

CITATION: GMI Publications Inc. v. Wei Lin et al, 2026 ONSC 1802
COURT FILE NO.: CV-23-00711412-0000
DATE: 20260324

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

GMI Publications Inc.

Applicant

– and –

Wei Lin in his Capacity as Nominee Holder
on Behalf of the Debenture holders as
Secured Creditor of Media Centran
Corporation Inc., 1745573 Ontario Limited,
944657 Ontario LTd., Alex Pourian,
Andrew Dilts, Ari Rosensweig, a.k.a Ari
Rosenzweig, Bolingbroke Investments Inc.,
David L. Daniels, Drirena Inc., aurelio
Palermo financial Services Inc., Fernando
Pace, Grove Capital Group Ltd., Hannah
Lin, Huahao Wang, Jing Zhang, Kendall
Gee-wing, Laing Henshall, Lewis Man, Mak
Capital Inc., Megafoam Inc., Neng Wan,
Qin Tang, Zong Ze Li, Radical Capital Ltd.,
and Wei Lin, in his Personal Capacity

Respondent

Varoujan Arman, for the Applicant

Christopher Selby, Sarah Kemp for the
Respondent

HEARD: August 19, 2025

DES ROSIERS J.

REASONS FOR JUDGMENT

[1] When Now Central Communications (“NCC”), the publisher of Now Magazine, defaulted on its Guarantee Agreement, the Respondents, (“the debenture holders”),

moved to realize their guarantee and seize all NCC's assets with the intention to dispose of them. Mr. Wei Lin acted as the representative of the debenture holders for the sale of NCC's assets.

- [2] The Applicant, GMI Publications Inc. ("GMI") agreed to purchase all NCC's assets except specified excluded assets. The purchase price was \$270,000. The assets purchased were the accounts receivable, the intellectual property and copyrights NCC had, including permits, computers, office equipment and goodwill. It did not include employees' contracts that were to be terminated prior to the sale.
- [3] As part of the disclosure process during the negotiation of the Assets Purchase Agreement ("APA"), GMI representatives inquired about legal fees incurred by NCC and were told that NCC had incurred legal fees to negotiate with a union and settle grievances. The collective bargaining agreement was not provided to GMI at that time, and GMI did not request it.
- [4] The collective bargaining agreement had a three year term from January 1, 2019 to December 31, 2022.
- [5] The APA was signed on December 21, 2022 and had a closing date of January 9, 2023.
- [6] In January 2023, GMI announced its purchase of the assets of Now Magazine and its relaunch of it as a digital-only "nowtoronto.com" news enterprise.
- [7] In February 2023, the union who represented NOW Magazine's employees, UNIFOR Local 87-M, brought an application to the Ontario Labour Relations Board (OLRB) pursuant to section 69 of the *Ontario Labour Relations Act*. UNIFOR Local 87-M was seeking to enforce the collective bargaining agreement, to have the terminated employees reinstated and to bargain to renew the agreement.
- [8] GMI immediately advised Mr. Lin on behalf of the debenture holders of the situation and it was then provided with the collective bargaining agreement. There were some discussions between the parties, and GMI retained counsel to negotiate a settlement with UNIFOR Local 87-M. Through the settlement, which was later entered as an OLRB decision, GMI agreed to pay \$31,355.92 to members of the NOW bargaining unit in respect of their claims for unpaid wages, or for unpaid vacation pay in the case of one employee, by NOW for work performed prior to December 22, 2022.
- [9] GMI is now seeking to recover \$58,000 from the Debenture Holders pursuant to an indemnity clause in the APA. The amount represents the settlement of \$31,355.92 and its legal fees of \$27,640.64 incurred in the OLRB proceeding and in negotiating the settlement.
- [10] The debenture holders deny that they owe any money pursuant to the contract for the following reasons. First, they claim that GMI purchased the assets on a "As is Where is" basis whereby GMI had acknowledged completing its due diligence. To the extent that GMI did not know about the collective agreement between NOW and UNIFOR, it would

have known about it if it had conducted proper due diligence. Second, the debenture holders deny that they failed in their duty of disclosure by not disclosing the collective agreement, and therefore the debenture holders reject that they must indemnify GMI pursuant to the indemnification clause. Finally, the debenture holders argue that GMI breached the agreement itself by advertising publicly its purchase of NOW's assets, thereby triggering UNIFOR's proceedings in front of the OLRB.

