

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 957855 ALBERTA LTD. (FORMERLY
NEWSWEST INC.) AND ROSEBUD CREEK FINANCIAL
CORP. IN RESPECT OF METRO 360 GENERAL
PARTNERSHIP**

Applicants

FACTUM OF THE APPLICANTS
Motion for Stay Extension Order
Returnable June 25, 2021

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PART I - INTRODUCTION

1. This factum is filed in support of a motion by 957855 Alberta Ltd. (formerly NewsWest Inc.) ("**Alberta HoldCo**") and Rosebud Creek Financial Corp. ("**Rosebud HoldCo**" and, together with Alberta HoldCo, the "**Partners**"), as the partners of Metro 360 General Partnership ("**Metro 360**" and, together with the Partners, the "**CCAA Entities**"), for an Order (the "**Stay Extension Order**"), among other things, extending the Stay Period (as defined below) to and including September 30, 2021.¹ The stay of proceedings in respect of the CCAA Entities currently expires on June 30, 2021 (the "**Stay Period**").

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Affidavit of Daniel P. Shapiro sworn June 18, 2021 (the "**Shapiro Affidavit**").

2. The CCAA Entities believe that the development and implementation of a restructuring plan that preserves the value of Metro 360 and its business and hopefully repays creditors of Metro 360 in full is in the best interests of the CCAA Entities, as well as their respective stakeholders.

3. The CCAA Entities have achieved significant progress to date in these restructuring proceedings, including to substantially complete the Claims Process (as defined below) and advance a draft restructuring plan, but require further time to engage with the Canada Revenue Agency (the “**CRA**”) with respect to certain of Metro 360’s potential tax liabilities in order to resolve the CRA’s “placeholder” claim against Metro 360 and complete the Claims Process. The amounts at issue in respect of the CRA’s “placeholder” claim are significant, and need to be resolved before a plan can be filed. Accordingly, the CCAA Entities are seeking an extension of the Stay Period to September 30, 2021 to enable them to attempt to resolve the CRA’s claim and conclude the Claims Process, finalize a restructuring plan, and seek approval to schedule a meeting of creditors to vote on such plan.

4. For the reasons set out herein, the CCAA Entities respectfully submit that the relief requested is in the best interests of the CCAA Entities and their respective stakeholders and that it is fair, reasonable and appropriate for the Court to grant the requested Stay Extension Order.

PART II – FACTS

A. BACKGROUND

5. The Partners are holding companies that together hold 100% of the interests of Metro 360, which operates a multi-faceted business that, prior to completing the TNG Transaction (as defined below), was focused primarily on the wholesale distribution across Canada of books,

magazines and newspapers (the “**Literature Business**”). Metro 360 also has other business interests, including a music distribution and consumer-packaged goods distribution business, and investments in various emerging businesses.

Shapiro Affidavit at para. 3; Motion Record returnable June 25, 2021 (the “**Motion Record**”), Tab 2.

6. On April 6, 2020, the Partners filed notices of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) to commence proceedings (the “**Proposal Proceedings**”) in order to implement the sale of the Literature Business (the “**TNG Transaction**”) to Great Pacific Enterprises Inc. dba TNG. This Court granted an Approval and Vesting Order on April 7, 2020 approving the TNG Transaction, and the TNG Transaction closed the next day on April 8, 2020.

Shapiro Affidavit, at para. 4; Motion Record, Tab 2.

7. On June 17, 2020, the Partners obtained an Order of this Court (the “**Initial Order**”) which, among other things, (i) took up and continued the Proposal Proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”), (ii) appointed KSV Restructuring Inc. as the Monitor of the CCAA Entities (the “**Monitor**”), and (iii) granted a stay of proceedings under the CCAA (the “**Stay of Proceedings**”) in respect of the CCAA Entities in order to help stabilize Metro 360’s remaining businesses and provide the time and framework within which the CCAA Entities could advance a value-maximizing restructuring plan. The Stay of Proceedings was subsequently extended by further orders of this Court until and including June 30, 2021.

Shapiro Affidavit, at paras. 5 and 8; Motion Record, Tab 2.

8. On September 16, 2020, this Court granted a Claims Procedure Order approving a process (the “**Claims Process**”) for the identification, quantification and resolution of claims against the CCAA Entities, as well as their present and former officers and directors.

Shapiro Affidavit, at para. 6; Motion Record, Tab 2.

