

HUGHES, J.



No. S233788
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36

AND

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44,
THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57, AND THE BUSINESS
CORPORATIONS ACT, R.S.O. 1990, c. B.16

IN THE MATTER OF DONNELLY HOLDINGS LTD.
AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

THIRD MONITOR'S REPORT

ERNST & YOUNG INC.

February 7, 2024

**TABLE OF CONTENTS
TO THE
THIRD MONITOR'S REPORT**

INTRODUCTION..... 2
TERMS OF REFERENCE..... 6
MONITOR'S ACTIVITIES SINCE THE SECOND REPORT 6
PETITIONERS' ACTIVITIES SINCE THE SECOND REPORT 7
POST-FILING TAXES 9
PLAN IMPLEMENTATION 10
CINEMA AGREEMENT 13
CINEMA LEASE ASSIGNMENT 17
REDUNDANT ASSETS PROVISION AMENDMENT 18
CASH FLOW VARIANCES OVER THE THIRD FORECAST PERIOD 20
CONCLUSION AND RECOMMENDATIONS..... 22

LIST OF APPENDICES

Cinema Agreement Addenda

Appendix A

INTRODUCTION

1. On May 23, 2023 (the “**Filing Date**”), pursuant to an order (the “**Initial Order**”) granted by the Honourable Justice Milman of the Supreme Court of British Columbia (the “**Court**”), Donnelly Holdings Ltd. and the entities listed at Schedule “A” to the Initial Order (collectively, the “**Initial Petitioners**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”). Ernst & Young Inc. (“**EYI**”) was appointed monitor (in such capacity, the “**Monitor**”) of the Initial Petitioners.
2. Pursuant to the terms of the Initial Order, among things, the Court:
 - (a) granted a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Initial Petitioners and their directors and officers to June 2, 2023 (the “**Stay Period**”);
 - (b) authorized the Initial Petitioners (subject to the restrictions under the CCAA) to dispose of redundant and non-material assets not exceeding \$200,000 in any one transaction or \$500,000 in the aggregate (the “**Redundant Assets Provision**”); and
 - (c) granted the Administration Charge and the D&O Charge (as defined in the Initial Order, and together, the “**CCAA Charges**”).
3. On June 1, 2023, the Monitor filed the First Monitor’s Report (the “**First Report**”) of the same date in support of the Comeback Hearing (defined below).
4. On June 2, 2023 (the “**Comeback Hearing**”), the Court granted a series of orders, including:
 - (a) an order (the “**ARIO**”) amending and restating the terms and provisions of the Initial Order to provide for, among other things: (i) the addition of further petitioner entities (collectively, with the Initial Petitioners, the “**Petitioners**”);

- (ii) the correction of names of certain of the Initial Petitioners; and (iii) an extension of the Stay Period until July 31, 2023;
- (b) an order (the “**Claims Process Order**”) approving the claims process (the “**Claims Process**”) proposed by the Petitioners, and authorizing and directing the Monitor and the Petitioners to implement it; and
- (c) an order (the “**Meeting Order**”), among other things: (i) accepting for filing the Plan of Arrangement of the Petitioners dated May 30, 2023 (the “**Plan**”); and (ii) authorizing the Petitioners to convene a meeting (the “**Creditors’ Meeting**”) of applicable creditors to vote on the Plan.
5. On July 7, 2023, the Petitioners executed an Amended and Restated Plan of Arrangement of the same date (the “**Amended Plan**”), which, among other things, removed Donnelly Hospitality Management Ltd. (“**DHM**”) as a Debtor (as defined therein).
6. On July 17, 2023, the Creditors’ Meeting was held, and the Amended Plan was approved unanimously by both classes of creditors.
7. On July 24, 2023, the Monitor filed the Second Monitor’s Report (the “**Second Report**”) of the same date.
8. On July 26, 2023, the Court granted an order (the “**Sanction Order**”) that, among other things:
- (a) approved the Restructuring Support Agreement dated July 17, 2023 (the “**RSA**”), among the Petitioners and Bank of Montreal (“**BMO**”), and authorized and directed the Petitioners to enter into the RSA;
- (b) approved and sanctioned the Amended Plan; and
- (c) extended the Stay Period from July 31, 2023, until March 1, 2024, except in respect of DHM.

