

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**

AFFIDAVIT OF ANASTASIA MARKAROFF
(Sworn Thursday, February 29, 2024)

I, **ANASTASIA MARKAROFF** of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a legal assistant at Baker & McKenzie LLP, the lawyers for the Trustee RSM Canada Limited also known as TDB Restructuring Limited ("**TDB**"), and as such I have knowledge of the following matters except where I indicate that statements are based upon information provided by others, in which case I verily believe the information to be true.
2. Attached hereto and marked as [Exhibit "A"](#) is a true copy of email exchange between Bennett Jones LLP, counsel for Creative Wealth Media Lending, and Baker & McKenzie LLP on February 26 and 27, 2024.
3. This Affidavit is sworn for use in the Trustee's Motion for an order to compel access to CWMF's books and records and for no other purpose. This Affidavit is sworn by video

conference via Zoom. I was physically present in the City of Toronto and the commissioner was physically present in Toronto, Ontario.

SWORN BEFORE ME:

in person OR by video conference

by Anastasia Markaroff at the City of Toronto, in the Province of Ontario, before me on Thursday, the 29th day of February, 2024 in accordance with [O. Reg. 431/20](#), Administering Oath or Declaration Remotely.

A. Rizor

Signature of Commissioner

Anastasia Markaroff
Anastasia Markaroff

Anton Rizor
LSO# 87067A

This is Exhibit "A" referred to in the **Affidavit of ANASTASIA MARKAROFF**, sworn before me this 29th day of February, 2024.

A. Rivas

Commissioner for Taking Affidavits (or as may be)

From: [Nowina, Michael](#)
To: [Mike Shakra](#); [Rob Staley](#); [Peter Dunne](#); [David T. Ullmann \(dullmann@blaney.com\)](#); [Eric Golden](#)
Cc: [Bryan Tannenbaum](#); [Rizor, Anton](#); [Arif Dhanani](#)
Subject: RE: CWMF Motion
Date: Tuesday, February 27, 2024 5:13:27 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Mike, Rob,

Further to our call today, the Trustee has proposed an appropriate protocol in the draft order included in the motion record for the review and segregation of the intermingled books and records. We do not agree that it is necessary as a first step for a party independent of the trustee to hold the records and conduct the initial review. Respectfully, we fail to understand on what basis you are suggesting that CWMF or the Trustee is adverse to the CWM Entities but we trust that you will make that clear in your responding motion record.

We also do not agree that the Trustee should bear the costs of desegregating the documents that CWMF and the CWM Entities chose to intermingle on a shared computer system. However, to be clear, we have no issue with excluding privileged communications and records of the CWM Entities that do not relate to CWMF. These are not the records that the Trustee is looking for.

Prior to the return of the motion on Friday, we urge your clients to propose revisions to the protocol. Jason Cloth has already confirmed that there are separate folders containing documents for all of the films that CWMF provided funding and those should be accessible to the Trustee immediately. In addition, the accounting records of CWMF should be producible immediately.

Regards,
Michael

Michael Nowina (he/him/his)
Partner, Pro Bono Chair (Toronto)
Baker & McKenzie LLP
181 Bay Street, Suite 2100
Toronto, Ontario, Canada M5J 2T3
Direct: +1 416 865 2312
Mobile: +1 647 339 7896
Fax: +1 416 863 6275

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Tuesday, February 27, 2024 12:26 PM
To: Arif Dhanani <adhanani@tdbadvisory.ca>; Nowina, Michael <Michael.Nowina@bakermckenzie.com>
Cc: Rob Staley <StaleyR@bennettjones.com>; Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Rizor, Anton <Anton.Rizor@bakermckenzie.com>; Peter Dunne <DunneP@bennettjones.com>
Subject: [EXTERNAL] RE: CWMF Motion

Thank you.

I will send an invite for 4pm shortly.

With respect to our concerns regarding the relief to be sought by the Trustee, they can be summarized as follows.

Bennett Jones is counsel to Creative Wealth Media Lending Inc., Creative Wealth Media Lending 2016 LP ("**2016**"), Creative Wealth Media Genpar Ltd., its general partner, and Creative Wealth Media Lending Limited Partnership (the "**CWM Entities**").

We are advised that certain of the "**Creative Wealth Media**" entities' electronic documents and records (the "**Records**"), including those of the CWM Entities, are commingled with those of CWMF. The Records include, among other things, communication involving businesses that have nothing to do with CWMF and communications with counsel that are privileged, and other confidential information in respect of business opportunities, operations, strategy and confidential communications in respect of the BRON CCAA proceedings.

CWMF is adverse to certain of the CWM Entities. Prior to its bankruptcy, CWMF submitted a bid that competed with 2016's bid in connection with BRON's CCAA proceedings. Following its bankruptcy, creditors of CWMF and the trustee took positions that were adverse to 2016 in BRON's CCAA proceedings. I understand that certain of the CWM Entities are also creditors of CWMF and identified as having contingent claims in the Trustee's notice to creditors.

