

**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

(Returnable June 26, 2020)

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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 in the Initial Order of this Court granted on June 17, 2020 (the “**Initial Order**”)) to and including September 18, 2020.¹
2. The stay of proceedings under the Initial Order currently expires on June 26, 2020. The CCAA Entities are seeking the Stay Extension Order extending the Stay Period to September 18, 2020 to, among other things, (i) maintain the stability of Metro 360’s remaining operating businesses, (ii) complete the wind-down of the Literature Business (including the collection of outstanding accounts receivable and retrieval and return of unsold inventory), and (iii) allow Metro 360’s business investments time to advance and mature, in each case with a view to maximizing value for Metro 360’s creditors and eventually having Metro 360 emerge from creditor protection.
3. For the reasons set out herein, the CCAA Entities respectfully submit that the relief requested is in the best interests of their stakeholders and that it is fair, reasonable and appropriate for the Court to grant the requested Stay Extension Order.

¹ Capitalized terms that are not defined herein have the meaning given to them in the affidavit of Daniel P. Shapiro sworn June 10, 2020 (the “**Shapiro Affidavit**”).

PART II – THE FACTS

4. Background information with respect to Metro 360, the Partners, and the circumstances which led to the Partners filing notices of intention to make a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), among other things, is set out in the affidavit of Daniel P. Shapiro sworn on April 6, 2020. Information with respect to the activities of Metro 360 since the commencement of the proposal proceedings under the BIA (the “**Proposal Proceedings**”) and the conversion thereof under the CCAA is detailed in the Shapiro Affidavit.

Shapiro Affidavit; Motion Record returnable June 26, 2020 (the “**Motion Record**”), Tab 2.

5. Since the commencement of the Proposal Proceedings, the Partners and Metro 360 have acted in good faith and with due diligence in pursuing their restructuring measures.

Second Report of KSV Kofman Inc. as the Proposal Trustee and Report of KSV Kofman Inc. as the Proposed Monitor dated June 10, 2020 (the “**Second Report**”), at para. 5.2.1(a); Motion Record returnable June 26, 2020 (the “**Motion Record**”), Tab 3.

6. In particular, Metro 360’s activities in the Proposal Proceedings have included, among other things, the following:
- (a) completing the TNG Transaction on April 8, 2020 in accordance with the Approval and Vesting Order;
 - (b) working diligently to facilitate the return and processing of unsold Literature Business inventory and the collection of outstanding accounts receivable related to the Literature Business;
 - (c) reducing or eliminating certain redundant expenses; and

- (d) reducing its employee headcount by approximately 335 employees following the sale of the Literature Business (the majority of such employees being offered employment with TNG as part of the TNG Transaction), and also implementing a temporary 20 percent wage cut for its management employees.

Shapiro Affidavit, at para. 15; Motion Record, Tab 2.

- 7. The ongoing benefit provided by the CCAA stay of proceedings is critical to Metro 360's ability to continue operating its remaining businesses, and will allow additional time for its business investments to mature so that Metro 360 can work towards developing a plan of compromise or arrangement within these CCAA proceedings that can be presented to Metro 360's creditors.

Shapiro Affidavit, at para. 42(e); Motion Record, Tab 2.

- 8. The Cash-Flow Forecast included at Appendix "E" to the Second Report indicates that Metro 360 is projected to have sufficient liquidity to operate in the normal course throughout the proposed Stay Period.

Second Report, at para. 5.1.3 and Appendix "E"; Motion Record, Tab 3.

PART III – LAW AND ARGUMENT

- 9. The issue to be considered on this motion is whether the Court should grant the requested Stay Extension Order.

A. THE TEST FOR AN EXTENSION OF THE STAY PERIOD

- 10. 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).

11. 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 OF PROCEEDINGS

12. Metro 360 submits that an extension of the Stay Period to and including September 18, 2020 is appropriate in the circumstances given, among other things:
- (a) Metro 360 has been working diligently and in good faith since the commencement of the Proposal Proceedings to, among other things, implement the TNG Transaction, maintain the stability of its business, continue the organized wind-down of the Literature Business, and manage relationships with key stakeholders, in each case with a view to maximizing value for Metro 360's creditors and eventually developing a plan of compromise or arrangement that can be presented to Metro 360's creditors;

- (b) Metro 360 has worked diligently to complete inventory returns and has reduced the amount of its accounts payable since the commencement of the Proposal Proceedings by approximately \$25 million;
- (c) the Cash-Flow Forecast covering the period of June 15, 2020 to September 18, 2020 indicates that Metro 360 will continue to have access to sufficient funds during the requested extension of the Stay Period to operate in the normal course;
- (d) creditors will not suffer any material prejudice if the Stay Period is extended;
- (e) the extended stay of proceedings will provide ongoing stability for Metro 360 as it continues to operate its remaining operating businesses and advance its restructuring efforts;
- (f) Metro 360 requires additional time to complete the wind-down of the Literature Business including the collection of outstanding accounts receivable and the retrieval, return and processing of unsold inventory (which Metro 360 estimates will take until at least the end of October 2020 to complete), all of which is expected to maximize recoveries for the benefit of Metro 360's creditors;
- (g) Metro 360 requires additional time to allow its business investments to advance and mature to pursue a value-maximizing restructuring plan for Metro 360's creditors; and
- (h) the Monitor is supportive of Metro 360's request to extend the Stay Period to and including September 18, 2020.

Shapiro Affidavit, at paras. 10, 35, 38-40, 43, 49; Motion Record, Tab 2.

Second Report, at para. 5.2.1(g) and Appendix "E"; Motion Record, Tab 3.

PART IV – CONCLUSION

13. Metro 360 has made significant progress to date in the Proposal Proceedings and has now converted the Proposal Proceedings into proceedings under the CCAA given that, among other reasons, Metro 360 requires additional time in order to complete the wind-down of the Literature Business (including the collection of outstanding accounts receivable and retrieval and return of unsold inventory, which Metro 360 estimates will take until at least the end of October 2020 to complete) and to allow its business investments time to advance and mature, in each case so that Metro 360 can develop a value-maximizing plan of compromise or arrangement that can be presented to its creditors. As noted above, Metro 360 is projected to have sufficient liquidity to operate in the normal course throughout the proposed Stay Period and the Monitor is supportive of the proposed extension of the Stay Period.
14. Accordingly, the CCAA Entities respectfully submit that it is appropriate in the circumstances for this Court to grant the proposed Stay Extension Order to extend the Stay Period to and including September 18, 2020.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 19, 2020

GOODMANS LLP

Goodmans LLP

SCHEDULE A

STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT

RSC 1985, c C-36, as amended

s. 11

General power of court – Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances

s. 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.

s. 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.

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

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

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

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