

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND*
***INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

IN THE MATTER OF THE PROPOSAL OF
BREAKTHROUGH ENTERPRISES INC. (TOGETHER WITH
BREAKTHROUGH ENTERTAINMENT INC., BREAKTHROUGH FILMS &
TELEVISION INC., BREAKTHROUGH MERCHANDISING INC., BREAKTHROUGH
NEW MEDIA INC., BREAKTHROUGH POST INC., BREAKTHROUGH PUBLISHING
INC., OAK ROOM PRODUCTIONS INC. and 2447134 ONTARIO INC.) OF THE CITY
OF TORONTO IN THE PROVINCE OF ONTARIO

FACTUM OF THE PROPOSAL TRUSTEE
(approval of proposal returnable September 13, 2022)

September 12, 2022

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I. NATURE OF THIS MOTION

1. This is a motion by Dodick Landau Inc. in its capacity as trustee (the “**Proposal Trustee**”) of the proposal of Breakthrough Enterprises Inc., Breakthrough Entertainment Inc., Breakthrough Films & Television Inc., Breakthrough Merchandising Inc., Breakthrough New Media Inc., Breakthrough Post Inc., Breakthrough Publishing Inc., Oak Room Productions Inc. and 2447134 Ontario Inc. (collectively the “**Debtor**”) for an order approving the Debtor’s proposal to creditors dated July 7, 2022 (the “**Proposal**”) pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”).

II. OVERVIEW

2. The Proposal Trustee is of the view that the Proposal complies with the required terms of the BIA.
3. The Proposal was accepted by a clear majority of the creditors eligible to vote.
4. The Proposal Trustee is unaware of any opposition to the approval of the Proposal. Earlier opposition by a former director, employee and shareholder engaged in litigation against the Debtor companies and their current/former directors and shareholders has now been resolved
5. The Proposal Trustee recommends that the Court approve the Proposal because it provides more for creditors than a liquidation would, and because it will also provide for continued operations for the benefit of the Debtor companies’ stakeholders, including customers, suppliers, and employees. The Proposal Trustee is not aware of any facts that would warrant censure of the Debtor or that would constitute BIA offences.

III. FACTS

The Debtor

6. The Debtor companies together operated the business of producing and distributing feature films, television series and digital content worldwide. The Debtor companies operate in Toronto.¹

The NOI Proceedings and the Proposal

7. The Debtor companies each filed a Notice of Intention (“NOI”) to make a proposal on February 1, 2022. The NOI period for the Debtor companies was extended by several orders ultimately to July 16, 2022. During the NOI proceedings, other orders were also made to:
 - a) allow for the payment of certain critical pre-filing creditors;
 - b) administratively consolidate the estates of the Debtor companies;
 - c) approve the sale of certain production in process to a former officer and director of the Debtor companies;
 - d) vest certain Christmas production titles in a new subsidiary company for the purposes of obtaining financing; and
 - e) substantively consolidate the estates of the Debtor companies to allow for the filing of one joint proposal.²
8. The Debtor made its Proposal on July 7, 2022.³ The Proposal provides for a fund of \$350,000 comprised of both funds paid at the time of approval and installments to be paid

¹ Trustee’s Report to Creditors on the Proposal dated July 12, 2022, para. 13; Motion Record, Tab 2(H), page 129.

² Trustee’s Report dated September 9, 2022, para. 9; Motion Record, Tab 2, page 9-10.

³ Proposal, Appendix “F” to Trustee’s Report dated September 9, 2022; Motion Record, Tab 2(F), pages 69-88.

over 24 months to be distributed to the Debtor's creditors and for payment of proposal expenses.⁴