9. On February 7, 2024, the Petitioners filed a Notice of Application returnable February 9, 2024 (the “**February Application**”) seeking, among other things:
- (a) an order (the “**Vesting Order**”):
 - (i) approving the transaction contemplated under the binding contract of purchase and sale for business assets dated November 1, 2023 (the “**Cinema Agreement**”), between the Petitioner, Cinema Public House Ltd. (“**Cinema**”), as vendor, and 1442029 B.C. Ltd. (“**144**” or the “**Purchaser**”), as purchaser, whereby the Purchaser has agreed to purchase the Business Assets (as defined in the Cinema Agreement) located at 901 Granville St., Vancouver, BC (the “**Cinema Premises**”), and vesting the Business Assets in the Purchaser; and
 - (ii) assigning to the Purchaser (the “**Cinema Lease Assignment**”) the lease agreement dated on or about March 29, 2023 (the “**Cinema Lease**”), between Donnelly Public Houses Inc. (“**DPH**”), as tenant, and the City of Vancouver (“**CoV**”), as landlord, in respect of the Cinema Premises; and
 - (b) an order (the “**ARIO Amendment Order**”) amending the Redundant Asset Provision to increase the limits on permitted sales or dispositions of redundant or non-material assets from \$200,000 per transaction and \$500,000 in the aggregate to \$750,000 per transaction and \$3 million in the aggregate (the “**Redundant Assets Provision Amendment**”), all subject to the prior written consent of BMO and the Monitor.

PURPOSE OF THIS REPORT

10. The purpose of this Third Monitor’s Report (the “**Third Report**”) dated February 7, 2024, is to provide the Court with information regarding:

- (a) the Monitor's activities since the Second Report;
 - (b) the Petitioners' activities since the Second Report;
 - (c) the Post-Filing Taxes (defined below);
 - (d) the Petitioners' efforts to satisfy the Plan Implementation Conditions (defined below);
 - (e) the Cinema Agreement;
 - (f) the Cinema Lease Assignment;
 - (g) the Redundant Assets Provision Amendment; and
 - (h) the actual receipts and disbursements of the Petitioners for the period from July 17, 2023, to February 4, 2024 (the "**Third Forecast Period**"), as compared to the cash flow forecast attached to the Second Report as Appendix "A" (the "**Third Cash Flow Forecast**").
11. Capitalized terms used but not otherwise defined in this Third Report have the meanings given to them in the February Application and the various materials filed by the Petitioners in support thereof, including the Affidavit #1 of Jeff Donnelly made January 18, 2024 ("**Donnelly #1**", and collectively, the "**February Application Materials**"). This Third Report should be read in conjunction with the First Report, the Second Report, and the February Application Materials, as certain information contained therein has been omitted from this report to avoid redundancy.
12. The Monitor has established a website in respect of this matter at: www.ey.com/ca/DPH (the "**Monitor's Website**"). All documents filed with the Court in these CCAA proceedings, and certain other documents relating thereto, have been posted to the Monitor's Website.

TERMS OF REFERENCE

13. In preparing this Third Report and making the comments herein, the Monitor has been provided with, and has herein relied upon, unaudited financial information, books, records and financial information prepared by the Petitioners, discussions with management of the Petitioners (“**Management**”), and information from other third party sources (collectively, the “**Information**”).
14. Future-oriented financial information referred to in this Third Report was prepared based on Management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not readily and currently ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be material.
15. Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this Third Report concerning the Petitioners and their business is based on the Information, and not independent factual determinations made by the Monitor.

MONITOR’S ACTIVITIES SINCE THE SECOND REPORT

16. Since the Second Report and up to and including the date of this Third Report, the Monitor has, among other things:
 - (a) engaged extensively with Management, Petitioners’ counsel, and its own counsel regarding all aspect of these CCAA Proceedings;
 - (b) engaged extensively with BMO regarding: (i) the Post-Filing Tax Arrears; (ii) the Cinema Agreement and the Pending Sale Agreements (defined below); and (iii) numerous other matters related to advancing these CCAA proceedings;

- (c) assisted the Petitioners with the preparation of documents, proposals and cashflows delivered to BMO to advance these CCAA proceedings;
- (d) monitored the Petitioners' receipts and disbursements in accordance with the established weekly cashflow review protocol;
- (e) monitored the Post-Filing Tax Arrears and communicated the Petitioners' remittance status regarding same to the Provincial and Federal Crown (together, the "**Crown**"), and to BMO (as further described below);
- (f) responded to numerous creditor and stakeholder inquiries;
- (g) reviewed and commented on the February Application Materials; and
- (h) prepared this Third Report.

