

CANADA / JUDGMENT

Lionsgate Studios Corp. (Re)

2025 BCSC 739

COURT

Supreme Court of British Columbia

DECIDED

11 April 2025

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2025 BCSC 739 Lionsgate Studios Corp. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lionsgate Studios Corp. (Re),

2025 BCSC 739

Date: 20250411

Docket: S250821

Registry: Vancouver

Lionsgate Studios Corp.

Petitioner

Re: In the Matter of Section 288 of the Business Corporations Act,

S.B.C. 2002, c. 57

And:

In the Matter of a Proposed Arrangement Involving Lions Gate Entertainment Corp., the Shareholders of Lions Gate Entertainment Corp, Lionsgate Studios Corp., The Shareholders of Lionsgate Studios Corp., LG Sirius Holdings ULC, and Lionsgate Studios Holding Corp.

Before: Associate Judge Muir

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

M. Schafler

S. Chang

K. Burns

Counsel for CPP Investments:

P. Williams

V. Tortora

T. Lorensen, Articled Student

Place and Date of Hearing:

Vancouver, B.C.

April 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 11, 2025

- [1] THE COURT: There were two applications before me regarding two petitions with respect to proposed plans of arrangements.
- [2] The first petition is by the petitioner, Lionsgate Studios Corp., and the second by Lions Gate Entertainment Corp. (together, "Lionsgate"). The second petition is under Vancouver Registry Action S250822. The applications themselves are essentially the same, and I will treat them as one.
- [3] The application is by CPPIB Credit Investments II Inc. and CPPIB Credit Investments III Inc. (together, "CPP"). They seek orders adjourning the final order hearing sought in the petitions in this proceeding from May 1 to 2, 2025 to either May 20 to 23rd or May 26 to 27, 2025, and requiring Lionsgate to pay costs in any event of the cause.
- [4] The petitions involve what was referred to as a "separation transaction", by which the studio business and what I will refer to as the "subscription business" of Lionsgate would be split up into separate and unaffiliated corporations.
- [5] CPP says that it owns tens of millions of dollars of notes guaranteed by Lionsgate and that the separation will result in an impairment of those guarantees as it will result in the lesser valued subscription business being responsible for them. There is litigation that was commenced in August 2024 and which is ongoing in New York regarding this issue.
- [6] I will refer to the affidavit of Mr. Tobey, who is general counsel for Lionsgate. His affidavit was sworn on April 3, 2025. It is regarding the US litigation. He deposes as follows:

U.S. Noteholder Litigation

13. On May 8, 2024, an indirect, wholly-owned Delaware subsidiary of Lionsgate issued US\$389.9 million aggregate principal amount of new 5.500% senior notes due 2029 (the "New 5.500% Senior Notes"), governed by an indenture governed by New York law. The trustee of the New 5.500% Senior Notes is U.S. Bank Trust Company, National Association, a national banking association formed under United States law. The new 5.500% Senior Notes were subsequently exchanged by Lionsgate for US\$389.9 million of the existing 5.500% Senior Notes (the "Notes") previously issued by another indirect, wholly-owned Delaware subsidiary of Lionsgate pursuant to an indenture dated April 1, 2021 (the "Indenture"). The Indenture, the Notes, and any guarantees relating to the Notes are governed by New York law. The trustee of the Notes is Deutsche Bank Trust Company Americas, a New York banking corporation.
14. Effective upon completion of the Separation, the New 5.500% Senior Notes will have an extended maturity, a newly negotiated interest rate and will become obligations of the Studio Business and will be reflected in the LG Studio Business's combined financial statements, and will cease to be obligations of the Starz business.
15. CPPIB Credit Investments II Inc. and CPPIB Credit Investments III Inc. (together "CPPIB"), holders of Notes that were not exchanged for New 5.500% Senior Notes, commenced an action on August 27, 2024, in the Supreme Court in the State of New York (the "NY Court Action"). They allege that by entering into the note exchange and Supplemental Indenture No. 10 ("Supplemental Indenture") to the Indenture, Lionsgate breached the Indenture that governs the Notes held by CPPIB.
16. CPPIB, like any noteholder, is a contract-counterparty that is owed monetary obligations (principal and interest) by the Lionsgate obligors at appointed times prescribed in the applicable Indenture. In the NY Court Action, CPPIB alleges breaches of that contract and, while Lionsgate denies that CPPIB's claims have any merit, should CPPIB prevail, it may be entitled to the remedy of "acceleration," i.e., a requirement that the Notes be repaid immediately rather than on the schedule originally contemplated by the Indenture, and potentially other remedies. CPPIB also challenges the validity of certain amendments to the Indenture (set out in the Supplemental Indenture), which it claims required 100% consent of all noteholders to be effective under the terms of the Indenture. If CPPIB is correct, it could seek a determination that the amendments were invalid and that CPPIB should be restored to its pre-amendment position, including the restoration of certain covenants under the Indenture, and the restoration of certain guarantees of payment of the Notes. Indeed, CPPIB is already pursuing these remedies in the NY Court Action.
17. The Arrangement does not seek to arrange the legal rights of any creditors, including CPPIB. In particular, nothing in the Arrangement seeks to alter or impair CPPIB's litigation rights in any way in the event that its claims prove to be successful in the NY Court Action. Nothing that Lionsgate seeks in the Final Order Hearing will impair or interfere with CPPIB's ability

