

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

THE HONOURABLE JUSTICE)
McEWEN)
)

THURSDAY, THE 7TH DAY OF
OCTOBER, 2021

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 (CLASS ACTION)

THIS MOTION, made by Alex Kan, and Stuart Rath (the plaintiffs (the “**Plaintiffs**”) in a proposed securities class action (the “**Class Action**”) brought against Kew Media Group Inc. (“**Kew Media**”)) and certain of its former directors and officers) for an Order: permanently lifting the stay of proceedings (the “**Stay of Proceedings**”) imposed by the Order of Justice Koehnen dated February 28, 2020 (the “**Receivership Order**”), against Kew Media for the limited purposes of: allowing the Class Action to proceed against Kew Media was heard this day in Toronto by way of judicial video conference via Zoom.

ON READING the Motion Record and Factum of the Plaintiffs, filed, and the Fourth Report of 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, filed;

AND UPON hearing the submissions of counsel for each of the Plaintiffs, the Receiver, and on being advised that counsel for the insurers to policies issued to Kew Media under policy nos. FINMW1900173 and FINMW1900166 that those insurers take no position on the motion:

TIME FOR SERVICE

1. **THIS COURT ORDERS** that the time for service of the Plaintiffs’ 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 be and is hereby lifted for the sole and limited purpose of allowing the Class Action to proceed against Kew Media in the ordinary course so that the Plaintiffs may seek to establish their claims against Kew Media as set out in the Plaintiffs’ Statement of Claim in the Class Action, provided that the Plaintiffs’ claims in the Class Action, if established, may only be sought to be enforced against: (i) any insurers of Kew Media (collectively, the “**Insurers**”) under any relevant insurance policies issued to Kew Media and/or the other defendants in the Class Action and/or any other insurance policies that may provide for coverage to Kew Media and/or the other defendants in the Class Action for the claims made by the Plaintiffs; and (ii) the other defendants in the Class Action other than Kew Media, but not against the Receiver or any present or future property, assets or undertaking of Kew Media.

3. **THIS COURT ORDERS** that nothing in this Order prejudices, waives, or alters the rights or defences of any insurer who has issued an insurance policy to Kew Media and/or to other defendants in the Class Action, nor shall it prejudice, waive or alter the rights of any insured under any such policy.

4. **THIS COURT ORDERS** that, subject to further Order of the Court, the Receiver shall not be required to participate in or defend the Class Action, or to incur any costs in respect of the Class Action. Without limiting the foregoing, and subject to: (i) the Receivership Order; (ii) an agreement between the Plaintiffs and the Receiver; and (iii) further Order of this Court, the Plaintiffs and defendants in the Class 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 Receivership Order (collectively, the “**Receiver and Debtor Entities**”);
- (b) add any of the Receiver and Debtor Entities, other than Kew Media, to the Class 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 Class Action; or
- (d) seek, or obtain, any discovery from, or examination or participation of, the Receiver and Debtor Entities in the Class Action, other than as provided for pursuant to paragraph 6(a) of the Receivership Order.

5. **THIS COURT ORDERS** that except as expressly provided for in this Order: (i) all other stays of proceedings provided for in the Receivership 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 Receivership Order.

6. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Class 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.

7. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Class 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 Receivership Order.

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 Class Action, and no party to the Class Action shall be deemed by virtue of this Order to have made any admission, acknowledgment or acquiescence of or to any liability in the Class Action. All rights, remedies and defences of the parties, 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 Receivership Order (including, without limitation, the Stay of Proceedings).

GENERAL

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

11. **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.

12. **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.

McE T.

8 Oct 21

Order to go as per the draft filed and signed.
The motion is unopposed. The relief sought is fair and reasonable. I see no prejudice to any party or person affected by the Order and the lift stay is a sensible method of allowing the class action to proceed.

McE T.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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