PETITIONERS' ACTIVITIES SINCE THE SECOND REPORT

17. Since the Second Report and up to and including the date of this Third Report, the Petitioners have, among other things:
- (a) continued to manage their operations in the ordinary course, including by negotiating with suppliers for the continued supply of goods and services, and by making payments to their suppliers for amounts owing after the Filing Date;
 - (b) negotiated the Cinema Agreement, plus four other agreements (collectively, the "**Pending Sale Agreements**") for the purchase and sale of the following unprofitable or non-core business locations (collectively, the "**Pending Sale Locations**"):
 - (i) "Three Brits Public House", a bar in Vancouver operated by The Three Brits Enterprises Ltd.;

- (ii) “Brass Fish Tavern”, a bar in Vancouver operated by Academic Public House Enterprises Ltd.;
 - (iii) “Hello Goodbye”, a bar in Vancouver operated by Hello Goodbye Enterprises Ltd.; and
 - (iv) “Granville Room”, a bar in Vancouver operated by Granville Room Enterprises Ltd.;
- (c) listed the following unprofitable or non-core business locations (collectively, and together with the Pending Sale Locations, the “**Redundant Locations**”) for sale on a multiple listing service (“**MLS**”):
 - (i) “Butcher & Bullock Public House”, a bar in Vancouver operated by The Butcher & Bullock Enterprises Ltd.;
 - (ii) “Bomber Brewing”, a brewery in Vancouver operated by Bomber Investments Ltd.; and
 - (iii) “Death & Taxes Free House”, a bar in Toronto, Ontario, operated by Death & Taxes Enterprises Ltd.;
- (d) taken steps to rationalize their costs and expenses, including by: (i) implementing cost and staffing reductions; and (ii) negotiating rent reductions for certain leased premises;
- (e) improved their financial reporting, including by obtaining 2022 and 2023 notice-to-reader financial statements (“**2022/23 Financial Statements**”);
- (f) deferred payment of fees for management services (“**Management Fees**”) payable to Freehouse Management Ltd. (“**Freehouse**”);
- (g) advanced proposals for Exit Financing (as defined in the Amended Plan, and as further described below);

- (h) engaged extensively with BMO to advance these CCAA proceedings, including in relation to: the Post-Filing Tax Arrears, the RSA (and the RSA Amendment), the Cinema Agreement and the Pending Sale Agreements;
 - (i) provided updates regarding these CCAA Proceedings to the Petitioners' stakeholders and creditors; and
 - (j) prepared the February Application Materials.
18. **DHM Bankruptcy:** As of the date of this Third Report, the Petitioners have not yet assigned DHM into bankruptcy, as contemplated in the Second Report. The Monitor understands that such bankruptcy has not yet been filed on account of the Petitioners' extremely straitened cash flow situation (as further described below), but that such filing will be completed in advance of, or as a part of the overall restructuring. While DHM remains a Petitioner in these CCAA Proceedings, it is excluded from the Stay of Proceedings by paragraph 3 of the Sanction Order.

POST-FILING TAXES

19. Beginning in about August 2023, the Petitioners fell behind in their payment of post-filing PST and GST (the "**Post-Filing Taxes**") as such amounts came due. Despite continuing to make some Post-Filing Tax remittances during the Third Cash Flow Period, as of the date of this Third Report, the Petitioners owe post-filing PST and GST in the amounts of \$271,373 and \$342,376, respectively, for a total amount owing of approximately \$613,749 (the "**Post-Filing Tax Arrears**"). The Post-Filing Tax Arrears represent approximately two months of Post-Filing Taxes owing by the Petitioners.
20. Throughout the Third Cash Flow Period, the Monitor has closely monitored the Petitioners' remittance of Post-Filing Taxes, and has reported on the status of such to BMO. Further, during the Third Cash Flow Period, the Monitor provided representatives of the Crown with periodic updates regarding the Post-Filing Tax

Arrears, and advised that they would be alerted if the Petitioners were expected to fall further than approximately two months in arrears.

21. The Monitor recognizes that the Petitioners' non-payment of Post-Filing Taxes is far from ideal, but further notes that—given cash flows over the Third Cash Flow Period (as further described below) and the Petitioners' attendant liquidity constraints—it is not aware of any option open to the Petitioners while maintaining ongoing operations other than to accrue Post-Filing Taxes during this period.
22. As set out above, the Stay Period expires March 1, 2024, and it is contemplated that the Petitioners will seek an order extending it to allow for them to, among others, satisfy the Plan Implementation Conditions (as defined below). In order to obtain a stay extension, the Petitioners will need to demonstrate that they have sufficient liquidity to carry on operations during the extended Stay Period, including by paying Post-Filing Taxes as they come due. The Petitioners, in consultation with the Monitor are in the process of preparing a revised statement of projected cash flow to meet this requirement, which cash flow will need to be filed in a further or supplemental report from the Monitor, in conjunction with any future application to extend the Stay Period.

