

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

THE HONOURABLE ) TUESDAY, THE 14TH  
 )  
JUSTICE KOEHNEN ) DAY OF JULY, 2020  
 )

BETWEEN:

**TRUIST BANK, AS AGENT**

Applicant

- and-

**KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) 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**

**LIFT STAY ORDER**

**THIS MOTION**, made by Alex Kan and Stuart Rath (the proposed representative plaintiffs in a putative securities class proceeding against Kew Media Group Inc. (“**Kew Media**”)) (collectively, the “**Plaintiffs**”) for an Order:

(1) temporarily lifting the stay of proceedings in place as against Kew Media for the limited purposes of:

(i) issuing, filing and serving the proposed Statement of Claim (the “**Action**”);

(ii) filing the Plaintiffs’ Motion for Certification and Leave under Part XXIII.1 of the Ontario *Securities Act*;

(iii) serving (as necessary), filing, and hearing any motion(s) related to the service of the Statement of Claim and/or the Plaintiffs’ Motion for Certification and Leave; and

(iv) serving (as necessary), filing and hearing any motions related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement;

(2) appointing Thornton Grout Finnigan LLP, Kalloghlian Myers LLP and Foreman & Company as counsel to prosecute the Action and declaring that no other proceeding may be commenced in Ontario on behalf of Kew Media shareholders in respect of the subject matter of the Action without leave of this Court; and

(3) directing that FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the undertaking, property and assets of, *inter alia*, Kew Media, disclose and produce to the Plaintiffs all potentially responsive insurance policies under which an insurer may be liable to satisfy all or part of any judgment against Kew Media or any of its Directors, Officers or advisors in the Action and ancillary information (the “**Insurance Policy Disclosure Relief**”), was heard this day in Toronto by way of judicial video conference via Zoom, with the Insurance Policy Disclosure Relief being adjourned on consent to July 21, 2020 at 2:15 pm.

**ON READING** the Plaintiffs’ Motion Record (dated July 8, 2020), Supplemental Motion Record (dated July 10, 2020) and Factum (dated July 13, 2020), all filed;

**AND UPON** hearing the submissions of counsel for the Plaintiffs and the Receiver, no one else appearing for any other person on the Service List, although duly served as appears from the affidavits of service of Rose Bozzelli sworn July 8, 2020, July 10 and July 13, all filed:

**TIME FOR SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Plaintiffs’ Motion Record and Supplemental Motion Record be and is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with any further service thereof.

**LIFT STAY**

2. **THIS COURT ORDERS** that the stay of proceedings (the “**Stay of Proceedings**”) provided for in the Order of this Court appointing the Receiver in the within proceedings dated

February 28, 2020 (the “**Appointment Order**”), be and is hereby lifted for the sole and limited purpose of: (i) granting the Plaintiffs leave to issue and file with the court and serve the Statement of Claim in substantially the form attached hereto as **Schedule “A”** (the “**Statement of Claim**”); (ii) granting the Plaintiffs leave to file with the court the Plaintiffs’ Motion for Certification and for Leave under Part XXIII.1 of the Ontario *Securities Act*; (iii) serving (as necessary), filing with the court and hearing any motion(s) related to the service of the Statement of Claim and/or the Plaintiffs’ Motion for Certification and Leave under Part XXIII.1 of the Ontario *Securities Act*; and (iv) serving (as necessary), filing with the court and hearing any motions related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement, provided that no further steps shall be taken in the Action in respect of Kew Media or the Receiver without further Order of this Court.

3. **THIS COURT ORDERS** that, subject to further Order of this Court, the Receiver shall not be required to participate in or defend the Action or any hearing authorized in paragraph 2 above, or to incur any costs in respect of the Action or such hearings. Subject to: (i) an agreement between the Plaintiffs and the Receiver; or (ii) further Order of this Court, the Plaintiffs and defendants in the Action shall not:

- (a) seek, make, or obtain, whether directly or indirectly, as the case may be, any further claim, counterclaim or recovery from, against, or in respect of the Receiver, Kew Media or any other entity that is, or has assets, subject to the Appointment Order (collectively, the “**Receiver and Debtor Entities**”);
- (b) add any of the Receiver and Debtor Entities, other than Kew Media, to the Action;
- (c) seek, or obtain, any costs awards, judgments or any relief of any kind against, or in respect of the Receiver and Debtor Entities in the Action; or
- (d) seek, or obtain, any discovery from, or examination or participation of, the Receiver and Debtor Entities in the Action.

4. **THIS COURT ORDERS** that except as expressly provided for in this Order: (i) all other stays of proceedings provided for in the Appointment Order; and (ii) all rights and protections in favour of the Receiver, remain in full force and effect in accordance with the terms of the Appointment Order.

5. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Action to submit proofs of claim in the within proceedings or any other restructuring, insolvency, receivership, bankruptcy or other similar proceedings in respect of the subject matter of the Statement of Claim or otherwise, and to share in any distribution made in such proceedings to creditors in accordance with their respective entitlements, if any.

6. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Action as against the current and/or future defendants, named in or later added to the Statement of Claim, who are not subject to the Appointment Order.

7. **THIS COURT ORDERS** that to the extent that any statute of limitations or other notice or limitation period (or any other time period of similar effect) under Canadian law or any other applicable law, or any rule of civil procedure (a “**Limitation Period**”) in connection with any of the claims against Kew Media that are the subject of the Statement of Claim (the “**Tolled Claims**”) expires on or after the date hereof (the “**Effective Date**”), such Limitation Period shall be and is hereby tolled such that it ceases to continue running as of the Effective Date and, for greater certainty, that all time elapsing on or after the Effective Date shall not be counted in determining any such Limitation Period. Kew Media may not raise the expiration of any Limitation Period as a defence, estoppel, limitation or bar to any Tolled Claims as against them unless such Limitation Period had already expired prior to the Effective Date.

8. **THIS COURT ORDERS AND DECLARES** that this Order is not, and shall not be deemed to be, an acknowledgement of any merits or substance of the Action, and no party to the Action shall be deemed by virtue of this Order to have made any admission, acknowledgment or acquiescence of or to any liability in the Action. All rights, remedies and defences of the parties, including regarding whether the Stay of Proceedings should be lifted to permit the continuation of the Action, are expressly reserved.

9. **THIS COURT ORDERS AND DECLARES** that, subject to further Order of this Court, it retains exclusive jurisdiction with respect to the within proceedings, the Receiver, the assets, property and undertaking of Kew Media, and the other matters that are set out in or the subject of the Appointment Order (including, without limitation, the Stay of Proceedings).

**CARRIAGE**

10. **THIS COURT ORDERS** that Thornton Grout Finnigan LLP, Kalloghlian Myers LLP and Foreman & Company are hereby appointed to prosecute the Action.

11. **THIS COURT ORDERS** that no other action may be commenced in Ontario on behalf of Kew Media shareholders in respect of the subject matter of the Action without leave of this Court granted on notice to the Receiver and the Plaintiffs.

**GENERAL**

12. **THIS COURT MAKES NO ORDER** as to costs of this Motion.

13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

14. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that this order is effective from today's date and is not required to be entered.

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**TRUIST BANK, AS AGENT**  
Applicant

- 7 -  
and **KEW MEDIA GROUP INC. and KEW MEDIA**  
**INTERNATIONAL (CANADA) INC.**

Court File No.: CV-20-00637081-00CL

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**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at Toronto

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**LIFT STAY ORDER**

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