



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-25-03244564-0031

DATE: August 6, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING:

The Podcast Exchange Inc. vs. TDB Restructuring Limited

BEFORE: Justice J. Dietrich

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jason Wadden, Counsel	The Podcast Exchange Inc.	jwadden@tyrllp.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Bryan Tannenbaum, Proposal Trustee	TDB Restructuring	btannenbaum@tdbadvisory.ca
Jeff Berger, Proposal Trustee		jberger@tdbadvisory.ca
Thomas Gertner, Counsel for Proposal Trustee	Gowling WLG (Canada) LLP	Thomas.gertner@gowlingwlg.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

[1] The Podcast Exchange Inc. (“**TPX**” or the “**Company**”) seeks an order (a) extending the time for the Company to file a proposal under the BIA to September 22, 2025; (b) approving a Key Employee Retention Plan (the “**KERP**”), and certain pre filing commissions to a key employee; and (c) approving the activities and conduct of the Proposal Trustee as set out in its Report dated July 29, 2025, filed in connection with this motion (the “**Report**”).

[2] On July 7, 2025 (the “**Filing Date**”), TPX filed the Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”). TDB Restructuring Limited was appointed as the proposal trustee (the “**Proposal Trustee**”).

[3] The Proposal Trustee supports the requested relief.

[4] No opposition to the relief requested was raised.

[5] Defined terms used but not otherwise defined herein have the meaning provided to them in the factum of TPX filed for use on this motion.

Background

[6] TPX is an advertising reseller specializing in podcast advertising. TPX creates, manages and places advertising for brands and advertising agencies and other related services.

[7] As a result of business challenges described in the affidavit of Pary Bell sworn on July 29, 2025, TPX’s CEO and its former directors determined that a formal restructuring process under the BIA was required and was the best avenue in which to protect all stakeholders’ interests. As a result, TPX filed the NOI, with TDB Restructuring Limited as the Proposal Trustee.

[8] The principal purpose of this NOI proceeding is to enable TPX to assess the best path forward for its stakeholders and to devise a viable proposal or plan for the benefit of its stakeholders in light of the available alternatives.

[9] Since the Filing Date, the evidence is that TPX has acted in good faith and made diligent efforts to improve its liquidity position, stabilize its operations and pursue a going concern solution of the continuation of its business. TPX advises that these efforts have included, among others: (a) terminating the employment of two employees who were recently hired and who were determined to not be necessary for the Company’s restructuring efforts; (b) successfully renegotiating the payment terms of an agreement with a key supplier from a large upfront payment to a monthly structure, which has helped with cash flow; (c) engaging with creditors and stakeholders about the process and the Company’s plans for the NOI proceedings, which resulted in most stakeholders and creditors agreeing to continue with TPX going forward; (d) booking approximately \$100,000 in new business in the month of July, which will run across the next few months; (e) continuing to book advertising campaigns for the autumn advertising cycle and receive new bookings and business; and (f) receiving various unsolicited expressions of interest regarding potential restructuring transactions from certain strategic actors in the industry.

Issues

[10] The issues to be determined on this motion are:

- a. Should the requested Extension to September 22, 2025 be granted;
- b. Should the KERP be approved;
- c. Should the Company be permitted to pay certain pre-filing commissions to a key employee; and
- d. Should the Report and the activities of the Proposal Trustee set out therein be approved?

Analysis

[11] TPX seeks an extension of time to file a proposal (the “**Extension**”) from the current deadline of August 6, 2025 to September 22, 2025. The requested extension exceeds 45 days and the 45-day period expires on a weekend and the requested extension is to the following Monday. As discussed at the hearing, the requested Extension was revised to expire on September 19th, 2025.

[12] Section 50.4(9) of the BIA provides the court with the authority to grant an extension of the time required to file a proposal where the court is satisfied that: (a) the insolvent person has acted, and is acting, in good faith and with due diligence; (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and (c) no creditor would be materially prejudiced if the extension being applied for were granted.

