

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 11th DAY
)
JUSTICE NEWBOULD) OF APRIL, 2017



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

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
1462598 ONTARIO INC., carrying on business as TRICON FILMS AND TELEVISION,
AND THE OTHER COMPANIES LISTED IN SCHEDULE "A"**

APPLICANTS

APPROVAL ORDER – DISTRIBUTION AGREEMENT

THIS MOTION made by the Applicants for an Order, inter alia, (i) approving the transactions contemplated under the distribution agreement entered into between Sonar Canada Inc. (the "**Distributor**"), as agent, and 1462598 Ontario Inc. and certain of the other Applicants (together, the "**Company**") dated as of April 4, 2017 (the "**Distribution Agreement**") and for certain related relief, and (ii) the granting of the Distributor's Charge (as defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of Applicants, the fifth report of KSV Kofman Inc. in its capacity as CCAA Monitor of the Applicants dated April 5, 2017 (the "**Report**"), and on being advised that the secured creditors who are likely to be affected by the charge created herein were given notice, and on hearing the submissions of counsel for the Applicants, the Monitor and SunTrust Bank ("**SunTrust**") and those other parties listed on the counsel slip, no one appearing

for any other person although duly served as appears from the affidavit of service of Amy Casella sworn April 6, 2017,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Report is hereby abridged and that this Motion is properly returnable today and that service, including form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated December 12, 2016 (the “**Initial Order**”) and the Distribution Agreement, including the schedules thereto, as applicable.

APPROVAL OF DISTRIBUTION AGREEMENT

3. **THIS COURT ORDERS** that the Distribution Agreement and the transactions contemplated therein and thereunder are hereby approved, authorized and ratified and that the execution of the Distribution Agreement by the Company is hereby approved, authorized and ratified with such minor amendments to which the Company, SunTrust and the Distributor may agree in writing. Subject to the provisions of this Order, the Company is hereby authorized to perform the provisions of the Distribution Agreement and take all actions and execute all agreements and other documents as may be necessary or desirable to implement the Distribution Agreement and each of the transactions contemplated therein.

4. **THIS COURT ORDERS** that the Distributor is authorized, as agent for the Company, to exercise the Distribution Rights and all other rights granted to the Distributor under the Distribution Agreement (collectively, the “**Distributor’s Rights**”) in accordance with the terms of this Order and the Distribution Agreement, and for such purposes the Distributor shall have and be entitled to the benefit of the stay of proceedings and other protections provided in the Initial Order and subsequent orders of the Court (including paragraphs 14 through 17 of the Initial Order).

5. **THIS COURT ORDERS** that, subject to the terms of this Order, the Distribution Agreement and any future order of the Court: (a) the Program Rights remain the property of the Company and subject to the stay of proceedings and other protections of the Initial Order and subsequent orders of the Court; and (b) during the Stay Period, no creditor or other stakeholder of the Company will interfere with (i) the exercise by the Distributor of the Distributor's Rights in accordance with the terms of this Order and the Distribution Agreement, or (ii) the exercise by a licensee of any Program Rights licensed to it by the Distributor as agent for the Company, without leave of the Court on notice to the Distributor, Monitor, Company, SunTrust and the applicable licensee. For certainty, nothing in this paragraph 5 will prevent the Company or SunTrust from enforcing their respective rights, if any, under the Distribution Agreement and this Order, or from acting in a manner consistent with the provisions of this Order and the Distribution Agreement.

6. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until the date that is two (2) weeks following the expiry or earlier termination of the Term, provided that the Monitor is hereby directed to report to the Court on the affairs of the Applicants (excluding Tricon Television⁸² Inc.) no less than every twelve (12) months, and promptly upon any material adverse change in the Applicants' affairs, which includes the expiry or earlier termination of the Term; provided if the Purchase Agreement terminates in accordance with its terms, the Monitor shall serve and file a supplemental report forthwith and the Stay Period shall expire ten (10) days following the date upon which the Monitor serves and files such supplemental report.

6A. **THIS COURT ORDERS** that, notwithstanding the stay of proceedings, Rhombus Media Inc. ("**Rhombus**") shall be entitled to terminate the agreements by and between (i) Rhombus and Tricon Films Inc. dated May 1, 2013, as amended from time to time (Sensitive Skin I), (ii) Skin II Productions Inc. and Tricon Films Inc. dated May 6, 2015, as amended from time to time (Sensitive Skin II), and (iii) Rhombus and Tricon Films Inc. dated May 5, 2011, as amended from time to time (Michael, Tuesdays and Thursdays).

7. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the Initial Order or any subsequent order of the Court, until the expiry or earlier termination of the Term,

the stay of proceedings and other protection of the Initial Order and subsequent orders of the Court, including this Order, shall not be lifted or suspended except with the written consent of the Applicants, Monitor, Distributor and SunTrust, or Order of the Court made on not less than seven (7) days' prior notice to the Applicants, Monitor, Distributor and SunTrust.

8. **THIS COURT ORDERS** that the Company is hereby authorized and directed, in accordance with the Distribution Agreement, to remit and pay to the Distributor all amounts that are or become due to it thereunder and, whether such amounts are retained by the Distributor from Gross Receipts or paid or repaid to the Distributor by the Company or SunTrust, when received by Distributor such amounts shall be free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence on or prior to the date this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, "**Claims**"), including, without limitation, the indebtedness, liabilities and obligations owing by the Applicants to SunTrust, the Administration Charge, the DIP Lender's Charge and the Directors' Charge, and any other charges hereafter granted by this Court in these proceedings, and all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) or any other personal or removable property registration system (all such Claims, charges, security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances, subject to this Order and the Initial Order, will attach instead to the Distribution Advance and other amounts received by the Company pursuant to the Distribution Agreement, in the same order and priority as they existed against the Program Rights on the date of commencement of the Term in respect of each Program.

9. **THIS COURT ORDERS** that, until the expiry or earlier termination of the Term, the Distributor shall have access to all Program Rights and be entitled to exercise the Distributor's Rights in respect thereof in accordance with the terms of applicable trademark, trade name or other intellectual property licenses and Third Party Distribution Agreements on the basis that the

Distributor is an agent of the Company and the Company has granted the right of access and the Distributor's Rights to the Distributor as its agent. To the extent that the terms of any applicable trademark, trade name or other intellectual property license or Third Party Distribution Agreement are in conflict with the terms of this Order, the terms of this Order shall govern. Nothing in this Order shall be construed to create or impose upon the Company or the Distributor any additional restrictions not contained in the applicable trademark, trade name or other intellectual property licenses or Third Party Distribution Agreements.

10. **THIS COURT ORDERS** that the Distributor, as agent for the Company, is authorized to advertise and promote the Distribution Rights, without further consent of any Person other than the Company to the extent required under the Distribution Agreement.

LIMITATIONS ON DISTRIBUTOR LIABILITY

11. **THIS COURT ORDERS** that, in carrying out the terms of the Distribution Agreement and this Order, the Distributor shall be acting solely as an agent to the Company, and that it shall not be liable for any claims against the Company other than as expressly provided in the Distribution Agreement (including the Distributor's indemnity obligations thereunder). More specifically:

(a) the Distributor shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

(b) the Distributor shall have no liability whatsoever (including without limitation losses, costs, damages, fines, or awards) to any Person other than the Company relating to any claims of customers, licensees, distributors, licensors, vendors, agents, employees and any other Persons arising from the exercise of the Distributor's Rights during and after the Term, except in accordance with the Distribution Agreement.

DISTRIBUTOR AN UNAFFECTED CREDITOR

12. **THIS COURT ORDERS** that the Distribution Agreement shall not be repudiated, resiliated or disclaimed by the Company or any receiver or trustee in bankruptcy of Company or its property. The claims of the Distributor pursuant to the Distribution Agreement and under the Distributor's Charge shall be treated as unaffected and shall not be compromised or arranged pursuant to any plan of arrangement or compromise filed by or in respect of the Applicants under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA") or any proposal filed by or in respect of the Company under the *Bankruptcy and Insolvency Act (Canada)* (the "BIA").

DISTRIBUTION TO SUNTRUST AND LIMITATION OF SUNTRUST LIABILITY

13. **THIS COURT ORDERS** that the Monitor, on behalf of the Applicants, shall be authorized and directed, without further Order of the Court, to distribute to SunTrust any amounts received from the realization of the assets of the Applicants (excluding the assets of Tricon Television 80 Inc. and Tricon Television 81 Inc.), including but not limited to the Distribution Advance, Net Receipts, Purchase Price (as defined in the agreement of purchase and sale between certain of the Applicants and Sonar Canada Inc. dated April 4, 2017), and amounts received in respect of tax credits and accounts receivable collections, subject: a) in the case of the Purchase Price, to retaining a reserve in the amount specified in the Estimated Holdback Calculation attached to the Third Amending and Extension Agreement to Interim Financing Term Sheet made as of April 10, 2017 among SunTrust and the Applicants party thereto (the "Third DIP Extension"); b) in the case of tax credits received, provision being made for payment in full of the professional fees subject to the Administration Charge in an amount to be agreed by the Applicants, the Monitor and SunTrust; and c) in the case of all other amounts including accounts receivable collections, subject to retaining a reasonable reserve in an amount to be agreed by the Applicants, the Monitor and SunTrust in accordance with the Initial Agreed Quarterly Budget and the Agreed Quarterly Budgets (each as defined in the Third DIP Extension), in each case, upon receipt of such funds. In addition, the directions to pay the Distribution Advance and Net Receipts directly to SunTrust are authorized and approved subject to the terms and conditions set out therein. All such distributions shall:

(a) be applied against any indebtedness, liabilities and obligations owing by any of the Applicants to SunTrust, including, in SunTrust's discretion, to the obligations pursuant to the revolving credit, security, guaranty and pledged agreement dated as of August 22, 2013, as amended, restated supplemented or modified (the "SunTrust Facility"),

(b) be, upon the receipt thereof by SunTrust, free of all Claims, Encumbrances and charges granted by or relating to the Applicants; and,

(c) be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants or constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the Bankruptcy and Insolvency Act (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

Such authorization and direction shall continue until SunTrust is paid in full in respect of all obligations of the Applicants to SunTrust including pursuant to the SunTrust Facility, the interim financing term sheet made as of December 12, 2016, as amended, restated, modified or supplemented from time to time, and all interest, fees, expenses or other amounts owing in respect thereof.

14. **THIS COURT ORDERS** that, except for the obligation of SunTrust to pay the Distributor up to \$150,000 in the circumstances set forth in Section 10.1.4 of the Distribution Agreement, SunTrust, or any of its directors, officers, employees or agents, or any of SunTrust's affiliates or their directors, officers, employees or agents, shall not be liable to the Tricon Entities or the Distributor for any damages, losses, liabilities, costs, fees or expenses of any kind whatsoever, directly or indirectly arising out of or in connection with the transactions contemplated by the Distribution Agreement. The obligation to pay up to \$150,000 in the circumstances set forth in Section 10.1.4 of the Distribution Agreement shall be and is the sole and exclusive direct or indirect remedy available to the Distributor against SunTrust or any of its directors, officers, employees or agents, or any of SunTrust's affiliates or their directors, officers,

employees or agents arising directly or indirectly out of or in connection with the transactions contemplated by the Distribution Agreement.

NO RECOURSE TO TAX CREDIT ASSETS AND EXISTING ACCOUNTS RECEIVABLE

15. **THIS COURT ORDERS** that notwithstanding anything express or implied in this Order or the Distribution Agreement, in satisfaction of any damages, losses, liabilities, costs, fees or expenses of any kind whatsoever, directly or indirectly arising out of or in connection with the transactions contemplated by the Distribution Agreement and any amounts payable to Distributor pursuant to the terms of the Distribution Agreement, the Distributor shall only have recourse to the Program Rights (other than Program Rights relating to productions for which Tax Credit Assets are outstanding) and the amounts held in trust for the benefit of the Distributor pursuant to Section 6.2 of the Distribution Agreement and paragraph 16 hereof. No recourse, remedy or right of recovery or contribution shall be had by the Distributor under the Distribution Agreement, this Order or any document delivered in connection with the Distribution Agreement, against the Existing Accounts Receivable or the Tax Credit Assets.

AGENCY ACCOUNTS

16. **THIS COURT ORDERS** that all amounts deposited in the Agency Accounts pursuant to the Distribution Agreement including Gross Receipts, net of GST/HST, shall be and be deemed to be held in trust as follows: (a) amounts to be paid or repaid to the Distributor in accordance with Sections 6.4.1, 6.4.2, 6.4.3 and 10.1.4 of the Distribution Agreement in trust for the Distributor, and (b) all other amounts in trust for the Company, in each case to be distributed and otherwise dealt with in accordance with the provisions of Distribution Agreement and this Order.

DISTRIBUTOR'S CHARGE AND SECURITY INTEREST

17. **THIS COURT ORDERS** that subject to the receipt by the Company of the Distribution Advance, the Distributor be and is hereby granted a charge (the "**Distributor's Charge**") on the Program Rights (excluding Program Rights relating to productions for which Tax Credit Assets are outstanding) and all amounts held in trust for the benefit of the Distributor from time to time pursuant to Section 6.2 of the Distribution Agreement and paragraph 16 hereof, including all proceeds from realization thereon (the "**Distributor Charge Assets**"), which charge shall rank in

priority to all Encumbrances. The Distributor's Charge shall stand as security for (i) the payment of all amounts to be paid or repaid to the Distributor pursuant to Sections 6.4.1, 6.4.2, 6.4.3 and 10.1.4 of the Distribution Agreement, and (ii) up to \$150,000 for damages, losses, liabilities, costs, fees or expenses incurred by the Distributor as a result of third party claims arising out of or in connection with the Distribution Agreement (collectively, the "**Distributor Amounts**").

