

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

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

AND IN THE MATTER OF EIGHT RELATED INTENDED PROPOSALS

MOTION RECORD

June 8, 2022

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Lawyers for the Breakthrough Enterprises
Inc. Breakthrough Films & Television
Inc., Breakthrough Entertainment Inc.,
Breakthrough Post Inc., Breakthrough
New Media Inc., Breakthrough
Merchandising Inc., and Breakthrough
Publishing Inc.

TO: THE SERVICE LIST

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND*
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AND IN THE MATTER OF EIGHT RELATED INTENDED PROPOSALS

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Tab 1

Court File No. 31-2801364
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(RE: SUBSTANTIVE CONSOLIDATION AND VESTING)

THE APPLICANTS will make a motion to a Judge presiding over the Commercial List on June 13 at 11:00 a.m., or as soon after that time as the motion can be heard by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Christel Paul at cpaul@reconllp.com

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1 (1);
- in writing as an opposed motion under subrule 37.12.1 (4);
- in person;
- By telephone conference;
- By video conference.

Videoconference Details to join Motion via Zoom

Zoom videoconference details to be uploaded to Caselines

THE MOTION IS FOR:

1. Orders, substantially in the form attached at Tabs 3 and 4 of the Motion Record that, among other things:
 - a) substantively consolidate the Breakthrough Filing Entities, as defined below;
 - b) approve the transfer and vesting of the Christmas Hill Titles, as defined below, to Christmas Hill Productions Inc.; and
2. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

3. The Breakthrough Filing Entities are part of a family of corporations forming ‘Breakthrough’, a production company located in Toronto, Ontario. Breakthrough Enterprises Inc. is the sole shareholder and parent of the other Breakthrough Filing Entities: 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. (together with Breakthrough Enterprises Inc., the “**Breakthrough Filing Entities**”).
4. As an integrated entity, Breakthrough develops, produces and distributes feature films, television series and digital content worldwide and earns revenue from the production, licensing and distribution of television shows and films. The Breakthrough Filing Entities work together to complete the life cycle of a television series or film from development of

an idea to production and eventual monetization of the production through distribution of completed production to international buyers.

5. On February 1, 2022, each Breakthrough Filing Entity filed a Notice of Intention to Make a Proposal (each an “**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). Dodick Landau Inc. was appointed as proposal trustee under the BIA (the “**Proposal Trustee**”).

Substantive Consolidation

6. The Breakthrough Filing Entities propose to substantively consolidate the NOI proceedings of the Breakthrough Filing Entities to allow these entities to be dealt with as one estate and make a single proposal to their unsecured creditors.
7. The Breakthrough Filing Entities operate as parts of an integrated business, with the sole purpose of developing, producing and distributing television programs and films. The business is a closely integrated enterprise.
8. The test for substantive consolidation is met:
 - a) the elements of consolidation are present;
 - b) the benefits of consolidation outweigh the prejudice to any creditor; and
 - c) consolidation is fair and reasonable in the circumstances.
9. The business operations of the Breakthrough Filing Entities are deeply intertwined. The assets of the Breakthrough Filing Entities cannot readily be 'segregated' from the substantial investments in those assets by the other Breakthrough Filing Entities. Revenues received by

any one entity cannot be readily separated from the costs incurred by Breakthrough Entertainment Inc., which provides centralized services for the benefit of the corporate group.

10. Without consolidation of the Breakthrough Filing Entities, creditors within entities that developed or produced content but did not receive revenues from sales of such content or reimbursement for their services will be materially prejudiced. Similarly, creditors of Breakthrough Entertainment Inc., the entity responsible for revenue generating, will disproportionately benefit from such revenue to the detriment of all other creditors of the Breakthrough group that remain unpaid but who advanced products, services and resources to the group as a whole.
11. Further, without substantive consolidation, the Breakthrough Filing Entities will be required to make nine separate proposals to their creditors, which is inefficient and duplicative. There is a general cost savings to permitting the Breakthrough Filing Entities to file a single proposal, hold a single creditors' meeting and seek a single approval order if the proposal is accepted by the creditors.

Vesting the Christmas Hill Titles

12. Certain of the Breakthrough Filing Entities' productions are seasonal in nature and must be released during an appropriate time of year.
13. Breakthrough has commenced filming three seasonal television films to be completed for release during the Christmas holidays (the "**Christmas Hill Titles**"). While Breakthrough has funded the initial stages of filming, it requires financing to complete filming and

production. Breakthrough has negotiated with its senior secured lender, HSBC, for production financing of the Christmas Hill Titles.

