



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00713128-0000

DATE: JANUARY 19, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: SIMEX INC. et al

BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

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**ENDORSEMENT OF JUSTICE CONWAY:**

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants dated January 18, 2024.**
- [2] This is an application by the Applicants for an initial order under the CCAA. The evidence on the application is set out in the affidavit of Michael Needham, President and director of the Applicants, sworn January 17, 2024 and the Pre-Filing Report of the Proposed Monitor dated January 18, 2024. All factual references in this Endorsement come from those materials. Unless otherwise noted, dollar references are to USD.
- [3] The Applicants operate a unique single business enterprise in the specialized “4D” motion rides and cinematic attractions space. They operate in the “theatre attractions” or “motion rides” space and as such rely nearly exclusively on tourism. They have suffered significant losses due to the pandemic and associated lockdown and a slower than expected return to pre-COVID business levels. They had also invested in projects that are now either on hold or amount to costs thrown away.
- [4] The Applicants have 76 employees, none of whom are unionized.
- [5] The Applicants have assets of approximately \$26,500,000. Their consolidated liabilities are \$29,600,000. The Applicants have secured debt of \$16.1 million to RBC and BDC Capital. RBC noted the Applicants in default on January 12, 2024 but is supporting the Applicants and is prepared to provide interim financing for these CCAA proceedings. The Applicants have over \$7 million in unsecured obligations.
- [6] The Applicants urgently need interim financing and cannot otherwise meet their ordinary course and payroll obligations during the Forecast Period set out in the Cash Flow Forecast. RBC has agreed to provide DIP financing of up to \$600,000.

### **APPLICATION FOR AN INITIAL ORDER**

- [7] The CCAA applies to a “debtor company” where the total claims against it exceed \$5 million. A “debtor company” is defined as one that is bankrupt or insolvent.
- [8] I am satisfied that each of the Applicants is a “debtor company” under the CCAA. The head office and management are located in Ontario. The companies operate as a single business enterprise and are affiliated companies. The claims against them exceed \$5 million. As noted, they are unable to meet their ordinary course and payroll obligations over the Forecast Period without an immediate cash infusion and are therefore insolvent.
- [9] This court may grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that such a stay is appropriate and the applicant has acted in good faith and with due diligence (s. 11.02(1), (3)). I am satisfied that the stay of proceedings sought by the Applicants is necessary for them to obtain the breathing room and stabilize their operations over the next 10 days for the benefit of their stakeholders. They intend to

seek approval of a SISP to pursue a going-concern transaction for the business at the comeback motion.

- [10] The Proposed Monitor is a licensed trustee within the meaning of s. 2 of the BIA and has signed a consent to act as the Monitor of the Applicant. The Proposed Monitor is qualified under section 11.7 of the CCAA and I appoint it as Monitor.
- [11] The DIP Facility is for \$600,000. The Cash Flow Forecast supports the need for the DIP Facility - \$458,287 is required over the Forecast Period and there is no remaining availability under the RBC Facilities. Although there will only have to be draws during the initial period if customer receipts are delayed, RBC has agreed to provide up to \$200,000 of the DIP Facility if required during this initial period. The terms of the DIP Facility are acceptable. I approve the DIP Facility and the DIP Lender's Charge under s. 11.2 of the CCAA.
- [12] The Applicants seek the Administration Charge of \$390,000 to secure the professionals' fees and disbursements during the initial period. The amount of the Administration Charge is supported by the Proposed Monitor. The secured creditors have received notice of the charge. I grant the Administration Charge pursuant to s. 11.52 of the CCAA.
- [13] The Applicants seek the Directors' Charge of \$290,000 to protect the directors and officers during the initial stay period. The quantum is supported by the Proposed Monitor. I grant the Directors' Charge pursuant to s. 11.51 of the CCAA.
- [14] The Applicants sought approval of the SISP today, with only preparatory steps to be taken during the initial period. I declined to grant this relief and required counsel to remove it from the initial order. That is not relief that is "reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period", as required by s. 11.001 of the CCAA. The Applicants may seek approval of the SISP at the comeback hearing, but not today.
- [15] Counsel has revised the initial order in accordance with directions given by me at the hearing. Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.
- [16] **The comeback hearing is scheduled before me on January 29, 2024 at 11 a.m. for 60 minutes (confirmed with the Commercial List office).**