[11] The issues before me relate to the interpretation of the APA between the parties:

- is the payment in fulfillment of the settlement with UNIFOR at the OLRB part of the excluded liabilities pursuant to the Agreement and subject to the indemnity clause?
- is GMI prevented from relying on the indemnity clause because of the publicity it generated around the purchase of NOW's assets or otherwise?

[12] For reasons below, I conclude that GMI is entitled to \$58,000 as provided by the indemnity clause, and that it is not prevented from claiming such indemnity.

Is a payment in fulfillment of a settlement with the union and GMI part of excluded liability pursuant to the Agreement?

[13] The Supreme Court of Canada has observed that the approach to contract interpretation “has evolved towards a practical, common-sense approach not dominated by technical rules of construction”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633. The primary object of contract interpretation is to give effect to the intention of the parties at the time of contract formation: *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494, at para. 45. The “intent of the parties and the scope of their understanding,” is determined by reading a contract “as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”: *Sattva Capital*, at para. 48.

[14] In *The Plan Group v. Bell Canada*, 2009 ONCA 548, 96 O.R. (3d) 81, at para. 37, the Court of Appeal held that a commercial contract should be interpreted:

- as a whole, by giving meaning to all the terms of a contract to avoid an interpretation that would render any term ineffective;
- by determining the intention of the parties with reference to the words used in the contract;
- with regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to subjective intention; and
- to the extent that there is any ambiguity in the contract, in a fashion that accords with sound commercial principles and good business sense and that avoids a commercial absurdity.

[15] The APA includes an indemnification clause:

Section 7.01 Indemnification by Vendor.

Subject to the other terms and conditions of this ARTICLE VII, the Vendor shall defend, indemnify and hold harmless the Purchaser, its affiliates and their respective shareholders, directors, officers and employees from and against all claims, judgments, damages, **liabilities**, settlements, losses, costs and expenses, **including reasonable legal fees**, disbursements and charges, arising from or relating to:

(a) any inaccuracy in or breach of any of the representations or warranties of the Vendor contained in this Agreement or any document to be delivered hereunder;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Vendor under this Agreement or any document to be delivered hereunder; or

(c) any **Excluded Asset or any Excluded Liability**.

(Emphasis added)

[16] The APA lists excluded assets in Schedule B. Among the excluded assets are employment contracts. (Schedule B of the APA)

[17] Section 1.03 of the APA provides that GMI will assume all liabilities arising from the assigned contracts, which do not include employment contracts. Section 1.03 clearly states that the Purchaser (GMI) shall not and does not assume, agree to perform or discharge, indemnify the Vendor (the debenture holders) against any responsibility for any liabilities **including liability for salary, wages, bonus, commissions, vacations, vacation pay, severance or other compensation that may be owed or become payable by the Vendor** or NCC to any current or former employees.

[18] The only way that GMI could be expected to shoulder liabilities arising out of wages or employment contracts would be if this liability was specifically assigned in the Agreement as part of an assumed liability or assigned contract.

[19] The settlement with UNIFOR enshrined in the OLRB decision obliges GMI to pay for unpaid wages and unpaid vacation for employees until December 22, 2022, the date of the APA.

[20] The parties disagreed on whether the collective agreement should have been disclosed by the debenture holders, and to the extent that GMI's representatives asked questions about legal expenses, it was part of due diligence duty to request a copy of the collective agreement. In my view, this dispute is irrelevant.

[21] Even if the Collective Bargaining Agreement were disclosed, as the debenture holders argue, this disclosure would not change the allocation of responsibilities in the APA.

Employment contracts and wages of employees were never part of the responsibility that GMI was meant to shoulder.