14. In the normal course, when a title is green-lit, Breakthrough transfers the title to a single purpose production corporation to facilitate financing and tax filings. The Christmas Hill Titles need to be transferred to a production company, in line with usual practice and industry custom, to allow financing to flow and the productions to be completed.
15. Breakthrough and HSBC have executed the necessary financing documents, which are being held in escrow pending the granting of a vesting order. Breakthrough will only realize revenues and profit from the Christmas Hill Titles if they are filmed and production is completed before the 2022 Christmas season.
16. If the vesting order is not granted, HSBC will not provide funding and it is unlikely that Breakthrough will be able to complete production by the Christmas season.

Further Grounds

17. Rules 1.04, 2.03, 3.02, 16, and 38 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended;
18. The BIA;
19. The inherent jurisdiction of this Court; and,
20. Such further and other grounds as counsel may advise and this Honorable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

21. The Affidavit of Michael McGuigan, sworn June 8, 2022;
22. The Fourth Report of the Proposal Trustee, to be filed;
23. Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 8, 2022

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**Lawyers for the Breakthrough
Enterprises Inc. Breakthrough Films &
Television Inc., Breakthrough
Entertainment Inc., Breakthrough Post
Inc., Breakthrough New Media Inc.,
Breakthrough Merchandising Inc., and
Breakthrough Publishing Inc.**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto

NOTICE OF MOTION

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**Lawyers for the Breakthrough Enterprises
Inc. et al.**

Tab 2

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IN THE MATTER OF THE *BANKRUPTCY AND*
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AFFIDAVIT OF MICHAEL MCGUIGAN
(Sworn June 8, 2022)

I, **MICHAEL MCGUIGAN**, of the City of Toronto, in the province of Ontario,

MAKE OATH AND SAY:

1. I am the Chief Financial Officer of Breakthrough Enterprises Inc. (“**Breakthrough Enterprises**” together with Breakthrough Entertainment Inc. (“**Breakthrough Entertainment**”), Breakthrough Films & Television Inc. (“**Breakthrough Films & Television**”), Breakthrough Merchandising Inc., Breakthrough New Media Inc., Breakthrough Post Inc., Breakthrough Publishing Inc., Oak Room Productions Inc., and 2447134 Ontario Inc., the “**Breakthrough Filing Entities**” or “**Breakthrough**”). Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. On February 1, 2022, each Breakthrough Filing Entity filed a Notice of Intention to Make a Proposal (each an “**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-

3 (the “**BIA**”). Dodick Landau Inc. was appointed as proposal trustee under the BIA (the “**Proposal Trustee**”).

3. The Breakthrough Filing Entities commenced these NOI proceedings to monetize a portion of its development slate to pay down its indebtedness to its secured lender, HSBC Bank Canada (“**HSBC**”) and to address its unsecured debt by way of a proposal to unsecured creditors.

4. On March 1, 2022, the Honourable Madam Justice Conway granted an Order that administratively consolidated the NOI proceedings commenced by the Breakthrough Filing Entities and extended the stay of proceedings up to and including April 17, 2022 (the “**Stay of Proceedings**”). The Stay of Proceedings has been extended until July 16, 2022 pursuant to an Order dated May 25, 2022.

5. This affidavit is submitted in support of a motion for an Order that, *inter alia*:

(a) substantively consolidates the Breakthrough Filing Entities; and

(b) approves the transfer and vesting of the Christmas Hill Titles (defined below) to Christmas Hill Productions Inc. to permit the financing of the production by HSBC.

I. BREAKTHROUGH’S BUSINESS AND OPERATIONS

6. Each Breakthrough Filing Entity is an Ontario corporation incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16 (Ontario) (the “**OBCA**”).

7. The Breakthrough Filing Entities are part of a family of corporations carrying on business under the name ‘Breakthrough’, a fully-integrated production and distribution

company located in Toronto, Ontario. Breakthrough Enterprises is the sole shareholder and parent of the other Breakthrough Filing Entities: Breakthrough Entertainment, Breakthrough Films & Television, Breakthrough Merchandising Inc., Breakthrough New Media Inc., Breakthrough Post Inc., Breakthrough Publishing Inc., Oak Room Productions Inc., and 2447134 Ontario Inc. Breakthrough Enterprises also owns other companies that own assets in productions that have been completed and marketed. Those other companies have not filed under the BIA.

