2024 Hfx No. 531463

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OR ARRANGEMENT OF SALTWIRE NETWORK INC., THE HALIFAX HERALD LIMITED, HEADLINE PROMOTIONAL PRODUCTS LIMITED, TITAN SECURITY & INVESTIGATION INC., BRACE CAPITAL LIMITED AND BRACE HOLDINGS LIMITED

BETWEEN:

Fiera Private Debt Fund III LP and Fiera Private Date Fund V LP, each by their general partner, Fiera Private Debt GP Inc.

Applicants

-and-

Saltwire Network Inc., The Halifax Herald Limited, Headline Promotional Products Limited, Titan Security & Investigation Inc., Brace Capital Limited and Brace Holdings Limited

Respondents

AFFIDAVIT OF MICHELLE FLICK
(affirmed March 11, 2024)

I make oath and give evidence as follows:

1. I am a paralegal with the firm BOYNECLARKE LLP, co-counsel to Fiera Private Debt GP Inc., the general partner of Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP.

2. Attached as Exhibit "A" hereto is a decision of the Ontario Superior Court of Justice, related to the proposal proceedings of Metroland Media Group Ltd. (Court File No. BK-23-02986886-0031) dated January 24, 2024.

3. Attached as Exhibit "B" hereto is an article from the Globe and Mail published November 10, 2023, entitled "In Metroland insolvency, creditors get a 'trust-me' trustee report".

SWORN at Dartmouth in the Province of Nova Scotia, before me on March 11, 2024.

Commissioner for Taking Affidavits
(or as may be)
JOSHUA J. SANTIMAW
A Barrister of the Supreme
Court of Nova Scotia

Michelle Flick

CAN_DMS: \1003781125

Form 39.09

Exhibit Stamp

No. 531463

This is Exhibit "A" referred to in the affidavit of Michelle Flick, sworn to before me on March 11, 2024.

Signature

JOSHUA J. SANTIMAW
A Barrister of the Supreme
Court of Nova Scotia

PL# 170439/14302785

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-23-02986886-0031 **HEARING DATE:** January 18 and 22, 2024

NO. ON LIST: _____

TITLE OF PROCEEDING: **IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE KIMMEL:

The Proposal

1. Metroland Media Group Ltd. ("Metroland" or the "Company") is a media publisher and distributor, which owned and operated in excess of 70 weekly community newspapers, six daily newspapers, and a parcel delivery service. Metroland is a subsidiary of the Torstar Corporation ("Torstar"), which was purchased by NordStar Capital Inc. ("NordStar") on August 3, 2020 with funds from Canso Investment Counsel Ltd. ("Canso").
2. On September 15, 2023, the Company filed a Notice of Intention to Make a Proposal (the "NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, as amended ("BIA"). Grant Thornton Limited was named proposal trustee under the NOI (the "Proposal Trustee").
3. The Proposal Trustee brings a motion for an Order approving (i) the proposal in respect Metroland dated on December 11, 2023 (the "Third Amended Proposal" or the "Proposal") and accepted by the requisite majority of creditors on December 11, 2023 and (ii) the Proposal Trustee's First Report to Court dated January 8, 2024 ("Trustee's Report") and the actions and activities of the Proposal Trustee described therein.
4. In and around the filing of the NOI, the Company terminated approximately 60% of its workforce. This included approximately 120 unionized employees and approximately 500 non-union employees. The terminated employees are unsecured creditors of Metroland in respect of their termination and/or severance pay.
5. Metroland has maintained the remaining approximately 450 unionized and non-unionized employees to continue providing independent journalism to communities across Ontario.
6. Unifor Local 87-M (the "Union") is a trade union and the sole and exclusive bargaining agent for over a dozen bargaining units of members employed by Metroland at publications across Ontario. The non-union former employees and retirees of Metroland have their own representative counsel (the "Representative Counsel"), and are not represented by the Union.
7. In its Third Amended Proposal, Metroland proposes to distribute approximately $7.8 million to unsecured creditors ($8.3 million minus fees), whose claims collectively total more than $40 million. The aggregate claims of the Company's former employees who are among the unsecured creditors total more than $20 million. The other unsecured creditors are primarily trade creditors.
8. Secured creditors of Metroland are unaffected by the Proposal.

