

**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 September 24, 2021

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

L. Joseph Latham LSO#: 32326A
jlatham@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for 957855 Alberta Ltd. (formerly
NewsWest Inc.), Rosebud Creek Financial
Corp., and Metro 360 General Partnership

TABLE OF CONTENTS

PART I - INTRODUCTION.....1

PART II – FACTS2

A. Background.....2

B. Update on Recent Activities4

PART III - ISSUE AND THE LAW5

A. The Test for an Extension of the Stay Period6

B. It is Appropriate to Extend the Stay Period6

PART IV - RELIEF REQUESTED9

ADDENDA

Schedule A - Statutory References

**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 September 24, 2021

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 December 31, 2021.¹ The stay of proceedings in respect of the CCAA Entities currently expires on September 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 September 17, 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, with the assistance of the Monitor (as defined below) and their respective legal counsel, have developed a draft restructuring plan and substantially completed the Claims Process (as defined below), but because of the significant amounts at issue in respect of the potential claims of the Canada Revenue Agency (the “CRA”) with respect to the CCAA Entities’ potential tax liabilities, the CCAA Entities have not yet been able to finalize the draft restructuring plan and present same to creditors and this Court. The CCAA Entities have recently made considerable progress in their discussions with the CRA and its representatives, and as a result of a meeting convened on September 8, 2021 with the CRA and its legal counsel at the Department of Justice (the “DOJ”), believe that the parties are close to finalizing an agreement that will resolve the CRA’s claims and allow a restructuring plan to be finalized and presented to creditors and this Court in the near term.

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**”). As a result of the TNG Transaction, Metro 360’s business is now focused on the distribution of consumer-packaged goods, such as food products, music and consumer electronic accessories, and various businesses in which it and/or Rosebud HoldCo have an equity interest, being Well Ventures Corp., Handfuel Inc., All Day Nutritionals Canada Ltd., All-Day Nutritionals Inc., and Spectral Agriventures Inc.

Shapiro Affidavit at para. 3; Motion Record returnable September 24, 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 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 September 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. The CCAA Entities, with the assistance of their advisors and the assistance and oversight of the Monitor, have substantially completed the Claims Process, subject only to the resolution of the claims of the CRA.

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. Since their most recent Court appearance on June 25, 2021, the CCAA Entities have been principally focused on working to resolve matters with the CRA in order to determine the CRA’s claims against Metro 360 and the Partners. Further information with respect to the CRA’s potential claims and the CCAA Entities’ efforts to resolve such claims are summarized in the Shapiro Affidavit and in the Fifth Report of the Monitor (the “**Fifth Report**”). In brief, the CCAA Entities have engaged over several months in a number of discussions with CRA and DOJ representatives in an effort to resolve the CRA reassessments issued in respect of Metro 360 in order to finally resolve Metro 360’s tax liabilities and determine the CRA’s claim amount against Metro 360, and also to reconcile the CRA’s claims against the Partners.

Shapiro Affidavit, at paras. 9 to 11; Motion Record, Tab 2.

Fifth Report, at s. 5.0(1)-(5).

10. The CCAA Entities and their counsel, with the assistance of the Monitor and its counsel, have made considerable recent progress in their discussions with the CRA and its representatives. In particular, as a result of a meeting convened on September 8, 2021 with the CRA and the DOJ, Metro 360 and the Monitor believe that Metro 360 is close to reaching an agreement with the CRA regarding the CRA reassessments and the CRA's claim against Metro 360. The parties are presently working to finalize such an agreement, and it is expected that such agreement will also include resolution of the CRA's claim against the Partners.

Shapiro Affidavit, at para. 11; Motion Record, Tab 2.

11. The ongoing benefit provided by the Stay of Proceedings is critical to the ability of the CCAA Entities to finally resolve matters with the CRA and complete the Claims Process, after which the CCAA Entities can finalize and present a proposed restructuring plan for the benefit of all stakeholders.

Shapiro Affidavit, at para. 14; Motion Record, Tab 2.

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

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 December 31, 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, develop a draft CCAA plan that the CCAA Entities believe will provide the best available outcome for stakeholders, and work to resolve the CCAA Entities' potential tax liabilities. In this respect, among other things, Metro 360 has filed objections to the CRA reassessments and engaged in ongoing dialogue with the CRA and its representatives over several months in an effort to resolve such reassessments;

- (b) the extension of the Stay Period to December 31, 2021 is necessary to provide the CCAA Entities with the time needed to, among other things, (i) finally resolve Metro 360's tax liabilities and determine the CRA's claim amount against Metro 360, (ii) reconcile the CRA's claims against the Partners, (iii) finalize and execute an agreement with the CRA in respect of (i) and (ii), and (iv) thereafter finalize and file a proposed restructuring plan to seek approval from this Court to hold a meeting of creditors to vote thereon;
- (c) the updated cash flow forecast covering the period until December 31, 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 December 31, 2021.

Shapiro Affidavit, at paras. 14-17; Motion Record, Tab 2.

Fifth Report, at s. 6.0(2)-(3), 7.0(2) and Appendix "C".

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, given the significant amounts at issue, the CRA's reassessments need to be resolved and the CRA's claim against Metro 360 determined before a restructuring plan can be finalized and presented to creditors and this Court for approval. The CCAA Entities believe that they are close to reaching an agreement with the CRA that will address the CRA reassessments, resolve the CRA's claims against Metro 360 and the Partners, and enable the CCAA Entities to thereafter finalize and present a proposed restructuring plan to creditors and this Court.

18. Accordingly, the CCAA Entities submit that it is appropriate for this Court to extend the Stay Period to and including December 31, 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

September 20, 2021

GOODMANS LLP
Goodmans LLP

SCHEDULE A

STATUTORY REFERENCES

[COMPANIES' CREDITORS ARRANGEMENT ACT](#)

RSC 1985, c C-36, as amended

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.

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**

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(Motion Returnable September 24, 2021)**

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

L. Joseph Latham LSO#: 32326A
jlatham@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for 957855 Alberta Ltd. (formerly
NewsWest Inc.), Rosebud Creek Financial Corp.,
and Metro 360 General Partnership