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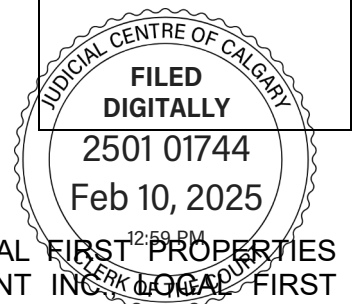
COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLANTIFF ATB FINANCIAL

DEFENDANTS LOCAL FIRST MEDIA GROUP INC., LOCAL FIRST PROPERTIES INC., BTC USA HOLDINGS MANAGEMENT INC., LOCAL FIRST PROPERTIES USA INC., ALASKA BROADCAST COMMUNICATIONS, INC., BROADCAST 2 PODCAST, INC. and FRONTIER MEDIA LLC

Clerk's Stamp:



DOCUMENT **BENCH BRIEF OF THE APPLICANT
IN SUPPORT OF THE RECEIVERSHIP APPLICATION**

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**Hearing via Webex before the Honourable Justice M.J. Lema
on the Commercial List, on February 21, 2025, commencing at 3:00PM**

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I. INTRODUCTION

1. This is the Brief of Law of ATB Financial ("**ATB**" or the "**Lender**"), in support of its application (the "**Application**") to appoint FTI Consulting Canada Inc. ("**FTI**") as the receiver and manager (the "**Receiver**") of all of the current and future assets, undertakings and property (collectively, the "**Property**") of Local First Media Group Inc. ("**Local First Media**"), Local First Properties Inc. ("**Local First Properties**" and together with Local First Media, collectively, the "**Borrowers**"), BTC USA Holdings Management Inc. ("**BTC USA**"), Local First Properties USA Inc. ("**Local First USA**"), Alaska Broadcast Communications, Inc. ("**Alaska Broadcast**") Broadcast 2 Podcast, Inc. ("**Broadcast 2**") and Frontier Media LLC ("**Frontier**", and together with BTC USA, Local First USA, Alaska Broadcast and Broadcast 2, collectively, the "**Guarantors**", and each a "**Guarantor**", and together with the Borrowers, collectively, the "**Debtors**").
2. ATB extended credit facilities and related services to the Borrowers (collectively, the "**Loans**") pursuant to, a commitment letter dated April 10, 2023 (the "**Loan Agreement**").¹
3. As of February 5, 2025, the Borrower was indebted to ATB in the amount of USD\$8,205,843.77 in respect of funds borrowed pursuant to the Loans Agreement, plus interest and costs, which continue to accrue (the "**Indebtedness**").²
4. The terms of the Security (as defined below) include the right to appoint or apply to this Honourable Court to appoint a receiver and manager.
5. The Debtors have previously consented to the appointment of a Receiver.³
6. FTI is qualified, prepared and has consented to act as Receiver.⁴
7. As the Borrowers are in default of its obligations to the Lender under both the Loan Agreement and the Security, the Lender seeks to enforce its contractual right to appoint a Receiver, and it is just and convenient to do so.

¹ Affidavit of Greg Steidl sworn February 10, 2025 (the "**Steidl Affidavit**") at para 10.

² Steidl Affidavit at para 11.

³ Steidl Affidavit at paras 22-23.

⁴ Steidl Affidavit at para 40.

II. ISSUE

8. There is one issue in this application, namely should this Honourable Court appoint a receiver over the Property?

III. THE LENDER'S POSITION

9. The appointment of a receiver over the Debtors is a contractual remedy that is available to the Lender and the Lender respectfully submits that it is just and convenient to appoint a Receiver of the Property in the present circumstances.

IV. FACTUAL BACKGROUND

10. The facts in support of the Lender's application are further set forth in the Steidl Affidavit and summarized below.⁵

11. The Borrowers are corporations incorporated under the laws of Alberta.⁶

12. The Guarantors are corporations incorporated in various states in the United States.⁷

A. Borrower Security

13. The Borrowers granted, among others, the following security to ATB in respect of all of its obligations, indebtedness, and liabilities under the Loans:

- (a) a general security agreement dated April 26, 2023, granted by Local First Media in favour of ATB;
- (b) a general security agreement dated April 26, 2023, granted by Local First Properties in favour of ATB; and
- (c) a pledge agreement dated April 26, 2023, granted by Local First Media in favour of ATB,

(collectively, the "**Borrower Security**").⁸

14. The Borrower Security has been registered at the Alberta Personal Property Registry.⁹

⁵ Capitalized terms not otherwise defined herein have the meaning set forth in the Steidl Affidavit, the Lender's Statement of Claim or the Lender's Application, as applicable.

