

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

**GROSVENOR PARK MEDIA FUND L.P.**

Plaintiff

– and –

**ARC PRODUCTIONS LTD., ARC HOLDINGS INC., ARC INVESTMENTS LTD.,  
ARC/DARK CRYSTAL PRODUCTIONS INC., KICK PRODUCTIONS LTD., IN THE  
JUNGLE PRODUCTIONS INC., TF I PRODUCTIONS INC., BL II PRODUCTIONS  
INC., ARCADIA PRODUCTIONS LTD., EGGS LTD., PRINCESS PRODUCTIONS  
INC., UNDERZOO PRODUCTIONS INC., HOLE IN THE BELLY PRODUCTIONS  
LTD., SIR SIMON PRODUCTION LTD., SAMURAI PRODUCTIONS LTD., THOMAS  
MURRAY, KALLAN KAGAN and PETER KOZIK**

Defendants

**NOTICE OF MOTION  
(Motion Returnable on May 29, 2020)**

Deloitte Restructuring Inc. in its capacity as the Court-appointed Receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Arc Productions Ltd. and its subsidiaries and affiliates, which consist of the other corporate defendants described in the title of proceedings (collectively, “**Arc**”) will make a Motion to a Judge of the Commercial List, on May 29 at 10:00 a.m via teleconference. or soon after that time as the motion can be heard,.

**THE PROPOSED METHOD OF HEARING:** The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is made without notice;
- in writing as an opposed motion under subrule 37.12.1(4); or
- orally.

**THE MOTION IS FOR:**

1. Advice and direction concerning the making of distributions relating to the proceeds from various tax credits more particularly described below (net of costs and expenses directly attributable to the collection thereof) arising from productions more particularly described in the Receiver's Fifteenth Report, filed;
2. Advice and guidance on whether a sealing order ought to be made in respect of the production services agreements and BK2BRAC supporting documents which are the subject matter of this motion; and
3. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

*Background to this Motion*

1. Arc was in the business of providing animation and computer graphic services to the film and television industry and had approximately 550 full time and contract employees;
2. On July 29, 2016, the Grosvenor Park Media Fund L.P. (the "**Secured Creditor**" or "**GP**") brought a motion seeking the appointment of an Interim Receiver over Arc and the other corporate defendants. That motion was granted by the Honourable Mr. Justice Wilton-Siegel, and the Interim Receiver was appointed pursuant the Interim Receivership Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated July 29, 2016. On August 2, 2016, the Secured Creditor sought and obtained the (fresh) Interim Receivership Order;
3. On August 10, 2016, the Court made an order appointing Deloitte Restructuring Inc. as

Receiver over the assets, undertakings and properties of Arc for the purpose of, among other things, pursuing a sale transaction for substantially all of the assets of Arc and its affiliates, in respect of which the Receiver had concluded a letter of intent with the then prospective purchaser Jam Filled Entertainment (Toronto) Inc. (“**Jam Filled**”);

4. Subsequent, to the completion of the transactions contemplated by the Jam Filled sale transaction, and among the other various activities previously reported on by the Receiver in its previous 14 reports filed with this Court, the Receiver continued to facilitate the collection of tax credits from Ontario Computer Animation and Special Effects, Ontario Production Services Tax Credit and Production Services Tax Credit (together, the “**Tax Credits**”) as well as the relevant filings pertaining to such tax credits.
5. On January 27, 2017, the Court made an Order authorizing the Receiver to assign Arc into bankruptcy. The Receiver has done so, and the Office of the Superintendent of Bankruptcy issued a Certificate of Appointment of Deloitte Restructuring Inc. as trustee of Arc on January 31, 2017.

*Distributions already approved*

6. On April 18, 2017, the Honourable Justice Newbould granted a Distribution Order (the “**Distribution Order**”), which, among other things, authorized the Receiver to “distribute to GP from time to time all funds coming into its hands, subject to such reserves as the Receiver may deem prudent in the circumstances, up to the amount of \$43,953,400”.
7. Paragraph 5 of the Distribution Order states that “any distributions by the Receiver hereunder of proceeds of the realization or collection of tax credits of Arc, where the Receiver has notice of the interests of parties other than the GP claiming ownership,

security interests, or both in such tax credits or their proceeds, shall only be made upon further Order of the Court on notice to GP and to such other parties”.

*Distributions to be Approved*

8. The Receiver has now collected Tax Credits in respect of productions which appear to be subject to the interests of the parties other than the Secured Creditor and accordingly a further order of the Court is required before the Receiver is entitled to make such distributions.
9. There is uncertainty as to whether the security interest of GP constitutes a first-ranking charge over net tax recoveries relating to Production Services Agreements (“**PSAs**”) with these producers, or whether Arc’s contractual obligation in these PSAs to assign net tax recoveries to the appropriate producers creates a proprietary interest in these net proceeds such that they are not impressed with GP’s security interest.
10. BK2BRAC Holdings Inc. (“**BK2BRAC**” or “**Disney**”), Spin Master Riveting Productions Inc. (“**Spin Master**”), and Blazing Productions Ltd. (“**Blazing**”) are parties to PSAs with Arc whereby Arc had contracted to compile information and submit tax recovery claims on behalf of the each producer and accordingly, these claimants would have been entitled to receive the proceeds of these tax credit applications in the ordinary course.
11. Generally, these PSAs assign Arc’s rights and claims to tax credits resulting from certain productions to each of BK2BRAC, Spin Master and Blazing such that the assignee is to obtain a proprietary interest in such property effective upon such assignment.

12. In addition, the obligations of Arc were secured by a security interest granted to BK2BRAC (Disney), which was perfected by a June 28, 2013 registration in favour of BK2BRAC, and subordinated to the security held by GP by agreement between BK2BRAC and GP dated December 10, 2015.
13. Neither Spin Master nor Blazing took similar measures with respect to these entitlements.
14. Since the Thirteenth Report, the Receiver has collected tax recoveries and accrued interest, net of directly attributable professional fees and costs, related to PSAs of \$1,149,702, as follows:
  - (a) BK2BRAC – \$395,090; and
  - (b) Spin Master – \$754,612.
15. Collections in respect of the Blazing production have not yet been received, but given the similar language of the PSAs, Blazing could be affected by the outcome of this proceeding;
16. Concerns have been raised by BK2BRAC that the contents of the PSA and other supporting documents contain sensitive information and should be the subject of the sealing order;
17. Rules 1.04, 2.01, 3.02, and 37 of the *Rules of Civil Procedure*;
18. Section 137 (1) of the *Courts of Justice Act*, R.S.O. 1990, c., 43; and
19. 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:

1. The Fifteenth Report of Deloitte Restructuring Inc. as Receiver dated April 9, 2020; and
2. Such further and other documentary evidence as counsel may advise and this Honourable Court may accept.

**DATE: April • 2020**

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Lawyers for Deloitte Restructuring Inc. in its capacity as the Court appointed Receiver of Arc Productions Ltd. et al.

**TO: THE SERVICE LIST**

GROSVENOR PARK MEDIA FUND L.P.

Court File No.: CV-16-11472-00CL

Plaintiff

– and –

ARC PRODUCTIONS LTD., et al.

Defendants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced TORONTO**

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**NOTICE OF MOTION  
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