

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

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

Court No. 31-2504280

Court No. 31-2504276

AND BETWEEN:

BDO CANADA LIMITED

Applicant

- and -

THE NUT JOB 2 PRODUCTIONS INC., TOONBOX ENTERTAINMENT LTD. and THE  
NUT JOB 3 PRODUCTIONS INC.

Respondents

AND

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  
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IN THE PROVINCE OF ONTARIO

**MOTION RECORD**  
**(Returnable April 28, 2020)**

**LIPMAN, ZENER & WAXMAN PC**  
Barristers and Solicitors  
100 Sheppard Avenue East, Suite 850  
Toronto, Ontario M2N 6N5

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Lawyers for BDO Canada Limited in its  
capacity as Proposal Trustee/Receiver

**TO: SERVICE LIST (attached)**

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**NOTICE OF MOTION**

BDO CANADA LIMITED (“**BDO**”) in its capacity as the Receiver (the “**Receiver**”) of all of the assets, undertakings and properties of The Nut Job 2 Productions Inc. (“**NJ2 Prodco**”), The Nut Job 3 Productions Inc. (“**NJ3 Prodco**”) and Toonbox Entertainment Ltd. (“**Toonbox**”) (collectively, the “**Companies**”), including all proceeds thereof (the “**Property**”) and as the Proposal Trustee of NJ Prodco and Toonbox (the “**Proposal Trustee**”), will make a Motion before a Judge on Tuesday, April 28, 2020 at 11:00 a.m. or as soon after that time as the Motion can be heard by way of teleconference.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally - via teleconference.

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

- (a) an Order validating service of the Notice of Motion and the Motion Record in the manner effected, abridging time for service thereof and dispensing with service thereof on any party other than the parties served, if necessary;
- (b) an Order approving the Fourth Report and the activities of BDO, as set out therein;

- (c) an Order approving the Settlement Agreement and the APS (as defined in the Fourth Report);
- (d) an Order vesting certain assets as set out in the Settlement Agreement and APS in the form substantially attached hereto as Schedule “A”;
- (e) an Order approving the fees and disbursements of BDO and its counsel incurred to April 20, 2020;
- (f) an Order amending the Administration Charge (as defined in the Fourth Report) to be \$500,000.00; and
- (g) 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)*

- a. Pursuant to the order of the Honourable Justice McEwen dated November 26, 2019, BDO became the court appointed receiver of the Companies. BDO is also proposal trustee of Toonbox and NJ2 Prodco pursuant to the *Bankruptcy and Insolvency Act*.
- b. The Companies share common management, certain creditor obligations, and certain assets.
- c. Toonbox operated as an animation studio that produced several animated films through wholly owned subsidiaries, including NJ2 Prodco and NJ3 Prodco.
- d. Redrover Co. Ltd. (“**Redrover**”) is a South Korean company that finances various

Toonbox produced films, and the respective rights of the two companies were set out in certain Co-Production Agreements for each film.

- e. Disputes arose between BDO and Redrover largely with respect to: (a) ownership of certain computers, software, furniture and miscellaneous equipment used by Toonbox, and (b) the right to benefit from certain tax credits with an estimated value of \$6,300,000 that NJ3 Prodco is entitled to receive.
- f. Given these disputes, in a resolution attempt, the endorsement of Justice Hainey dated October 17, 2019 scheduled a Judicial Mediation for December 19, 2019, and in the event the Judicial Mediation was unsuccessful, a hearing was scheduled for January 27, 2020.
- g. A Judicial Mediation before the Honourable Justice Hainey was held on December 19, 2019. BDO, Redrover and the senior secured lender for Toonbox and NJ2 Prodco, Pacific Mercantile Bank attended on the mediation with counsel.
- h. After extensive negotiations, the parties reached settlement on the following terms (the “**Settlement Agreement**”):
  - a. Redrover will pay \$350,000 (the “**Price**”) to BDO for all assets of Toonbox and the production companies, in a structure to be agreed to by the parties, on an as/is where/is basis, other than Excluded Assets (defined below). This amount shall be deducted from Redrover’s share of the NJ3 tax credits. If Redrover’s share of the NJ3 tax credits is less than \$350,000, Redrover shall pay the balance of the Price to BDO;



- b. BDO shall transfer the locker containing the Toonbox assets to Redrover by February 1, 2020. Redrover shall assume the storage costs for these assets on February 1, 2020;
- c. Redrover and BDO agree to share the NJ3 Tax Credits 50/50 and to cooperate in any necessary filings to obtain the tax credits;
- d. The allocation of the costs of the receiverships among the Companies shall be determined by the court;
- e. Excluded Assets shall be defined as
  - i. HST return for Toonbox;
  - ii. NJ2 and NJ3 tax credits;
  - iii. Far Fetched tax returns and tax credits earned up to today;
  - iv. Books and records of Toonbox (subject to BDO providing reasonable access thereto to Redrover);
  - v. Cash held by Toonbox up to today; and
  - vi. Any claim Toonbox may have against Hong Kim or Soo Jung.
- f. Redrover will file and BDO shall admit a proof of claim against NJ2 Prodcoc and Toonbox in the amount of \$9.9 million. However, Redrover shall only be able to recover on said proof of claim from the proceeds of litigation against Hong Kim, or Soo Jung provided that Redrover contributes to the cost of the litigation as contemplated by section 38 of the BIA. For greater clarity, Redrover shall not participate in any other recoveries including, without limitation, Excluded Assets other than 5(f);
- g. The agreement is subject to court approval, including a vesting order;