⁶ Steidl Affidavit at paras 3-4

⁷ Steidl Affidavit at paras 5-9.

⁸ Steidl Affidavit at para 13.

⁹ Steidl Affidavit at para 14.

B. Guarantor Security

15. In support of the Loan Agreement are the following guarantees:

- (a) a Continuing Guarantee dated April 26, 2023, granted by Alaska Broadcast in favour of ATB;
- (b) a Continuing Guarantee dated April 26, 2023, granted by BTC USA in favour of ATB;
- (c) a Continuing Guarantee dated April 26, 2023, granted by Local First USA in favour of ATB; and
- (d) a Limited Recourse Guarantee dated April 26, 2023, granted by Broadcast 2 Podcast in favour of ATB,

(collectively, the "**Guarantees**").¹⁰

16. In support of the Guarantees, the Guarantors granted, among others, the following security in favour of ATB in support of their respective obligations under the Guarantees:

- (a) a Pledge Agreement dated April 26, 2023, granted by Broadcast 2 Podcast in favour of ATB;
- (b) a Security Agreement dated April 26, 2023, granted by Alaska Broadcast in favour of ATB;
- (c) a Security Agreement dated April 26, 2023, granted by BTC USA in favour of ATB;
- (d) a Security Agreement dated April 26, 2023, granted by Local First USA in favour of ATB; and
- (e) a Deed of Trust dated April 26, 2023, granted by Local First USA in favour of ATB with respect to the property described therein,

(collectively, the "**Guarantor Security**" and together with the Borrower Security, the "**Security**").¹¹

17. The Guarantor Security has been registered at the Alberta Personal Property Registry and the applicable UCC Registries, as applicable.¹²

¹⁰ Steidl Affidavit at para 15.

¹¹ Steidl Affidavit at para 19.

¹² Steidl Affidavit at para 20.

C. Defaults, Forbearance and Demand

18. By November of 2023, the Loans were in default pursuant to the terms of the Loan Agreement and the Security.¹³
19. On or about November 24, 2023, ATB and the Debtors entered into a forbearance agreement (the "**2023 Forbearance Agreement**") whereby the Lender agreed to temporarily forbear from exercising its rights against the Debtors in exchange for certain covenants and agreements contained therein, including the agreement for a consent receivership order (the "**Consent Receivership Order**"), which was releasable upon the earlier of an Event of Default (as defined therein), or the expiry of the Forbearance Period (as defined therein). Each of the Debtors signed the 2023 Forbearance Agreement and agreed to be bound by its terms.¹⁴
20. On or about July 19, 2024, ATB and the Debtors entered into an amended and restated forbearance agreement (the "**2024 Forbearance Agreement**") whereby the Lender agreed to temporarily forbear from exercising its rights against the Debtor in exchange for certain covenants and agreements contained therein, including the agreement for a Consent Receivership Order, which was releasable upon the earlier of an Event of Default (as defined therein), or the expiry of the Forbearance Period (as defined therein).¹⁵
21. As part of the Forbearance Agreements, the Debtors agreed to the appointment of a monitor for the purposes of monitoring the business and affairs of the Borrowers on behalf of ATB. The Debtors agreed to provide the monitor with full and unrestricted access to all necessary information and to cooperate with the monitor in its engagement.¹⁶
22. FTI was appointed by ATB to act as the monitor under the Forbearance Agreements. However, in breach of the terms of the Forbearance Agreements, the Borrowers have not provided the necessary information to FTI for it to complete its engagement and duties as monitor.¹⁷

¹³ Steidl Affidavit at para 21.

¹⁴ Steidl Affidavit at para 22.

¹⁵ Steidl Affidavit at para 23.

¹⁶ Steidl Affidavit at para 24.

¹⁷ Steidl Affidavit at para 25.

