

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

May 20, 2022

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Lawyers for Breakthrough Enterprises
Inc.

TO: THE SERVICE LIST

ONTARIO
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1.	Notice of Motion, returnable May 25, 2022	001
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TAB 1

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(RE: STAY EXTENSION ORDER)

THE APPLICANTS. will make a motion to a Judge presiding over the Commercial List on May 25 at 10:00 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@wfkllaw.ca.

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.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of the Motion Record that, among other things, extends the time for the Applicants to file a proposal with the Official Receiver by 45 days, up to and including July 16, 2022.
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 (as defined in the Affidavit of Michael McGuigan) together operate a production company located in Toronto, Ontario. As an integrated entity, the Breakthrough Filing Entities develop, produce and distribute feature films and television content.
4. 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**”).
5. The Applicants seek a stay extension up to July 16, 2022 for the purpose of finalizing a proposal to their creditors. The Applicants are finalizing discussions with key stakeholders in developing a viable proposal to its creditors, however further work is required to finalize the proposal, including further analysis on whether the Breakthrough Filing Entities will require substantive consolidation prior to filing a proposal. A proposal will benefit the Applicants’ stakeholders as compared to a bankruptcy.

Extension of Time to File a Proposal

6. The current time to file a proposal under the BIA expires on June 1, 2022. The Applicants require time to continue discussions with key creditors and other stakeholders in order to develop a viable proposal for the benefit of its stakeholders. Accordingly, the Applicants are requesting a 45-day extension of time pursuant to Section 50.4(9) of the BIA, up to and including July 16, 2022, to make a proposal.
7. Without an extension of time, the Breakthrough Filing Entities will not be in a position to make a viable proposal to creditors and the Applicants will be deemed bankrupt, to the detriment of their creditors and stakeholders.
8. The test for an extension of time under Section 50.4(9) of the BIA is met:
 - a) the Applicants intend to continue discussions with stakeholders and production partners and are likely to be able to make a viable proposal to their creditors if the extension requested is granted;
 - b) the Applicants have acted, and are acting, in good faith; and
 - c) no creditor will be materially prejudiced if the extension requested is granted.

Further Grounds

9. Rules 1.04, 2.03, 3.02, 14, 16, and 38 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended;
10. The BIA;

11. The inherent jurisdiction of this Court; and,
12. 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:

13. The Affidavit of Michael McGuigan, sworn May 20, 2022;
14. The Third Report of the Proposal Trustee, to be filed;
15. Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 20, 2022

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**Lawyers for Breakthrough Enterprises
Inc.**

TO: THE SERVICE LIST

Videoconference Details to join Motion via Zoom

Zoom videoconference details to be uploaded to Caselines.

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

Court File No. 31-~~2801~~364
Estate No. 31-2801364

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for Breakthrough Enterprises Inc. et al

TAB 2

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ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *BANKRUPTCY AND*
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AFFIDAVIT OF MICHAEL MCGUIGAN
(Sworn May 20, 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. (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., the “**Breakthrough Filing Entities**” or the “**Applicants**”). 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. This affidavit is submitted in support of a motion for an Order that, among other things, extends the time for the filing of a proposal and extends the stay of proceedings for a period of 45 days up to and including July 16, 2022.

I. OVERVIEW OF BREAKTHROUGH’S BUSINESS OPERATIONS

A. Overview of the Business

4. The Breakthrough Filing Entities are part of a family of corporations forming Breakthrough, a production company located in Toronto, Ontario. Breakthrough develops, produces and distributes feature films, television series and digital content worldwide.

5. At the outset of the COVID-19 pandemic in 2020, Breakthrough experienced interruptions and slowdowns in its media productions. When shooting recommenced after the delay, Breakthrough incurred significant additional and duplicative costs that negatively impacted the Applicants’ cash flow which necessitated, among other things, restructuring proceedings.

6. The Breakthrough Filing Entities commenced these NOI proceedings to, among other things,

- (a) monetize a portion of its development slate and apply the proceeds to pay down its secured indebtedness to its secured lender, HSBC Bank Canada;
- (b) obtain the breathing room necessary to deal with its obligations in an organized manner and to negotiate go-forward arrangements with its key production partners;

- (c) avoid the loss of value of its predominantly intangible assets, which would result from a bankruptcy; and
 - (d) develop a proposal to its unsecured creditors.
- 7. On March 1, 2022, the Honourable Madam Justice Conway granted an order (the “**Initial Order**”) that, among other things:
 - (a) administratively consolidated the NOI proceedings commenced by the Breakthrough Filing Entities;
 - (b) extended the stay of proceedings up to and including April 17, 2022; and
 - (c) authorized the Breakthrough Filing Entities to pay to critical suppliers, with the written approval of the Proposal Trustee, amounts owing for goods or services actually supplied to it prior to the date of the NOI proceeding if such payment is necessary to maintain the uninterrupted operations of the business.
- 8. On April 14, 2022, Honourable Madam Justice Conway granted a stay extension order, extending the time for the Applicants to file a proposal until June 1, 2022.
- 9. Since then, the Applicants have:
 - (a) developed the terms of the proposal to creditors, and considered whether the Breakthrough Filing Entities will require substantive consolidation prior to filing a proposal;
 - (b) worked with key stakeholders to develop a viable proposal to creditors; and

- (c) continued operating the business under the supervision of the Proposal Trustee.

Stay Extension

10. The Applicants have until June 1, 2022 to file a proposal unless they obtain an extension of time prior to that date to file a proposal. The Breakthrough Filing Entities are finalizing discussions with key stakeholders in developing a viable proposal to its creditors, however further work is required to finalize the proposal, including further analysis on whether the Breakthrough Filing Entities will require substantive consolidation prior to filing a proposal. A proposal will benefit the Applicants' stakeholders as compared to a bankruptcy.

11. The Applicants, with the assistance of the Proposal Trustee, have prepared a cash flow forecast, which will be appended to the Proposal Trustee's report, to be filed, demonstrating that the Breakthrough Filing Entities have the ability to meet their post-filing obligations as they come due throughout the extended stay period.

12. The Breakthrough Filing Entities have been acting and continue to act in good faith and with due diligence in these NOI proceedings and I believe that no creditor will be materially prejudiced by the extension of the time to file a proposal.

13. The Breakthrough Filing Entities expect to be in a position to file the proposal during the extended stay period. The proposal being developed will result in a superior recovery to creditors than a bankruptcy and a liquidation, and among other things, will allow the Breakthrough Filing Entities to continue as a going concern and preserve employment in a key Canadian cultural industry.

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

SWORN BEFORE ME *by video*)
conference in the City of Toronto, in the)
Province of Ontario this 20th day of May)
2022.)

DocuSigned by:)
Shaun Parsons)
EF6BF00C10644D6...)

A Commissioner for taking Affidavits.)

Name:

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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**Lawyers for Breakthrough
Enterprises Inc.**

TAB 3

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	WEDNESDAY, THE 25 TH
)	
JUSTICE GILMORE)	DAY OF MAY, 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
(Stay Extension)

THIS MOTION, made by the Applicants, for an Order extending the period of time for filing a proposal pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), was heard this day by video conference due to the COVID-19 crisis.

ON READING the Affidavit of Mike McGuigan affirmed May 20, 2022, and on reading the Third Report of Dodick Landau Inc. dated May ●, 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 ● sworn May ●, 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.

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Applicants to file a proposal with the Official Receiver be and is hereby extended to July 16, 2022.

ORDER EFFECTIVE IMMEDIATELY

3. **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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ORDER

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