

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

AMENDED NOTICE OF MOTION

RSM Canada Limited, also known as TDB Restructuring Limited, the Trustee of the estate of Creative Wealth Media Finance Corp. ("CWMF"), a bankrupt, will bring a motion on an *ex parte* basis before Justice Wilton-Siegel on Friday, February 23, 2024 at 10:30 am (balance of relief sought on motion adjourned to March 6, 2024 at 11:00 am).

PROPOSED METHOD OF HEARING: The motion is to be heard by:

- In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

At the following location:

<https://ca01web.zoom.us/j/65400327305?pwd=WC91RjNENjNnZlQ2NHpvdDlzaUNldz09>

THE MOTION IS FOR AN ORDER, substantially in the form attached hereto as [Schedule "A"](#):

- (a) compelling all of CWMF's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons with knowledge to forthwith provide access to the Trustee to CWMF's books and records regardless of whether they are intermingled with the books and records of Creative Wealth Media Lending ("CWML") and/or other entities operating at the premises formerly occupied by CWMF at 151 Bloor Street West, 700, Toronto, Ontario, Canada, M5S 1S4 (the "**Premises**");
- (b) compelling any persons in control of CWMF's books and records stored or otherwise contained on a computer or other electronic system of information storage to give unfettered access to allow the Trustee to recover and fully copy all the information contained therein; ~~and~~
- (c) approving the protocol for the preservation and review of the books and records set out in paragraph 6 of the draft order attached at Schedule "A" and ordering that CWML and/or Jason Cloth be responsible for the costs of segregating the books and records of CWMF from CWML and the other entities operating from the Premises;
- (d) costs of this motion; and
- ~~(e)~~(e) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. CWMF arranged and provided financing for the development and production of motion pictures, films, television streaming, and animated productions. Prior to its bankruptcy, CWMF shared an office at the Premises with several associated entities, including, but not limited to, CWML.
2. On November 28, 2023, CWMF was deemed to have filed an assignment in bankruptcy after failing to file a proposal or seek an extension of time to make a proposal.
3. CWMF's sole director, Jason Cloth, swore CWMF's Statement of Affairs, estimating approximately \$67 million as being "good" receivables.
4. Mr. Cloth has advised the Trustee that the bankrupt's books and records have been digitized and are stored online.
5. The Trustee requires the books and records to efficiently administer the bankruptcy estate of CWMF and has repeatedly requested them from Mr. Cloth and his counsel.
6. On January 31, 2024, the Trustee met with Mr. Cloth, his counsel and the in-house counsel for CWML at the Premises. Mr. Cloth denied the Trustee's request to access CWMF's books and records on the basis that they are intermingled with the books and records of another company directed by Mr. Cloth called CWML, as well as other unidentified entities.

7. On February 6, 2024, the Trustee (via counsel) sent a letter summarizing the January 31, 2024 meeting to CWMF's counsel and reminded Mr. Cloth about his statutory duties under the *BIA* to provide CWMF's books and records.
8. To date, no further information has been forthcoming from Mr. Cloth, his counsel or the in-house counsel for CWML regarding access to CWMF's books and records.
9. The Trustee is entitled to the books and records pursuant to ss. 16(3), 16(5), and 17(1) of the *BIA*.
10. Mr. Cloth has a statutory duty to deliver CWMF's books and records to the Trustee pursuant to s. 158 and s. 159 of the *BIA*.
11. CWML and any other entity that is in possession of CWMF's books and records also have a statutory duty to deliver CWMF's books and records to the Trustee pursuant to s. 164(1) of the *BIA*.
12. Both before and at the meeting on January 31, 2024, the Trustee specifically asked what steps are being taken by Mr. Cloth and CWML to preserve and safeguard the books and records of CWMF that are stored online. To date, there has been no response.
13. The Trustee believes that further delay may lead to the destruction and/or loss of the books and records.
14. The *BIA*, including sections 16, 17, 158, 159, 163, 164, 192; the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including Rules 1.04, 16.07, 17.05 and 37.

15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Arif Dhanani sworn on ~~February 21, 2024~~ (re-sworn March 4, 2024).
- (b) The Affidavit of Lisa Bertrand sworn on February 21, 2024.
- (c) Such other material as counsel may advise, and this Honourable Court may permit.

~~February 21,~~ March 4, 2024

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Proceeding commenced at Toronto, Ontario

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