PLAN IMPLEMENTATION

23. In the First Report, the Monitor provided a detailed overview of the Plan, including a description of the conditions precedent to its implementation. The Amended Plan, and the Monitor's comments in relation thereto, was described in the Second Report. Capitalized terms used but not otherwise defined in this section have the meanings given to them in the Amended Plan, which is attached as Schedule "C" to the Sanction Order.
24. To recap, the Amended Plan is and remains subject to certain conditions precedent to its implementation (together, the "**Plan Implementation Conditions**"), including that:

- (a) all conditions precedent to an Exit Financing pursuant to an Exit Financing Agreement shall have been met by no later than January 31, 2024; and
 - (b) the Plan Contribution Amount of \$500,000 shall have been paid to the Monitor by no later than 120 days after the date on which the Sanction Order became a Final Order.
25. The Amended Plan cannot be implemented until such time as the Petitioners satisfy the Plan Implementation Conditions, which have come due. Further details of the Petitioners' efforts to obtain Exit Financing and enter into an Exit Financing Agreement are set out below.
26. **Further Plan Amendment:** As of the date of this Third Report, the Petitioners have—in consultation with the Monitor—finalized an amendment to the Amended Plan (the “**Further Plan Amendment**”) to extend the dates for satisfaction of the Plan Implementation Conditions to align with the expected timeline for their obtaining Exit Financing, as described below. The Monitor understands that BMO has consented to the Further Plan Amendment and that the RSA has been amended to match.
27. Pursuant to section 8.1(2) of the Amended Plan, the Further Plan Amendment may be filed without an order of this Court provided that, in the opinion of the Monitor, the amendments contained therein are not materially prejudicial to the interests of Affected Creditors. The Monitor is of this opinion in respect of the Further Plan Amendment. Accordingly, the Monitor understands that once the Further Plan Amendment is executed by the Petitioners—which is expected to happen very shortly—it will be filed and circulated to the Service List.
28. **Exit Financing:** Following pronouncement of the Sanction Order in July 2023, the Petitioners engaged a commercial lending brokerage to assist in obtaining Exit Financing.
29. In late September 2023, the Petitioners received an Expression of Interest (“**EOI**”) for financing from a Canadian Chartered Bank (the “**Potential Lender**”). The EOI

contains certain conditions precedent (the “**EOI Conditions Precedent**”) to funding, including:

- (a) the Potential Lender’s receipt of accountant-prepared combined financial statements in satisfactory form (the “**Financial Statement CP**”);
- (b) confirmation of sale, or satisfactory plans for the closure of the Redundant Locations (the “**Redundant Locations CP**”); and
- (c) satisfactory review of a Quality of Earning Report by a qualified accounting firm (the “**QoE Report CP**”).

30. The Monitor is advised by the Petitioners that: (i) the 2022/23 Financial Statements satisfy the Financial Statement CP; (ii) the sale of the Redundant Locations will satisfy the Redundant Locations CP; and (iii) they have engaged an accounting firm to prepare Quality of Earnings Reports, and that such reports are expected to be finalized in mid February 2024.

31. The Monitor understands that, if Exit Financing is obtained from the Potential Lender, the Redundant Locations are sold, and the Cinema Agreement is approved, sufficient proceeds will be generated to effect plan implementation (i.e., to satisfy the BMO Secured Claim and pay the Plan Contribution Amount).

32. **Restructuring Support Agreement:** As reported on in the Second Report, in July 2023, the Petitioners entered into the RSA with BMO as contemplated in the Amended Plan. The RSA sets out the terms of BMO’s support for the Amended Plan, and contains certain conditions and funding deadlines.

33. On about January 29, 2024, on account of the delay in obtaining Exit Financing, among other things, the Petitioners and BMO executed an amendment to the RSA of the same date (the “**RSA Amendment**”) which provided for, among other things:

- (a) an increase in the Payout Amount (i.e., the amount to be paid to BMO on account of its secured claim) to include interest payments that were deferred by the Petitioner with BMO’s consent since the RSA;

- (b) an extension of the date by which the Petitioners shall provide written confirmation of their having obtained a conditional commitment to fund the Payout Amount and all other amounts necessary to fulfill the Petitioner's obligations under the Amended Plan, from October 13, 2023, to February 29, 2024;
 - (c) an extension of the date by which the Petitioners shall provide written confirmation of their having obtained an unconditional commitment to fund the Payout Amount and all other amounts necessary to fulfill the Petitioner's obligations under the Amended Plan from November 14, 2023, to March 31, 2024; and
 - (d) an extension of the date by which the Payout Amount must be paid to BMO from December 1, 2023, to April 30, 2024.
34. Under the Sanction Order, the RSA was approved along with such "amendments, additions, corrections as may be negotiated among the parties thereto...with the consent of the Monitor". The Monitor has reviewed the RSA Amendment, and consents to the amendments contained therein.

