

CITATION: Creative Wealth Media Finance Corp. et al., 2025 ONSC 4326

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

DATE: 20250723

SUPERIOR COURT OF JUSTICE - ONTARIO

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

BEFORE: The Honourable Justice J. Dietrich

COUNSEL: *Michael Nowina*, Counsel for Trustee, TDB Restructuring Limited

Jason Wadden, Counsel for Catalyst Wealth Management Media Fund I and the
Ad Hoc Group

Wojtek Jaskiewicz, Counsel for Premium Parties

Ryan Shah, Counsel for Highmore Trade Finance Fund LP

Arif Dhanani, Trustee for TDB Restructuring Limited

HEARD: July 23, 2025

REASONS FOR DECISION

Introduction

- [1] TDB Restructuring Limited, in its capacity as the bankruptcy trustee (the "**Trustee**") of Creative Wealth Media Finance ("**CWMF**"), seeks an Order allowing it to make use of the estate funds held by the Trustee that may constitute trust funds or are otherwise funds that are subject to the claims of secured creditors.
- [2] The relief requested by the Trustee is not opposed. All persons who have filed a proof of claim (whether asserting a trust claim, secured claim or unsecured claim) with the Trustee have been served. The Trustee has also served counsel who have appeared for various creditors as well as the Office of the Superintendent of Bankruptcy.

Background

- [3] Prior to its bankruptcy, CWMF operated as a media financing entity that raised capital through two primary mechanisms: (i) participation agreements with individual investors, and (ii) secured loan arrangements referred to as "Series Investments." The participation agreements provided investors with a fractional interest in specific film loans, while the Series Investments were secured against all of CWMF's assets.
- [4] In total, the Trustee has received 200 proofs of claim with total claims of approximately \$264.7 million. The Trustee's independent counsel reviewed 12 claims to assess the nature

of the claims and validity of the asserted security interests. Of these reviewed claims, five parties asserted secured claims, while others asserted trust claims in relation to specific film projects.

- [5] The Trustee has not yet determined whether all or a portion of the estate funds that it holds are subject to trust claims, as doing so requires a detailed review of the relevant agreements, the claims, and the source of the monies received by the Trustee. To date, the Trustee has not drawn on estate funds to pay professional fees and has instead relied on third-party funding provided by the Inspectors.
- [6] The Trustee has received and is expecting to receive further film residual proceeds. Someone needs to assess the various claims to those funds before they are distributed to the persons entitled to them. The Trustee is uniquely situated to do this. However, given the uncertainty related to payment of the Trustee's fees for doing so, the Trustee has brought this motion for directions before engaging in further substantive work in this regard.

Issue

- [7] The issue to be determined on this motion is whether the Court can, and if so, should, exercise its inherent jurisdiction to make an order that the Trustee's fees and disbursements relating to the administration, preservation and recovery efforts both incurred to date and on a go-forward basis may be paid from the estate funds held by the Trustee, notwithstanding that the estate funds are subject to unresolved trust claims and claims of secured creditors.

Analysis

- [8] Section 183(1) of the BIA preserves the Court's inherent jurisdiction. It provides:

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:
(a) in the Province of Ontario, the Superior Court of Justice;...

- [9] There are two preconditions which must be met prior to the Court exercising its inherent jurisdiction: (a) the BIA must be silent or not have dealt with the matter exhaustively; and (b) after weighing competing interests, the benefit of the relief sought must outweigh the prejudice to those affected: see *Samji (Re)*, 2013 BCSC 2101 at para 20 citing *Re Residential Warranty Co. of Canada Inc.* 2006 ABQB 236; at para 26 aff'd 2006 ABCA 293 [*Residential Warranty*].
- [10] The current issue arises because s. 67 of the BIA excludes any property held by the bankrupt in trust for any other person from the assets of the bankrupt. Further, s. 136 of the BIA establishes the statutory order of priority for the distribution of a bankrupt's estate, all of which is subject to the rights of secured creditors. Within this hierarchy, trustee remuneration is explicitly recognized as a preferred claim, and categorized as a cost of

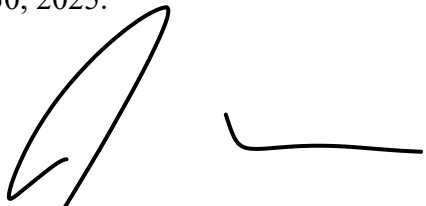
administration. Accordingly, the general scheme provides that a Trustee's remuneration is to be paid from property that is not held in trust for others or subject to security.