23. On or about August 20, 2024, the Lender issued a notice of default (the "**August Notice of Default and Reservation of Rights**") to the Debtors informing them of certain Events of Default (as defined in the 2024 Forbearance Agreement) that had occurred and were continuing, including (i) the Debtors' failure to abide by certain covenants contained in the 2024 Forbearance Agreement; and (ii) failure to make certain payments as required under the 2024 Forbearance Agreement (the "**Defaults**").¹⁸
24. The August Notice of Default and Reservation of Rights informed the Debtors that the Lender reserved all rights arising under the Defaults (as defined therein), including the right to seek immediate repayment of the facilities.¹⁹
25. Following the issuance of the August Notice of Default and Reservation of Rights communication, ATB attempted to negotiate a further forbearance agreement with the Debtors, however the Debtors refused to agree to any further forbearance terms with ATB.²⁰
26. On or about December 20, 2024, the Lender issued a second notice of default (the "**December Notice of Default and Reservation of Rights**"). to the Debtors informing them of certain Events of Default (as defined in the 2024 Forbearance Agreement) that had occurred and were continuing, including (i) the Debtors' failure to abide by certain covenants contained in the 2024 Forbearance Agreement; and (ii) failure to make certain payments as required under the 2024 Forbearance Agreement.²¹
27. The December Notice of Default and Reservation of Rights informed the Debtors that the Lender reserved all rights arising under the Defaults (as defined therein), including the right to seek immediate repayment of the facilities.²²
28. As a result of the Defaults, on or about January 16, 2025, ATB issued a notice of default and demand for payment to the Borrowers (the "**Borrower Demands**"), and concurrently delivered notice of its intention to enforce its Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) RSC 1985 c B-3 (a "**244 Notice**").²³

¹⁸ Steidl Affidavit at para 26.

¹⁹ Steidl Affidavit at para 27.

²⁰ Steidl Affidavit at para 28.

²¹ Steidl Affidavit at para 29.

²² Steidl Affidavit at para 30.

²³ Steidl Affidavit at para 31.

29. Also, on or about January 16, 2025, ATB issued notices of default and demands for payment to each of the Guarantors, (the "**Guarantor Demands**" and together with the Borrower Demands, the "**Demands**") together with 244 Notices.²⁴
30. Despite the Demands for repayment of the Indebtedness by ATB, the Borrowers and the Guarantors have failed or neglected, and continue to fail or neglect to repay the Indebtedness, and they are in default of their obligations under the Loan Agreement, the Guarantees and the Security.²⁵
31. It is a term of the Security that if the Debtors are default of its obligations to the Lender, the Lender may apply to this Honourable Court for the appointment of a receiver and manager.²⁶

V. LAW AND ARGUMENT

A. The Lender is Entitled to Appoint a Receiver

32. The Lender satisfied the procedural prerequisite to seeking the appointment of the Receiver in January 2025 when it served the 244 Notice on the Debtors.
33. Each of section 243 of the *BIA*, section 13(2) of the *Judicature Act* and section 65(7)(a) of the *PPSA* vest this Honourable Court with the authority to appoint a Receiver where it is just and convenient to do so.²⁷
34. The Lender respectfully submits that this Honourable Court ought to exercise its discretion to appoint a Receiver over the Property, because it is just, convenient and otherwise appropriate in the circumstances and would be in accordance with the contractual terms agreed upon by the Lender and the Debtors under the Security.

B. Considerations when Appointing a Receiver

35. In considering whether it is just and convenient to appoint a receiver, Alberta courts often cite and consider a non-exhaustive set of factors, as described in *Bennett on Receiverships* when deciding whether or not to appoint a receiver, including:²⁸

²⁴ Steidl Affidavit at para 32.

²⁵ Steidl Affidavit at para 33.

²⁶ Steidl Affidavit at para 34.

²⁷ *BIA* at s. 243 [**Authorities, Tab 1**]; *Judicature Act*, RSA 2000 c J-2, as amended (the "**Judicature Act**") at s. 13(2) [**Authorities, Tab 2**]; *Personal Property Security Act*, RSA 2000 c P-7 ("**PPSA**") at s. 65(7)(a) [**Authorities, Tab 3**].

²⁸ See *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Company*, 2002 ABQB

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder, taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the securityholder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief, which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties;
- (p) the goal of facilitating the duties of the receiver; and
- (q) the secured creditor's good faith, commercial reasonableness of the proposed appointment and questions of equity.²⁹

430 at para 27[**Authorities, Tab 4**].