to prosecute its claims in the NY Court Action and, if the claims succeed, to obtain remedies that are consistent with its rights under the Indenture and applicable New York law for breaches of contractual obligations.

18. Although the litigation has been pending since August 2024, CPPIB has, in the NY Court Action, taken no steps to obtain temporary or injunctive relief seeking to block the Arrangement or the Separation.
- [7] Mr. Feder, K.C., is counsel for CPP. I do not have an affidavit from him or from anyone at CPP. The evidence is presented through the affidavits of Ms. Yu, a paralegal of Mr. Feder's firm, McCarthy Tétrault LLP. From those and materials provided by Lionsgate, it appears that on October 9, 2024, counsel for CPP wrote to Lionsgate and Lionsgate's counsel, Ms. Chang, to note CPP's objection to the separation transaction, expressly wanting a discussion on scheduling. In that letter, Mr. Feder stated:

CPP Investments opposes the Separation Transaction in any form, and the above-referenced and still pending New York action seeks, among other things, to enjoin it. If the Separation Transaction involves another plan of arrangement or other proceedings in the Supreme Court of British Columbia, CPP Investments intends to oppose it. We are providing notice of that intention to you now to facilitate a discussion on scheduling when any such proceeding is filed. Further, if Lionsgate or StudioCo or their affiliates proceed with any ex parte application related to the Separation Transaction, we expect this letter to be brought to the court's attention.

- [8] The petitions in support of a plan of arrangement were filed on January 31, 2025. The application for the initial interim order was made ex parte on February 4, 2025 before Justice Latimer. At that hearing, the court granted the interim order, setting out the procedural steps in connection with the calling and conduct of the Lionsgate meeting to consider and vote on the arrangement. This order also included orders setting the date of the final order or fairness hearing for March 12, 2025 and related filing deadlines. It is pointed out that at that point it was anticipated that the hearing would be in regular chambers and that it would require less than two hours, as is required.
- [9] At that first hearing, Ms. Chang brought McCarthy Tétrault's letter to the court's attention, and the transcript indicates as follows:

CNSL S. CHANG: And so I -- I am bringing this letter to your attention as requested by Mr. Feder. And I can advise the court that, of course, we will work with Mr. Feder in respect of the final order hearing if they intend to appear to oppose.

THE COURT: Was Mr. Feder given notice of today's hearing?

CNSL S. CHANG: We did not give notice of the interim order hearing because it's just procedural and generally proceeds ex parte, but we will be giving him notice of the final order hearing, so they can speak to fairness if they have any concerns.