[13] As set out in the Report, the Proposal Trustee's view is that TPX has been acting with good faith and with due diligence since commencing the NOI proceeding. There is no suggestion otherwise. Further, the evidences is that TPX is making progress towards being able to make a viable proposal and the Company and the Proposal Trustee believe that the Extension will provide the Company with an appropriate period in which to continue to conduct the restructuring to the benefit of its creditors. The Report also includes the Cash Flow Forecast for the period July 14, 2025 to October 10, 2025 which indicates that TPX will have sufficient liquidity to operate during the requested Extension.

[14] Accordingly, the requested Extension to September 19, 2025 is granted.

[15] TPX also seeks approval of the KERP and a corresponding \$96,000 KERP Charge. The KERP was developed by TPX, its former directors and its professional advisors prior to the filing of the NOI in order to incentivize the retention of three key employees (the “KERP Participants”) who have been identified as critical to a successful realization process and orderly wind-down. The KERP takes into consideration the KERP Participants’ existing compensation packages and the circumstances of this NOI proceeding.

[16] The proposed KERP provides for two payments to the three identified key employees under certain conditions, including if they remain employed at 30 days following the filing date and at 75 days following the filing date. Each payment represents 10% of the employee's base annual salary.

[17] Courts have repeatedly approved KERPs in proposal proceedings under the BIA: See *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882 at para 24; *Danier Leather Inc. (Re)* [“**Danier**”], 2016 ONSC 1044 at para 77.

[18] Courts have established several factors to consider when assessing whether to approve a KERP, which include: (a) whether the court appointed officer supports the retention plan; (b) whether the key employees who are the subject of the retention plan are likely to pursue other employment opportunities absent the approval of the retention plan; (c) whether the employees who are the subject of the retention plan are truly “key employees” whose continued employment is critical to the successful restructuring; (d) whether the quantum of the proposed retention payments is reasonable; and (e) the business judgment of the board of directors regarding the necessity of the retention payments. see: *Danier* at para 76.

[19] Here, the Proposal Trustee supports the approval of the KERP and is of the view that the KERP is reasonable in the circumstances. The evidence in the Bell Affidavit is that according to the KERP Participants, the approval of the KERP is a significant factor as to whether they will be willing to continue working with TPX

during this NOI proceeding. The KERP Participants perform critical management or business functions, have important institutional knowledge and the skills the KERP Participants possess are irreplaceable, making their continued services vital and restructuring. As noted above, the KERP was developed by TPX, its former directors and its professional advisors.

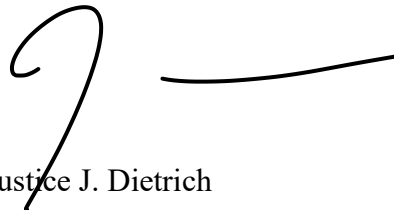
[20] In the circumstances the KERP is approved. As discussed at the hearing the KERP Charge will be deferred to a later hearing if and when necessary.

[21] The Company also requests the Court authorize and direct the Company to pay pre-filing commissions to the one KERP Participant who was owed commissions as of the date of the NOI filing. Neither TPX nor the Proposal Trustee could point me to any prohibition on TPX's ability to pay such pre-filing amount. Accordingly, I decline to grant the relief requested as it does not appear necessary.

[22] Further, TPX requests approval of the Report and the activities of the Proposal Trustee set out therein. There are good policy and practical reasons to grant the approval of a court-officer's reported activities see *Target Canada Co (Re)*, 2015 ONSC 1487, at paras 2, 22-23. The evidence is that the Proposal Trustee has carried out its duties in a reasonable and efficient manner, consistent with its powers as set out in the BIA and in the interests of the Company's stakeholders generally. There are no objections to the Report and accordingly it is approved. The draft order provides that only the Proposal Trustee may rely on such approval.

Disposition

[23] Order to go in the form signed by me this day.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line.

August 6, 2025

Justice J. Dietrich