9. The Proposal Trustee recommended the Third Amended Proposal to the creditors and is of the view that its approval and implementation will provide creditors with greater recovery, and that they will derive greater benefit and value for their claims, than from the liquidation of Metroland's assets through a bankruptcy which, in the Proposal Trustee's estimation, may not result in any recovery for the unsecured creditors. Whereas, if the Third Amended Proposal is approved by the Court, it is expected that the unsecured creditors will receive some recoveries and the Company will be able to continue to operate as a going concern and preserve employment for approximately 450 employees.
10. On December 11, 2023, at a meeting of the creditors, the creditors voted to approve the Third Amended Proposal by the requisite double majority of creditors, with 99.6% of creditors in number and value voting in favour of the Third Amended Proposal. Both creditor groups of unionized and non-unionized former employees voted in favour of the Third Amended Proposal.
11. The Proposal Trustee recommends that the court approve the Third Amended Proposal and grant the Order sought.

WEPPA

12. The Company has worked with the Representative Counsel and the Union to facilitate the ability of terminated employees to apply for payment from the Federal Government under the *Wage Earner Protection Program Act* ("WEPPA") independent of the distributions they may receive under the Proposal.
13. The Proposal Trustee, in consultation with its counsel and Company counsel, was of the view that its appointment as Receiver likely triggers the eligibility of the former employees of the Company, terminated in connection with the NOI, to apply for payment under WEPPA.
14. A condition precedent to the performance of the Third Amended Proposal is confirmation from Service Canada that the former employees are eligible to apply for a payment under WEPPA, or a waiver of this condition by the requisite majority of creditors. The Receiver has received confirmation from Service Canada that former employees of the Company are eligible to apply for WEPP. This was anticipated by the Proposal Trustee and is in keeping with the usual practice WEPP has adopted when a receiver has been appointed in conjunction with a proposal or the CCAA in other matters. The condition in the Proposal with respect to WEPPA was only whether or not WEPPA applied to the employees. The Proposal Trustee considers that condition to have been met by Service Canada's e-mail dated December 13, 2023.
15. In its report to the court dated January 8, 2024, the Proposal Trustee estimates that WEPP could provide a net additional amount of approximately $3.9 million to former employees.

The DOJ Subrogation Position

16. In a letter dated December 21, 2023, the Department of Justice (on behalf of the Federal government, "DOJ") took the position that payments to the former employees under clause 2.3(f)(i) of the Third Amended Proposal may trigger offset provisions pursuant to section 6 of the regulations under WEPPA. The DOJ further advised that, in its view, the government would be subrogated to the individual employee's rights if payment is made under WEPPA in respect of "eligible wages" (as defined in WEPPA), and that the Proposal Trustee would be required to pay the government the subrogated amount in full before making any payment to the individual former employee in respect of "eligible wages."
17. The Proposal Trustee challenged this position in a letter dated January 5, 2024, suggesting its interpretation that the government's subrogated rights would entitle it to a *pro rata* distribution from the Unsecured Basket as defined in the Third Amended Proposal and not as a priority payment. Representative Counsel shares the same interpretation as the Proposal Trustee.
18. The DOJ does not oppose the approval of the Proposal but has advised the Company, the Proposal Trustee, the stakeholders and the court, through its latest correspondence of January 16, 2024 and at the

approval hearing, that it does not agree with the Trustee's interpretation and that further directions will need to be sought from the court.

19. If the DOJ's position is correct, the Union raised a concern that the net benefit of WEPP for former employees could be almost entirely eliminated and this could significantly affect their overall recovery.
20. The Proposal Trustee was of the view that the potential dispute as to the subrogation rights of Canada did not need to be resolved prior to the approval of the Accepted Proposal. It proposed to retain a holdback (estimated to be approximately $2.8 million) from the distributions pending the determination of the DOJ's ultimate rights, the outcome of which would determine the final distributions to any affected employees.