[]

Mr. Feder's clients are shareholders, so they will receive the meeting materials including -- which will attach the notice of hearing for the final order, as well as the petition and this interim order. And I will also communicate directly with Mr. Feder to advise him of the dates.

[10] Of course, the position of counsel for CPP is that Ms. Chang should have coordinated the final hearing dates with him prior to obtaining any order.

[11] The interim order provided that the shareholders' meeting would be on March 10, 2025 and the final order or fairness hearing, as noted, would be on March 12.

[12] Counsel for CPP, on being given notice, provided in a letter of February 7, 2025, that, firstly, they intended to oppose the granting of the final orders and raising two preliminary issues, the second of which is noted as follows:

Second, as set out in our October 9, 2024 letter, we want to discuss the scheduling of the hearing at which you intend to seek the final orders. The interim orders provide that hearing may occur on March 12, 2025 at 9:45 a.m. or a later date. We are not available on March 12. Further, we expect the hearing to require at least a full day, if not two. We propose an attempting to secure a lengthy chambers booking in April 2025 when booking opens on February 11, 2025. Please advise if that is agreeable and, if so, provide your available dates in April 2025.

[13] Lionsgate, before agreeing to anything, in a letter of February 13, 2025, questioned why two days of hearing would be required and what the issues were. Counsel for CPP advised by letter of February 28, 2025:

In response to your February 13, 2025 letter, scheduling these proceedings is not contingent on the details of our client's position [].

Nonetheless, to facilitate scheduling, we are willing to share that we expect to take the position that the petitions should be dismissed because, among other things, the proposed plan of arrangement and the separation transaction it seeks to implement are not: (i) brought in good faith or (ii) fair and reasonable. We expect to take the position, in the alternative, the hearing of the petitions should be adjourned until the New York litigation concludes, to avoid prejudice to shareholders and other stakeholders of Lionsgate, including CPP Investments.

As we did not hear from you in time to schedule a lengthy chambers hearing in April, please provide your availability for May.

[14] Securities and Exchange Commission ("SEC") approval was not forthcoming in time for the March hearing date. New financial statements for Lionsgate were required, and they were unable to meet the deadlines contemplated in the initial order.

[15] Once the SEC advised approval was imminent, Lionsgate determined that it would be able to schedule a shareholders' meeting for April 23, 2025 and contacted Supreme Court Scheduling for the first available two dates following. They were given May 1st and 2nd. They did not canvass those dates with counsel for CPP.

- [16] On March 12, 2025, Lionsgate applied and obtained a new interim order before Associate Judge Harper. That order provided for the shareholders' meeting on April 23rd and the final or fairness hearing to be held May 1st and 2nd. CPP was served the same day and immediately advised that counsel was unavailable on May 1st and 2nd. They proposed May 20 to 23 or May 26 to 27, 2025, although they did not indicate that whether Supreme Court Scheduling would be able to accommodate those dates.
- [17] Indeed, Supreme Court Scheduling would not have been able to accommodate the May 20 to 23, 2025 dates as that is the court conference week and no judges would be available. Lionsgate refused to adjourn the May 1st and 2nd dates on the basis that the lengthy delay between the shareholders' meeting and the final hearing would create commercial and regulatory risks to the company. Mr. Feder advised that he would be available April 29 to 30, 2025 and Lionsgate did attempt to reserve those dates, but Supreme Court Scheduling could not accommodate them.
- [18] Ms. Chang, who, as I noted was counsel for Lionsgate involved on the interim application, gave evidence as to the standard practice in hearings for plans of arrangement in her affidavit made April 3, 2025, as follows, starting at paragraph 24:
24. In my experience, the usual practise in obtaining court approval of a plan of arrangement begins with the company proposing the arrangement bringing an ex parte application for an interim order that, among various procedural matters, deals with the:
- a) authorizing and directing the company to call and hold a meeting at a specified time, date, and location for the purpose of considering and approving a proposed arrangement; and
 - b) setting the date and time for hearing of the application for the final order and related filing deadlines.
25. McCarthy's Canadian Going-Private Transactions publication [which she appends as Exhibit B] states that a typical plan of arrangement contemplates that the final order hearing takes place two days after the shareholder vote, and notes that it can "take up to a week after the shareholder meeting to obtain the final order of the court." My experience with plans of arrangement is consistent with McCarthy's advice.
26. Since 2017, I have acted as litigation counsel on approximately ten plans of arrangement. In the majority of these arrangements, the final order hearing was scheduled between two to three business days after the shareholder vote, with one arrangement involving a final order hearing scheduled on the same day as the shareholder vote and one arrangement involving a final order hearing scheduled four business days after the shareholder vote. In no case was the final order hearing scheduled more than four business days after the shareholder vote, including a contested final order hearing. In that case, indexed at 2023 BCSC 1402, we did not involve counsel for the opposing stakeholder in the scheduling of the final order hearing, who flew in from Toronto to attend at the final order hearing (in regular chambers) in accordance with the timetable requested by the company and imposed by the Court.

