

Court No. 31-2504280
Court No. 31-2504276
Court File No. CV-19-618364-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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 ENTERTINMENT LTD.
OF THE CITY OF TORONTO,
IN THE MUNICIPALITY OF METROPOLITAN TORONTO,
IN THE PROVINCE OF ONTARIO

AND

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IN THE MATTER OF THE PROPOSAL OF
THE NUT JOB 2 PRODUCTIONS INC.
OF THE CITY OF TORONTO,
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IN THE PROVINCE OF ONTARIO

AND

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SUPERIOR COURT OF JUSTICE
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BETWEEN:

PACIFIC MERCANTILE BANK

Applicant

- and -

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

Respondents

**MOTION RECORD
(Returnable Thursday June 6, 2019)**

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INDEX

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Respondents

I N D E X

DOCUMENT	TAB
Notice of Motion Returnable June 6, 2019	1
First Report of the Receiver dated May 27, 2019	2
<u>Appendix I</u> A copy of the Order of the Honourable Justice Hainey dated April 18, 2019.....	A
<u>Appendix II</u> A copy of the Proposal of Toonbox Entertainment Ltd. dated April 26, 2019.....	B
<u>Appendix III</u> A copy of the Proposal of The Nut Job 2 Productions Inc. dated April 26, 2019.....	C
<u>Appendix IV</u> Copies of the Reports of Trustee on Proposal and Supplementary Report of Trustee on the Companies' proposals.....	D
<u>Appendix V</u> Procedures for the Sales Process.....	E
Draft Order.....	3

TAB 1

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Respondents

NOTICE OF MOTION

BDO CANADA LIMITED (the “**Proposal Trustee/Interim Receiver**”), in its capacity as Proposal Trustee / Interim Receiver of The Nut Job 2 Productions Inc. and Toonbox Entertainment Ltd. (collectively, the “**Companies**”) will make a Motion before a Judge on Thursday June 6, 2019 at 10:00 a.m. or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The Motion is to be heard (*choose appropriate option*)

in writing under subrule 37.12.1(1) because it is (*insert one of on consent, unopposed or made without notice*);

in writing as an opposed motion under subrule 37.12.1(4);

orally.

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 (if necessary) and dispensing with service thereof on any party other than the parties served;
- (b) an Order approving a sales process for the sale of the assets of the Companies;
- (c) an Order authorizing the Proposal Trustee/Interim Receiver to carry out the sales process and take such incidental steps as it considers necessary or desirable in the circumstances to complete the sales process;
- (d) an Order permitting the consolidation of the proposal proceedings of each of the Companies for administrative purposes, including, without limitation, the preparation and filing of motions and reports to creditors, the Official Receiver, and this Court, all as may be required by the *Bankruptcy and Insolvency Act*;
- (e) an Order approving a \$200,000.00 first-ranking priority charge over all of the Companies' assets, undertakings, and property (the "**Administration Charge**") in favour of the Proposal Trustee/Interim Receiver and their counsel, Lipman, Zener & Waxman PC ("**LZW**") to secure payment of their professional fees and disbursements, to rank in priority to all other charges
- (f) an Order approving the First Report and the activities of the Proposal Trustee/Interim Receiver, as set out therein; 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. On April 10, 2019 Pacific Mercantile Bank (“PMB”) brought Applications for Bankruptcy Orders against the Companies, returnable May 7, 2019;
- b. PMB brought a further application for the appointment of an Interim Receiver to preserve the assets of the Companies, until such time as Bankruptcy Orders were issued;
- c. On April 18, 2019, by Order of the Honourable Justice Haaney, BDO was appointed as Interim Receiver of all assets, undertakings and properties of the Companies (the “**Interim Receivership Order**”);
- d. Subsequently, the Companies and PMB agreed that an orderly sale of assets “*en bloc*” would maximize realization and, accordingly, the Applications for Bankruptcy Orders were adjourned to June 4, 2019 to allow the Companies to file Proposals under the *Bankruptcy and Insolvency Act*;
- e. On April 28, 2019 the Companies each filed a Proposal, naming BDO as the Proposal Trustee (the “**Proposals**”);
- f. On May 21, 2019 separate First Meetings of Creditors were held for each of the Companies. Both meetings were adjourned *sine-die* pending the outcome of the proposed sale process of the assets of the Companies;
- g. Since the Proposals have not been accepted by the Companies’ creditors yet and approved by Court, and since the Interim Receivership Order granted on April 18,

2019 did not grant the Proposal Trustee/Interim Receiver with the authority to sell the Companies' assets, approval of the proposed sales process from the Court is necessary;

- h. Each of the Companies have their own asset pools and separate creditors; however, the Companies' share common management, certain creditor obligations and have co-mingled certain assets and should therefore be administratively consolidated to reduce professional fees, costs and avoid duplication of proceedings before the Court;
- i. In the view of the Proposal Trustee/Interim Receiver, creditors will not be prejudiced by the proposed administrative consolidation, and such consolidation is the most efficient and practical approach to dealing with the Proposal Proceedings;
- j. The Companies terminated all operations effective on or about March 20, 2019 and there is no cash flow available for professional fees and costs. Given the complexities of the transactions the proposed administration charge is reasonable; and
- k. 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 First Report of the Receiver dated May 27, 2019 and the Appendices attached thereto; and
- (b) Such further and other material as counsel may produce and this Honourable Court may permit.

DATED: May 28, 2019

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PACIFIC MERCANTILE BANK v. THE NUT JOB 2
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Proceeding commenced at
TORONTO

NOTICE OF MOTION

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