CINEMA AGREEMENT

35. In this section capitalized terms used but otherwise defined have the meanings given to them in the Cinema Agreement, which is attached as Exhibit "A" to Donnelly #1.
36. On November 1, 2023, Cinema and 144 executed the Cinema Agreement which, together with subsequent amendments thereto, provides for 144's purchase of the Business Assets. Attached hereto collectively as Appendix "A" are amendments to the Cinema Agreement dated January 17 and February 6, 2024, which together extend the completion and possession dates thereunder to February 21 and 22, 2024, respectively.

37. **Purchase Price:** The Cinema Agreement provides that the Purchaser will purchase the Business Assets for cash consideration totalling \$580,000 (the “**Purchase Price**”) payable as follows: (i) \$30,000 as a deposit (the “**Deposit**”), which has been paid to and is currently being held by the Purchaser’s agent; (ii) \$58,000, representing 10% of the Purchase Price, to be paid and held by the Purchaser’s notary for 60 days after completion, which amount is subject to payment claims made on account of pre-closing business-related expenses (the “**Holdback**”); (iii) \$26,499.20 comprising the deposit payable under the Cinema Lease (the “**Cinema Lease Deposit**”), which is currently held by the CoV; and (iv) the balance payable in cash on closing.
38. The Cinema Agreement further provides for the following deductions from gross sale proceeds:
- (a) \$46,000, representing 8% of the Purchase Price, as commission to Cinema’s and the Purchaser’s agents; and
 - (b) \$75,000 (the “**Transition Services Fee**”) payable to Freehouse.
39. In sum, net proceeds contemplated to be received pursuant to the Cinema Agreement, after deduction of the foregoing amounts and assuming no deduction to the Holdback, total approximately \$432,500 (the “**Net Sale Proceeds**”).
40. **Transition Services Fee:** As detailed in the addendums to the Cinema Agreement dated November 1, 2023 and January 17, 2024, Cinema has agreed that Freehouse—a company controlled by Mr. Donnelly through which management services are provided to the Petitioners—will provide certain training to 144 as a condition of the sale, for 6 weeks and for a total of 220 hours, in exchange for the Transition Services Fee.
41. The Monitor understands that this training will be provided by a team of representatives from Freehouse, at equivalent hourly rates ranging between \$68 and \$113. While the Monitor notes that Freehouse is not a signatory to the Cinema Agreement, it is advised by the Petitioners that such training was offered up in

response to the CoV's concerns regarding the Cinema Lease Assignment (discussed further below), and that Freehouse has provided its assurances that, provided the Vesting Order is granted, this training will be provided.

42. **Conditions precedent:** The Cinema Agreement contained a number of conditions precedent, including approval of its terms by BMO, as well as Court-approval. Further, the Monitor understands that it is a condition precedent to the Cinema Agreement that the Cinema Lease be assigned to the Purchaser (i.e., the Cinema Lease Assignment).
43. The Monitor is advised by the Petitioners that BMO approves of the Cinema Agreement, and therefore all conditions precedent to the Cinema Agreement (with the exception of Court-approval and the Cinema Lease Assignment) have now been either satisfied or waived.
44. **Vesting Order:** The Monitor further understands that the Cinema Agreement and the terms of the Vesting Order provide that:
 - (a) the Net Sale Proceeds are to be paid to the Monitor upon closing, and that the Monitor shall be authorized to administer these funds on behalf of the Petitioners; and
 - (b) the Purchaser shall be required under the Vesting Order to remedy all monetary defaults under the Cinema Lease by no later than 30 days after issuance of the Monitor's Certificate (i.e., closing of the transaction under the Cinema Agreement). The Monitor understands that Cinema is in default under the Cinema Lease in the amount of approximately \$97,782 based on the Petitioners' books and records (the "**Cure Costs**").
45. **Marketing:** Donnelly #1 sets out the efforts undertaken by the Petitioners and their agents to market the Business Assets, including:
 - (a) engaging Jean Seguin of Restaurant Business Broker to market and sell the Business Assets;

- (b) listing the Business Assets on MLS on August 14, 2023, and sending emails describing the opportunity to 9,400 parties;
- (c) executing nineteen (19) non-disclosure agreements with prospective purchasers; and
- (d) receiving two offers to acquire the Business Assets, of which the offer received by the Purchaser the Petitioners deemed to be superior.