The Union's Request for an Adjournment of the Approval Hearing

21. In light of this recent position of the DOJ, and notwithstanding their vote in favour of the approval of the Proposal, at the return of this motion on January 18, 2023, the Union initially sought an adjournment of the Proposal approval motion to permit the Proposal Trustee to seek and obtain advice and directions from the Court with respect to its obligations under *WEPPA* (the "WEPPA Statutory Interpretation Issue").
22. The Union asserted that throughout these NOI proceedings the Proposal Trustee has indicated that WEPP would significantly increase recovery for Metroland's former employees. The Union was concerned about the implications of a determination of the WEPPA Statutory Interpretation Issue in the DOJ's favour and wanted that to be determined before the court decided whether to approve the Proposal.
23. This adjournment request was opposed by the Proposal Trustee and the other parties who appeared in support of the approval of the Proposal, including Representative Counsel.
24. While the Proposal Trustee worked to put the former employees of the Company into the position that they would be eligible to apply for WEPP, it maintains that it did not give any assurances or guarantees with respect to the WEPP benefits that former employees would receive, and points out that the Proposal itself does not provide any guaranteed minimum recovery to any of the unsecured creditors. The Proposal Trustee further maintains that the position taken by DOJ that the government may be entitled to a priority payment does not impact whether or not the Court should approve the Proposal.
25. The material filed for this adjournment request was not received sufficiently in advance of the hearing on January 18, 2024 for the court to review and properly consider it. Preliminary submissions were made, including concerns raised by the Proposal Trustee, the Company and the DOJ that it was not realistic to expect that the WEPPA Statutory Interpretation Issue can be briefed, heard and decided and appeals exhausted within a reasonably short adjournment time frame.
26. An adjournment of any length was considered to be problematic for the Company, which is not in a financial position to maintain its *status quo* over an extended period. An adjournment could put the Company at risk of losing the benefit of the Proposal that the creditors had overwhelmingly voted in favour of.
27. With these considerations in mind, the court briefly adjourned the approval hearing, from Thursday January 18, 2024 to Monday January 22, 2204 to allow the parties to prepare more focussed submissions on three issues that arose out of the submissions made on January 18, 2024. Those issues were:

    a. Does the Union have grounds upon which to dispute the Proposal Trustee's advice to the court that, even if the DOJ's position ultimately prevails, the creditors (including the former unionized and non-unionized employees) will still be better off under the Proposal than in a bankruptcy scenario[1]?

[1] The Proposal Trustee agreed to provide certain additional supporting information and calculations to the Union following the January 18, 2024 hearing in this regard.

b. Could the court approve the Proposal by considering that it would still have been approved by the requisite number of creditors who voted at the December 11, 2023 meeting even if the Union had not voted in favour of its approval?
c. What specific objections, if any, does the Union have to the release language contained in the Proposal and approval order, in light of the WEPPA Statutory Interpretation Issue and/or any other issues that the Union intended to raise in connection with the request for the court to approve the Proposal?

The Withdrawal of the Adjournment Request

28. In a Supplementary Report to the Court dated January 22, 2024, the Proposal Trustee provided an analysis comparing the overall anticipated distributions to former employees under three scenarios:
    a. If the DOJ is incorrect, employees would receive an estimated $10,033,693
    b. If the DOJ is correct, employees would receive an estimated $8,008,284
    c. If the Metroland employees are not eligible at all for WEPPA, they would receive an estimated $7,159,584
29. The Proposal Trustee's analysis also confirmed that, now that WEPPA is considered approved, Former Employees would not be better off if they do not apply for WEPPA, which was another consideration that the Union had raised at the January 18, 2024 hearing. The Proposal Trustee reaffirmed its position that any permutation of the Proposal is preferable to a bankruptcy and continues to recommend that the Court approve the Accepted Proposal.
30. Looking that the Proposal Trustee's calculations, the top end and bottom end of the estimates were within the range of possible outcomes presented by the Proposal Trustee in its earlier report to creditors recommending that they approve the Proposal. At the time of the vote, it was not certain whether the former employees of the Company would be eligible to apply for WEPPA and that eligibility was a condition of the Proposal that could be waived. In that event, they estimate is that the overall recoveries to former employees would have been at the lowest end of the range, less than what the Proposal Trustee now projects even if the DOJ is correct in its position.
31. Shortly before the commencement of the January 22, 2024 hearing, the court was advised that the Union had reflected further on this issue and considered the additional information provided by the Proposal Trustee and it had decided to withdraw the adjournment request.
32. All stakeholders, including the DOJ, requested an early court date for the hearing of the WEPPA Statutory Interpretation Issue. A full day hearing has been scheduled for this to be decided on February 14, 2024 based on a timetable for the exchange of materials to be agreed by the participating parties, such that all materials shall have been served filed and uploaded into CaseLines by no later than February 12, 2024.

Other Concerns Raised by the Union

33. The Union also has raised in its written submissions two other claims that it wishes to pursue irrespective of the court's approval of the Proposal and that it maintains would be unaffected by that approval. These are:

    a. A motion pursuant to section 38 of the *Bankruptcy and Insolvency Act* (*BIA*) seeking authorization to pursue proceedings under provincial fraudulent preferences legislation and at common law to recover from third party recipients $27 million in funds that Metroland used to pay an unsecured debt of the limited partnership that owns its parent company a few months before these NOI proceedings (the "Authorization Motion").
    b. A grievance arbitration seeking to ensure that Metroland complies with its ongoing obligation under several unrevised collective agreements to provide post-retirement benefits to certain

active employees (eligible to receive such benefits upon retirement) and retired employees (now eligible to receive such benefits) (the "Grievance Arbitration").