8. As a family of companies, Breakthrough develops, produces and distributes feature films, television series and digital content worldwide and earns revenue from the production, licensing and distribution of television shows and films. Breakthrough's primary assets are its library, which consists of 43 feature films and 2,890 television episodes (the "**Library**") and various projects in its development pipeline (the "**Development Slate**"). As a producer, the Breakthrough Filing Entities typically have around 40 projects in the development pipeline at any point in time.

9. The distribution rights to the Library are held by Breakthrough Entertainment and Breakthrough's Development Slate is held by Breakthrough Films & Television and 2447134 Ontario Inc.

II. SUBSTANTIVE CONSOLIDATION OF THE NOI PROCEEDINGS

10. The Breakthrough Filing Entities propose to substantively consolidate the NOI proceedings to allow these entities to be dealt with as one estate and make a single proposal to their unsecured creditors.

11. The Breakthrough Filing Entities operate as parts of an integrated business, with the sole purpose of developing, producing and distributing television programs and films. The business is a closely integrated enterprise in which assets are held primarily in three entities: Breakthrough Enterprises, Breakthrough Entertainment and Breakthrough Films & Television. Breakthrough did not historically track the contribution of value to the business on an entity-by-entity basis, including in relation to revenue earned.

Intertwined Assets

12. The Breakthrough Filing Entities work together to complete the life cycle of a television series or film from development of an idea to production and eventual monetization of the production through distribution of completed production to international buyers.

- (a) Breakthrough Enterprises and Breakthrough Films & Television hold directly or indirectly through single purposes entities, legal rights to the Library and Development Slate;
- (b) Breakthrough Post provides post-production services for content e.g. editing of content following production of the film and television programming;
- (c) Breakthrough New Media Inc. was established to create and monetize new media companion properties for Breakthrough produced TV shows;
- (d) 2447134 Ontario Inc. holds a portion of the Development Slate with Breakthrough Enterprises. 2447134 Ontario Inc. develops new TV and film concepts by investing in scripts, sizzle reels and other pitch materials. These concepts are pitched to broadcasters and partners with the aim of getting an order for the program;

- (e) Breakthrough Merchandising Inc. does not conduct any activity. This entity was set up to manage the merchandising opportunities on Breakthrough's children's television programing. Breakthrough sold its children's programming business in 2018;
- (f) Breakthrough Publishing Inc. - this entity was established to house the music publishing rights to all Breakthrough produced television programs. Music, including the score in any television program generates royalties when aired by broadcasters, which royalties are payable to Breakthrough Publishing Inc. Breakthrough Publishing Inc. takes a fee and remits net revenues to Breakthrough Entertainment for payout to third party partners/investors on the programs;
- (g) Oak Room Production Inc. - this is a single purpose production company for the movie "The Oakroom"; and
- (h) Breakthrough Films & Television also develops content ideas and operates as the executive producer in the production of media content.

13. Each of the Breakthrough Filing Entities rely on the services of Breakthrough Entertainment to distribute and sell the productions in order to monetize and generate revenue from the Library for the benefit of Breakthrough's corporate group. Revenue derived from Breakthrough Entertainment is then used to fund the development of content ideas and productions within the Breakthrough Filing Entities. Accordingly, the assets of the Breakthrough Filing Entities cannot readily be 'segregated' from the substantial investments in those assets by the other Breakthrough Filing Entities. Revenues received by any one entity cannot be readily separated from the costs incurred by Breakthrough Entertainment in providing centralized services for the benefit of the corporate group.

Consolidated Financial Statements

14. In my experience, in the film and television industry, production companies are usually treated as one aggregate entity working together to develop programming, and they are treated as such by lenders, banks and other business counterparties. The Breakthrough Filing Entities have historically developed and reported consolidated financial statements aggregating the assets and liabilities across all entities.

Profitability of Consolidation at a Single Location

15. Breakthrough Entertainment is the principal source of revenue for the Breakthrough group as it holds the distribution and sale rights of the Library. Revenue received by Breakthrough Entertainment is and historically has been applied to the other Breakthrough Filing Entities to allow them to meet their obligations as they become due.

Comingling of Assets and Business Functions

16. The Breakthrough Filing Entities each provide value to the Breakthrough enterprise. Without the value provided by each entity during the life cycle of developing television and film content – including at the development and production phase, as well as in the distribution thereof, the value of the assets within the three entities would be nominal. The operation of the entities as one business results in accretive value for the collective benefit of Breakthrough as a whole.

