

District of ONTARIO
Division No.09 – Toronto
Estate No. 31-2504280
Court No. 31-2504280

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
TOONBOX ENTERTAINMENT LTD.
OF THE CITY OF TORONTO,
IN THE MUNICIPALITY OF METROPOLITAN TORONTO,
IN THE PROVINCE OF ONTARIO

AND

District of ONTARIO
Division No.09 – Toronto
Estate No. 31-2504276
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ONTARIO
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IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
THE NUT JOB 2 PRODUCTIONS INC.
OF THE CITY OF TORONTO,
IN THE MUNICIPALITY OF METROPOLITAN TORONTO,
IN THE PROVINCE OF ONTARIO

AND

Court File No. CV-19-618364-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

PACIFIC MERCANTILE BANK

Applicant

- and -

THE NUT JOB 2 PRODUCTIONS INC. and TOONBOX ENTERTAINMENT LTD.

Respondents

MOTION RECORD
(Returnable Tuesday November 26, 2019)

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Receiver

TO: SERVICE LIST

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INDEX

DOCUMENT**TAB**

Notice of Motion returnable November 26, 2019	A
Third Report of the Proposal Trustee and Interim Receiver Dated October 31, 2019 with Exhibits	B
Endorsement of Hainey J. dated June 25, 2019	1
Certificate of Incorporation – Redrover Creative Ltd.	2
Articles of Amendment – Toon Box Entertainment Ltd.	3
Articles of Amendment – Toonbox Entertainment Ltd.	4
Organization Chart	5
Certificate of Incorporation – The Nut Job 3 Productions Inc.	6
Toonbox’s Termination Letter to Redrover – October 4, 2018	7
Redrover’s Response to Termination Letter – October 10, 2018	8
Endorsement of Hainey J. – October 17, 2019	9

TAB A

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NOTICE OF MOTION

BDO CANADA LIMITED (the “**Proposal Trustee/Interim Receiver**” or “**BDO**”), in its capacity as Proposal Trustee / Interim Receiver of The Nut Job 2 Productions Inc. (“**NJ2 Prodc**”) and Toonbox Entertainment Ltd. (“**Toonbox**”, and collectively, the “**Companies**”) will make a Motion before a Judge on November 26, 2019 or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The Motion is to be heard (*choose appropriate option*)

- in writing under subrule 37.12.1(1) because it is (*insert one of on consent, unopposed or made without notice*);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR (*state here the precise relief sought*)

- (a) If necessary, an Order abridging the time for service and validating service of this Motion Record in the manner effected by the Proposal Trustee/Interim Receiver that this Motion is properly returnable today and dispensing with service thereof on any party other than the parties served;
- (b) an Order to convert the existing interim receiverships of Toonbox and NJ2 Prodc into receiverships under s.101 of the *Courts of Justice Act, R.S.O. 1990, c. C43* (the “**CJA**”), with the usual powers granted to Court-appointed receivers;

- (c) an Order placing one of Toonbox's wholly-owned subsidiaries, The Nut Job 3 Productions Inc. ("NJ3 Prodc") into receivership pursuant to s.101 of the CJA;
- (d) an Order approving the Third Report and the activities of the Proposal Trustee/Interim Receiver, as set out therein;
- (e) an Order permitting the consolidation of the receivership proceedings referenced in (a) and (b) above with the existing titles of proceedings for administrative purposes, including, without limitation, the preparation and filing of motions and reports to creditors, the Official Receiver, and this Court, all as may be required by the *Bankruptcy and Insolvency Act*; and
- (f) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE *(specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on)*

Background

- a. On April 10, 2019 Pacific Mercantile Bank ("PMB") brought Applications for Bankruptcy Orders against the Companies, returnable May 7, 2019;
- b. PMB brought a further application for the appointment of an Interim Receiver to preserve the assets of the Companies, until such time as Bankruptcy Orders were issued;
- c. On April 18, 2019, by Order of the Honourable Mr. Justice Hainey ("Justice Hainey"), BDO was appointed as Interim Receiver of all assets, undertakings and

properties of the Companies (the “**Interim Receivership Order**”);

- d. The Companies and PMB subsequently agreed that a sale of the Companies assets *en bloc* would maximize recoveries so the Applications for Bankruptcy Orders were adjourned for the purpose of allowing the Companies to file Proposals;
- e. The Companies filed Proposals on April 29, 2019 and BDO was named as Proposal Trustee;
- f. The First Meetings of Creditors for both Proposals were held on May 21, 2019 at which time it was agreed that the meetings be adjourned *sine die* pending the outcome of the proposed sales process of the assets of the Companies;