34. The Union purported to cast its votes in favour of the Proposal contingent upon a reservation of rights in respect of these matters. It was advised by the Proposal Trustee that there was no mechanism pursuant to the Proposal which allowed for a contingent vote. The Union did not object to the Proposal Trustee's comments and, when provided with the opportunity to change their vote, did not do so. Accordingly, the Union's vote was recorded as voting in favour of the Proposal.[2]
35. The Company and the Proposal Trustee do not agree with the Union's assertions in the Authorization Motion or the Grievance Arbitration, nor do they agree that the claims asserted are unaffected by the Proposal. However, they acknowledge that if the Union seeks to pursue them the question of whether or not they are extinguished by the approval of the Proposal and its terms (and if not, the merits of those claims) can be decided at that time.
36. The Company and Proposal Trustee maintain that the releases contained in the Proposal would apply to these claims. It is a matter of interpretation of the terms of the release language in the Proposal whether these claims are extinguished. These claims will have no bearing or impact upon the implementation or the Proposal or the contemplated distributions it provides for.
37. The Union was seemingly of the same view, that its position regarding these claims need not hold up the court's approval of the Proposal (and clearly was of the view that they should not hold up its own approval of the Proposal when the Union voted in favour of its approval). However at the return of the motion on January 22, 2024, the Union brought to the court's attention a case decided by the British Columbia Court of Appeal which concerned whether a motions judge could defer for a later determination of the legal effect of a particular clause in a proposal.
38. The British Columbia Court of Appeal concluded that a chambers judge erred in leaving the determination of the efficacy of one of the provisions of a proposal that had been challenged to a future determination in (expected to take place in Federal Tax Court proceedings). The BC Court of Appeal was concerned that "[t]he court must determine what creditors and what specific debts are affected by the proposal as a result of its terms and this sub-section" and that "the issue of the meaning of clause 7 (b) could not be attacked collaterally." See *H.M. T. Q. v. Beach*, 2001 BCCA 7, at paras. 4, 12, 13 and 17. In that case, the very issue that had been raised in opposition to the approval of the proposal was that this specific clause, 7 (b), rendered the proposal unlawful and the proposal was being objected to as unreasonable on that basis.
39. That is not the situation here. The point that is being left for interpretation is the implication of releases contained in the Proposal on future claims, outside of the Proposal, some of which are against third party releasees, not the Company itself. The releases are all qualified "to the extent permitted by governing law." I do not consider these to be matters that the court must determine when considering the reasonableness of the Proposal itself, particularly when there is no creditor suggesting that the Proposal should not be approved or is unreasonable because these potential future claims may, or may not be, barred. Rather, the Union says that these claims are not barred based on its interpretation and the Company and the Proposal Trustee says they are barred based on their interpretation, and both say that this threshold question can be determined at a later time if the Union attempts to pursue the claims in the future.
40. I do not consider it to be necessary to determine the scope of the releases question now, especially when no one is asking for that determination. The Union initially asked that the court's approval of the

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[2] The Company and Proposal Trustee make the further point that the Union's vote was inconsequential to the outcome of the vote on the Third Amended Proposal because, even if the Union had withdrawn its vote in favour of accepting the Third Amended Proposal and instead voted against acceptance, the Third Amended Proposal would still have been accepted by the requisite double majority of creditors, with 78.6% in number and 69.9% in value of the creditors voting in favour.

Proposal to be expressly stated to be without prejudice to the Union's ability to pursue these other claims. That could be interpreted as "deciding the issue" which the Union also says it is not asking the court to do. This is really no different than the Union's assertion that it was reserving its rights when it voted in favour of the Proposal, which was not an option. Just like when voting, the Union cannot say it is not objecting to the Proposal "without prejudice" to some later challenge. Nor can the court grant its approval of a proposal "without prejudice" to rights where the existence of those rights is disputed. The Union later backed away from this request.

41. However, to be clear, the court's approval of the Proposal does not change the parties' respective positions on the interpretation of the release language contained in it. As the parties requested, the court is not deciding this issue.