- h. Redrover will not object to any claims filed by PMB in the receivership/bankruptcy proceedings of the Companies; and
- i. The Honourable Justice Hainey is seized of these matters.
- i. Further to the Settlement Agreement the parties negotiated and entered into the APS;
- j. The Settlement Agreement is fair and commercially reasonable considering, *inter alia*:
  - a. The litigation risk, in view of weighing the parties respective positions on the issues, the lack of reliable back-up documentation from all parties, and anticipated concerns with key witness cooperation and accessibility from Toonbox's management;
  - b. The anticipated costs of litigation;
  - c. The benefit of certainty and streamlining potential claims issues in the administration of the Receivership and the Proposals for the key stakeholders; and
  - d. The likelihood of an appeal, given the "all or nothing" nature of the disputes.
- k. As contained in the Fourth Report of BDO;
- l. S. 100 of the *Courts of Justice Act*;
- m. Rules 1.04, 1.05, 3.02 and 16.04, 16.08 of the *Rules of Civil Procedure*;
- n. 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 Fourth Report of BDO dated April 23, 2020 and the Appendices attached thereto; and
- (b) Such further and other material as counsel may produce and this Honourable Court may permit.

DATED: April 23, 2020

**LIPMAN, ZENER & WAXMAN PC**  
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Lawyers for BDO Canada Limited in its capacity as the Receiver of the Companies and the Proposal Trustee of NJ2 Prodco and Toonbox

Schedule "A" to Notice of Motion

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
MR. JUSTICE HAINEY ) TUESDAY, THE 28<sup>th</sup> DAY OF  
APRIL, 2020

B E T W E E N:

PACIFIC MERCANTILE BANK

Applicant

- and -

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

Respondents

Court File No. CV-19-618364-00CL  
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**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by BDO Canada Limited, in its capacity as receiver (the "**Receiver**") of the undertaking, property and assets of The Nut Job 2 Productions Inc. ("**NJ2**"), The Nut Job 3 Productions Inc. ("**NJ3**"), and Toonbox Entertainment Ltd. ("**Toonbox**", and together with NJ2, and NJ3, are the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Redrover Co. Ltd. (the "**Purchaser**") dated April 23, 2020 and appended to the Report of the Receiver dated April 23, 2020 (the "**Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, and all other parties on the counsel sheet, no one appearing for any other person on the service list, although properly served as appears from the affidavit of «name» sworn «date» filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Court Order, including any encumbrances or charges created by Order of:

- (a) the Honourable Justice Hainey dated April 18, 2019 in court file number 19-CV-618364-00CL;
- (b) the Honourable Justice Conway dated June 6, 2019 in court file number 31-2504276;
- (c) the Honourable Justice Conway dated June 6, 2019 in court file number 31-2504280;
- (d) the Honourable Justice Conway dated June 6, 2019 in court file number 19-618364-00CL; and
- (e) the Honourable Justice McEwen dated November 26, 2019 in court file numbers 31-2504276, 31-2504280, and 19-618364-00CL;

and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that, for greater certainty, the provisions of this Order, including paragraph 2 above, apply, with retroactive effect if applicable, to the Selected Included Contracts, as that term is defined in the Sale Agreement.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor 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.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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**Schedule A – Form of Receiver’s Certificate**

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

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Applicant

- and -

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Respondents

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**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the "**Court**") dated November 26, 2019, BDO Canada Limited was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of The Nut Job 2 Productions Inc., Toonbox Entertainment Ltd., and The Nut Job 3 Productions Inc. (the "**Debtors**").

B. Pursuant to an Order of the Court dated «date», the Court approved the agreement of purchase and sale made as of April 23, 2020 (the "**Sale Agreement**") between the Receiver and Redrover Co. Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming that (i) the conditions to Closing as set out in sections 4.1 and 4.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

1. the conditions to Closing as set out in sections 4.1 and 4.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
2. The Transaction has been completed to the satisfaction of the Receiver; and
3. This Certificate was delivered by the Receiver at «time» on «date».

BDO Canada Limited, in its capacity as Receiver of The Nut Job 2 Productions Inc., Toonbox Entertainment Ltd., and The Nut Job 3 Productions Inc., and not in its personal capacity.

Per: \_\_\_\_\_

Name:

Title:

6204013.1

PACIFIC MERCANTILE BANK v. THE NUT JOB 2 PRODUCTIONS INC. and TOONBOX ENTERTAINMENT LTD.  
BDO CANADA LIMITED v. THE NUT JOB 2 PRODUCTIONS INC., TOONBOX ENTERTAINMENT LTD.  
Applicant and THE NUT JOB 3 PRODUCTIONS INC.  
-and- Respondents

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  
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

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Proceeding commenced at  
TORONTO

**APPROVAL AND VESTING ORDER**

**LIPMAN, ZENER & WAXMAN PC**  
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Lawyers for BDO Canada Limited in its  
capacity as Proposal Trustee/Receiver