

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

B E T W E E N:

**BANK OF MONTREAL**

Applicant

- and -

**SERENDIPITY MEDIA LTD.  
AND THE ENTITIES LISTED AT SCHEDULE "A"**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS AMENDED, AND  
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS  
AMENDED**

**FACTUM OF THE APPLICANT**

December 29, 2023

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**FACTUM OF THE APPLICANT**

**PART I - INTRODUCTION**

1. The Bank of Montreal ("**BMO**" or the "**Applicant**") brings an application for a receivership order, substantially in the form at Tab "3" of the Application Record (the "**Receivership Order**") over the Debtors (as defined below), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**") and section 101 of the *Courts of Justice Act*, RSO 1990, c C43 ("**CJA**"), which *inter alia*:

- (a) appoints Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of the undertaking and personal property of Serendipity Media Ltd. ("**Serendipity**" or the "**Company**")

listed at Schedule “B” to the Receivership Order, and all of the assets, undertakings and properties of the guarantor entities listed at Schedule “A” hereto (collectively, the “**Guarantors**”, and together with Serendipity, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors (the “**Property**”).

2. The Debtors are in the film and television production business, and do business in Alberta, Manitoba, and Ontario.<sup>1</sup>
3. BMO has extended to Serendipity a \$20 million secured and demand revolving credit facility (the “**Revolving Facility**”), pursuant to an offer letter dated August 23, 2022 (the “**Offer Letter**”).<sup>2</sup> The Offer Letter provides that the Revolving Facility was available to Serendipity to assist with financing the production of films and television series.<sup>3</sup>
4. The Guarantors are subsidiaries of Serendipity and each has guaranteed Serendipity’s obligations under the Offer Letter on identical terms, and each has granted an identical security interest to BMO under a general security agreement (each, a “**GSA**”). Further, each Guarantor has signed an identical Joinder Agreement whereby each Guarantor has agreed to be a principal obligor under the Offer Letter.<sup>4</sup>

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<sup>1</sup> Affidavit of Craig Khattar (affirmed December 21, 2023) at paras 3, 10, 13, Tab 2 of the Application Record [Affidavit].

<sup>2</sup> Affidavit at para 4; Exhibit A to the Affidavit.

<sup>3</sup> Affidavit at para 25.

<sup>4</sup> Affidavit at para 5.

5. As security for all obligations under the Revolving Facility, Serendipity executed the Production Security Agreement (the “PSA”).<sup>5</sup> The PSA provides BMO with the right to appoint a receiver in the event of a default.<sup>6</sup>
6. The Debtors are experiencing a significant liquidity crisis, and have defaulted on numerous obligations under the Revolving Facility and related loan documents. Despite multiple notices, opportunities to cure, and the issuance of formal demand letters, including notices of intention to enforce security pursuant to section 244 of the BIA), the Debtors have failed to remedy their defaults.<sup>7</sup>
7. BMO, concerned about its security and financial position, is seeking appointment of the Receiver to take control of the Property and facilitate an orderly process to maximize the value of the Bank’s collateral.<sup>8</sup>
8. Certain subsidiaries and affiliates of Serendipity have also received loans from (i) Royal Bank of Canada, (ii) Bank of Hope, and (iii) private lenders (together, the “**Additional Lenders**”), which loans may have been guaranteed, in whole or in part, by Serendipity. The proposed Receivership Order does not seek the appointment of Deloitte as receiver over the collateral of Additional Lenders and the proposed stay of proceedings against Serendipity does not prevent the Additional Lenders from exercising any of their rights and remedies against the Debtors.

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<sup>5</sup> Affidavit at para 29.

<sup>6</sup> Affidavit at para 33.

<sup>7</sup> Affidavit at para 6.

<sup>8</sup> Affidavit at para 7.

9. The Debtors have consented to (a) the proposed Receivership Order, and (b) this matter proceeding before the Ontario Superior Court of Justice (Commercial List).<sup>9</sup>

## **PART II - SUMMARY OF FACTS**

10. The full facts in support of this application are set out in the Affidavit of Craig Khattar, affirmed December 21, 2023 (the “**Khattar Affidavit**”) Capitalized Terms not otherwise defined herein shall have the meaning ascribed to them in the Khattar Affidavit.

## **PART III - STATEMENT OF ISSUES**

11. The issue to be determined by this Court is whether it is just or convenient to appoint a Receiver on the terms of the proposed Receivership Order.

## **PART IV - LAW AND ARGUMENT**

### **A. Law on Appointing a Receiver**

12. Pursuant to section 243(1) of the BIA and section 101 of the CJA, the court has broad discretion to appoint a receiver where it is “just or convenient to do so”.<sup>10</sup>
13. In determining whether it is “just or convenient” to appoint a receiver, the court must have regard to all of the circumstances, particularly the nature of the property and the rights and interests of all parties in relation thereto.<sup>11</sup> The applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.<sup>12</sup>

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<sup>9</sup> Affidavit at paras 8, 50; Exhibit E to the Affidavit.

<sup>10</sup> [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 \[BIA\]](#); [Courts of Justice Act, R.S.O. 1990, c. C.43 \[CJA\]](#).

<sup>11</sup> [Bank of Nova Scotia v. Freure Village on Clair Creek](#) (1996), 40 CBR (3d) 274 (Ont Gen Div) at para 10; [Bank of Montreal v Carnival National Leasing Limited](#), 2011 ONSC 1007 at para 24.

<sup>12</sup> [Bank of Montreal v Carnival National Leasing Limited](#), 2011 ONSC 1007 at paras 24, 28.