Other Release Issues

42. The Union sought in its written submissions a modification to the court approval order confirming that related party debt will not be released except to the extent that Metroland provides evidence of *bona fide* contracts giving rise to such debt.
43. The Union's submissions on this point seemingly presume that the related party debt is being released. However, the relevant release language provides the opposite, that the Proposal will release all claims against Metroland with limited exceptions, including "contractual obligations pursuant to contracts to which one or more" of its affiliates is a party (article 4.3(b)). Metroland has indicated that approximately $40 million in related party debt will not be compromised by its Proposal, and that debt is not being released. The corollary is that those affiliates are not entitled to receive any distributions under the Proposal.
44. This carve out for affiliates is an inherent part of the Proposal. It is not the release language that creates the carve out (as the Union suggested) but the more basic premise that the claims of affiliates are being carved out of the Proposal. This Proposal was voted on and approved and the Company and Proposal Trustee quite properly point out that this request for a modification is tantamount to seeking an amendment to the Proposal. A proposal under the BIA is a contract between the debtor and its creditors. On a motion to approve a proposal, the court has a very limited power to make clerical corrections to the proposal, but cannot alter its substance. The court cannot add a clause to a proposal or delete parts which dissenting creditors view as objectionable. See *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587, citing *Employers' Liability Assurance Corp. v. Ideal Petroleum*, 1976 CanLII 142 (SCC), pg. 239 and *Bankruptcy and Insolvency Law of Canada*, 4th Edition, the Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, and Dr. Janis P. Sara § 4:68.
45. The Union concedes that it cannot ask the court to amend the release language, so instead it asks for an order requiring evidentiary proof of claims that will be exempted. This is outside of the scope of this motion for the approval of the Proposal.
46. Unrelated to the Union's concerns, the court raised its own concerns about the breadth of the third party releases that are provided for in the Proposal, including in favour of affiliates, directors, officers, employees etc. On one level, this too is open to limited judicial intervention given that the Proposal, which expressly included these very broad third party releases, was voted on and approved by an overwhelming majority of creditors.
47. It is now generally accepted that the court favours a flexible, purposive interpretation of ss. 62(3) of the BIA and that "there is no express prohibition in the *BIA* against including third-party releases in a proposal [emphasis added]." *Kitchener Frame*, 2012 ONSC 234, at paras. 54 and 60.
48. The court's concern is with the breadth and scope of releases can arise as a result of an objection but can also be a function of the possibility that they might be used to preclude claims by others who are not part of the approval process. For that reason, it is appropriate for the Company and the Proposal Trustee to be required to satisfy the court that these releases meet the test in *Metcalfe*. The Proposal Trustee

recognizes that this test is applicable and should be considered and has addressed the test in its submissions.

49. In *Metcalfe*, the Court of Appeal for Ontario held that the requirements that must be satisfied to justify a release in favour of a third-party are:
    a. the parties to be released are necessary and essential to the restructuring of the debtor;
    b. the claims to be released are rationally related to the purpose of the Plan (Proposal) and necessary for it;
    c. the Plan (Proposal) cannot succeed without the releases;
    d. the parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan (Proposal); and
    e. the Plan (Proposal) will benefit not only the debtor companies but creditors generally.

50. The Court in Kitchener Frames observed (at para. 81) that requirements have also been referenced in *Canwest Global Communications Corp. (Re),* 2010 ONSC 4209 (CanLII), 70 CBR (5th) 1 and *Angiotech Pharmaceuticals Inc. (Re)* 76 CBR (5th) 210. It was further noted (at para. 82) that no single requirement listed above is determinative and the analysis must take into account the facts particular to each claim.

51. The Proposal Trustee and the Company provided detailed supplementary written and oral submissions to the court outlining the relevant factors in this case in support of the approval of the proposed third party releases.

52. The Proposal Trustees' Second Supplementary Report detailed the reasons for the third party releases in favour of the Affiliates. They are guarantors of the proposed funding contemplated in the Proposal, and such funding will not be secured unless all of the Released Parties are granted the Releases contemplated in the Proposal. The Company provided the Proposal Trustee with a letter outlining the necessity of the releases, and in particular, their integration with the funding that is required for the Accepted Proposal to move forward. The Proposal Trustee is of the view that each of the Released Parties have contributed significantly to the proposal proceedings and are integral to the Company's restructuring efforts, including the formulation and implementation of the Proposal.

