

2019 01G
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF: An Application by **Norcon Marine Services Ltd.** for relief under the *Company' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as am.

SUMMARY OF CURRENT DOCUMENT	
Court File No.	2019 01G
Date of filing of document:	
Name of filing party or person:	Tim Hill, Q.C., (Counsel for the Applicants)
Application to which document being filed relates:	Application for an Order pursuant to Section 11.02(1) of the <i>Company' Creditors Arrangement Act</i> .
Statement of purpose in filing:	Application

Originating Application
(Inter Parties)

TO THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR OR ONE OF THE JUDGES THEREOF

The application of Norcon Marine Services Ltd. (the "Company"), the Applicant herein says:

1. The Company seek orders as follows:

- (a) An Order abridging the notice periods pursuant to Section 11 of the *Company' Creditors Arrangement Act* ("CCAA") and the *Rules of the Supreme Court, 1986*, Rule 2.01(1);
- (b) An Order pursuant to Section 11 of the CCAA directing that service on the service list set out in Schedule "A" hereto is sufficient for the purposes of this Application;
- (c) An Order pursuant to Section 11.02(1) of the CCAA:
 - (i) staying, for a period not to exceed 10 days, or until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the Company under the *Bankruptcy and Insolvency Act*;

(ii) restraining, for a period not to exceed 10 days, or until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the Company; and

(iii) prohibiting, for a period not to exceed 10 days, or until otherwise ordered by the court, the commencement of any action, suit or proceeding against the Company.

Procedural History

2. On November 25, 2019, the Company filed a Notice of Intention to Make a Proposal Pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* ("BIA"), and Deloitte Restructuring Inc. was appointed Proposal Trustee.

Material Facts

3. The Company is incorporated in Newfoundland and Labrador.

4. The Company is engaged in marine transportation and has historically owned and operated passenger-freight vessels on routes located across the south shore of Newfoundland and Labrador. The Company also owns and operates cargo ships servicing the offshore and aquaculture industry. At this time the Company owns four vessels, these being the motor vessels Northern Seal, Norcon Oceanus, Norcon Galatea and Norcon Triton.

5. The Company is also engaged in the business of providing crewing and vessel management services to clients primarily in the aquaculture industry.

6. The Company is commonly owned by the owning shareholders of Burry's Shipyard Inc. ("BSI"). BSI is bankrupt and in receivership following unsuccessful attempts to restructure BSI earlier this year.

7. Business Development Bank of Canada ("BDC") was a major creditor of BSI. The Company had provided to BDC a guarantee of the debt of BSI. BDC now seeks \$834,000 from the Company in respect of that guarantee.

8. The Company had loaned money to BSI. As a result of BSI's bankruptcy, the Company has incurred a bad debt expense of approximately \$1,800,000.

9. During the current fiscal year, the Company has experienced a reduction in revenue and profitability as a result of:

(a) the loss of a Government of Newfoundland and Labrador ferry contract effective March 31, 2019. That contract provided work for two of the Company's vessels;

(b) the termination effective June 30, 2019 of a long term contract with Northern Harvest Limited; and

(c) recent disruptions within the aquaculture industry which have resulted in reduced work being available.

10. As a result of the foregoing the Company has incurred an approximately \$443,000 liability to the Canada Revenue Agency relating to unpaid HST and payroll obligations. The Company has also increased utilization of its line of credit with the Bank of Nova Scotia, and its trade payables have increased when compared to prior years.

11. The Company's primary current assets consist of the four vessels noted above, and real property located in Glovertown, Newfoundland and Labrador.

12. The Company is actively seeking new contracts for its vessels and services, but does not expect to enter into such new contracts until early Spring, 2020.

13. On November 8, 2019, the MV Norcon Oceanus was arrested pursuant to a Warrant issued in the Federal Court of Canada, and it remains under arrest.

14. On October 28, 2019, BDC purported to issue a demand against the Company pursuant to section 244 of the *BIA*. The Company took issue with service of that demand, and BDC reissued and served the demand on November 19, 2019.

15. As previously noted, on November 25, 2019, the Company filed a Notice of Intention to Make a Proposal Pursuant to section 50.4(1) of the *BIA*.