17. With respect to business functions, substantially all of the business functions of the Breakthrough Filing Entities are comingled:

- (a) the business functions of each entity are carried out by substantially the same employees;
- (b) the same directors and officers exercise general authority and direction over all of the Breakthrough Filing Entities' business affairs and functions;
- (c) Breakthrough Entertainment paid substantially all expenses on behalf of the Breakthrough Filing Entities regardless of which entity procured or benefitted from the goods or services obtained. These transactions were not on commercial terms as between the Breakthrough entities that would be expected for arms-length corporations;
- (d) most intercompany transactions between the Breakthrough Filing Entities were solely recorded by journal entries and cash is loaned between the Breakthrough Filing Entities as needed;
- (e) substantially all decision-making, communication functions, marketing and pricing decisions, new business development initiatives, negotiation of material contracts and leases, retail and third-party suppliers/services decisions, design and merchandising, and production and distribution functions are managed centrally by a core group of management and employees, who, despite receiving payroll from the various Breakthrough Filing Entities, make decisions across the corporate group as a whole;
- (f) employees were either employees of Breakthrough Entertainment or Breakthrough Films & Television. Breakthrough Entertainment funded most of the employee costs;
- (g) the IT system for all of the Breakthrough Filing Entities is centralized and used by each of them; and

(h) the Breakthrough Filing Entities share a head office.

Existence of Inter-Corporate Guarantees

18. Any financing obtained by Breakthrough for the development and production of content has historically been cross-collateralized and guaranteed by the other Breakthrough entities. As an example, HSBC is Breakthrough's sole secured lender and holds security over each of the Breakthrough Filing Entities.

Transfer of assets without observance of corporate formalities

19. While there has not necessarily been the presence of transfers of assets as between the Breakthrough Filing Entities, the development of content including the Library and the Development Slate (being the principal asset of Breakthrough) are contributed to by each of the Breakthrough Filing Entities such that the value of the asset is maximized for the benefit of the group generally.

20. The approach taken by the Breakthrough Filing Entities is consistent with the operation of the entities as a common enterprise and has not involved independent arms'-length parties with independent directors.

21. Without consolidation of the Breakthrough Filing Entities, creditors within entities that developed or produced content but did not receive revenues from sales of such content or reimbursement for their services will be materially prejudiced. Similarly, creditors of Breakthrough Entertainment, the entity responsible for revenue generating will disproportionately benefit from such revenue to the detriment of all other creditors of the

Breakthrough group that remain unpaid but who advanced products, services and resources to group as a whole.

22. In addition, without substantive consolidation, the Breakthrough Filing Entities will be required to make nine separate proposals to their creditors, which is inefficient and duplicative. There is a general cost savings to permitting the Breakthrough Filing Entities to file a single proposal, hold a single creditors' meeting and seek a single approval order if the proposal is accepted by the creditors

III. VESTING OF THE CHRISTMAS HILL TITLES

23. Certain of Breakthrough's productions are seasonal in nature and must be released during an appropriate time of year. For instance, Christmas movies are filmed earlier in the year and prepared for release in and around November and December.

24. Breakthrough has commenced filming three seasonal television films to be completed for release during the Christmas holidays (the "**Christmas Hill Titles**"). While Breakthrough has funded the initial stages of filming, it requires interim financing to complete filming and production. Breakthrough has negotiated with its senior secured lender, HSBC for production financing as against the future receivables of the Christmas Hill Titles.

25. In the normal course, when a title is green-lit, Breakthrough transfers the title to a single purpose production corporation to facilitate financing and tax filings. The Christmas Hill Titles need to be transferred to a production company, in line with industry practice, to allow financing to flow and the productions to be completed.

26. Given these NOI proceedings and to ensure that the chain of title remains intact for the purposes of tax filings and other financing matters, HSBC has requested that Breakthrough obtain a vesting order approving the transfer to the production company, which would otherwise be done in the normal course to facilitate financing. The granting of a vesting order over the Christmas Hill Titles is a condition of financing in addition to the execution of HSBC's typical loan and financing documents.

27. Breakthrough and HSBC have executed the necessary financing documents, which are being held in escrow pending the granting of a vesting order.

