²⁸

38. Ontario courts have held that the examination must be for the general benefit of creditors and it must relate to the general administration of the bankrupt’s estate.²⁹

39. For the following reasons, it is clear that not only is something amiss, but that an investigation is appropriate in order to reconcile and shed further light on the conflicting information obtained by the Trustee.

40. First, as the Trustee has reported to this Court in its own affidavit, Cloth has refused and failed to comply with his obligations under BIA to provide the books and records to the Trustee. As the sole officer and director of CWM Finance, it was his obligation under the BIA to provide this information. By failing in this most basic of obligations, he has left the Trustee and creditors without the most basic of information about CWM Finance’s business and affairs.

41. Second, what little information that Cloth has provided in both the NOI and bankruptcy processes has been unsupported and contradictory.

42. Third, the information is needed to allow the creditors to prove their respective claims in the estate and to determine whether recoveries can be expected either from the revenues of the Productions, or whether other sources of recoveries will need to be

²⁸ See, for example, *Ellis (Re)*, [2013 SKQB 225](#) at para. [7](#) and *Kane (Re)*, [2011 NBQB 142](#) at para. [26](#). In *Black v. Ernst & Young Inc. (1997)*, [1997 NSCA 67](#) (CanLII), 47 C.B.R. (3d) 129, the Nova Scotia Court of Appeal stated that orders for examination under s. 163(2) “usually issue as a matter of course” (see para. [20](#)).

²⁹ *Assaf (Re)* (1976), 23 C.B.R. (N.S.) 14 (Ont. SCJ) at para. 6

explored. Since it is the creditors, such as the Catalyst Fund and the other members of the Ad-Hoc Group, that are funding the Trustee, it is necessary that this information be provided to assist them determining how the bankrupt estate should be administered.

43. Fourth, it is also necessary to determine: (i) whether and what funds that were collected by CWM Finance from creditors for the purposes of being transferred to BRON were in fact transferred to BRON; and (ii) to what extent if any did CWM Finance or Cloth through a different company advance other monies to BRON with respect to different productions. CWM Finance and Cloth raised funds from creditors on the basis that only certain money was being raised for the productions, and the investors made their decisions based on that information. The creditors need to understand the extent to which additional funds might have been raised for these projects, and from whom, in order to understand what funds CWM Finance and they are entitled to receive from the productions and BRON and, accordingly, steps and efforts should be taken in the administration of the estate to recover such amounts.

44. Fifth, the requested order under section 163(2) of the BIA will benefit the entirety of the bankruptcy estate as the costs associated with obtaining this information and conducting this examination will be borne not by the estate alone, but rather the Catalyst Fund and the Ad-Hoc Group will be helping to defray the cost of the administration of the estate by obtaining the requested order and conducting the requested interview.

45. For these reasons, it is respectfully submitted that that an order should be granted pursuant to section 163(2) of the BIA substantially in the form of the draft Order submitted to this Court, permitting the Catalyst Fund and the Ad-Hoc Group to examine Adam

Davids and to have them to produce documents within their possession and control in any capacity.

PART V - RELIEF REQUESTED

46. For the foregoing reasons, it is respectfully requested that an order substantially in the form of the draft Order provided, regarding the examination of Adam Davids and the production of documents from him, be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of February, 2024.



Tyr LLP
488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

Jason Wadden (LSO#: 46757M)
Email: jwadden@tyrllp.com
Tel: 416.627.9815

Anna White (LSO#: 84663P)
Email: awhite@tyrllp.com
Tel: 437.226.8549

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Josipovicz (Re)*, [2012 ONSC 5361](#)
2. *Ellis (Re)*, [2013 SKQB 225](#)
3. *Kane (Re)*, [2011 NBQB 142](#)
4. *Black v. Ernst & Young Inc. (1997)*, [1997 NSCA 67](#) (CanLII), 47 C.B.R. (3d) 129
5. *Assaf (Re)* (1976), 23 C.B.R. (N.S.) 14 (Ont. SCJ)

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC 1985, c B-3, Section 163(2)

Examination of bankrupt, trustee and others by a creditor

(2) On the application to the court by the Superintendent, any creditor or other interested person and on sufficient cause being shown, an order may be made for the examination under oath, before the registrar or other authorized person, of the trustee, the bankrupt, an inspector or a creditor, or any other person named in the order, for the purpose of investigating the administration of the estate of any bankrupt, and the court may further order any person liable to be so examined to produce any books, documents, correspondence or papers in the person's possession or power relating in all or in part to the bankrupt, the trustee or any creditor, the costs of the examination and investigation to be in the discretion of the court.

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Tyr LLP

488 Wellington Street West
Suite 300-302
Toronto, ON M5V 1E3
Fax: 416-987-2370

Jason Wadden (LSO#: 46757M)

Email: jwadden@tyrllp.com
Tel: 416.627.9815

Anna White (LSO#: 84663P)

Email: awhite@tyrllp.com
Tel: 437.226.8549

Lawyers for the Applicants, Catalyst Wealth
Management Media Fund 1, LLC and the Ad-Hoc
Group