

COUNSEL SLIP

COURT FILE

March 1 2022

NO.: BK-22-02801364-0031

DATE: _____

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NO. ON LIST _____

TITLE OF
PROCEEDING

BREAKTHROUGH ENTERPRISES INC

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X

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JUDICIAL NOTES:

Conway J. Endorsement

The Breakthrough entities (“**Breakthrough**”) are in NOI proceedings. They seek various orders today including an administrative consolidation of the nine NOI proceedings; authorization to make certain critical supplier payments, extension of the stay to April 17, 2022, and approval of a sale transaction.

All of the relief sought, except for the sale transaction, is unopposed. The sale transaction is unopposed, except for NJA Enterprises and Nathaniel Abraham (collectively, “**Abraham**”). Abraham is an unsecured creditor of Breakthrough and is currently in litigation with the company. It sought a two week adjournment of today’s motion on the sale transaction, in order to file more responding materials. Breakthrough and its sole secured creditor HSBC oppose the adjournment. After hearing submissions, I told Abraham’s counsel that I would give a much shorter adjournment of three days given that the sale transaction is scheduled to close on March 7th. Mr. Michaud sought instructions from Abraham and advised that it would not pursue the adjournment if it was only going to be for three days. However, Mr. Michaud told the court that his client may seek to bring a motion in the future seeking leave to set aside the NOI altogether.

Breakthrough is a producer of films, television series, and digital content. Apart from its library of television and films, it has various projects that are in its development pipeline, typically 40 at any time (the “**Development Slate**”). The sale transaction is for a portion of those projects (10 out of the 40). The purchaser is Ira Levy (“**Levy**”), who was the principal contact for Breakthrough with possible network buyers and a former director of the company. He also holds a minority interest in the company.

The evidence before me is that the value of film and television projects arises when the project has been green-lit for production. Until then, they remain intangible concepts with little intrinsic value. Importantly, they diminish with time as they become stale. Breakthrough has been unable to bring these assets to production due to cash flow limitations and lack of personnel.

Breakthrough worked with the Proposal Trustee and HSBC in determining how to monetize its assets. They decided not to run a formal sales process as the cost of running one would eclipse any value attaching to these assets. The sale transaction was entered into with Levy. The purchase price is \$100,000 plus reimbursement of certain payments between February 1 and closing plus forgiveness of all unsecured debt owed to Levy.

Abraham wanted to adjourn the sale approval motion in order to seek a formal sales process for these assets. I declined the adjournment, for three primary reasons. First, the evidence before me is that these assets continue to decline with time and this is the opportunity to monetize the assets before the value declines further. Second, the cost of a sales process will only erode the value of the assets. Third, the Proposal Trustee does not believe that a formal sales process will generate higher proceeds and supports the transaction as being in the best interest of Breakthrough and its stakeholders.

I am prepared to approve the transaction notwithstanding that a sales process was not conducted. It is not required in circumstances where it is not feasible or reasonable to conduct one: see *Re OEL Projects Ltd.*, 2020 ABQB 365; *Re Target Canada Co.*, 2015 ONSC 2066.

I have considered the factors in *Soundair* and s. 65.13(4) of the BIA and approve the transaction considering the following factors:

- These assets are only a portion of the Development Slate;
- The Proposal Trustee and HSBC were consulted about the process.
- The evidence before me is that: these assets are intangible and their value dwindles with time; Breakthrough does not have the resources to produce and develop them to realize their value; Levy is the one whose involvement is necessary to continue the development and bring them to networks for possible production; and if any titles are passed over for production, they become worthless.
- The Proposal Trustee, as noted, does not believe that a formal sales process will generate higher proceeds and supports the transaction.
- Given the amounts involved, a sales process for this portion of the Development Slate is highly uneconomical.
- HSBC would have been able to sell these assets itself as a secured creditor under the PPSA without a formal sales process.

I therefore approve the transaction.

As noted, the other relief sought is not opposed and is acceptable to me. Paragraph 12 has now been removed from the Administrative Consolidation and Related Relief Order in light of Abraham's stated position. With respect to the stay extension, I am satisfied that Breakthrough is acting in good faith and with due diligence and that no creditor will be prejudiced by the extension.

I have signed two orders today – Administrative Consolidation and Related Relief Order and AVO. They are attached to this endorsement. The orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.