28. Breakthrough will only realize revenues and profit from the Christmas Hill Titles if they are filmed and production is completed before the Christmas season in 2022 so the films can be released and distribution revenues received. Breakthrough is unable to continue paying the costs of filming and production for these projects. Financing is needed imminently as Breakthrough cannot delay filming if it is to meet the Christmas season deadline for release of the films.

29. If the vesting order is not granted, HSBC will not provide funding and it is unlikely that Breakthrough will be able to complete production by the Christmas season. If that were the case, there would be little prospect of recovering the amounts already paid by the Breakthrough Filing Entities to film the Christmas Hill Titles. These losses will have significant impact on Breakthrough's ongoing viability.

30. 2447134 Ontario Inc. (the Breakthrough Filing Entity that currently holds the Christmas Hill Titles) holds a CEBA loan of \$60,000. No other party is affected by the transfer for the purpose of completing production on the Christmas Hill Titles.

31. I swear this affidavit in support of the Breakthrough Entities' motion for the relief requested, and for no other or improper purpose.

SWORN BEFORE ME *by video*)
conference at the City of Toronto, in the)
Province of Ontario, this 8th day of June)
2022.)

DocuSigned by:
Shaun Parsons
EF6BF00C10644D6...

A Commissioner for taking Affidavits.

Name: Shaun Parsons

DocuSigned by:
Michael McGuigan
9537B2A1EF5C463...

MICHAEL MCGUIGAN

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

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**AFFIDAVIT OF MICHAEL
MCGUIGAN**

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Lawyers for Breakthrough Enterprises Inc.

Tab 3

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM) MONDAY, THE 13TH
)
JUSTICE DIETRICH) DAY OF JUNE, 2022
)

IN THE MATTER OF THE *BANKRUPTCY AND
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AND IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
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**ORDER
(Substantive Consolidation)**

THIS MOTION, made by the Applicants, for an Order: substantively consolidating the Applicants, pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “BIA”), was heard this day by video conference.

ON READING the Affidavit of Mike McGuigan affirmed June 8, 2022, and on reading the Fourth Report of Dodick Landau Inc. dated June ●, 2022 in its capacity as proposal trustee of the Applicants, and on hearing the submissions of counsel for the Applicants, as well as all persons present as stated in the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Shaun Parsons sworn June ●, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

SUBSTANTIVE CONSOLIDATION

2. **THIS COURT ORDERS** that the Proposal Trustee may administer the proposal proceedings under Part III, Division I of the BIA of the Applicants on a consolidated basis, respectively being:

- (a) the present proceeding;
- (b) the matter of the notice of intention to make a proposal of Breakthrough Entertainment Inc., Estate and Court File No. 31-2801365;
- (c) the matter of the notice of intention to make a proposal of Breakthrough Films & Television Inc., Estate and Court File No. 31-2801367;
- (d) the matter of the notice of intention to make a proposal of Breakthrough Merchandising Inc., Estate and Court File No. 31-2801368;
- (e) the matter of the notice of intention to make a proposal of Breakthrough New Media Inc., Estate and Court File No. 31-2801369;
- (f) the matter of the notice of intention to make a proposal of Breakthrough Post Inc., Estate and Court File No. 31-2801370;
- (g) the matter of the notice of intention to make a proposal of Breakthrough Publishing Inc., Estate and Court File No. 31-2801371;

- (h) the matter of the notice of intention to make a proposal of Oak Room Productions Inc., Estate and Court File No. 31-2801373; and
 - (i) the matter of the notice of intention to make a proposal of 2447134 Ontario Inc., Estate and Court File No. 31-2801374
- (collectively, the “**Consolidation Entities**”)

3. **THIS COURT ORDERS** that the Proposal Trustee is authorized to carry out its administrative duties and responsibilities as proposal trustee under the BIA as if such proposal proceedings were a single proposal proceeding under the BIA, including, without limitation, as follows:

- (a) meetings of creditors of the Consolidation Entities may be convened through one combined advertisement and conducted jointly;
- (b) the Proposal Trustee is authorized to adhere to and implement any consolidated claims procedure for the identification and quantification of claims against the Consolidation Entities for voting and distribution purposes;
- (c) the Proposal Trustee is authorized to issue consolidated reports in respect of the Consolidation Entities;
- (d) the Proposal Trustee is authorized to deal with all filings and notices relating to the proposal proceedings of the Consolidation Entities as required under the BIA on a consolidated basis; and

- (e) the Proposal Trustee is authorized to file consolidated cash-flow statements in respect of the Consolidation Entities.