[19] Ms. Chang's evidence is consistent with my experience in presiding over interim hearings in applications involving plans of arrangement.

[20] As to Mr. Feder's availability, as noted, we have the evidence of Ms. Yu in her Affidavit #3 sworn April 7, 2025, who advises on information and belief as follows:

I am advised by Mr. Feder, counsel for CPP Investments, of the following:

- (a) He was first approached by CPP Investments in connection with this matter on September 4, 2024.
- (b) He was engaged my CPP Investments in connection with this matter by no later than September 12, 2024, when he met with lawyers representing CPP Investments in a lawsuit by CPP Investments against Lionsgate in New York.
- (c) He has been personally involved in representing CPP Investments in this matter continuously since September 2024 and has been involved in all aspects of the matter since then.
- (d) The specific scheduling conflict with May 1-2, 2025 are the meetings of McCarthy Tétrault LLP's board of partners and equity partners in Montreal. Every equity partner of McCarthy Tétrault LLP is mandated to attend the latter meeting on May 2.
- (e) CPP Investments expects the final response to petition, similar in form to the draft attached as Exhibit "A" by April 23, 2025.

[21] CPP argues that it is entitled to have Mr. Feder, its counsel experienced in this litigation, attend at the fairness hearing. They continued to suggest an adjournment to May 20 to 23 or May 26 to 27, 2025, although they, at the hearing before me, still had not ascertained from Supreme Court Scheduling whether those dates could be accommodated.

[22] CPP also argues that there has already been a lengthy delay in Lionsgate bringing the plan of arrangement and that further delay would not prejudice them but would prejudice CPP in not being able to have its experienced counsel attend.

[23] Counsel for Lionsgate argues that to allow this application would set a dangerous precedent in hearings regarding plans of arrangement, which have their own procedural cadence. It is argued that to accede to the adjournment request would give power to anyone trying to interfere with the arrangement process by insisting on notice at every step and then arguing, as here, that an adjournment should be granted if not consulted.

[24] Lionsgate submits that it is well understood that arrangers have control of the process of taking plans of arrangement through the initial hearing, the shareholders' meeting, and the ultimate fairness hearing.

[25] Here, Lionsgate did defer to the concerns of CPP by setting the fairness hearing for two days. Normally such applications, as noted, would be made in regular chambers for a duration of less than two hours. They provide evidence, however, that to delay the final or fairness hearing would work substantial prejudice on Lionsgate. Its general counsel, Mr. Tobey, in the April 3, 2025 affidavit referenced earlier, deposed as follows, starting at paragraph 19:

Delay in Closing will Substantially Prejudice Lionsgate

19. A delay in the Final Order Hearing, whether by weeks or months, as requested by CPPIB, will result in a corresponding delay to the completion of the Arrangement. The delay in closing will expose Lionsgate, Lionsgate shareholders, and other stakeholders to significant risks of adverse consequences, including other avoidable commercial, operational, and regulatory risks and burdens, as I describe more particularly below.