B. UPDATE ON RECENT ACTIVITIES

9. The CCAA Entities continue to work diligently and in good faith in respect of all matters relating to the CCAA proceedings. The activities of the CCAA Entities since the most recent Court appearance on March 29, 2021 are summarized at Parts II and III of the Shapiro Affidavit and are not repeated here to avoid duplication. In brief, the CCAA Entities have worked diligently to, among other things, complete the reconciliation of claims filed in the Claims Process, engage in several discussions with the CRA in an attempt to resolve Metro 360’s potential tax liabilities and determine the CRA’s potential claim, complete the sale of a non-material asset, develop and advance a draft restructuring plan, and support the operation and growth of Metro 360’s remaining operating businesses. The Claims Process is substantially complete, subject to the resolution of the “placeholder” claim of the CRA. The significant amounts at issue in the CRA re-assessments and the uncertain nature of the CRA’s “placeholder” claim prevent the CCAA Entities from finalizing and filing a proposed restructuring plan at this juncture.

Shapiro Affidavit, at paras. 9 to 24; Motion Record, Tab 2.

10. The ongoing benefit provided by the Stay of Proceedings is critical to the ability of the CCAA Entities to resolve the CRA claim and complete the Claims Process and finalize and present a proposed restructuring plan for the benefit of all stakeholders.

Shapiro Affidavit, at para. 39; Motion Record, Tab 2.

11. The CCAA Entities believe that, once outstanding matters with the CRA are resolved and its claim against Metro 360 is determined, the CCAA Entities will be well positioned to file a restructuring plan soon thereafter.

Shapiro Affidavit, at para. 19; Motion Record, Tab 2.

12. Further background and facts relating to the requested relief are set out in the Shapiro Affidavit.

PART III - ISSUE AND THE LAW

13. The issue to be considered on this application is whether the Court should grant the requested Stay Extension Order.

A. THE TEST FOR AN EXTENSION OF THE STAY PERIOD

14. Section 11.02(2) of the CCAA provides the Court discretion to make an Order extending the stay of proceedings granted in an initial order. Specifically, Section 11.02(2) states:

11.02(2) *Stays, etc. — other than initial application* – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[CCAA](#), Section 11.02(2).

15. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.

[CCAA](#), Section 11.02(3).

B. IT IS APPROPRIATE TO EXTEND THE STAY PERIOD

16. The CCAA Entities submit that an extension of the Stay Period to and including September 30, 2021 is appropriate in the circumstances given, among other things:

- (a) the CCAA Entities have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to these proceedings, including to, among other things, complete the retrieval and return of unsold Literature Business inventory for credit and reduction of the Metro 360 payables, provide notice of the Claims Process pursuant to the Claims Procedure Order, review all Proofs of Claim and Notices of Dispute received in connection with the Claims Process and reconcile the amounts referenced therein as against the books and records of Metro 360, engage with the CRA in respect of Metro 360's potential tax liabilities and file notices of objection in respect of the CRA re-assessments, and develop a draft CCAA plan that the CCAA Entities believe will provide the best available outcome for stakeholders;

- (b) the extension of the Stay Period to September 30, 2021 is necessary to provide the CCAA Entities with the time needed to, among other things, resolve the CRA's "placeholder" claim against Metro 360 in order to complete the Claims Process, and finalize and file a proposed CCAA plan to seek approval of this Court to hold a meeting of creditors to vote thereon;
- (c) the updated cash flow forecast covering the period until October 1, 2021 indicates that Metro 360 will continue to have access to sufficient funds during the requested extension of the Stay Period to operate its remaining businesses and for the CCAA Entities to continue these proceedings throughout the Stay Period;
- (d) creditors will not suffer any material prejudice if the Stay Period is extended, and in fact will benefit from the CCAA Entities' efforts to bring forward a CCAA plan that will maximize value and recoveries to them; and
- (e) the Monitor is supportive of the request to extend the Stay Period to and including September 30, 2021.

Shapiro Affidavit, at paras. 36 to 39; Motion Record, Tab 2.

Fourth Report of the Monitor dated June 18, 2021, at s. 6.0(2), 10.0(1) and Appendix "B".

17. The CCAA Entities believe that the successful completion of a CCAA plan is in the best interests of the CCAA Entities and their various stakeholders, and that a CCAA plan will result in a superior outcome to other alternatives. As referenced above, the significant amounts at issue in the CRA re-assessments and the uncertain nature of the CRA's "placeholder" claim have

prevented the CCAA Entities from being able to finalize a restructuring plan at this time which can be presented to creditors and this Court for approval.

18. Accordingly, the CCAA Entities submit that it is appropriate for this Court to extend the Stay Period to and including September 30, 2021.

PART IV- RELIEF REQUESTED

19. For all of the above-stated reasons, the CCAA Entities respectfully request that this Court grant the relief sought in the proposed Stay Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 21, 2021

GOODMANS LLP

Goodmans LLP

SCHEDULE A

STATUTORY REFERENCES

[COMPANIES' CREDITORS ARRANGEMENT ACT](#)

RSC 1985, c C-36, as amended

11.02(2)

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- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(3)

Burden of proof on application – The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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Court File No. CV-20-00642783-00CL

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