

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

B E T W E E N:

TRUIST BANK, AS AGENT

Applicant

- and -

**KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC.
and ARCHITECT FILMS INC.**

Respondents

APPLICATION UNDER SUBSECTION 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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF JUSTICE KOEHNEN
February 28, 2020**

R. Kennedy and M. Freake of Dentons for the Applicant, Truist Bank, as Agent

D. Bish of Torys for FTI, Proposed Receiver

J. Carhart of Miller Thomson for BMO Media Finance

J. Wadden and B. Wiffen of Goodmans for the Respondent, Kew Media Group Inc.

Truist seeks to appoint FTI as Receiver and Manager of Kew Media Group Inc. and some of its affiliates.

Kew seeks an adjournment of the application to the middle of next week. Kew says it is entitled to 10 days notice of the Receivership application. It was served only last night.

Despite the very short service I grant the receivership order.

The applicant syndicated lenders are owed over \$113,000,000.

The applicant and FTI have already been “in” the company for over 60 days working with management to prepare for a receivership or some other process of restructuring. During this period the situation of Kew has gone from bad to worse.

In December 2019 Kew advised its lenders that it had materially overstated information in its base borrowing certificates. The effect was that there was a collateral deficiency equal to approximately half of the \$113,000,000 debt.

On January 15, 2020 Kew’s auditors withdrew its audit reports for 2017, 2018 and 2019.

On January 16, 2020 the OSC cease traded Kew’s shares for 15 days. On January 29 the OSC issued a permanent cease trade order.

The lenders have also become aware of numerous other breaches including the sale of certain U.S. subsidiaries without the required consent of the lenders and the diversion of payments that should have gone to the lenders that went to the other parties instead.

Kew initialed a sales process. It resulted in non-binding letters of interest that would see the lenders suffer a significant short fall.

Kew’s subsidiaries in the UK were put into administration in the UK this morning.

Kew remains a reporting issuer and will be required to disclose this application. That runs the serious risk of having suppliers and customers of Kew terminate contracts. If that occurs the situation of Kew will only worsen.

In addition, notice of a receivership application risks jeopardizing those sales or potential sales that are in progress. Providing potential purchasers with certainty about who they should deal with can only improve the sale process.

The respondents have not pointed me to any specific prejudice that they would suffer because of the failure to receive 10 days notice.

This is not a situation where the receivership application has come out of the blue. FTI has been working with management for 60 days. That only occurs when there are significant problems.

Although Kew has had 60 days to come up with proposals, counsel could not point me to any alternatives. The only thing counsel for Kew has pointed me to is that the board would like to meet to consider alternatives. It has not advised that the board has been working on alternatives that are coming to fruition.

Counsel for Kew also requested that we do not know if the information in the banks' application is true. If that is the case, Kew is not without a remedy. The material was served last night. It is a serious application on extremely short notice. If there is something materially misleading about the application materials, that may give directors or other stakeholders grounds to set the order aside.

In my view this is a case in which it is appropriate to dispense with the 10 days notice under the BIA. The defaults are material. Kew has known for at least 60 days that it needed options. I have been pointed to no options. Kew's UK subsidiaries are already in administration.

Further delay at this point creates a serious risk that customers and suppliers will flee thereby only exacerbating an already very serious situation.

Koehnen, J.