Shareholder Confidence and Market Expectations

20. As noted above, the Arrangement is the culmination of an extensive strategic process undertaken by Lionsgate. I understand the Arrangement to be highly anticipated by the Lionsgate Shareholders, who have previously voted, in an advisory vote, to support a mandate to pursue a collapse of the dual-class share structure as part of the separation of the LG Studios Business and Starz Business.
 21. Both Lionsgate Shareholders and industry and market analysts have been expressing frustration and concern about the time it has taken Lionsgate to affect the Separation. The delay has already begun to adversely affect investor relations, analysts' assessments and share valuations.
- [26] He then sets out several examples of criticism and continues at paragraph 24:
24. Most recently, in March 2025, Lionsgate publicly disclosed to the Lionsgate Shareholders and the market that, subject to regulatory review by the SEC, the Lionsgate Meeting is expected to occur on April 23, 2025, with the Separation occurring shortly thereafter.
 25. Market and industry analysts have relied on the timing of this transaction in their advice to investors and in their valuation of Lionsgate and LG Studios share prices.
 26. On November 14, 2023, IndieWire, a film industry website, published an article entitled "WTF is Taking So Long For Lionsgate and Starz to Split Up?" The article notes,

Several anticipated deadlines for the studio spinoff have come and gone. As one analyst told IndieWire for this story, everyone involved in the ongoing saga is "exhausted." The spinoff is now expected to close by the beginning of spring. For real this time.

Wall Street is getting antsy. Analysts have based their Lionsgate price targets on the spin for a while now.

Consider the ducks in a row -- everyone ready to move this along? Oh right, still no. Now what are we waiting for?!?

[27] And Mr. Tobey continues:

I am advised by Samantha Chang, counsel for Lionsgate and LG Studios, and verily believe [...]

And he attaches a copy of that article.

[28] Several other commentaries to the same effect are referenced, and then he continues at paragraph 35:

35. Based on the response of industry publications, market analysts, and Lionsgate Shareholders, including the examples set out above, the Separation is highly anticipated by both Lionsgate Shareholders and the market, who have been told that the Arrangement will be voted on by Lionsgate Shareholders in late April 2024, with the Separation being completed shortly thereafter.
36. The weeks-long delay that CPPIB now seeks, just as the Lionsgate Shareholders and markets are anticipating the closing of the Arrangement will, undoubtedly, erode investor and market confidence, and raise concerns regarding execution risk and Lionsgate's ability to follow through on its strategic commitments. Additionally, market uncertainty surrounding any postponement is likely to weigh on Lionsgate's and LG Studios' share prices, as investors will surely react to the perceived instability and further potential regulatory or operational hurdles.

Regulatory and Financial Recording Risks

37. As I indicated earlier, this is a complex commercial transaction involving significant regulatory oversight and coordination and third-party stakeholders, including the SEC and various lenders. A weeks-long delay in the previously disclosed date for the Final Order Hearing may require Lionsgate to file additional public disclosure with the SEC and provided to the Lionsgate Shareholders, and to give notice of the adjournment and new hearing date and filing deadlines to the Lionsgate shareholders. The disclosure of such delay is likely to cause significant concerns amongst Lionsgate shareholders and the investment community as to when, if ever, the Separation will occur.

Increased Costs

38. A delay in the completion of the Arrangement will result in increased costs to Lionsgate, including extended legal, accounting, and advisory fees, potential financial expenses [...]. Additionally, in anticipation of the pending Separation, a number of employees have been hired to perform certain functions historically centralized within Lionsgate. Any delay will impose additional costs to cover what, prior to Separation, are largely duplicative roles.

[29] He then points out that Lionsgate is planning to obtain new credit facilities with respect to the separated companies, and says:

39. [] If there is a delay in the closing of the Arrangement, Lionsgate may have to incur additional fees to get the lending banks to keep their commitments in place. Any such additional fees will be an addition to the added costs of keeping the current Lionsgate corporate facility in place beyond the originally contemplated date of the Separation.