Loan from PMB

- g. On December 19, 2017 NJ2 Prodco entered into a loan agreement with PMB for \$8,170,705.00 (USD) which was secured by a general security agreement in favour of PMB;
- h. NJ2 Prodco was to use tax credits (the “**Tax Credits**”) it was entitled to claim to repay PMB in full. The loan agreement with PMB required that the funds generated from the Tax Credits be held in a segregated account in favour of PMB and paid to PMB upon receipt. NJ2 Prodco did not comply with its obligations set out above; instead, the refunded Tax Credits were co-mingled with Toonbox's funds with a major portion apparently used to fund other productions, including the film *The Nut Job 3* (“**NJ3**”) (details of NJ3 are described in further detail below);

Relationship between the Companies and Redrover Co. Ltd.

- i. The Companies were subject to co-production agreements with Redrover Co. Ltd. (“Redrover”), a South Korean company which had funded various animation films produced by the Companies;
- j. After issuance of its First Report, BDO became aware that the relationship between the Companies and Redrover is considerably more complicated than had first been realized;
- k. BDO, Redrover and PMB agreed to defer requesting the court's approval for a proposed sales process until the relationships and agreements between the Companies and Redrover could be better understood, the issues of ownership of assets determined, and an accounting was received from Redrover with respect to monies potentially owing by Redrover to Toonbox;
- l. Pursuant to the endorsement of Justice Hainey dated June 25, 2019, the court adjourned the approval for a proposed sales process and ordered, *inter alia*, that Redrover was to make best efforts to provide an accounting of funds received from various Toonbox related productions;
- m. With further investigation into the relationship between Toonbox and Redrover, the Proposal Trustee/Interim Receiver reported that Toonbox, through various subsidiary companies, produced various animated films on behalf of Redrover, which then owned 100% of the productions, in exchange for financing the costs of production. Toonbox was obligated to pay over to Redrover any tax credits it received from the

- Canadian federal or provincial governments, related to the specific productions funded by Redrover;
- n. The only accounting received by BDO from Redrover to date includes a brief summary of net receipts received in connection to the film *The Nut Job*;
 - o. There is an ongoing dispute between the Proposal Trustee/Interim Receiver and Redrover as to the ownership of the assets of the Companies. The Proposal Trustee/Interim Receiver advised that the assets of Toonbox include computer and other equipment, as well as furniture and fixtures used by the production companies in the various films produced for Redrover. Redrover claims to be entitled to that equipment, as it was charged by Toonbox for equipment as part of the production costs of such films. Toonbox claims that these assets belong to Toonbox, not to Redrover;

Nut Job 3

- p. NJ3 Prodco is a wholly owned subsidiary of Toonbox;
- q. Toonbox and NJ3 Prodco entered into a number of agreements with Redrover with respect to the funding of NJ3. Similar to the agreements reached with respect to *The Nut Job* and *Nut Job 2: Nutty by Nature*, Redrover was to fund the production of NJ3 in consideration of owing the intellectual property related to the film and an entitlement to exploit the distribution of the film;
- r. There is an unresolved dispute as to what amounts Redrover and Toonbox each contributed to the financing of NJ3;

- s. Furthermore, it appears to BDO that Toonbox terminated the Co-Production Agreement with Redrover with respect to NJ3 but Redrover disputes that the termination was valid;
- t. If the above referenced termination was valid, the intellectual property rights relating to NJ3 appear to revert to Toonbox and Toonbox would be entitled to recover and retain any tax credits earned on the production costs incurred to date;
- u. The only known asset of NJ3 Prodco is the prospective tax credits which have an anticipated value of \$6.3M;
- v. Pursuant to the Endorsement of Justice Hainey dated October 19, 2019 a judicial mediation was scheduled for December 19, 2019 in order to determine whether the outstanding issues set out above can be resolved. If not, a motion has been scheduled for January 27, 2020;
- w. The Proposal Trustee/Interim Receiver currently has no control over the activities or assets of NJ3 Prodco as it is not subject to any insolvency proceedings, as such the role of the Proposal Trustee/Interim Receiver in dealing with NJ3 Prodco is not clear and the Proposal Trustee/Interim Receiver requests that its existing roles related to the Companies be strengthened, and that the receivership of NJ3 Prodco be added to its mandate; and
- x. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion *(list the affidavits or other documentary evidence to be relied on)*

- (a) The Third Report of the Receiver dated October 31, 2019 and the Appendices attached thereto; and
- (b) Such further and other material as counsel may produce and this Honourable Court may permit.

DATED: November 19, 2019

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