

Hfx No. 539955
Estate No. 51-3176229
Estate No. 51-3176186
Estate No. 51-3175914
Estate No. 51-3176190
Estate No. 51-3176175

Supreme Court of Nova Scotia
in Bankruptcy and Insolvency

**In the Matter of the Notice of Intention to Make a Proposal under the
Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, of Annapolis
Management, Inc., Ruby, LLP, BSL Holdings Limited, 3337151 Nova Scotia
Limited and 4551650 Nova Scotia Limited**

WRITTEN SUBMISSION of the APPLICANTS

Joshua J. Santimaw
BOYNECARKE LLP
99 Wyse Road – Suite 600
Dartmouth, NS
B2Y 3Z5
T: 902.460.3451
F: 902.463.7500
jsantimaw@boyneclarke.ca

The Service List

Lawyer for the Applicants

A. Overview

1. This memorandum is filed by Annapolis Management, Inc. ("**Annapolis**"), Ruby, LLP ("**Ruby**"), BSL Holdings Limited ("**BSL**"), 3337151 Nova Scotia Limited ("**333 NSL**") and 4551650 Nova Scotia Limited ("**455 NSL**"), which are collectively referred to herein as the "**Caryi Group of Companies**" for, *inter alia*, an order:

(a) extending the time for the Caryi Group of Companies to file a proposal under the *Bankruptcy and Insolvency Act* ("**BIA**") by 45 days, commencing from and including May 19, 2025, up to and including July 5, 2025, pursuant to section 50.4(9) of the BIA; and

(b) approving the activities of the Proposal Trustee as described in its Fourth Report.

B. Concise Statement of Facts

2. Steven Caryi had a vision to revitalize heritage properties by combining both the modern and historic elements of each, resulting in a new purpose and life for the older buildings Mr. Caryi purchased over the years and specific to this proceeding.
3. The Caryi Group of Companies are incorporated pursuant to the laws of Nova Scotia save and except Annapolis and Ruby, which are extra provincially companies incorporated pursuant the laws of the State of Florida, in the United States of America.
4. The Caryi Group of Companies own various buildings in downtown Halifax and one in Charlottetown, Prince Edward Island, which contain rental and commercial tenants. Additionally, most of the buildings are in mid-construction.

5. Given their heritage status, many of the buildings are generally known by their historic names rather than their municipal address. The buildings owned by the Caryi Group of Companies have various credit facilities secured against them, and in particular:

(a) the National Film Board building is secured by a mortgage extended by League Savings and Mortgage Company and Graysbrook Capital Ltd.;

(b) the Halifax Club is secured by a mortgage extended by Assumption Mutual Life Insurance Company and Graysbrook Capital Ltd.;

(c) the Freemason's Building is secured by a mortgage extended by Atlantic Central and Graysbrook;

(d) the Young Property is secured by a mortgage extended by CIBC and Graysbrook Capital Ltd.;

(e) Granville Hall is secured by a mortgage extended by Atlantic Central and Graysbrook Capital Ltd.;

(f) the property in Prince Edward Island is secured by a mortgage extended by Saltwire Network Inc. and Assumption Mutual Life Insurance Company;

(g) the Tramway Building is secured by a mortgage extended by League Savings and Mortgage Company and;

(h) the Sonic Building is secured by a mortgage extended by 4518276 Nova Scotia Limited and 3046475 Nova Scotia Limited.

(the properties are defined in the affidavit of Joanne Caryi sworn on January 23, 2025, at paragraphs 13, 18, 23, 27, 30, 35 38 and 41)

6. The Caryi Group of Companies are indebted to the secured lenders (detailed above in paragraph 5 in the amount of approximately \$47,000,000 and Mr. Caryi (his estate) has guaranteed approximately \$29,000,000 of that indebtedness.

7. On January 20, 2025, each of the companies forming the Caryi Group of Companies filed a Notice of Intention to Make a Proposal. Prior to the expiry of the initial stay of proceedings, the Caryi Group of Companies filed a motion for, *inter alia*, a further stay of proceedings and to proceed with a sale investment and solicitation process ("SISP").