Monitor's comments and recommendations

46. While no court-approved sales and investment solicitation process was undertaken for the sale of the Business Assets, the Monitor notes that MLS is commonly used for the sale of standalone restaurants and bars. Accordingly, and based on the marketing efforts described in Donnelly #1, the Monitor is of the view that the Cinema opportunity was adequately exposed to the market. Further, the Monitor notes that Cinema is unprofitable, operates with negative EBITDA, and has minimal value in a liquidation scenario. Accordingly, and for the above reasons, the Monitor is of the view that the Purchase Price represents a fair and reasonable value for the Business Assets.
47. The Monitor acknowledges that the Transition Services Fee is contemplated to be paid to a related party in consideration for services that are minimally defined only in the addendums to the Cinema Agreement. With that said, the Monitor notes that BMO—the Petitioners' senior secured creditor and the only stakeholder directly financially impacted by the payment of same—consents to the terms of the Cinema Purchase Agreement. Therefore, subject to BMO's consent, the Monitor approves of the Cinema Agreement, and respectfully recommends that this Court approve it under the Vesting Order.

CINEMA LEASE ASSIGNMENT

48. As set out in Donnelly #1, the CoV does not consent to the Cinema Lease Assignment, for the various reasons described in the letter from its counsel dated December 12, 2023, which is attached as part of Exhibit “B” to Donnelly #1.
49. Among other things, the CoV notes: (i) that the Purchaser is a newly incorporated company and neither it nor its principals appear to have substantial hard assets in British Columbia; (ii) the principals of the Purchaser appear to have limited restaurant experience; (iii) Cinema has operated the business at a loss over the last two years; and (iv) there are 9 years remaining on the Cinema Lease, with monthly lease payments starting at approximately \$30,000 with year-over-year increases.
50. The Monitor notes that section 11.3(3) of the CCAA sets out certain factors a Court may consider in deciding whether to order the assignment of the rights and obligations of a debtor company under an agreement; namely:
- (a) whether the Monitor has approved the proposed assignment;
 - (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
 - (c) whether it would be appropriate to assign the rights and obligations to that person.

Monitor’s comments and recommendations

51. Notwithstanding the points raised by the CoV, the Monitor approves of the Cinema Lease Assignment including because:
- (a) Purchaser’s ability to perform the obligations: The Monitor understands that each of the Purchaser’s principals have recent experience in the hospitality industry, and will receive transitional training and support from Freehouse under the Cinema Agreement. Further, the Purchaser has acted in good

faith throughout the negotiation of the Cinema Agreement, including by agreeing to further extensions to allow for court-approval. Additionally, the Purchaser has committed to paying the Cure Costs, which, based on the Petitioners' books and records, the Monitor understands are substantial. All of the foregoing satisfy the Monitor that the Purchaser will be able to perform the obligations under the Cinema Lease.

- (b) Appropriateness of the assignment: The Cinema Lease Assignment is a condition precedent to the Cinema Agreement, which will contribute to the Petitioners' overall restructuring, which, in turn and if implemented, will maximize stakeholder benefit at an enterprise level. At a business level, the Monitor is advised by the Petitioners that the Purchasers intend to retain Cinema's approximately 10 full and part-time employees pending the completion of the Cinema Agreement. Alternatively, in Donnelly #1, Mr. Donnelly deposes that the Petitioners expect to have to terminate Cinema's employees and disclaim the Cinema Lease in the event that the Cinema Agreement does not complete.

52. For the foregoing reasons, the Monitor approves the Cinema Lease Assignment.

REDUNDANT ASSETS PROVISION AMENDMENT

53. As above, the Petitioners seek the Redundant Assets Provision Amendment under the ARIO Amendment Order. In particular, the Petitioners seek authorization to (with the prior written consent of BMO and the Monitor) dispose of redundant or non-material assets not exceeding \$750,000 in any one transaction (increased from \$200,000) and \$3 million in the aggregate (increased from \$500,000).

54. The Monitor understands that the impetus for the Redundant Assets Provision Amendment is to allow the sales under the Pending Sales Agreements—which fall within the above thresholds—to close without the need for Court-approval. The Monitor understands that neither vesting orders, nor court-ordered lease

assignments, are contemplated to be required in order to complete the Pending Sales Agreements.

