

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

**AIDE MEMOIRE OF CREATIVE WEALTH MEDIA FINANCE CORP.
AND ITS LIMITED PARTNERSHIPS**

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario M5X 1A4

Robert W. Staley (LSO# 27115J)
staleyr@bennettjones.com

Michael Shakra (LSO# 64604K)
shakram@bennettjones.com

Tel:416-863-1200 / Fax:416-863-1716

Lawyers for Creative Wealth Media Lending
Inc. and its Related Limited Partnerships

1. This aide memoire is filed by Creative Wealth Media Lending Inc. ("Lending") and related limited partnerships under its management in opposition to the motion brought by RSM Canada Limited (now TDG Restructuring Limited), in its capacity as trustee (the "Trustee") of Creative Wealth Media Finance Inc. ("Finance"), to access books and records Lending's premises, which are located at 151 Bloor St West, Suite 700 ("151 Bloor").

Lending and Finance

2. Lending arranges for financing to the producers and distributors of motion picture, television, and animated productions. Lending also provides investment and administrative services to various entities.

3. Lending represents a single Canadian institutional pension fund investor whose investments are structured primarily through limited partnerships administered by Lending as general partner. Through the limited partnerships, Lending, as administrator, through different investment vehicles, makes direct and indirect investments in productions on behalf of its investor client.

4. Lending and Finance are separate corporations, operating separate businesses in the motion picture, television, and animated productions industry. Lending and Finance are separately managed, have separate clients and separate legal representation. Lending operates independently of Finance.

5. Lending and Finance exist under common upstream ownership by two ultimate shareholders that are unrelated, and which share equal indirect voting entitlement, resulting in

neither shareholder controlling Lending or Finance. Neither Lending nor Finance are subsidiaries of the other.

151 Bloor Street

6. 151 Bloor is shared by Lending, its limited partnerships, Finance, and several other businesses.

7. 151 Bloor does not house extensive paper records. The businesses have generated extensive digital records and communications, including email, all of which is housed on a common network system with some common cloud storage. Except for Epic Media, the paper and digital records of all of the businesses and entities at 151 Bloor are substantially intermingled.

8. The records at 151 Bloor and accessible at or on the cloud from 151 Bloor include lawyer/client communications and other confidential communications in relation to matters in which Lending and its limited partnerships are adverse to Finance.

Adversity Between Lending and Finance

9. As is known to the Trustee and Trustee's counsel,

- (a) Creative Wealth Media Lending Limited Partnership, one of Lending's limited partnerships, is listed (described as Creative Wealth Media Lending LP) in Finance's notice of bankruptcy as a creditor of Finance (Exhibit "E" to the Dhanani affidavit), as Lending's institutional pension fund investor invested through Creative Wealth Media Lending Limited Partnership in several Finance-led film and television projects that have failed;

- (b) Finance and one of Lending's limited partnerships, Creative Wealth Media Lending LP 2016 ("LP 2016"), made competing bids in the SISP of Bron Media Corp. ("Bron") in Bron's proceeding under the *Companies' Creditors Arrangement Act*. LP 2016's bid was ultimately successful;
- (c) the Bron CCAA proceeding is known to the Trustee and to Trustee's counsel, as it is described in the Dhanani affidavit, and reasons dated November 29, 2023 in the Bron CCAA proceeding are attached as Exhibit "V" to the Dhanani affidavit. The Trustee and Trustee's counsel are also aware from the Bron CCAA proceeding that LP 2016 is represented by Bennett Jones LLP; and
- (d) at the January 17, 2024 hearing at which LP 2016's bid in the Bron SISP was approved, Bryan Tannenbaum ("Tannenbaum") and Dhanani appeared for the Trustee, and Tannenbaum made submissions in opposition to LP 2016's bid.

10. The records of Lending and its limited partnerships in relation to the Bron SISP, and Lending limited partnership investments in Finance, including privileged communications, are among the commingled records at 151 Bloor, and accessible on the cloud from 151 Bloor.

Ex Parte Motion by The Trustee

11. On February 23, 2024, the Trustee moved *ex parte* for an order to access Finance'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" 151 Bloor.

12. In applying to the court *ex parte*, the Trustee disclosed to the court that Finance shared premises with Lending and one of its limited partnerships, LP 2016, and possibly other Lending

entities. The Trustee also disclosed that, when the Trustee attended at the premises on January 31, 2024, a representative of Lending, Brian Koscak, advised that Lending's records were on a shared drive with Finance, that Lending had not been made aware of the Trustee's request for access to Finance's books and records until recently, and that Lending was asserting privilege on the contents of his office and Lending's records stored on the cloud.

13. In its factum for the *ex parte* motion, the Trustee represented to the court that non-bankrupt third parties would not be prejudiced by the order requested.

14. In making this representation, the Trustee did not draw to the court's attention that Lending was adverse to Finance in connection with the bankruptcy of Finance and in connection with the Bron CCAA, both live matters.

Production of Commingled Records

15. In its factum in support of the *ex parte* motion seeking to take possession of Lending's records, Finance relied on *Teleglobe Inc. (Re)*, 2004 CanLII 1547 (ON SC)¹ and *Bankruptcy of St. Anne-Nackawic Pulp Company Ltd. (Re)*, 2005 NBQB 76².

16. In both cases, before records of the records of the insolvent entity were turned over to the trustee or interim receiver, a party other than the trustee or receiver vetted the records to ensure that no documents belonging to third parties were turned over.

¹ <https://www.canlii.org/en/on/onsc/doc/2004/2004canlii1547/2004canlii1547.html>

² <https://www.canlii.org/en/nb/nbqb/doc/2005/2005nbqb76/2005nbqb76.html>

17. As Lending has advised the Trustee, Lending does not object to having an independent third party take a copy of commingled books and records, in a manner that protects Lending's confidentiality and privilege, and to segregate and make Finance's records available to the Trustee.

18. As a general principle, where a party seeks production from a non-party, the party seeking production should be responsible for the reasonable costs incurred.

19. This principle is codified in Rule 30.10(5) of the *Rules of Civil Procedure*, which provides that where production is sought from non-parties, "(t)he moving party is responsible for the reasonable cost incurred or to be incurred by the person not a party to produce a document referred to in subrule (1), unless the court orders otherwise."³

20. The Trustee cites *Teleglobe*. In *Teleglobe*, the court ordered otherwise, requiring BCE Inc. to pay the costs of segregating the documents of its subsidiary Teleglobe. It did so because it "was the choice of BCE to intermingle this requested Teleglobe material with other BCE material."

21. Unlike in *Teleglobe*, Lending and Finance are separately managed and neither is the subsidiary of the other. This is not a case in which Lending bears responsibility for commingling by Finance, such that it should bear the costs of segregation. There is no principled reason to require Lending to expend sums to benefit the stakeholders of Finance.

February 29, 2024

³ <https://www.canlii.org/en/on/laws/regu/rro-1990-reg-194/217123/rro-1990-reg-194.html>

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

Court File No.: BK-24-03003083-0031
Estate File No.: 31-3003083

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)

Proceedings Commenced in Toronto

AIDE MEMOIRE

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Robert Staley (LSO# 27115J)
Mike Shakra (LSO# 64604K)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for Creative Wealth Media
Lending Inc. and its Related
Limited Partnerships