Additional Tax Liability

40. If the closing of the Arrangement is delayed, there is a greater likelihood that the value of the LG Studios shares will increase from the time of the business combination in May 2024, potentially creating a tax liability to Lionsgate.

[]

Governance Risks

42. As part of the Arrangement, Lionsgate has secured the commitment of highly qualified individuals to act as directors of the two resulting public companies, New Lionsgate and Starz Entertainment Corp. Prolonged uncertainty surrounding the closing of the Arrangement increases the risk that these individuals may pursue other opportunities, potentially leaving Lionsgate to reconstitute the board leadership slates. This would not only complicate governance planning but would also necessitate amendments to the Plan of Arrangement and the Joint Proxy Statement, further disrupting the transition and adding complexity to an already time-sensitive process.

Operational Disruptions and Other Risks

43. As with any complex commercial transaction, the closing of the Arrangement involves a significant number of carefully timed and coordinated steps, many of which involve third parties, including but not limited to the SEC, the Nasdaq Stock Market, the New York Stock Exchange, the B.C. Corporate Registry, and lenders. The successful completion of the Separation requires advanced coordination with each of these regulatory authorities who have been informed of the current contemplated timing of the closing. Moreover, any delay would expose the transaction to shifts in regulatory requirements or market conditions, making the transaction more complex and lead to further delays and additional costs.
44. Similarly, the closing of the Arrangement involves a significant amount of planning and work for Lionsgate's and LG Studios' operations, including but not limited to the implementation of the terms of the separation agreement and certain other agreements relating to the transition and allocation of assets, employees, liabilities, and obligations of Lionsgate and its subsidiaries to New Lionsgate and Starz Entertainment Corporation. Any delay will operationally disrupt these plans and result in costly interim inefficiencies.

45. Further, a delay in closing the Arrangement and the resulting uncertainty may impact the availability and cost of capital for the financing of productions by Lionsgate and by LG Studios.
46. On closing Lionsgate will fully draw down against its available term loans based on the then prevailing interest rates. As the Court is likely aware, we are living in extremely uncertain geopolitical times, which have the potential to materially adversely affect interest rates. Consequently, a delay of even a few weeks in the closing of the Arrangement will expose Lionsgate to increased interest rate volatility and risk.
47. For all of these reasons, a delay in closing the Arrangement would not only undermine investor confidence and shareholder value, but will also expose Lionsgate to heightened execution, regulatory, and governance risks, making the transaction more uncertain and potentially jeopardizing its success.
- [30] The first case referenced by counsel and probably the seminal case on adjournments in this jurisdiction is *Navarro v. Doig River First Nation*, 2015 BCSC 2173. At paras. 18 through 21 the court sets out the interests, the factors or considerations, and the ultimate goal, and that is a fair trial on the merits of the action.
- [18] A judge exercises discretion when an adjournment is sought and has wide powers in relation to the order that is made (*Cal-Wood Door v. Olma*, [1984] B.C.J. No. 1953 at para. 13 (C.A.) (*Cal-Wood Door*)). The discretion must, of course, be exercised judicially in accordance with appropriate principles (*Dhillon v. Virk*, 2014 BCSC 745 at para. 8 (*Dhillon*)). The exercise of discretion is a delicate and difficult matter that addresses the interests of justice by balancing the interests of the plaintiff and of the defendant (*Sidoroff v. Joe* (1992), 1992 CanLII 1815 (BC CA), 76 B.C.L.R. (2d) 82 at paras. 8-11 (C.A.) (*Sidoroff*)). This balancing requires a careful consideration of all of the elements of the case including the nature of the proceedings and the parties (*Sidoroff* at para. 10). The Court of Appeal will be extremely reluctant to interfere with a decision of a trial judge on an adjournment matter which is integral to exercise of judicial discretion (*Sidoroff* at para. 11; *Toronto-Dominion Bank v. Hylton*, 2010 ONCA 752 at para. 36 (*Toronto-Dominion Bank*)).
- [19] There are numerous factors to be considered on an adjournment application. However, the paramount consideration is the interest of justice in ensuring that there will remain a fair trial on the merits of the action (*Cal-Wood Door* at para. 13; *Graham v. Vandersloot*, 2012 ONCA 60 at para. 12 (*Graham*)). Because the overall interests of justice must prevail at the end of the day, courts are generous rather than overly strict in granting adjournments, particularly where granting the request will promote a decision on the merits (*Graham* at para. 12). The natural frustration of judicial officials and opposing parties over delays in processing civil cases must give way to the interests of justice, which favours a claimant having his day in court and a fair chance to make out his case (*Graham* at para. 12).
- [20] Other factors or considerations include (in no particular order of priority):

