



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: BK-22-02801364-0031 DATE: June 14, 2022

NO. ON LIST: 4

TITLE OF PROCEEDING: **BREAKTHROUGH ENTERPRISES INC**

BEFORE JUSTICE: **DIETRICH, B**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Shaun Parsons	Breakthrough Enterprises Inc.	sparsons@reconllp.ca
Pat Corney	Breakthrough Enterprises Inc.	pcorney@reconllp.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Rachel Nicholson	HSBC Bank Canada	rnicholson@tgf.ca
Brendan Bissell	Dodick Landeau Inc.	bissell@gsnh.com
Joel Turgeon	Dodick Landeau Inc	turgeon@gsnh.com
Rahn Dodick	Dodick Landeau Inc	rahn.dodick@dodick.ca

**ENDORSEMENT:**

I heard a motion by the applicants, Breakthrough Enterprises et al for two orders. The first is a substantive consolidation of the Breakthrough filing entities, each of which filed a Notice of Intention to Make a Proposal (a "NOI"), and the second is a vesting order respecting certain films to be produced.

Dodick Landau has been appointed as the Proposal Trustee under the *Bankruptcy and Insolvency Act* (the "BIA"). It supports the relief sought.

I am satisfied that substantive consolidation through the pooling of various assets to create a common fund out of which the claims of creditors can be jointly satisfied is appropriate in this case.

Such a consolidation is not expressly provided for in the *BIA*, however, it was considered in *Re Redstone Investment Corp. (Receiver of)*, 2016 ONSC 4453. In that case, Justice Morawetz, as he then was, identified the principles to be considered to evaluate whether substantive consolidation should be granted.

Having reviewed the record and heard the submissions of counsel, I am satisfied that the elements of consolidation identified in *Redstone* are present in this case, including difficulty in segregating assets, the presence of consolidated financial statements, profitability of consolidation at a single location, co-mingling of assets, co-mingling of business functions, unity of interests in ownership, the existence of inter-corporate loan guarantees, and transfers of assets without observing corporate formalities. I am also satisfied that the benefits of consolidation outweigh the prejudice to particular creditors. Further, without substantive consolidation, the filing entities would be required to make nine separate proposals to their creditors, which is inefficient and duplicative. Without consolidation, the creditors of one filing entity, Breakthrough Entertainment, would disproportionately benefit from such revenue to the detriment of all other creditors of Breakthrough entities which advanced products, services and resources to the group as a whole.

To facilitate financing, Breakthrough is proposing to transfer certain films to be produced in advance of Christmas to a newly incorporated, wholly-owned subsidiary of Breakthrough Enterprises. HSBC, as the primary secured lender to Breakthrough, will not fund the production of these films unless Breakthrough obtains a vesting order approving the transfer of these films to be produced. Any delay in the filming and production of these films will result in lost revenues, but also the loss of amounts already paid in production costs. Such a disposition of assets is authorized in a NOI proceeding, and I am satisfied that Breakthrough has met the test under s. 65.13(4) of the *BIA*.

The motion is unopposed.

The Substantive Consolidation Order and the Vesting Order, respectively, shall issue in the respective forms attached hereto and signed by me. These Orders are effective as of today's date, and they do not need to be entered.



Superior Court of Justice (Toronto)