55. Further, the Monitor is advised by the Petitioners that: (i) BMO is the only secured creditor whose security is impacted by the disposition of the assets under the Pending Sales Agreements; and (ii) they have consulted with and expect that BMO will consent to the terms of the Pending Sales Agreements. As above, the Redundant Locations CP is an EOI Condition Precedent (and therefore in turn, a condition precedent to Exit Financing), therefore BMO is expected to be supportive of the Pending Sales Agreements further to the overall restructuring.

Monitor's comments and recommendations

56. The Monitor notes that the businesses operated at the Redundant Locations operate at a loss or are otherwise non-core locations, and therefore are not part of the Petitioners' post-plan implementation operations. Further, it notes that the Redundant Asset Provision Amendment would allow the Pending Sales Agreements to close without the Petitioners incurring the substantial professional fees attendant with court-approval, while maintaining safeguards such as Monitor oversight and consent, as well as the consent of BMO (the Petitioners' fulcrum creditor). The professional fees required to obtain court-approval of the Pending Sales Agreements would substantially reduce recoveries to the Petitioners' creditors, specifically BMO.
57. For the foregoing reasons, the Monitor is of the view that the Redundant Asset Provision Amendment is appropriate and would further the Petitioners' restructuring, and therefore respectfully recommends that this Court grant the ARIO Amendment Order as sought.

CASH FLOW VARIANCES OVER THE THIRD FORECAST PERIOD

58. The table below summarizes the Petitioners' actual cash receipts and disbursements as compared to the Third Cash Flow Forecast for the Third Cash Flow Period (i.e., July 18, 2023 to February 4, 2024):

	Projection	Actuals	Variance
Beginning Cash	\$875,430	\$875,430	-
Gross Receipts	\$32,505,187	\$29,460,765	(\$3,044,422)
Gross Receipts:			
Donnelly Public Houses	29,776,851	26,876,187	(2,900,663)
Barber & Co	2,000,909	1,849,079	(151,830)
Hi-Standard	727,428	735,500	8,072
Sales Tax & Gratuity	(\$6,440,619)	(\$5,540,724)	\$899,895
Disbursements	(\$25,825,609)	(\$24,374,330)	\$1,451,279
Inventory	(6,882,000)	(7,049,014)	(167,014)
Payroll	(10,249,192)	(10,186,859)	62,332
Leases	(3,531,880)	(3,306,101)	225,779
Operational G&A	(1,390,024)	(1,807,832)	(417,808)
Banking & Treasury	(607,417)	(651,167)	(43,749)
Insurance	(724,965)	(711,352)	13,612
Professional Fees - Operations	(205,000)	(113,884)	91,116
Management Fees	(1,017,132)	(66,022)	951,111
Restructuring Professional Fees	(350,000)	(268,400)	81,600
Contingency	(98,000)	-	98,000
Payments to BMO	(770,000)	(213,699)	556,301
Ending Cash Balance	\$1,114,389	\$421,142	\$(693,248)

59. During the Third Cash Flow Period, the Petitioners experienced significant negative variance in gross receipts, amounting to approximately \$3.0 million or 9%, primarily due to lower customer volume at various locations. Such lower volumes do not appear unique to the Petitioners, as the hospitality industry as a whole appears to be facing significant headwinds, with multiple industry representatives and advocacy groups publishing articles in recent months outlining the significant challenges faced by the hospitality industry.

60. The Petitioners' primary operating expenses are comprised of inventory, payroll and leases. In respect of these costs, the Monitor notes:

- (a) inventory costs did not decrease in line with gross receipts. The Petitioners have recently undertaken cost reduction initiatives and such reductions in inventory costs are expected to be reflected in go-forward operations;
- (b) the Petitioners have advised the Monitor that staffing requirements at the Petitioners' locations do not scale with reduction in revenues, so therefore payroll did not decrease in line with the gross receipts. As stated in the Donnelly #1, the Petitioners have undertaken staffing reductions which cost savings are expected to carry forward; and
- (c) lease costs are primarily fixed and do not scale with revenue.

61. Regarding some of the more significant variances, the Monitor reports that:

- (a) operational G&A was \$417,808 greater than forecast due to various cost overruns caused by, cost increases and operational G&A costs incurred but not forecast. As detailed in the Donnelly #1, the Petitioners have undertaken cost reductions that are expected to carry forward;
- (b) Management Fees were \$951,111 less than forecast because they were deferred by the Petitioners;
- (c) professional fees were \$81,600 less than forecast due to the Petitioners' liquidity constraints to pay professional fees accrued and owing; and
- (d) interest payments to BMO were \$556,301 less than forecast due to the Petitioners' deferral of interest payments owing.