53. Further justifications are provided in paragraphs 14 to 20 of the Proposal Trustee's Supplemental Factum on this motion as well as in a Third Supplementary Report of the Proposal Trustee dated January 23, 202 and a January 23, 2024 affidavit of Neil Oliver providing details about the contributions made by the directors, officers, employees and contractors of the Company and its Affiliates (as defined in the Proposal) to proposal proceedings and the ongoing restructuring efforts, including the formulation and implementation of the accepted Proposal, and to the ongoing operations of Metroland. These supplementary materials were delivered after the hearing at the court's request to provide further supporting evidence regarding these factors.

54. The Proposal Trustee is of the view that the releases in favour of the directors, officers, employees and contractors contained in the Proposal are reasonable and not overly broad in the circumstances. Having now considered the further and supplementary submissions and materials provided, I am satisfied that the releases that the court is being asked to approve in the Proposal satisfy the *Metcalfe* requirements.

55. The Proposal allows for a fresh start based on the Company's operational and balance sheet restructuring that has occurred over a lengthy period of negotiation and various iterations of the Proposal. The third party beneficiaries of the releases have contributed in a tangible and realistic way to these efforts with the expectation that the releases would be included since no one had objected to them. The collective efforts of all involved will benefit the Company and its creditors going forward.

56. These types of releases are not granted as a matter of course and will continue to be scrutinized by the court. The releases in this case are about as broad as they could be and should not be taken as a precedent for the scope or breadth of releases that the court will necessarily approve in other cases.

Approval of Proposal

57. In order to approve a proposal, courts have held that the following three factors should be considered under s. 59(2) of the BIA:
    a. The proposal is reasonable;
    b. The proposal is calculated to the benefit of the general body of creditors; and
    c. The proposal is made in good faith.
58. The first two of these factors are prescribed by the BIA. The last one is implied as an exercise of the court's equitable jurisdiction. See *Kitchener Frame*, paras. 19-20.
59. The outcome of the creditor vote and the Trustee's recommendations are given substantial deference by the court. See *Kitchener Frame*, at para. 21; See also *Abou-Rached (In Bankruptcy)*, 2002 BCSC 1022 at paras. 65-66.

a) *Is the Proposal Reasonable*?

60. A proposal will be considered "reasonable" if it has a reasonable possibility of being successfully completed in accordance with its terms. In addition, the proposal must meet the requirements of commercial morality and must maintain the integrity of the bankruptcy system. See *Abou-Rached*, at para 68.
61. The salient terms of the Proposal have been summarized by the Trustee as follows (capitalized words are defined in the Proposal):
    a. This Proposal is being made to the Unsecured Creditors as a single class;
    b. The Proposal does not affect Secured Creditors;
    c. The Proposal is contingent on either (i) confirmation from Service Canada that the Company's former employees are eligible to apply for a payment under WEPPA; or (ii) waiver of that requirement from the Required Majority;
    d. After the Proposal is Court approved, the Company will confirm that it is holding the funds contemplated in the Proposal, being $8,300,000, and advance the Proposal Funds to the Proposal Trustee to be used as follows:
        i. First, to pay the Administrative Fees and Expenses of the Proposal Trustee, Company counsel, Representative Counsel and Union Counsel, up to the identified maximum values;
        ii. Second, to pay any Crown claims within six months after Court approval of the Proposal;
        iii. Third, to pay all proven Preferred Claims, without interest from the Filing Date; and
        iv. Fourth, to distribute to unsecured creditors on a pro-rata basis, without interest;
    e. Distributions will be made as soon as practical following the Effective Date;
    f. The Proposal contemplates releases in favour of the Company, its Affiliates, their Directors and Officers (except with respect to s. 50(14) of the BIA) and employees, the Proposal Trustee and its counsel and counsel to the Company, as well as releasing any claims pursuant to sections 95 to 101 of the BIA and related provincial statutes.
62. The Proposal Trustee is of the view that the Third Amended Proposal is preferable to a bankruptcy in all scenarios, including if the position articulated by DOJ on the WEPPA Statutory Interpretation Issue is ultimately correct. The Proposal Trustee is of the view that the Third Amended Proposal is advantageous to the Company's unsecured creditors because the assets of Metroland have limited recoverable value in

a liquidation scenario, and given the quantum of secured claims, there would likely be insufficient funds to satisfy the preferred claims or make any distribution to unsecured claims in the case of a bankruptcy.