- [11] However, in *Residential Warranty*, the Alberta Court, held that the existence of a pending trust claim does not preclude a trustee from recovering reasonable fees and expenses. The Alberta Court noted that the BIA does not authorize charges against confirmed trust property, but also recognized that the mere assertion of a trust claim—regardless of its scope cannot be used to paralyze the trustee's ability to administer the estate. Using its inherent jurisdiction, the Alberta Court granted a charge on the assets to the trustee finding that a considerable part of the trustee's work would have benefitted the alleged beneficiaries of the trust assets.
- [12] In upholding the Alberta Court's decision in *Residential Warranty*, the Alberta Court of Appeal at para 20 and 21 noted that the Court should resort to the use of inherent jurisdiction sparingly and where it is necessary to promote the objects of the BIA. Further at para 29, the Alberta Court of Appeal accepted that inherent jurisdiction exists to grant a charge on property subject to undetermined trust claims. In considering the circumstances of the case, the Court of Appeal at para 33 held that "the centrality of the trust claims to the bankruptcies underscore the necessity of the trustee's involvement and the payment of its fees from the property subject to the disputed trust".
- [13] Further, the Alberta Court of Appeal in *Residential Warranty* at para 37 provided a non-exhaustive list of factors to be considered in invoking inherent jurisdiction in the circumstances: (a) the strength of the trust claim being asserted; (b) the stage of the proceedings and the effect of the order on the proceedings; (c) the need to maintain the integrity of the bankruptcy process; (d) the realistic alternatives in the circumstances; (e) the impact on the trust claimants and the trust property as well as other creditors; (f) the anticipated time and costs involved; (g) the limits that can be placed on the fees or charge; and (g) the role the trustee will take.
- [14] In *Golfside Ventures Ltd (Re)*, 2023 ABKB 86 [***Golfside***] at paras 21-52, the Alberta Court relied on *Residential Warranty* to exercise its inherent jurisdiction to grant a super priority charge to the trustee, finding that s. 136(1) of the BIA does not exhaustively address priority disputes between trustees and secured creditors.
- [15] As set out in *Golfside* and *Residential Warranty*, the BIA has not exhaustively address the matter of the Trustee's fees in these circumstances. Accordingly, it is necessary to weigh competing interests, and the benefit of the relief sought must outweigh the prejudice to those affected.
- [16] In CWMF's bankruptcy, the Trustee is uniquely situated to maximize recoveries for all claimants. As noted in *Golfside* at para 49, trustees are a fundamental part of the bankruptcy system and the purpose of the trustee's powers is to administer the estate to satisfy creditor claims in an equitable way. Determining the validity and priority of claims has a real cost and trustees are entitled to receive reasonable compensation for their problem solving and exercise of judgment.

- [17] In the present circumstances, the number of potential trust or secured claims weigh in favour of the order sought. The Trustee's continued administration of the estate benefits all creditors.
- [18] As noted, the Trustee's motion was widely served and no opposition was raised today.
- [19] In the circumstances of this particular case, I find that the Court can, and should, exercise its inherent jurisdiction to grant the order requested, with the amendments as discussed during the hearing.

Disposition

- [20] Order to go in the form signed by me this day.
- [21] Counsel for certain secured creditors advised that they intend to bring a motion seeking to expand TDB's powers to include those of a receiver. That motion is scheduled for 60 minutes to be heard on **August 5, 2025 at 12:00 noon (virtually)**. All material is to be uploaded to case center no later than end of day on July 30, 2025.



The Honourable Justice J. Dietrich

Date: July 23, 2025