

Court File No. BK-25-03215064-0031  
Estate File No. 31 – 3215064

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,**  
**R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE**  
**A PROPOSAL OF BOOKJANE INC., OF THE CITY OF TORONTO,**  
**IN THE PROVINCE OF ONTARIO**

**FACTUM OF BOOKJANE INC.**  
**(Motion Returnable May 20, 2025)**

May 16, 2025

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TO: SERVICE LIST

## **PART I - OVERVIEW**

1. This motion is brought by BOOKJANE INC. (the "**Company**"), for an Order extending the time within which to file a Proposal with the Official Receiver and granting an Administration Charge over the Company's assets in favour of the Proposal Trustee, its counsel and counsel for the Company.

## **PART II – FACTS**

### **A. The Debtor and its Business**

2. The Company operates primarily as a Software as a Service ("**SAAS**") provider of staff booking solutions to businesses in healthcare and aged care. As of the Filing Date, the Company employed approximately 17 salaried employees.<sup>1</sup>

3. The Company is insolvent resulting from its inability to generate sufficient revenue to offset its operating costs.<sup>2</sup>

4. The Company has been reliant on funding provided by its senior secured lender - AYAL Capital Advisors Elite Fund LP ("**AYAL**") as collateral agent for AYAL, Amica Senior Lifestyles Trust, KB Capital Management Inc., Zahra Salibury and John McDonald (the "**Senior Secured Lender**").<sup>3</sup>

5. The Senior Secured Lender has been unwilling to advance further funding to cover operating losses since its most recent financing round in September of 2022 (inadvertently referenced in Affidavit as December of 2022)<sup>4</sup>.

6. As a result, the Company determined it was necessary to sell the business or its assets. Since November of 2023, together with the Senior Secured Lender, the Company has made efforts at

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<sup>1</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraphs 3 and 4

<sup>2</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraph 5

<sup>3</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraph 6

<sup>4</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraph 6

contacting several industry participants and private equity firms. Those efforts did not result in any acceptable offers.<sup>5</sup>

7. The Company determined it was necessary to engage a consultant, Albert Gelman Inc. (“**AGI**”) in March of 2025 to assist with conducting a formal sale process to canvas the market and solicit offers (the “**Sales Process**”)<sup>6</sup>.

8. AGI assisted the Company with conducting a Sale Process on an “as is basis”. 19 prospective purchasers executed Non-Disclosure Agreements and accessed the data room. The Sale process did not result in any qualified bids.<sup>7</sup>

9. Given the results of the Sale Process, the Senior Secured Lender advised of its intention to submit its own offer to purchase the Company's assets.<sup>8</sup>

## **B. The Notice of Intention to Make a Proposal**

10. The Company filed a Notice of Intention to Make a Proposal (“**NOI**”) on April 23<sup>rd</sup>, 2025 and AGI was appointed as Proposal Trustee.<sup>9</sup>

11. The Company is continuing to negotiate the terms of an Asset Purchase Agreement (“**APA**”) with the Senior Secured Lender which is expected to be finalized shortly. The Company will then return to court to seek approval of the APA and the sale process.<sup>10</sup>

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<sup>5</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraph 7

<sup>6</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraph 8

<sup>7</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraphs 9-14

<sup>8</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraph 17

<sup>9</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraphs 18-19

<sup>10</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraphs 20-21

12. The current deadline by which the Company must file a proposal with the Official Receiver under the BIA is May 23<sup>rd</sup>, 2025. Accordingly, the Company seeks a brief extension of that deadline until July 7, 2025, to allow it to complete its negotiations of the APA.<sup>11</sup>

13. The Company has acted diligently and in good faith and does not believe that the company's creditors will be materially prejudiced if the extension is granted.<sup>12</sup>

**C. The Administration Charge**

14. The Company is also seeking a first ranking charge against the assets of the Company to secure the fees and disbursements occurred in connection with services rendered to the Company or in furtherance of the NOI, both before and after the filing of the NOI, by the Proposal Trustee, its counsel, Capstone Legal, and the Company's counsel Garfinkle, Biderman LLP.<sup>13</sup>

15. The amount requested of \$220,000.00 is reasonable and was determined in consultation with the Proposal Trustee counsel and the Senior Secured Lenders.

**PART III – ISSUES AND ARGUMENT**

**A. ISSUES**

16. The Company's motion raises the following issues, all of which should be answered in the affirmative:

- i. should the court grant an Administration Charge over the assets of the Company in favour of the Proposal Trustee, its solicitors and the Company's solicitors? And

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<sup>11</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraphs 22-23

<sup>12</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraphs 24-25

<sup>13</sup>Motion Record - Tab 2 – Affidavit of Curtis Khan - Paragraph 26

- ii. should the court grant an extension of the time within which to file a proposal under the BIA until July 7<sup>th</sup>, 2025?

## **B. ARGUMENT**

17. The BIA confers on the court the statutory jurisdiction to grant an administration charge. Specifically, section 64.2 provides as follows<sup>18</sup>:

**64.2 (1) *Court may order security or charge to cover certain costs:*** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

**64.2 (2) *Priority:*** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

18. Administrative charges have been approved in BIA proposal proceedings, where, as in the present case, the participation of insolvency professionals is necessary to ensure a successful proceeding under the BIA, as well as for the conduct of a sale process.

19. The Company submits that this is an appropriate circumstance for the Court to grant the Administration Charge with priority over pre-existing security interests and other encumbrances. The quantum of the proposed Administration Charge is both fair and reasonable given the size and complexity of the Company's business and the Sale Process. Each of the professionals whose fees are to be secured by the Administration Charge has played and will continue to play a critical role in these proposal proceedings and in the Sale Process.

*The Court Should Grant an Extension of the Time to File a Proposal*

20. The Company filed its NOI on April 23, 2025. By operation of section 50.4(8) of the BIA, the Company is required to file a proposal within 30 days unless it otherwise obtains an extension of time from the Court within that 30-day period. The Company is seeking to extend the time within which a proposal must be filed to and including July 7, 2025.

21. Pursuant to section 50.4(9) of the BIA, a debtor in a proposal proceeding may, before the expiry of the time to file a proposal, apply to the court for an order extending the time to file a proposal, by a maximum of 45 days, and the court may extend the time if it is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

22. In order to continue its negotiations with AYAL, the Company is seeking an extension of time to file a proposal for 45 days. The Company respectfully submits that the extension sought ought to be approved for, inter alia, the following reasons:

- (a) the Company is acting in good faith and with due diligence;
- (b) an extension of time is required in order to continue negotiations with the Senior Secured Lender in order to complete a sale with court approval;
- (c) without the extension, the Company will not be in a position to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders. In contrast, no creditor will be materially prejudiced if the extension applied for is granted; and
- (d) the proposed extension is supported by the Proposal Trustee<sup>14</sup>.

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<sup>14</sup>BIA, section 64.2; *Colossus Minerals Inc. (Re)*, 2014 ONSC 514 at [para. 12](#) [*Colossus*].

**PART III – ORDER SOUGHT**

(e) The Company respectfully request that this court grant the Order substantially in the form included at Tab 3 of the Company's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



May 16, 2025

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Wendy Greenspoon-Soer  
Lawyers for BookJane Inc.

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PROCEEDINGS COMMENCED AT TORONTO

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RCP-F 4C (September 1, 2020)