



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: BK-25-03270451-0031 DATE: October 10, 2025

REGISTRAR: Damian Hutchinson

NO. ON LIST: 4

TITLE OF PROCEEDING: **Azure Publishing Inc. et al.**

BEFORE: **JUSTICE FL MYERS**

PARTICIPANT INFORMATION

For Plaintiff, Applicant / Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent / Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
R. Graham Phoenix	Counsel for Proposal Trustee, Dodick Landau Inc.	gphoenix@LN.law
Rahn Dodick	Proposal Trustee to Azure Publishing Inc.	rahn.dodick@dodick.ca

ENDORSEMENT OF JUSTICE FL MYERS:

1. I accept that Mr. Sgaramella is looking to save his business in good faith. To that end, I extend the time for the debtor to file its proposal under s. 50.4(9) of the *BIA* to November 24, 2025 as sought.
2. I am not prepared to add *CCAA* stay language to the order as sought in paras. 4 through 8 of the draft order filed. The *BIA* contains a comprehensive stay and debtor-in-possession regime. Absent evidence of a need for a different process, there is no basis to add the proposed terms.
3. Mr. Sgaramella has been funding the business through a corporate vehicle for the past two years to the tune of \$600,000 approximately. As lender his advances are secured by first ranking security against the debtor.
4. Mr. Sgaramella proposes to advance a further amount up to \$230,000 to fund the business during the 45-day proposal process. He asks for a court-ordered security interest to do so.
5. Mr. Sgaramella testifies that the print media business in which the award-winning debtor participates is no longer profitable. According to the cash flows filed, the company should be about \$100,000 in the red by today. Sgaramella testifies,

I have determined that 1449483 is unable to fund Azure as it has done in the past. However, 1449483 is prepared to advance a maximum of \$230,000 in additional financing in these NOI Proceedings through the terms of the proposed DIP Loan Agreement.

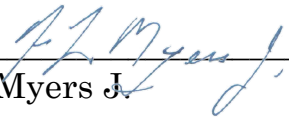
6. Despite this evidence, Mr. Sgaramella has been funding company as it entered into negative cashflow position. He has done so pursuant to his first secured interest against the company despite his evidence that he has exhausted his personal resources. In view of the additional funding provided, counsel confirms that the charge sought is for fresh advances hereafter only.

7. It is apparent that Mr. Sgaramilla has the resources to support the company's cash flow during the proposal. But he conditions his willingness to continue to fund on the availability of a security interest ahead of his current interest (but behind the proposed Admin Charge and KERP discussed below).
8. What then is the point of the proposed DIP and DIP Charge? Mr. Dodick advises that Mr. Mr. Sgaramella is proposing to keep the company alive to attempt to fund a sale in a month for the benefit of continuing its brand, maybe some employee job continuity, and maybe some customer continuity. Mr. Dodick advises that if there is no sale, the "music will stop" and when it does there will likely be priority employee claims remaining due. It seems to me that there may be priority tax claims as well. Mr. Citak notes, fairly, that without a successful sale for an amount that exceeds the secured debt and the charges sought, there will be nothing left for unsecured creditors.
9. That means that the purpose of the DIP Charge proposed will be to protect Mr. Sgaramilla in case he leaves unpaid employees, withholdings, and taxes if no sale is consummated in the next 45 days.
10. There is no evidence before the court of any existing market for a going concern sale. There is no stalking horse bid or pre-pack on offer. I am not told of any efforts to canvas the marketplace during the two years of bleeding to which Mr. Sgaramilla testifies. Mr. Dodick advises that there has been contact with a major industry player who perhaps could be interested in paying something for the goodwill and IP of the business. It would probably have its own employees in the main and its own premises to allow it to contain costs.
11. Mr. Dodick fairly notes that no one knows if a sale is available or at what price level. There is not even an order of magnitude proposed. I note there is no value ascribed in the financial statements for goodwill or IP.