9. The Proposal Trustee has determined that the Proposal would be a better result for creditors than a liquidation.⁵
10. The Proposal Trustee is not aware of any facts that would warrant censure of the Debtor or a finding of a BIA offence, which could be bases to refuse approval of the Proposal.⁶
11. The Proposal is only made to the Debtor's unsecured creditors. Secured creditors, including HSBC Bank Canada, are unaffected by the Proposal.⁷
12. The Proposal further provides that, upon acceptance by the creditors and approval by the Court, the Debtor's assets will vest in 1000242627 Ontario Inc., which is the Sponsor under the Proposal. If there is default by the Debtor companies under the Proposal, the Proposal provides that an annulment of the Proposal shall also lead to a bankruptcy of the Sponsor.⁸ The Court is not being asked to grant a vesting order at the hearing on Sept. 13, 2022. The Debtor companies and the Sponsor will seek a vesting order by further motion, if necessary.
13. The Proposal additionally provides releases in favour of the Debtor companies and their advisors, agents, officer, directors and assigns, which take effect upon acceptance by the creditors and approval by the Court. The scope of the releases is limited in terms identical to the limitation in subs. 50(14) of the BIA. The Proposal also provides that an annulment of the Proposal shall also lead to the releases being of no force and effect.⁹
14. The Proposal was accepted by a vote of the requisite majorities at a meeting of the unsecured creditors held on August 2, 2022. Of the creditors in attendance, 21 voted in

⁴ Trustee's Report to Creditors on the Proposal dated July 12, 2022, paras. 40-42; Motion Record, Tab 2(H), page 134.

⁵ Trustee's Report to Creditors on the Proposal dated July 12, 2022, para. 58; Motion Record, Tab 2(H), page 138.

⁶ Trustee's Report dated September 9, 2022, para. 36; Motion Record, Tab 2, page 15.

⁷ Trustee's Report to Creditors on the Proposal dated July 12, 2022, para. 26; Motion Record, Tab 2(H), page 132.

⁸ Trustee's Report to Creditors on the Proposal dated July 12, 2022, para. 39; Motion Record, Tab 2(H), page 134.

⁹ Trustee's Report to Creditors on the Proposal dated July 12, 2022, paras. 68-71; Motion Record, Tab 2(H), page 142.

favour and 5 voted against, with 77.11% of the value of claims being in favour and 22.89% against.¹⁰

IV. ISSUE AND LAW

15. The sole issue is whether the Court should approve the Proposal.
16. BIA sections 59 and 60(5) govern approval by the Court of proposals. Section 59 provides:

Court to hear report of trustee, etc.

59 (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the court may require.

Court may refuse to approve the proposal

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in [sections 198 to 200](#).

Reasonable security

(3) Where any of the facts mentioned in [section 173](#) are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents on the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.

Court may order amendment

(4) If a court approves a proposal, it may order that the debtor's constating instrument be amended in accordance with the proposal to reflect any change that may lawfully be made under federal or provincial law.

¹⁰ Trustee's Report dated September 9, 2022, paras. 20-21; Motion Record, Tab 2, page 11.

17. Subsection 60(5) provides:

Power of court

(5) Subject to subsections (1) to (1.7), the court may either approve or refuse to approve the proposal.

18. Subsections 60(1) to (1.7) impose statutory requirements on proposals, all of which are met in this matter.

19. In order to satisfy the test in subs. 59(2) of the BIA, the courts have held that the following three-pronged test must be satisfied:

(a) the proposal is reasonable;

(b) the proposal is calculated to benefit the general body of creditors; and

(c) the proposal is made in good faith.¹¹

20. In reviewing a proposal, the Courts do give deference to the majority vote of a meeting of creditors, and also to the recommendations of the proposal trustee.¹²

21. In this case, the Proposal is clearly better for creditors of the Debtor than a liquidation, and a further benefit of the Proposal is that it preserves the ongoing business of the Debtor companies for the benefit of customers, suppliers, and employees.

22. The vote in favour of the Proposal by the Creditors is a good indication that the test for approval is met.

¹¹ *In The Matter Of The Consolidated Proposal Of Kitchener Frame Limited And Thyssenkrupp Budd Canada, Inc.*, [2012 ONSC 234](#) at para. 19.

¹² *Ibid*, at para. 21.

V. ORDER SOUGHT

23. The Proposal Trustee therefore seeks an Order approving the Proposal in the form attached at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of September, 2022.