16. The Company is qualified to make this application pursuant to section 3(1) of the *CCAA*, as its debts total in excess of \$5,000,000.

Relief Sought

17. The Company therefore applies for an order as stipulated in paragraph 1 hereof:

(a) An Order abridging the notice periods pursuant to Section 11 of the *CCAA* and the *Rules of the Supreme Court, 1986*, Rule 2.01(1);

(b) An Order pursuant to Section 11 of the *CCAA* directing that service on the service list set out in Schedule "A" hereto is sufficient for the purposes of this Application;

(c) An Order pursuant to Section 11.02(1) of the *CCAA*:

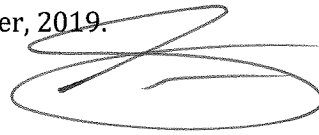
(i) staying, for a period not to exceed 10 days, or until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the Company under the *BIA* or the *Winding-up and Restructuring Act*;

(ii) restraining, for a period not to exceed 10 days, or until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the Company; and

(iii) prohibiting, for a period not to exceed 10 days, or until otherwise ordered by the court, the commencement of any action, suit or proceeding against the Company.

(d) such other and further relief as this Honourable Court deems just.

DATED at Dartmouth, Nova Scotia, this 5th day of December, 2019.



Tim Hill, Q.C., Solicitor for the Applicant
BOYNECLARKE LLP
Barristers and Solicitors
99 Wyse Road, Suite 700
Dartmouth, Nova Scotia B3A 4S5
Telephone: (902) 460-3442
Fax: (902) 463-7500

To: The Counsel and others listed in Schedule "A" hereto

ISSUED at St. John's, in the Province of Newfoundland and Labrador this day of December, 2019.

Registrar

2019 01G
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF: An Application by **Norcon Marine Services Ltd.** for relief under the
Company' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as am.

Affidavit of Glenn Burry

I, Glenn Burry, of Clarenville, Newfoundland and Labrador, swear as follows:

1. I have read and understand the foregoing application.

2. I have personal knowledge of the facts contained therein and they are true to the best of my knowledge and belief.

SWORN before me at
St. John's, Province of Newfoundland
And Labrador,
this ___ day of December, 2019.

Glenn Burry

2019 01G
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

IN THE MATTER OF: An Application by **Norcon Marine Services Ltd.** for relief under the
Company' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as am.

Notice to the Service List

You are hereby notified that you must attend before a judge presiding in chambers at the Court House at Duckworth Street, St. John's, Newfoundland and Labrador on the 17th day of December, 2019, at the hour of 10.00 o'clock in the forenoon or so soon thereafter as the application can be heard for the hearing of the application in the above noted matter.

AND FURTHER TAKE NOTICE that the judge may make an order in favour of the applicant in your absence and without further notice unless you or your solicitor appear at the time and place noted above.

To: the Service List attached as Schedule "A"

Schedule "A"

Canada Revenue Agency
Simmonds, David
Legal Clerk
165 Duckworth Street
P.O. Box 12075
St Johns NL A1B 4R5

Fax #: 709-772-5211

The Bank of Nova Scotia
4715 Tahoe Boulevard
Mississauga ON L4W 0B4

Counsel:

Anna Waberski
Stewart McKelvey
awaberski@stewartmckelvey.com

Joe Thorne
Stewart McKelvey
joethorne@stewartmckelvey.com

Ford Credit Canada Limited
PO Box 2400
Edmonton AB T5J 5C7

Business Development Bank Of Canada
42 High Street
P.O. Box 744
Grand Falls-Windsor NL A2A 2M4

Counsel:

Darren O'Keefe
Cox & Palmer
dokeefe@coxandpalmer.com

Allison Philpott
Cox & Palmer
aphilpott@coxandpalmer.com

Royal Bank of Canada
10 York Mills Road 3rd Floor
Toronto ON M2P 0A2
Fax #: 416-512-6650

Deloitte Restructuring Inc.

Attention: James Foran, LIT
jforan@deloitte.ca

Counsel:

Geoffrey Spencer
McInnes Cooper
geoffrey.spencer@mcinnescooper.com