12. Mr. Sgaramilla has been willing to fund pursuant to his security. Absent any evidence of a realistic basis for the business to expect a valuable sale in the next 45 days, it hardly sounds reasonable to enhance the security of his lending to allow him to leave unpaid wages, withholding, taxes, or other priority charges while the business hopes to find a buyer.
13. I am not precluding approval of a DIP Charge. But there needs to be evidence to support a conclusion that providing one is fair and reasonable to all interested parties. Putting out \$230,000 to prime priorities established by law for 45 more days to support the owner's hope a sale will appear when nothing has materialized over the past two years is not a basis for a court to act. A buyer can buy IP and the name can continue through a bankruptcy. There is just no evidence to support a reason to think, today, that a priming charge will benefit anyone more than it prejudices others.
14. I accept the desirability of providing an Administrative charge for up to \$100,000 so the debtor can be represented by counsel and have the services of a proposal trustee (and its counsel). If there is a way to avoid bankruptcy to be found, the company will need this support.
15. I am not prepared to accept the KERP proposed. It is a pool of \$70,000 payable to all employees who remain to the point of a successful sale. The evidence that the employees are needed does not identify anyone in particular; why she or he is needed; or what possible benefit may accrue to anyone by keeping that employee on with a bonus.
16. Again, I accept Mr. Sgaramilla's good faith desire to protect and encourage his loyal employee base to stay on to try to save the business. This is demonstrated by his offer to subordinate his DIP Charge to the KERP. In effect, he wants to direct some of his lending to his employees and keep his funding away from creditors.

17. KERP provisions can be part of a restructuring process. But there needs to be evidence justifying the alteration of the priorities established by law. It can be fair and reasonable to provide for a KERP, for example, where keeping particular employees is essential to obtain the extra value that will be received on a successful restructuring compared to a bankruptcy. But offering a stay bonus to all employees where a sale is not at all assured and the potential benefit from a sale is also not at all clear, is just giving them all a bonus without any basis to find that doing so provides or might provide a benefit to anyone compared to a liquidation today.
18. The applicant proposes to pay up to \$88,500 of pre-filing debt to critical suppliers. There is no evidence of who is to be paid or why they are “critical.” Mr. Dodick advises that almost 50% of the amount is to pay a specialty paper supplier and printer. But there is no evidence that it would not print the next run if paid in full in cash for doing so. It may be hungry and happy to print a new run if it is assured payment. There is no evidence satisfying any of the criteria discussed by Osborne J. at para. 66 of *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, 2024 ONSC 6199 (CanLII).
19. The applicant proposes a detailed solicitation process for handling offers for refinancing and sale. There is no indication that anyone is discuss a refinancing. While there is no harm setting some deadlines and processes for a potential sale, in the absence of any hint that there would be one or more qualified bidders, it may be overkill (like the DIP, KERP, and Critical Supplier proposals). If the applicant wants it and the Proposal Trustee thinks it is useful, then I am prepared to order it. I suspect that if a sale occurs, they will be explaining why the approved process was not followed.
20. This is a very modest business to justify the bells and whistles of the order sought. Normally, under the CCAA, a business must be far more substantial to justify the costs of this type of process and the devices proposed. I am not saying that they can never happen in a smaller business or even in this one on the proper evidence.

21. But priming charges are designed to prime i.e. to create rights ahead of the priorities established by law. They are available where it is fair and reasonable in light of the evidence to justify them as part of a restructuring effort in the greater good. But here, the only evidence is that the owner wants a last gasp to keep the brand alive and perhaps protect some jobs. He has funded the business for two years already to try to do so. Without some evidence of some realistic chance of success of a proposal that has an opportunity to exceed the outcome of a liquidation, even granting an extension of time may be a stretch. But I do not see how it can be said to be fair or reasonable to foist the costs of continuing for a last “Hail Mary” long bomb onto those entitled to priority by law.
22. Counsel may submit a draft order containing an extension, an Admin Charge, and the proposed SISP if so advised.



FL Myers J.