- the expeditious and speedy resolution of matters on their merits (Rule 1-3(1); Sidoroff at para. 10);
- the reasonableness of the request (Dhillon at para. 16);
- the grounds or explanation for the adjournment (Dhillon at para. 16; Toronto-Dominion Bank at para. 38);
- the timeliness of the request (Dhillon at para. 16);
- the potential prejudice to each party (Dhillon at paras. 16-17);
- the right to a fair trial (Dhillon at para. 16);
- the proper administration of justice (Dhillon at paras. 16 and 39; Toronto-Dominion Bank at para. 36);
- the history of the matter, including deliberate delay or misuse of the court process (Toronto-Dominion Bank at para. 38); and
- the fact of a self-represented litigant (Toronto-Dominion Bank at para. 39).

[21] Securing a fair trial on the merits of the action is the ultimate goal. This requires consideration of the nature of the claim. If the claim is novel, then the prospect for success is one factor to consider (*Sangha v. Azevedo*, 2005 BCCA 184 at para. 15 (*Sangha*)). However, the prospect for substantive success should not be the sole basis for refusal of an adjournment (Toronto-Dominion Bank at para. 41).

[31] There are, however, unique considerations at play for plans of arrangement. In *Re First Marathon Inc.*, [1999] O.J. No. 2805 (S.C.J.), the court notes:

[8] I do not accept the submission that interim orders of the sort in question here should not be made on a without notice basis, at least where, as here, there has been no indication of shareholder opposition to the proposed transaction prior to the seeking of the order and there has been a public announcement in the media regarding the transaction. Each case will require its own consideration of course. In section 182 of the Ontario Business Corporations Act, however, the legislature has created a specific procedure for dealing with arrangement transactions. Because of the very nature of such transactions, particularly in relation to publicly traded companies, there is often a tight timing dynamic to them. The provisions of the act should be construed and applied in a fashion which facilitates a fair and effective processing of the application in a manner that is consistent with their real-time nature as business transactions. To require the corporation to serve notice on all shareholders before taking any steps seems to me to introduce unnecessary expense, duplication, and delay into the procedure.

[32] I also note the decision in *Re iAnthus Capital Holdings, Inc.*, 2020 BCSC 1383:

The application to set aside the interim order

[]

- [8] Having said that, having regard to the authorities, I do not think that iAnthus was required to involve the applicants in fixing the schedule, and I do not consider that iAnthus's failure to bring to my attention Ms. Roberts Jones's general request to be involved in seeking the interim order was a breach of her obligation to make full and frank disclosure on an ex parte application. I dismiss the order sought in paragraph 1 of the notice of application.