PRIORITY OF CHARGES

18. **THIS COURT ORDERS** that the priorities of the Distributor's Charge, the Administration Charge, the DIP Lender's Charge and the Directors' Charge, as among them, in respect of the Distributor Charge Assets, shall be as set follows:

- (a) First, Distributor's Charge (to the maximum of the Distributor Amounts);
- (b) Second, Administration Charge (to the maximum amount of \$500,000)
- (c) Third, DIP Lender's Charge; and
- (d) Fourth, Directors' Charge (to the maximum amount of \$250,000).

THIS COURT ORDERS that the filing, registration or perfection of the Distributor's Charge shall not be required, and that the Distributor's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Distribution Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

19. **THIS COURT ORDERS** that the Company shall not grant or suffer to exist any Encumbrances over any Distributor Charge Assets that rank in priority to, or *pari passu* with the Distributor's Charge.

20. **THIS COURT ORDERS** that the Distributor's Charge shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Distributor Charge Assets and shall rank in priority to all other Encumbrances of or in favour of any Person in respect of the Distributor Charge Assets to the extent of the Distributor Amounts.

21. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA, in respect of the Company, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Company; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement which binds the Company:

(a) the Distribution Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Distributor thereunder, and

(b) the Distributor's Charge,

shall be binding on any trustee in bankruptcy that may be appointed in respect to the Company and shall not be void or voidable by any Person, including any creditor of the Company, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

PERSONAL INFORMATION

22. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, the Company and the Monitor are, as required to perform the Distribution Agreement, authorized and permitted to transfer to the Distributor personal information in each's custody and control, and Distributor is permitted to use and disclose such personal information subject to and in accordance with the terms of the Distribution Agreement.

GENERAL


23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States and elsewhere to give effect to this Order and to assist the Company, the Monitor and their agents in carrying

out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Company and the Monitor, and their agents, in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

25. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Monitor, the Company, SunTrust, and Distributor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

26. **THIS COURT ORDERS AND DIRECTS** that the unredacted copy of the Distribution Agreement, filed, be kept confidential and sealed in the court file pending further order of this Court.



C. Irwin
Registrar

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 11 2017

PER / PAR 

SCHEDULE A

1. 1462598 Ontario Inc.
2. Operator Post Inc.
3. Tricon Education Inc.
4. Tricon Films Inc.
5. Tricon Interactive Inc.
6. Tricon Television Inc.
7. Tricon Television10 Inc.
8. Tricon Television44 Inc.
9. Tricon Television49 Inc.
10. Tricon Television54 Inc.
11. Tricon Television55 Inc.
12. Tricon Television58 Inc.
13. Tricon Television59 Inc.
14. Tricon Television62 Inc.
15. Tricon Television63 Inc.
16. Tricon Television64 Inc.
17. Tricon Television65 Inc.
18. Tricon Television66 Inc.
19. Tricon Television67 Inc.
20. Tricon Television68 Inc.
21. Tricon Television69 Inc.
22. Tricon Television70 Inc.
23. Tricon Television71 Inc.
24. Tricon Television72 Inc.
25. Tricon Television73 Inc.
26. Tricon Television74 Inc.
27. Tricon Television75 Inc.
28. Tricon Television76 Inc.
29. Tricon Television77 Inc.
30. Tricon Television78 Inc.
31. Tricon Television79 Inc.
32. Tricon Television80 Inc.
33. Tricon Television81 Inc.
34. Tricon Television82 Inc.
35. Tricon Television83 Inc.
36. Tricon Television84 Inc.
37. Tricon Television85 Inc.
38. Tricon Television86 Inc.
39. Tricon Television87 Inc.
40. Tricon Media Holdings, Inc.
41. Tricon Media Productions, Inc.
42. Tricon Media, Inc.
43. Tricon US Productions1 Inc.
44. Tricon US Productions14 Inc.
45. Tricon US Productions15 Inc.
46. Tricon Films (UK) Limited

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1462598 ONTARIO INC., CARRYING ON BUSINESS AS TRICON FILMS AND TELEVISION, AND THE COMPANIES LISTED IN SCHEDULE "A"

Applicants

Court File No. CV16-11634-00CL

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

Proceedings commenced at Toronto

**APPROVAL ORDER – DISTRIBUTION
AGREEMENT**

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