R. Brendan Bissell

R. Brendan Bissell

Of counsel for for Dodick Landau Inc. in its capacity as trustee to the proposal to creditors proceeding of Breakthrough Enterprises Inc., Breakthrough Entertainment Inc., Breakthrough Films & Television Inc., Breakthrough Merchandising Inc., Breakthrough New Media Inc., Breakthrough Post Inc., Breakthrough Publishing Inc., Oak Room Productions Inc. and 2447134 Ontario Inc.

SCHEDULE A – LIST OF AUTHORITIES

1. *In The Matter Of The Consolidated Proposal Of Kitchener Frame Limited And Thyssenkrupp Budd Canada, Inc., [2012 ONSC 234](#)*

SCHEDULE B – RELEVANT STATUTES

Bankruptcy and Insolvency Act, [R.S.C., 1985, c. B-3](#) ss. 59, and 60

Court to hear report of trustee, etc.

59 (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the court may require.

Court may refuse to approve the proposal

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in [sections 198 to 200](#).

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Court may order amendment

(4) If a court approves a proposal, it may order that the debtor's constating instrument be amended in accordance with the proposal to reflect any change that may lawfully be made under federal or provincial law.

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Priority of claims

60 (1) No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

Certain Crown claims

(1.1) Unless Her Majesty consents, no proposal shall be approved by the court that does not provide for the payment in full to Her Majesty in right of Canada or a province, within six months after court approval of the proposal, of all amounts that were outstanding at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed, and are of a kind that could be subject to a demand under

- (a) [subsection 224\(1.2\)](#) of the *Income Tax Act*;
- (b) any provision of the [Canada Pension Plan](#) or of the [Employment Insurance Act](#) that refers to [subsection 224\(1.2\)](#) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the [Canada Pension Plan](#), an employee's premium, or employer's premium, as defined in the [Employment Insurance Act](#), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to [subsection 224\(1.2\)](#) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
 - (ii) is of the same nature as a contribution under the [Canada Pension Plan](#) if the province is a "province providing a comprehensive pension plan" as defined in [subsection 3\(1\)](#) of the [Canada Pension Plan](#) and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Idem

(1.2) No proposal shall be approved by the court if, at the time the court hears the application for approval, Her Majesty in right of Canada or a province satisfies the court that the debtor is in default on any remittance of an amount referred to in subsection (1.1) that became due after the filing

- (a) of the notice of intention; or
- (b) of the proposal, if no notice of intention was filed.

Proposals by employers

(1.3) No proposal in respect of an employer shall be approved by the court unless

- (a) it provides for payment to the employees and former employees, immediately after court approval of the proposal, of amounts at least equal to the amounts that they would be qualified to receive under [paragraph 136\(1\)\(d\)](#) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt's business during the same period; and
- (b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Voting on proposal

(1.4) For the purpose of voting on any question relating to a proposal in respect of an employer, no person has a claim for an amount referred to in paragraph (1.3)(a).

Proposals by employers — prescribed pension plans

(1.5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

(a) the proposal provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of [subsection 2\(1\)](#) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of [subsection 2\(1\)](#) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of [subsection 2\(1\)](#) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of [subsection 2\(1\)](#) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Non-application of subsection (1.5)

(1.6) Despite subsection (1.5), the court may approve a proposal that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(1.7) No proposal that provides for the payment of an equity claim is to be approved by the court unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Payment to trustee

(2) All moneys payable under the proposal shall be paid to the trustee and, after payment of all proper fees and expenses mentioned in subsection (1), shall be distributed by him to the creditors.

Distribution of promissory notes, stock, etc., of debtor

(3) Where the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, when the debtor is a corporation, shares in the capital stock of the corporation, the property shall be dealt with in the manner prescribed in subsection (2) as nearly as may be.

Section 147 applies

(4) [Section 147](#) applies to all distributions made to the creditors by the trustee pursuant to subsection (2) or (3).

Power of court

(5) Subject to subsections (1) to (1.7), the court may either approve or refuse to approve the proposal.

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

Court File No. 31-2801364
Estate File No. 31-2801364

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF BREAKTHROUGH ENTERPRISES INC. ET AL. OF THE CITY
OF TORONTO IN THE PROVINCE OF ONTARIO**

***ONTARIO*
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**FACTUM OF THE PROPOSAL TRUSTEE
(approval of proposal returnable Sept.13, 2022)**

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