8. This Honourable Court granted that Order on February 18, 2025.
9. On April 4, 2025, this Honourable Court granted a further order extending the stay of proceedings until May 19, 2025. During that time, the SISP was underway. Bids have been received and are being reviewed in consultation with all stakeholders.
10. Currently, the motion for sale approval is returnable on May 27, 2025. Thus, the Caryi Group of Companies is seeking a further stay of proceedings to obtain such approval and close any resulting transactions.

C. Extension of Time to file a proposal

11. Pursuant to section 69 of the BIA, a debtor that files an NOI is automatically given the benefit of an initial 30-day stay of proceedings, which may be extended in increments of 45 days on sufficient cause.
12. The current stay of proceedings is set to expire at the end of the day May 19, 2025. Deloitte Restructuring Inc., in its capacity as the Proposal Trustee ("**Proposal Trustee**") is conducting the SISP. Accordingly, the Caryi Group of Companies seeks a 45-day extension so the court approved SISP can continue until it is completed.
13. The Court has discretion to extend the time for a debtor to file a proposal pursuant to section 50.4(9) of the BIA:

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application 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. See BIA at s. 50.4(9).

14. In considering whether to exercise its discretion, the court assesses whether the debtor has discharged its burden of proving on a balance of probabilities that the factors enumerated in s. 50.4(9) of the BIA are objectively satisfied. See, *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131 at para. 19.
15. As will be described below, the Caryi Group of Companies submits that each of the factors of 50.4(9) of the BIA are satisfied and this it is appropriate for this Honourable Court to extend the stay period.

(a) The Company has acted in good faith and with due diligence

16. In *Re Convergix*, 2006 NBQB 288, Glennie, J., provided guiding principles regarding the consideration of applications by the Court and evidence of good faith and due diligence when His Lordship held:

[38] In considering applications under section 50.4(9) of the BIA, an objective standard must be applied and matters considered under this provision should be judged on a rehabilitation basis rather than on a liquidation basis: See *Cantrail Coach Lines Ltd., Re* (2005), 10 C.B.R. (5th) 164 (B.C. Master).

[39] I am satisfied that the Insolvent Corporations' actions demonstrate good faith and diligence. These actions include the following:

- (a) The Insolvent Corporations have retained the professional services of Grant Thornton Limited to assist them in their restructuring;
- (b) The Insolvent Corporations have completed a business plan;
- (c) The Insolvent Corporations are diligently working on the Restructuring;
- (d) Since the filing of the five Notices of Intention to Make a Proposal, representatives of the Insolvent Corporations and Grant Thornton Limited have met with representatives of ACOA, the

principle outside creditor of the Insolvent Corporations, to advise them of these proceedings, and

(e) Representatives of the Insolvent Corporations have met with outside investors.

17. Good faith has been defined as a state of mind consisting of (1) honesty in belief of purpose, (2) faithfulness to one's duty and obligation, (3) observance of reasonable commercial standards or fair dealing in a given trade or business, or (4) absence of intent to defraud or to use unconscionable advantage. See, *Lundrigan (Re)*, 2012 NSSC 231 at para. 18.
18. Likewise, the "good faith and "due diligence" requirement relates to the development of a viable proposal and not to other insolvency options. In other words, moving the viable proposal forward. It is a question of fact determined on the evidence. See, *Atlantic Sea Cucumber (Re)*, 2023 NSSC 238 at para. 22.
19. The Proposal Trustee with the assistance of the Caryi Group of Companies is conducting the SISP which was approved by this Honourable Court. Pursuant to the terms of the SISP, the deadline to submit bids to purchase all, or substantially all of the real property of the Caryi Group of Companies, was on or about April 21, 2025. The bids have been submitted and are being clarified and reviewed with all stakeholders.
20. Further, the Caryi Group of Companies are, as further detailed in the Proposal Trustee's Fourth Report:
 - a. continuing to manage the assets of the Caryi Group of Companies in the normal course, including but not limited to:
 - i. dealing with tenant matters, which include leasing matters;
 - ii. maintaining insurance coverage;
 - iii. communicating with stakeholders; and
 - iv. ensuring repairs and maintenance are completed.