14. It is well established that the extraordinary nature of a receiver “is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements.”<sup>13</sup>
15. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered.<sup>14</sup> The court should not ordinarily interfere with the contract between the parties.<sup>15</sup>
16. Courts also look at the following factors, among others, in determining whether the appointment of a receiver is appropriate:<sup>16</sup>
- (a) the need to preserve and maximize the return on the subject property;
  - (b) the relationship between the debtor and its creditors;
  - (c) the risk of the lender’s security deteriorating; and
  - (d) loss of confidence in the debtor’s management.
17. Where large amounts of money are at stake a receivership is particularly appropriate.<sup>17</sup>

**B. Appointing a Receiver is Just, Convenient, and Appropriate in the Circumstances**

18. It is just, convenient, and appropriate to appoint a Receiver in the circumstances.

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<sup>13</sup> [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.](#), 2020 ONSC 1953 at paras 43-44.

<sup>14</sup> [Bank of Nova Scotia v. Freure Village on Clair Creek](#) (1996), 40 CBR (3d) 274 (Ont Gen Div) at para 10.

<sup>15</sup> [United Savings Credit Union v. F & R Brokers Inc.](#), 2003 BCSC 640 at para 16.

<sup>16</sup> [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.](#), 2020 ONSC 1953 at para 45. Courts also consider the conduct of the parties. [Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited](#), 2022 ONSC 6186 at para 25.

<sup>17</sup> [Weig v. Weig](#), 2012 ONSC 7262 at paras 20-21.

19. It is undisputed that the PSA expressly provides BMO with the right to appoint a receiver in the event of a default under same.<sup>18</sup> It is also undisputed that the Debtors have defaulted on their obligations under the Revolving Facility and related loan documents.<sup>19</sup>
20. With the Debtors facing a significant liquidity crisis, there is an urgent need to preserve and maximize the value of the Debtors' business.<sup>20</sup>
21. Without a receiver taking control of the property and facilitating an orderly process for the wind-down of the Debtors' business, BMO, as a secured creditor of the Debtors, is at risk of its security deteriorating.<sup>21</sup> Tax credits owing to the Debtors represent the Bank's most valuable collateral. Realizing these tax credits requires that the Debtors continue to operate as a going concern; the Debtors must to correspond with, and provide documents to, various government entities involved in the certification and processing of the tax credits and the knowledge of current employees is critical to this process.
22. However, the Debtors are out of the capital necessary to operate as a going concern and some employees have resigned and others on the verge of doing so. As the Bank is unwilling to extend further credit with existing management in control of the business, a receiver is necessary ensure continuity of the tax credit realization process to maximize value in the circumstances.

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<sup>18</sup> Affidavit at para 5; [\*Bank of Nova Scotia v. Freure Village on Clair Creek\*](#) (1996), 40 CBR (3d) 274 (Ont Gen Div) at para 10.

<sup>19</sup> Affidavit at para 6.

<sup>20</sup> Affidavit at para 7.

<sup>21</sup> Affidavit at para 7.

**C. ORDER REQUESTED**

23. The Applicant requests that this Honourable Court grant the Receivership Order found at Tab “3” of the Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29th day of December, 2023.



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Lawyers for the Applicant, Bank of Montreal

**SCHEDULE “A”  
LIST OF GUARANTOR ENTITIES**

1. ADV: PR 3 MB. LTD.
2. ADVENTURE COOKING AML 1 OS LTD.
3. AFRICAN EVIL 1 MB. LTD.
4. AFRICAN EVIL 2 MB. LTD.
5. AFRICAN SUPERSTITION 1 ON. LTD.
6. ANOTHER ROUND 1 MB. LTD.
7. ARTISTRY OF DRAG 1 MB. LTD.
8. ASCEND TELEVISION 4 OS LTD.
9. ASCEND TELEVISION 5 OS LTD.
10. BOTSWANA NFT AML 1 OS LTD.
11. CHEFS IN THE WILD AML 1 OS LTD.
12. FUN Q 1 OS LTD.
13. JOBS OF TOMORROW 2 MS LTD.
14. JOT 1 MB. LTD.
15. MASTERS COSPLAY 1 MB. LTD.
16. MEALZ ON WHEELZ 1 MS LTD.
17. SOWETO 1 MB. LTD.
18. THE MANY TALENTS OF TRADITIONAL HEALERS 1 ON. LTD.
19. THE OTHER SIDE 1 ON. LTD.
20. TRANSFORMATIVE CEOS 4 MB. LTD.
21. TRANSFORMATIVE CEOS 5 MB. LTD.
22. TRANSFORMATIVE CEOS 6 MS LTD.
23. WITH A TWIST 1 ON. LTD

**SCHEDULE “B”  
LIST OF AUTHORITIES**

1. [\*Bank of Nova Scotia v. Freure Village on Clair Creek\*](#) (1996), 40 CBR (3d) 274 (Ont Gen Div)
2. [\*Bank of Montreal v Carnival National Leasing Limited\*](#), 2011 ONSC 1007
3. [\*BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.\*](#), 2020 ONSC 1953
4. [\*United Savings Credit Union v. F & R Brokers Inc.\*](#), 2003 BCSC 640
5. [\*Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited\*](#), 2022 ONSC 6186.
6. [\*Weig v. Weig\*](#), 2012 ONSC 7262

**SCHEDULE “C”  
RELEVANT STATUTES**

[Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3](#)

**Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

[Courts of Justice Act, R.S.O. 1990, c. C.43](#)

**Injunctions and receivers**

**101 (1)** In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

**Terms**

**(2)** An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

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Applicant

Respondents

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Proceedings commenced at Toronto

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