- [22] The parties intended matters of employment to be the responsibility of the Vendors (the Debentures holders). The language in the agreement is clear that this is an excluded liability, that GMI is not acquiring the labour force and that the debenture holders are responsible for terminating the employees. This interpretation is consistent with the fact that the debentures holders did not provide a copy of the collective agreement as part of the disclosure. It was not material to do so since they remained liable for all employment matters. This interpretation is also consistent with Mr. Lin's initial position that GMI should be indemnified for the employment matters arising out of the OLRB proceeding.
- [23] Section 6.04 of the APA is consistent with this interpretation. It provides:
- NCC Employees
- (a) Commencing on the Closing Date and prior to Closing, the Vendor shall cause the termination of all individuals currently employed by NCC, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, including an employee on statutory or approved leaves of absence (including maternity leave, parental leave, short term or long term disability leave, workers' compensation and other statutory leaves) (each a "NCC Employee") and all liabilities owing to any such NCC Employees in respect of such terminations, *including but not limited to all amounts owing on account of statutory notice, termination payments, severance, vacation pay, benefits, bonuses or other compensation or entitlements, shall be Excluded Liabilities.*
- (Emphasis added)
- [24] The debenture holders argue that it is unclear whether the settlement of an OLRB proceeding pursuant to section 69 of the *Ontario Labour Relations Act* ("continuing the same operation") comes within the scope of clauses 1.03 or 6.04 of "including but not limited to" amounts owing on account of statutory notice, termination payments, severance, vacation pay, benefits, bonuses or other compensation or entitlements. I disagree. The terms of the settlement are for payment of unpaid wages and vacation pay owed prior to the date of the APA. There is also a statement by the Union included in the settlement that the amounts paid will not provide double recovery for the various employees.
- [25] The interpretation that reflects the common intention of the parties is that any liability for past wages was to remain the responsibility of the debenture holders.
- [26] I conclude that GMI is entitled to be indemnified for the settlement that it concluded for past wages in the amount of \$31,355.92.

- [27] The debentures holders were notified about the proceeding in front of the OLRB. I am satisfied that the amount paid was reasonable and reflected moneys owed to the employees.
- [28] GMI is also entitled to its legal fees as provided in the indemnity clause. I have reviewed the bill of costs and find that the fees of \$27,640.64 claimed for the OLRB proceedings and settlement are reasonable.

Did GMI breach the agreement and is liable for the debenture holders' damages?

- [29] The debenture holders argue that they should be indemnified by GMI because GMI breached the agreement when it announced its acquisition of the assets without first seeking permission from the debenture holders.
- [30] The Debentures Holders rely on clause 6.01 of the APA.

Section 6.01 - Public Announcements.

Unless otherwise required by applicable law, neither party shall make any public announcements regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).

- [31] The debentures holder's position is that a tweet from GMI and GMI's announcement of its purchase of Now Magazine's assets triggered the inquiry and complaint from UNIFOR. It was done without prior approval of the debenture holders. In particular, because GMI used the work "relaunch" of Now Toronto, the debenture holders argue that it invited an investigation as to whether GMI was continuing the same business and therefore should be bound by the terms of the existing collective agreement.
- [32] GMI responds that this is a *de minimis* complaint because the intention of the parties was for GMI to operate a "media" company. It had to make its acquisition public. The language envisions that public announcements will be made because it provides that the consent shall not be unreasonably withheld or delayed. I agree.
- [33] At no time, was the issue of keeping the sale of the assets confidential raised between the parties. The debenture holders cannot have it both ways: arguing that the collective bargaining agreement was immaterial and then suggest that the collective bargaining agreement ought to have taken into account in the communications related to the sale of the assets, and prevent any public announcement.
- [34] In my view, following the principles of interpretation that contracts must be interpreted in "a fashion that accords with sound commercial principles and good business sense and that avoids a commercial absurdity", (*The Plan Group v. Bell Canada, supra*, par. 37), I conclude that GMI did not breach the APA when it announced its purchase of the NOW assets. This announcement was within the reasonable contemplation of the parties. It was inevitable and clearly envisaged.

- [35] If I am wrong about this interpretation, I would also find that the debenture holders are not entitled to a complete set-off of the indemnification they owe GMI. The settlement related to moneys the debenture holders owed NOW workers, wages or vacation pay that had not been paid. This debt does not arise out of the breach of the APA by GMI and is not covered by the indemnification clause.
- [36] The parties had clearly allocated between themselves their respective liabilities and the risks associated: the debenture holders were responsible to pay the employees' salaries until the closing date. That a claim was made after the closing date does not change the allocation of risks and responsibilities between the parties.
- [37] The application is granted.
- [38] GMI had discontinued its actions against several respondents who should be removed from the Order: Qin Tang, Andrew Dilts, Kendall Gee-Wing, Laing Henshall, Megafoam Inc., Neng Wan, Radical Capital Ltd, 944657 Ontario Ltd.

Costs

- [39] Parties have uploaded their bills of costs. If the parties cannot agree on costs, the Applicant shall provide its costs submissions not exceeding three pages, excluding offers to settle by April 10, 2026 and the Respondents shall provide their responding costs submissions by April 24, 2026.



Des Rosiers J.

Released: March 24, 2206

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Respondent

REASONS FOR JUDGMENT

Des Rosiers J.

Released: March 24, 2026