- b. corresponding with Halifax Regional Municipality and all stakeholders regarding the scaffolding erected at 5212 Sackville Street, Halifax, Nova Scotia, which is commonly known as the Tramway Building.
 - c. engaging, with the support of the affected Lenders, BMR Structural Engineering to review the exterior of the Tramway Building regarding the structural stability of the building per the requirement of Halifax Regional Municipality.
 - d. with the support of the affected Lenders, engaging Royal LePage Atlantic to list the residential property located at 545 Young Avenue in Halifax, Nova Scotia;
 - e. responding to information requests from the Proposal Trustee in a timely fashion;
 - f. submitting disbursement requests (including supporting documentation) to the Proposal Trustee for review prior to any payments being made;
 - g. corresponding with Canada Revenue Agency to open a post-filing excise tax accounts for Ruby, BSL, 333 NSL and 455 NSL;
 - h. corresponding with Cox & Palmer regarding the collection of a corporate receivable; and
 - i. assisting the Proposal Trustee and its counsel with reviewing and analyzing the bids received pursuant to the Sales and Investment Solicitation Process (“SISP”).
21. Based on the foregoing, the Caryi Group of Companies are acting in good faith and with due diligence.

(b) The Company will be likely to make a viable proposal

22. The test for whether an insolvent person would likely be able to make a viable proposal if granted an extension is whether the insolvent person might (not certainly will) be able to present a proposal that seems reasonable on its face to a reasonable creditor. See, *Re Convergix Inc.*, 2006 NBQB 288 at para. 40.
23. The Caryi Group of Companies submits that the evidence before the Court satisfies this requirement. In particular, the Caryi Group of Companies is proceeding with the Court approved SISP which should be to the benefit of all the stakeholders.

(c) No creditor is materially prejudiced

24. In considering the third element of the test, Glennie, J., held in *Convergix, supra*, described material prejudice when his Lordship stated:

[42] I am satisfied that the proposed extension would not materially prejudice creditors of the Insolvent Corporations. My conclusion in this regard is based on the following facts: the Insolvent Corporations continue to pay equipment leases and the equipment continues to be insured and properly maintained and preserved by the Insolvent Corporations; the principle debt of the Insolvent Corporations is inter-company debt; the collateral of the secured creditors is substantially comprised of equipment and software and its value is unlikely to be eroded as a result of an extension; based on the Projected Monthly Cash-Flow Summary the Insolvent Corporations have sufficient cash to meet their ongoing current liabilities to the end of September, 2006 and in a bankruptcy scenario it is likely that there will be little if any recovery for the unsecured creditors of the Insolvent Corporations.

[43] Accordingly, I conclude that each of the requirements of section 50.4(9) of the BIA are satisfied on the facts of this case and that an extension of time for filing a proposal should be granted.

25. Further, Registrar Balmanoukian has taken judicial notice that “proposals, if performed, generally result in a greater net recovery to creditors overall”. See, *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131 at para. 22.
26. The Caryi Group of Companies respectfully submits that there is no material prejudice if the requested extension is granted. The real property is located in downtown Halifax. It is not being dissipated or eroded.
27. The Court approved SISP is underway, and it respectfully submitted that the Applicants should be allowed to continue the same because its outcome will likely provide a greater net recovery for all creditors and stakeholders

(d) Relief sought under section 50.4(9)

28. The Caryi Group of Companies respectfully submit that it has satisfied the three-part test and that an extension of the NOI should be granted in its entirety.

E. Relief Sought

29. The Caryi Group of Companies respectfully requests that this Honourable Court grant this motion in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of May 2025

BOYNECLARKE LLP

Joshua J. Santimaw