63. The reasonableness of the releases provided for in the Proposal have been addressed previously in this endorsement. The release of claims against the Company's Directors and Officers are consistent with section 50(13) of the BIA and the extent of those releases are properly limited by the exceptions set out in section 50(14) of the BIA.
64. As discussed earlier in this endorsement, the Union agrees that section 4.4 of the Third Amended Proposal contemplates a release of all claims available pursuant to sections 95 to 101 of the BIA relating to preferences, transfers at undervalue or similar transactions. The Union does not dispute the release of these statutory preference claims.
65. The Union's intended pursuit of claims relating to preferences, transfers at undervalue or similar transactions under provincial statutes and at common law with respect to events surrounding the acquisition of Torstar by Nordstar and a related arbitration award will be challenged by the Company if pursued, but the parties agree that the question of whether those claims have been released can be determined if and when they are ever pursued.
66. The Proposal Trustee recommends the Proposal and considers it to be reasonable.
67. The creditor vote in favour of the Proposal is a strong indicator of its reasonableness.
68. I find the Proposal to be reasonable in all of these circumstances.

b) Is the Proposal Calculated to Benefit the General Body of Creditors?

69. The Proposal Trustee is of the view that the Third Amended Proposal is advantageous to the Company's unsecured creditors compared to a bankruptcy scenario. Further, if approved by the court, the Third Amended Proposal would allow Metroland to continue to operate as a going concern, providing independent journalism to communities across Ontario, and preserving employment for approximately 450 employees of Metroland.
70. The Proposal provides for recoveries for unsecured trade creditors (with estimated claims of $10.5 million) who would also not likely recover anything in a bankruptcy.
71. The secured creditors are unaffected by the Proposal.
72. Overall, the Proposal is calculated to benefit the general body of creditors of Metroland.

c) Was the Proposal Put Forward in Good Faith?

73. The Proposal Trustee submits that the Proposal was made by the Company in good faith. The Third Amended Proposal was developed and refined by the Company and the Proposal Trustee. The Proposal went through four different iterations that were responsive to various creditor issues as they arose, particularly with respect employee entitlements and the application of WEPPA to former employees of Metroland.
74. The Proposal Trustee has prepared two extensive reports explaining the terms of the Proposal to the creditors, which reports fully highlighted the Company's assets and encumbrances. In addition, the Proposal Trustee has disseminated information about the Proposal to the creditors well in advance of the various creditors' meetings through mailings and the Proposal Trustee's website. At the Reconvened Creditors' Meeting, the Third Amended Proposal was subject to discussions before the vote was called and the vast majority of creditors supported the Proposal.
75. I am satisfied that the Proposal was put forward in good faith.

<u>Approval of the Proposal Trustee's First Report</u>

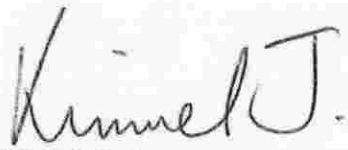
76. Approval was initial sought of the Proposal Trustee's First Report to Court dated January 8, 2024 ("Trustee's Report") and the actions and activities of the Proposal Trustee described therein. With the

addition of the supplemental reports to address issues raised in response to this motion, the three Supplemental Reports were added to the requested approval order. It is customary for court officers to seek periodic approval, and for the court to grant it if appropriate, subject, however, to the standard qualification that reliance upon it be limited to the Proposal Trustee.

77. The activities and conduct of the Proposal Trustee described in its four reports filed in connection with this motion are consistent with what the court would expect it to have done in the time frame specified, during which the Proposal was being developed, negotiated, revised, voted upon and ultimately approved. The wording of the proposed draft order in paragraph 9 has been revised by the court to include the standard qualification and to limit it to approval of the Proposal Trustee's activities and conduct described therein.

Order

78. The terms of the draft order were generally acceptable to the court, except for additional claims-bar language that was included and that the court did not consider to be necessary or appropriate and asked that it be removed.
79. Order to go in the revised form signed by me today, to be effective in accordance with its terms without the necessity of formal issuance and entry, although any party may take out a formal order if so advised.



KIMMEL J.
January 24, 2024

Form 39.09

Exhibit Stamp

No.53143

This is Exhibit "B" referred to in the affidavit of Michelle Flick, sworn to before me on March 11, 2024.

Signature

JOSHUA J. SANTIMAW
A Barrister of the Supreme
Court of Nova Scotia

OPINION

In Metroland insolvency, creditors get a 'trust-me' trustee report

DAVID MILSTEAD >

PUBLISHED NOVEMBER 10, 2023
UPDATED NOVEMBER 12, 2023

In the coming days, the creditors of Metroland Media Group Ltd., the Torstar Corp. subsidiary that owns dozens of Ontario community newspapers, must decide whether to accept an insolvency plan that gives them pennies on the dollar for what they're owed.