Given that the Trustee / CWMF are adverse to certain of the CWM Entities, it is inappropriate for the Trustee to take possession of the CWM Entities' Records (including privileged and confidential communications) commingled with CWMF's and determine what might be relevant to CWMF's bankruptcy. The review and disclosure of any commingled Records should be undertaken by a neutral third-party custodian pursuant to a review protocol agreed to by the CWM Entities and the Trustee that protects privilege and confidentiality attaching to the CWM Entities' Records.

In our view, the Trustee failed to make full disclosure to the Court in the Trustee's motion record that was brought ex parte to the CWM Entities. While reference to the commingling of Records was made, the Trustee did not disclose that CWMF was adverse to certain CWM Entities, whose Records are commingled with CWMF.

In addition, as indicated yesterday, we believe the Trustee was aware that we are counsel for the CWM Entities (or at least some of them). At the very least we should have been informed of the motion as it was brought and given an opportunity to attend and make submissions.

If we are unable to reach an acceptable protocol to resolve document segregation and production at the cost and expense of the Trustee, our clients will file responding materials and seek to cross-examine the Trustee's affiant in relation to, among other things, the Trustee's failure to make full disclosure to the Court.

Best,

Mike

Mike Shakra

Partner*, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

BennettJones.com



From: Arif Dhanani <adhanani@tdbadvisory.ca>

Sent: Tuesday, February 27, 2024 8:54 AM

To: Nowina, Michael <Michael.Nowina@bakermckenzie.com>; Mike Shakra <ShakraM@bennettjones.com>

Cc: Rob Staley <StaleyR@bennettjones.com>; Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Rizor, Anton <Anton.Rizor@bakermckenzie.com>

Subject: RE: CWMF Motion

Good Morning,

4 pm today works for me as well.

Thank you,

Arif



TDB Advisory Limited

Arif Dhanani

Managing Director

CPA, CA, CIRP, LIT

adhanani@tdbadvisory.ca

647-725-0183

416-915-6228

11 King St. West, Suite 700

Toronto, ON M5H 4C7

tdbadvisory.ca

Integrity. Leadership. Excellence.

From: Nowina, Michael <Michael.Nowina@bakermckenzie.com>

Sent: Monday, February 26, 2024 9:21 PM

To: Mike Shakra <ShakraM@bennettjones.com>

Cc: Rob Staley <StaleyR@bennettjones.com>; Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>; Rizor, Anton <Anton.Rizor@bakermckenzie.com>

Subject: RE: CWMF Motion

External sender

That timing works on my end.

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Monday, February 26, 2024 9:07 PM
To: Nowina, Michael <Michael.Nowina@bakermckenzie.com>
Cc: Rob Staley <StaleyR@bennettjones.com>; btannenbaum@tdbadvisory.ca;
adhanani@tdbadvisory.ca; Rizor, Anton <Anton.Rizor@bakermckenzie.com>
Subject: [EXTERNAL] RE: CWMF Motion

Please let me know if this group is available at 4pm tomorrow.

Best,

Mike

Mike Shakra

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

BennettJones.com



From: Nowina, Michael <Michael.Nowina@bakermckenzie.com>
Sent: Monday, February 26, 2024 5:37 PM
To: Mike Shakra <ShakraM@bennettjones.com>
Cc: Rob Staley <StaleyR@bennettjones.com>; btannenbaum@tdbadvisory.ca;
adhanani@tdbadvisory.ca; Rizor, Anton <Anton.Rizor@bakermckenzie.com>
Subject: RE: CWMF Motion

Mike,

If you read the decision in the Bron case or review the service list, you will see that your firm is listed as counsel for [Creative Wealth Media Lending LP 2016](#) which is a different entity than [Creative Wealth Media Lending Inc.](#) that you are now saying that your firm represents. The service list indicates that Blaney McMurtry is counsel for CWML Inc. We have not been told that Creative Wealth Media Lending LP 2016 has records that are intermingled with those of the bankrupt, but please confirm if they are in advance of our call.

In order that we have a productive call, we repeat our request that you set out what your significant concerns are and how you propose to deal with the issues of the apparent intermingling of records. If your client's records are not intermingled with the records of the bankrupt then the pending motion has no impact on Creative Wealth Media Lending LP 2016 and we don't need to have a call.

Arif and Bryan are not available until tomorrow after 2:30.

Regards,
Michael

Michael Nowina (he/him/his)
Partner, Pro Bono Chair (Toronto)
Baker & McKenzie LLP
181 Bay Street, Suite 2100
Toronto, Ontario, Canada M5J 2T3
Direct: +1 416 865 2312
Mobile: +1 647 339 7896
Fax: +1 416 863 6275

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Monday, February 26, 2024 4:53 PM
To: Nowina, Michael <Michael.Nowina@bakermckenzie.com>
Cc: Rob Staley <StaleyR@bennettjones.com>; btannenbaum@tdbadvisory.ca;
adhanani@tdbadvisory.ca; Rizor, Anton <Anton.Rizor@bakermckenzie.com>
Subject: [EXTERNAL] RE: CWMF Motion

Michael:

We're available at 8:30 tonight and I will circulate an invite to this group.

