

**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

**AN APPLICATION UNDER SECTION 46 OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED**

APPLICATION RECORD

April 17, 2019

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Lawyers for the Applicant

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 - C. Assignment and Security Agreements, dated December 19, 2017
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- I. PPSA Summary Report - The Nut Job 2 Productions Inc.
- J. Priority Agreement, dated December 11, 2017
- K. PPSA Summary Report – Toonbox Entertainment Ltd.
- L. Email dated October 12, 2018 re Bannockburn FX – The Nut Job 2
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- N. Email dated December 11, 2018 re Latest Financial Statement – Toon Box Entertainment
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- S. Email dated March 19, 2019 re from Toonbox about PMBank Loan payment
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AA. ToonBox Application for Bankruptcy Order dated April 9, 2019

TAB 1

CV-19-618364-0002
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

PACIFIC MERCANTILE BANK

Applicant

- and -

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

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NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

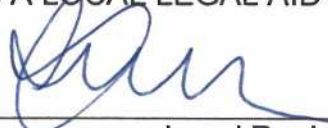
9:30 THIS APPLICATION will come on for a hearing on Thursday, April 18, 2019, at ~~10:00~~ a.m., before a judge presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto ON, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date April 17, 2019

Issued by 

Local Registrar
Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto ON
M5G 1R7

TO: Service List

APPLICATION

1. The applicant, Pacific Mercantile Bank ("**PMB**"), makes application, without notice, for an order:

- (a) if necessary, abridging the time for service and filing of this notice of application and application record or, in the alternative, dispensing with the same;
- (b) pursuant to subsection 46(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, appointing BDO Canada Limited ("**BDO**") as interim receiver ("**Interim Receiver**") in respect of the respondents, The Nut Job 2 Productions Inc. ("**Nut Job**") and Toonbox Entertainment Ltd. ("**Toonbox**", together with Nut Job the "**Debtors**");
- (c) the costs of this proceeding, plus all applicable taxes; and
- (d) such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:

Parties

- (a) The Debtors are Ontario corporations with registered offices in Toronto, Ontario.
- (b) Nut Job is a single purpose entity that was created to produce the animated feature film "The Nut Job 2" ("**Film**").

- (c) Toonbox is an independent animation studio that produces movies and television shows.
- (d) PMB is a commercial and retail bank headquartered in Orange County, California. It serves small- and middle-market businesses with a full range of loan, deposit and cash management products and services.

Loan Agreement and Security

- (e) PMB loaned US\$8,170,705 ("**Loan**") to Nut Job pursuant to the terms of a loan and security agreement entered into on December 19, 2017 ("**Loan Agreement**").
- (f) PMB underwrote and agreed to advance the Loan on the basis that Nut Job was entitled to and would receive certain valuable tax credits from the Canada Revenue Agency and the Ontario Ministry of Tourism, Culture and Sport (collectively, the "**Tax Credits**").
- (g) In recognition of the fact that the Tax Credits are the primary security for the Loan, PMB's security documents were prepared to ensure that the Tax Credits were segregated and held in trust for PMB such that they would be available to repay the Loan.
- (h) As additional security for the Loan, Nut Job also provided PMB with a security interest over all of Nut Job's personal property, assets and undertaking pursuant to a general security agreement made between Nut Job and PMB, executed December 19, 2017.

- (i) Toonbox guaranteed repayment of the Loan on demand pursuant to the terms of a written guarantee dated December 19, 2017 (“**Guarantee**”).
- (j) The Loan matured on March 19, 2019.

Defaults and Misappropriation of Collateral

- (k) Unbeknownst to PMB, Nut Job allegedly received \$9 million in Tax Credits in October 2018 and rather than repaying the Loan, Nut Job put the Tax Credits to other uses.
- (l) Nut Job failed to repay the Loan on March 19, 2019.
- (m) PMB issued a demand for payment and a notice of intention to enforce security to Nut Job on March 20 and 21, 2019, respectively.
- (n) PMB also made demands for payment from Toonbox under the Guarantee on March 20, 2019 and April 9, 2019.

Bankruptcy Applications Pending

- (o) On April 10, 2019, PMB commenced applications for bankruptcy orders in respect of the Debtors (“**Bankruptcy Applications**”). The Bankruptcy Applications are returnable May 7, 2019.

Interim Receivership Necessary to Preserve the Estates

- (p) As of April 17, 2019, Nut Job and Toonbox are indebted to PMB in the amount of US\$5.6 million.

- (q) PMB's security has been removed, re-directed, stolen or otherwise compromised. The Debtors are in serious breach and default of the Loan arrangements with PMB.
- (r) In respect of the missing Tax Credits proceeds, the Debtors' management have made material misrepresentations to PMB by omission or otherwise. The evidence presents a *prima facie* case of fraudulent activity.
- (s) The Loan is in default in that numerous conditions of the Loan and related security documentation were breached when the Tax Credits—which were to be held in trust for PMB—were misappropriated.
- (t) Despite repeated requests, PMB has not received an explanation for, or account of, the diversion of the Tax Credits.
- (u) Despite requests, and an entitlement to receive the same pursuant to its security package, PMB does not have complete, current and reliable financial information as to the Debtors' business.
- (v) The Debtors have evidently ceased operations and their landlord has changed the locks on the Debtors' registered office. There is an indication that the Debtors' movie production equipment has been moved from the formerly leased premises to another, undisclosed, location. The Debtors have not been forthcoming in terms of the current nature and status of their operations, if any.

- (w) The ability to locate, account for, and realize upon other assets of the Debtors may be adversely affected in the absence of conservatory measures being taken by an interim receiver acting on behalf of all creditors.
 - (x) PMB has not received the cooperation of management of the Debtors.
 - (y) PMB has lost all trust and confidence in the Debtors and their management.
 - (z) In the circumstances, the appointment of a receiver is necessary for the protection of the Debtors' estates.
 - (aa) BDO is a licensed trustee in bankruptcy and is familiar with the circumstances of the Debtors and its arrangements with PMB.
 - (bb) BDO has consented to being appointed as Interim Receiver of all of the assets, undertaking and property of the Debtors.
 - (cc) Section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
 - (dd) Rules 1.04, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
 - (ee) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The affidavit of Thomas Vertin sworn April 17, 2019;

- (b) The consent of BDO to act as Interim Receiver;
- (c) The Bankruptcy Applications; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 17, 2019

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

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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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