The application to vary the interim order

- [9] Alternatively, the applicants seek an order adjourning the substantive fairness hearing by one week from September 25, 2020, until a later date, giving them until October 2, 2020, to file responsive materials. IAnthus replies that the arrangement is being proposed pursuant to an agreement between the company and the noteholders that requires issuance of a final order approving the arrangement by September 28, 2020.
- [10] The September 28, 2020, deadline could be waived by the parties to the agreement, but there is certainly a risk that it would not be. Counsel for the note holders have advised that the timing was heavily negotiated, and that the adequacy of an interim financing arrangement is engaged. The applicants have not provided any evidence that they are unable to prepare for a hearing on September 25, 2020, or are otherwise prejudiced by the present timing. Ms. Roberts Jones tells me that her difficulty lies in obtaining an expert report addressing valuation issues. She has a concern with the timing but cannot say that it is impossible that she will be able to proceed on September 25.
- [11] Weighing the potential prejudice to each side, the potential prejudice to iAnthus's shareholders from a collapse of the arrangement into a CCAA proceeding is heavier. The application for the order sought in paragraph 2 of the notice of application is dismissed.
- [33] Counsel for CPP pointed out that this case was distinguishable as it dealt with a specific deadline. In my view, however, the concerns and considerations set out in these cases are generally applicable.
- [34] Counsel for Lionsgate also pointed out that when dealing with the prejudice to a party that will result from being unable to have its counsel of choice, the court will consider the matter as it did in the decision in *Henderson v. Fisher*, 2020 BCSC 886 where Justice Branch noted:
- [16] In terms of the initially proposed, and eventually secured, September 2020 trial date, the defendant's counsel says that he had previously booked off the month of September for a personal vacation out of the country. It is relevant that the conflict is not a competing trial, the progress of which would itself be jeopardized by not granting the adjournment of the present matter.

[]

- [23] The Court is left in a position where the weight on both sides of the scales is quite light, given the absence of meaningful evidence of substantial prejudice to either side. To the extent that the defendant is relying on the threat to their right to retain counsel of their choice, the fact is that the threat is really to the need for the defendant's counsel to potentially abandon now speculative September 2020 travel plans. This tilts the balance somewhat in the plaintiff's favour, particularly when coupled with the necessary consideration of the broader interests of the judicial system. As the court stated in [The Owners, Strata Plan VR 2000 v. Shaw, 1999 CanLII 6154 (B.C.S.C.)] at para. 26: "[A]n adjournment of any trial, but particularly a long trial, is prejudicial to the judicial system." []
- [35] I am satisfied that in considering this matter the issue is really a balancing of prejudice and the interests of justice in seeing that the plan of arrangement proceeds expeditiously and the concerns of CPP regarding the fairness of the plan are able to be presented to the court in a fulsome way.
- [36] The evidence of Lionsgate satisfies me that there is both actual and potential substantial prejudice if this matter is delayed.
- [37] Counsel for CPP could easily have approached Supreme Court Scheduling on March 13, 2025 when they first learned of the problems with the May 1st and 2nd dates and secured alternate dates in May, but they did not do so. It is now a month later. I have no assurance that the hearing could proceed in May, indeed the May 20 to 23, 2025 dates are impossible, and given the reality of scheduling, it is highly likely that it would be delayed at least into June.
- [38] I have no evidence from CPP as to the actual prejudice it will suffer, other than perhaps not being able to have Mr. Feder attend the fairness hearing. There is no evidence from counsel or a representative from CPP that CPP would be unable to retain and prepare alternate senior counsel in time for the May hearing.
- [39] Indeed, I have no evidence from Mr. Feder that his firm would not make an exception to his attending the planned partners' meeting so that he could appear on the fairness hearing.
- [40] The fairness hearing has been scheduled for two days to accommodate CPP's estimated hearing length. Thus, their arguments opposing the separation transaction will be able to be fully canvassed.
- [41] In all of the circumstances, including the commercial realities of plans of arrangements, the evidence of actual and potential prejudice to Lionsgate, and the lack of evidence as to the actual prejudice to CPP, I have concluded that the application should be denied.

[SUBMISSIONS ON COSTS]

- [42] THE COURT: I am of the view that Lionsgate should have its costs of this application in any event of the cause, as there is no traditional cause in the sense of a trial that will deal with the issues between the parties.

[43] So the order will go that Lionsgate will have its costs in any event of the cause. I am not going to fix them. Counsel can either agree or they can be assessed.

"Muir A.J."

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