The plan is recommended by an independent trustee employed by Grant Thornton, charged with operating in the interest of all the stakeholders in the matter. The trustee's report, however, is sufficiently thin on details to make creditors wonder whether they have enough information to make an informed decision.

Or, possibly, to wonder whether to accept the plan at all.

Metroland said in mid-September that it planned to make a proposal pursuant to Canada's Bankruptcy and Insolvency Act, and it followed up in mid-October with the plan.

In his report to creditors, Grant Thornton trustee Jonathan Krieger recommends a "Yes" for the vote scheduled for Tuesday, which would give unsecured creditors 13 cents on the dollar for their claims. Key to this analysis, of course, is just how much Metroland's assets are worth.

Here is where things get interesting. The proposal says Metroland has just under $15.5-million in assets – a little bit of cash and an estimate of how much of its accounts receivable, or money due it by vendors, it can collect.

The machinery and equipment, which the trustee says is primarily used to produce newspapers and flyers? They're worthless, as "the cost to market and disassemble the equipment in a liquidation scenario would set-off the proceeds from any sale."

Is there a list of this equipment, so we can double-check this assessment? No.

Even more remarkable: The company's intellectual property – the brands of 70 weekly community newspapers and six dailies, including the Hamilton Spectator – is also worthless, the trustee argues.

Given that the assets are integrated and "highly specialized" and have generated "significant financial losses," and because there is a "relatively small number of potential purchasers in the Canadian market," Mr. Krieger "is not in a position to ascribe a liquidation value to these assets," he said in his report. Realizing any value for creditors would require "a lengthy, and expensive, sales process."

The proposal includes no list of these brands, much less their number of customers and subscribers – the kind of intellectual property that seemingly has value.

Metroland also holds two minority equity positions in companies that it values at $20-million on its own balance sheet. The trustee says they're worthless.

The companies "are overleveraged with significant secured debt and are not otherwise profitable," Mr. Krieger said. "These investments are non-liquid, of no realizable value to the equity holders and would therefore yield no realizable value to creditors in a liquidation scenario."

Of course, we are not told what these investments are. But you know what else has significant debt and is unprofitable? VerticalScope Holdings Inc., in which Torstar previously held an equity stake. Now a public company, VerticalScope's market capitalization has ranged from about $60-million to $180-million in its first year on the Toronto Stock Exchange.

In short, Mr. Krieger has produced a kind of "trust-me" report. And in an e-mailed response to questions, the trustee only reiterated his conclusions.

"There was no discernible enterprise value for a business that has lost $10-million in the past year alone" and Metroland "held numerous M&A discussions with prospective buyers over the past year and could not procure a successful cash bid for any of the newspapers," he said. The $20-million in equity stakes are undisclosed because they are "subject to confidentiality provisions."

There does seem to be a winner here, though: Torstar and its owner, Jordan Bitove. (Mr. Bitove, who e-mailed a statement on the value of journalism and the poor health of his business, declined to directly comment on the BIA process, saying it would be inappropriate "given the proceedings are in the hands of the trustee and the courts.")

In this insolvency plan, Torstar agrees to waive nearly $42-million in claims – of course, we can't tell what exactly those comprise, and therefore why Metroland owes so much to its parent. And Canadian Imperial Bank of Commerce, the only secured creditor, agrees not to receive any payment under this plan for the $7.26-million it's owed.

However, unlike other corporate reorganizations where the stockholders get wiped out in order to pay creditors, Torstar will emerge from this process maintaining its 100-per-cent ownership of Metroland, with all of its assets. And, one supposes, a better plan for paying CIBC back.

All this makes me wonder whether the creditors should say "No" in Tuesday's vote and send the company into liquidation and see how much they can get, rather than let Torstar continue as owner. An auction of the newspapers and websites might not only yield some return, but also get them into the hands of members of the communities deeply concerned about their hometowns becoming news deserts under Torstar's ownership.

Yet I also understand why many would vote "Yes" – the creditor list is littered with current and former employees owed tens of thousands of dollars. A rejection would allow Torstar and CIBC to reassert their $50-million in claims, contributing to the trustee's estimate that a liquidation would get them five cents on the dollar, not 13. Any liquidation process would rack up legal and other professional fees that would

In his e-mail response, Mr. Krieger said "I respectfully disagree" when presented with the idea that a rejection of the proposal, and a liquidation could yield a meaningfully higher amount. While "creditors are free to make their own assessment of the merits of the proposal," regardless of the trustee's view, he said "the Proposal Trustee made a fulsome review of the affairs of Metroland."

Trust me, says the trustee.

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