4. **THIS COURT ORDERS** that the Consolidation Entities are authorized to present a single, consolidated proposal to their creditors (the “**Consolidated Proposal**”) for consideration at a duly convened meeting of the creditors of the Consolidation Entities, without prejudice to the right of any creditor of any one of the Consolidation Entities to object to the substantive consolidation contained in such Consolidated Proposal.

ORDER EFFECTIVE IMMEDIATELY

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for entry and filing.

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Lawyers for Breakthrough Enterprises Inc.

Tab 4

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ONTARIO
SUPERIOR COURT OF JUSTICE
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THE HONOURABLE MADAM)	MONDAY, THE 13 TH
)	
JUSTICE DIETRICH)	DAY OF JUNE, 2022

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AND IN THE MATTER OF EIGHT RELATED INTENDED PROPOSALS

ORDER
(Vesting Order)

THIS MOTION, made by the Applicants, for an Order approving the vesting of the Christmas Hill Assets (defined below) in Christmas Hill Productions Inc. (“**Christmas Hill**”), pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), was heard this day by video conference.

ON READING the Affidavit of Mike McGuigan affirmed June 8, 2022, and on reading the Fourth Report of Dodick Landau Inc. dated June ●, 2022 in its capacity as proposal trustee of the Applicants (the “**Proposal Trustee**”), and on hearing the submissions of counsel for the Applicants, as well as all persons present as stated in the counsel slip, no one appearing for any other person on

the service list, although properly served as appears from the affidavit of service of ● sworn June ●, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

VESTING OF CHRISTMAS HILL ASSETS

2. **THIS COURT ORDERS AND DECLARES** that all of 2447134 Ontario Inc.'s ("244") right, title and interest in and to the Christmas Hill Assets, being three seasonal television movie productions that are already at the filming stage and related agreements, as set out in Schedule "A" hereto, (the "**Christmas Hill Assets**") shall vest absolutely in and to Christmas Hill, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, claims of ownership or authorship, adverse claims, licenses or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise or any encumbrance of any nature which, in substance, secures payment or performance of an obligation (all of which are collectively referred to as "**Claims**") and, for greater certainty, this Court orders that all of the Claims affecting or relating to the Christmas Hill Assets as at the date of this Order are hereby expunged and discharged as against the Christmas Hill Assets.

3. **THIS COURT ORDERS AND DECLARES** that 244 is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary for the conveyance of the Christmas Hill Assets to Christmas Hill.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Christmas Hill Assets shall stand in the place and stead of the Christmas Hill Assets, and all Claims shall attach to the net proceeds from the sale of the Christmas Hill Assets with the same priority as they had with respect to the Christmas Hill Assets, as if the Christmas Hill Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proposal proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Company;

the vesting of the Christmas Hill Assets in Christmas Hill pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor

shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

ORDER EFFECTIVE IMMEDIATELY

6. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for entry and filing.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

Schedule "A"

The Holiday Switch

- i) Option Agreement between Melissa Hill and 2447134 Ontario Inc. dated November 20, 2021;
- ii) Writer's Agreement between Isabel Drean and 24447134 Ontario Inc. dated December 1, 2021;
- iii) Assignment of Rights between 2447134 Ontario Inc. and Christmas Hill Productions Inc. dated April 1, 2022;

Christmas on the Rocks

- i) Option Agreement between Melissa Hill and 2447134 Ontario Inc. dated March 1, 2022;
- ii) Writer's Agreement between Isabel Drean and 24447134 Ontario Inc. dated March 2, 2022;
- iii) Assignment of Rights between 2447134 Ontario Inc. and Christmas Hill Productions Inc. dated April 1, 2022;

A Vintage Christmas

- i) Option Agreement between Melissa Hill and 2447134 Ontario Inc. dated March 14, 2022;
- ii) Writer's Agreement between Isabel Drean and 24447134 Ontario Inc. dated March 15, 2022;
- iii) Assignment of Rights between 2447134 Ontario Inc. and Christmas Hill Productions Inc. dated April 1, 2022.

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

**AND IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF BREAKTHROUGH ENTERPRISES INC. OF THE CITY OF
TORONTO IN THE PROVINCE OF ONTARIO**

AND IN THE MATTER OF EIGHT RELATED INTENDED PROPOSALS

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

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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. OF THE
CITY OF TORONTO IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF EIGHT RELATED INTENDED
PROPOSALS

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

MOTION RECORD

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