62. Throughout the Third Cash Flow Period, the Petitioners received temporary working capital cash injections ("**Working Capital Injections**") from related parties controlled by Mr. Donnelly that are not petitioners in these CCAA Proceedings (the "**Non-Petitioner Entities**"). Such Working Capital Injections were provided on a no-fee and no-interest basis and were primarily provided in weeks where payroll or lease payments became due (i.e., weeks with increased expenditure). Such Working Capital Injections were fully repaid dollar for dollar (i.e., with no net cash

outflow) during the Third Cash Flow Period. While not ideal, such Working Capital Injections were required by the Petitioners to meet critical expenses (payroll and lease obligations) without sourcing interim financing. The Monitor understands that BMO is aware of the Working Capital Injections.

CONCLUSION AND RECOMMENDATIONS

63. For the reasons stated herein, the Monitor respectfully recommends that this Honourable Court grant the following Orders:

- (a) the Vesting Order; and
- (b) the ARIO Amendment Order.

All of which is respectfully submitted this 7th day of February, 2024.

ERNST & YOUNG INC.

in its capacity as Monitor of Donnelly Holdings Ltd.
and those other Petitioners listed in Appendix "A" to the ARIO,
and not in its personal or corporate capacity

Per:



Michael Bell, CPA, CA, CIRP, LIT
Senior Vice President



Jason Eckford, CPA, CIRP, LIT
Vice President

APPENDIX A



THE CANADIAN BAR ASSOCIATION
British Columbia Branch

CONTRACT OF PURCHASE AND SALE ADDENDUM / AMENDMENT

MLS® NO: C8053647 DATE: January 17 2024

RE: ADDRESS: 901 Granville St Vancouver BC V6Z 1L3

LEGAL DESCRIPTION: Business Asset

PID: 800-163-828 OTHER PID(S): _____

ADDENDUM TO / AMENDMENT MADE FURTHER TO AND FORMING PART OF THE CONTRACT OF PURCHASE AND SALE DATED November 1 2023 MADE BETWEEN 1442029 B.C. LTD

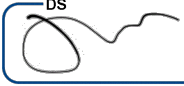


_____ AS BUYER(S), AND

Cinema Public House Ltd

_____ AS SELLER(S) AND COVERING THE ABOVE-MENTIONED PROPERTY, THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

Buyer and seller agree to change the completion date to February 7, 2024
Buyer and seller agree to change the possession and adjustment date to February 8, 2024

Seller agrees to provide an additional 3 weeks of transition training for a total of 100 hrs. All other terms and conditions remain the same.

BUYER
1439000 B.C LTD.
PRINT NAME

BUYER

PRINT NAME


BUYER

PRINT NAME

WITNESS

WITNESS

WITNESS

 
SELLER
282CA637FFB74FD...
Cinema Public House Ltd
PRINT NAME

SELLER

PRINT NAME

SELLER

PRINT NAME

WITNESS

WITNESS

WITNESS





CONTRACT OF PURCHASE AND SALE ADDENDUM / AMENDMENT

MLS® NO: C8053647 DATE: February 06 2024

RE: ADDRESS: 901 Granville St Vancouver BC V6Z 1L3

LEGAL DESCRIPTION: Business Asset

PID: 800-163-828 OTHER PID(S): _____

ADDENDUM TO / AMENDMENT MADE FURTHER TO AND FORMING PART OF THE CONTRACT OF PURCHASE AND SALE DATED November 1 2023 MADE BETWEEN 1442029 B.C. LTD

_____ AS BUYER(S), AND
Cinema Public House Ltd

AS SELLER(S) AND COVERING THE ABOVE-MENTIONED PROPERTY, THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

Buyer and seller agree to change the completion date to February 21, 2024
Buyer and seller agree to change the possession and adjustment date to February 22, 2024

AuthentiSIGN *Ay Mode* 

BUYER
1442029 B.C. LTD
PRINT NAME

AuthentiSIGN *Amrinderveer Chahal* 

BUYER

PRINT NAME





BUYER

PRINT NAME

WITNESS

WITNESS

WITNESS

DocuSigned by:  

SELLER
282CA637FFB74FD...
Cinema Public House Ltd
PRINT NAME



SELLER

PRINT NAME



SELLER

PRINT NAME

WITNESS

WITNESS

WITNESS