I'm perplexed by the suggestion that the trustee did not know that Bennett Jones is counsel to CWML.

I'm listed as counsel to CWML in the reasons that you quoted from and appended to your motion record.

Mr. Tannenbaum certainly knows that I'm counsel. He appeared at a hearing on January 16 and January 17 in the BC Supreme Court where BRON was seeking approval of, among other things, a transaction between BRON and CWML. I made submissions at that hearing on both days. Mr. Tannenbaum was present and made his own submissions on January 16 to the Court. Does he not recall those events? See the attached reasons for judgement.

Best,

Mike

Mike Shakra

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

BennettJones.com



From: Nowina, Michael <Michael.Nowina@bakermckenzie.com>
Sent: Monday, February 26, 2024 4:31 PM
To: Mike Shakra <ShakraM@bennettjones.com>

Cc: Rob Staley <StaleyR@bennettjones.com>; btannenbaum@tdbadvisory.ca; adhanani@tdbadvisory.ca; Rizor, Anton <Anton.Rizor@bakermckenzie.com>
Subject: RE: CWMF Motion

Hi Mike,

We did not know that your firm is counsel to Creative Wealth Media Lending Inc. and understood that Blaney McMurtry was counsel to that entity although that was not entirely clear either. Please confirm that you represent Creative Wealth Media Lending Inc. as there are multiple entities with similar names.

I can have a call later this evening between 8-9 or tomorrow after 1 pm. Arif and Bryan, please confirm when you are available.

In advance of the call please set out what your significant concerns are and how you propose to deal with the issues of the apparent intermingling of records.

Regards,
Michael

Michael Nowina (he/him/his)
Partner, Pro Bono Chair (Toronto)
Baker & McKenzie LLP
181 Bay Street, Suite 2100
Toronto, Ontario, Canada M5J 2T3
Direct: +1 416 865 2312
Mobile: +1 647 339 7896
Fax: +1 416 863 6275

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit www.bakermckenzie.com/disclaimers for other important information concerning this message.

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Monday, February 26, 2024 4:01 PM
To: Nowina, Michael <Michael.Nowina@bakermckenzie.com>
Cc: Rob Staley <StaleyR@bennettjones.com>; btannenbaum@tdbadvisory.ca; adhanani@tdbadvisory.ca; Rizor, Anton <Anton.Rizor@bakermckenzie.com>
Subject: [EXTERNAL] CWMF Motion
Importance: High

Michael:

As you and your client are aware, Bennett Jones is counsel to Creative Wealth Media Lending (CWML).

Notwithstanding that you failed to serve us, we've received a copy of your client's motion record, the order obtained on Friday and the Order being sought on March 1.

We have significant concerns regarding the relief being sought in respect of CWML.

Please advise if you are available for a call late this afternoon / evening.

Rob Staley and I are available between now and 5:30 and then again after 6:30.

Best,

Mike

Mike Shakra

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6236](tel:4167776236) | F. [416 863 1716](tel:4168631716) | M. [647 262 7741](tel:6472627741)

BennettJones.com



The contents of this message may contain confidential and/or privileged subject matter. If this message has been received in error, please contact the sender and delete all copies. If you do not wish to receive future commercial electronic messages from Bennett Jones, you can unsubscribe at the following link: <http://www.bennettjones.com/unsubscribe>

The contents of this message may contain confidential and/or privileged subject matter. If this message has been received in error, please contact the sender and delete all copies. If you do not wish to receive future commercial electronic messages from Bennett Jones, you can unsubscribe at the following link: <http://www.bennettjones.com/unsubscribe>

The contents of this message may contain confidential and/or privileged subject matter. If this message has been received in error, please contact the sender and delete all copies. If you do not wish to receive future commercial electronic messages from Bennett Jones, you can unsubscribe at the following link: <http://www.bennettjones.com/unsubscribe>

The contents of this message may contain confidential and/or privileged subject matter. If this message has been received in error, please contact the sender and delete all copies. If you do not wish to receive future commercial electronic messages from Bennett Jones, you can unsubscribe at the following link: <http://www.bennettjones.com/unsubscribe>

**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-24-31-3003083
Estate File No.: 31-3003083

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto, Ontario

AFFIDAVIT OF ANASTASIA MARKAROFF

BAKER & McKENZIE LLP

Brookfield Place
181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

Michael Nowina (LSO #496330)

e: michael.nowina@bakermckenzie.com
t: 416.865.2312 / f: 416.863.6275

Christina Doria (LSO #60072P)

e: christina.doria@bakermckenzie.com
t: 416.865.2348 / f: 416.863.6275

Anton Rizor (LSO #87067A)

e: anton.rizor@bakermckenzie.com
t: 416.865.6939 / f: 416.863.6275

Lawyers for the Trustee, RSM Canada Limited also
known as TDB Restructuring Limited