²⁹ See also, *Bank of Nova Scotia v Smiling Simba Learning Academy Inc*, 2025 ABKB 11 [**Authorities, Tab 5**]; *Servus Credit Union Ltd. v Proform Management Inc.*, 2020 ABQB 316 [**Authorities, Tab 6**] [**Proform**], *ATB Financial v Mayfield Investments Ltd.*, 2024 ABKB 635 at para 65[**Authorities, Tab 7**] [**Mayfield**].

36. Where a debtor agrees to a consent receivership as a part of negotiating a forbearance agreement, additional considerations are engaged. These considerations were summarized by Justice Lema in *Proform*:³⁰

[60] On how to approach a consent order, the guiding principles are as follows:

- the Court is not obliged, from the mere fact of consent, to grant a consent order; and
- the Court must be satisfied (at minimum) that:
 - o it has the jurisdiction to grant the order;
 - o if it has the jurisdiction, any preconditions (statutory or common law) to the exercise of its jurisdiction are met;
 - o consent has actually been provided;
 - o the consent is not the product of fraud, duress, or undue influence or otherwise tainted;
 - o where the consent was provided on a conditional basis (e.g. order not to be entered unless certain conditions are satisfied), the condition(s) are satisfied;
 - o the proposed relief does not exceed that consented to; and
 - o consent aside, the ordered relief is warranted in the circumstances.

[61] The level of scrutiny required depends on the circumstances. The onus to raise a concern rests with the consenting (or ostensibly consenting) party. If that party is present at the application for the order and raises no concerns, or if it is content to allow the other party (or parties) to appear at the application and relay the "we have consented" message, the Court can usually proceed on the basis that all of these elements are satisfied... [*Emphasis Added*].

37. The Lender respectfully submits that it is just and convenient to appoint FTI as Receiver over the Property for, among others, the following reasons:
- (a) the Borrowers have committed numerous defaults under the Security and the Loan Agreements;
 - (b) it is an express term of the Security that, upon default, one of the remedies available to the Lender is the appointment of a receiver;
 - (c) the Debtors have agreed to the Consent Receivership Order provided for in the Forbearance Agreements,
 - (d) the Lender has lost confidence in the Debtors' management;

³⁰ *Proform* at paras 60-61.

- (e) the immediate appointment of a receiver is necessary to protect the Lender's interests (including the preservation of the remaining assets of the Debtors);
- (f) the Lender believes that the Lender's collateral is at risk unless a receiver is immediately appointed;
- (g) no viable alternative is presently available to the Lender;
- (h) a Receivership Order would place all creditors and stakeholders of the Debtors on a level and transparent playing field under the administration of this Honourable Court to ensure the consistent and lawful treatment of all stakeholders;
- (i) ATB is acting in good faith and in a commercially reasonable manner in respect of the appointment of the Receiver; and
- (j) there are no compelling commercial or other reasons to not appoint FTI as receiver.

38. The Lender respectfully submits that it is just and convenient to appoint the Receiver over the entirety of the Property to ensure that the Receiver has full authority over the Debtors' business and to maximize recovery for stakeholders.

VI. CONCLUSION

39. For the reasons set forth above, the Lender seeks a Receivership Order, substantially in the form appended as Schedule "A" to the Application in order to maximize value for all of the Debtors' stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10TH DAY OF FEBRUARY, 2025.

BURNET, DUCKWORTH & PALMER LLP

Per: 

David LeGeyt
Solicitors for ATB Financial

TABLE OF AUTHORITIES

TAB	DOCUMENT
1.	<i>Bankruptcy and Insolvency Act, RSC 1985, c B-3.</i>
2.	<i>Judicature Act, RSA 2000, c J-2.</i>
3.	<i>Personal Property Security Act, RSA 2000 c P-7.</i>
4.	<i>Paragon Capital Corporation Ltd. v. Merchants & Traders Assurance Company, 2002 ABQB 430</i>
5.	<i>Bank of Nova Scotia v Smiling Simba Learning Academy Inc, 2025 ABKB 11</i>
6.	<i>Servus Credit Union Ltd v Proform Management Inc, 2020 ABQB 316</i>
7.	<i>ATB Financial v Mayfield Investments Ltd, 2024 ABKB 635</i>