2025 Hfx No. 539955

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF THE RECEIVERSHIP OF ANNAPOLIS MANAGEMENT, INC., RUBY LLP, BSL HOLDINGS LIMITED, 3337151 NOVA SCOTIA LIMITED and 4551650 NOVA SCOTIA LIMITED

Between:

DOURO CAPITAL LIMITED, GRAYSBROOK CAPITAL LIMITED, LEAGUE SAVINGS AND MORTGAGE COMPANY, ATLANTIC CREDIT, ASSUMPTION MUTUAL LIFE INSURANCE COMPANY, and 3046475 NOVA SCOTIA LIMITED

Applicants

And:

ANNAPOLIS MANAGEMENT, INC., RUBY, LLP, BSL HOLDINGS LIMITED, 3337151 NOVA SCOTIA LIMITED and 4551650 NOVA SCOTIA LIMITED

Respondents

MEMORANDUM OF FACT AND LAW

OVERVIEW:

1. The Applicants submit this Memorandum in support of an application for appointment of a court-appointed receiver over the property, assets and undertaking of Annapolis Management Inc., Ruby LLP, BSL Holdings Limited, 3337151 Nova Scotia Limited, and 4551650 Nova Scotia Limited (the "**Caryi Group**") pursuant to s. 243(1) the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") and 43(9) of the *Judicature Act* R.S.N.S, 1989 c. 240, s. 1 (the "**Receivership Application**"), as well as for ancillary relief under s. 69.4 and s. 243(1.1)(b) of the BIA.

2. Unless otherwise defined, all capitalized terms herein have the meanings ascribed to them in the Receivership Application.

FACTS:

3. The Applicants are secured creditors of the Caryi Group. The details of the Applicants' respective loans and security are set out in affidavits which have been filed with the Court.

4. The Caryi Group's assets are almost entirely in the nature of commercial real estate, including various projects still under construction.

5. The former principal of the Caryi Group, Steve Caryi, passed away in 2023. Following his death, the Applicants all learned at various times in early 2024 that the intent of the Caryi Group was to pursue an informal liquidation of the Caryi Groups assets. All secured parties attempted to work with Mr. Caryi's widow, Laurie Caryi, and his sister, Joanne Caryi, to facilitate the liquidation of the properties as intended. The Caryi Group was assisted by Cushman Wakefield in the marketing of the Caryi Group assets.

6. Each of the Applicants first learned in December 2024 that the Caryi Group was considering a CCAA filing upon attending a meeting called by counsel and accountants of the Caryi Group in early December 2024. Until that date, the messaging had remained that the Caryi Group was actively pursuing an orderly informal liquidation in consultation with Cushman Wakefield.

7. The potential CCAA filing was again expressed via correspondence on 18 December 2024.

8. Without further notice, the Applicants received an email on 09 January 2025 with a copy of the Caryi Group's CCAA Application, which was scheduled for hearing on 14 January 2025, the next Tuesday, i.e. on only two clear business days' notice. A Proposed Monitor's Pre-Filing Report was received by email on 10 January 2025, i.e. with only one clear business day notice prior to the hearing.

9. The Applicants quickly identified upon review that the CCAA Application lacked the statutorily required financial materials mandated by s. 10(2) of the CCAA and, aside from that deficiency, clearly contemplated a far more costly and onerous process than was necessary in the circumstances given the nature of the assets and interests at stake.

10. After conferring with the Applicants and receiving informal support, DCL worked as expediently as possible throughout the weekend to prepare a competing motion for an interim receiver and a submission contesting the CCAA Application. These materials were submitted to the Court and to the other parties on 13 January 2025, the day before the hearing.

11. Shortly after filing and service of DCL's application for an interim receiver and its material opposing the CCAA Application, counsel for the Caryi Group notified counsel for DCL that they would be withdrawing the CCAA Application.

12. At the hearing originally scheduled for the CCAA Application, the parties in attendance notified the Court of these developments. The Court noted that it had not been able to review DCL's application to appoint an interim receiver.

13. Based on the various representations of counsel and the circumstances before it, the Court decided that it would allow the Applicants to resubmit materials seeking a court-appointed receiver under s. 243 of the BIA, rather than an interim receiver under s. 47, which would be heard on 24 January 2025. It was also agreed that the Applicants who had not yet done so (all but DCL) would issue s. 244(1) BIA Notices and serve them on counsel for the Caryi Group during the intervening period.

14. Since 14 January 2025, all Applicants have issued s. 244(1) Notices.

15. On 20 January 2025, the Applicants learned that at least one of the Companies comprising the Caryi Group (455 NSL) had filed a Notice of Intention pursuant to s. 50.4 of the BIA. The Applicants were able to conduct searches and to confirm on 21 January 2025 that all of the Companies had filed Notices of Intention pursuant to s. 50.4 of the BIA as of 20 January 2025.

LAW AND ARGUMENT:

16. Notwithstanding the NOI filings, the Applicants are still seeking an order for Grant Thornton ("**GT**" or the "**Proposed Receiver**") to be named as court-appointed receiver. Under the BIA, there are two specific provisions dealing with the appointment of a receiver, s.47(1) which deals with interim receivers, and s.243(1) which deals with receivers generally.

17. As noted above, DCL's motion for an interim receiver brought under s. 47 was withdrawn in favour of the Receivership Application issued by the Applicants under s. 243(1), which states:

Court may appoint receiver

on application by a secured creditor, a court may appoint a 243 (1) Subject to subsection (1.1), receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

[Emphasis added]

18. Section 43(9) of the Nova Scotia *Judicature Act* also applies to appointment of a receiver:

> 43(9) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Supreme Court, in all cases in which it appears to the Supreme Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Supreme Court thinks just, and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Supreme Court thinks fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained, under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.
>
> [Emphasis added]

19. The *Judicature Act* allows the Court to appoint a receiver if it is found to be "just or convenient", whereas the BIA differs slightly articulates the test for appointment of a receiver as "just and convenient". The Applicants submit that this difference is immaterial here because it is both just and convenient to do so, such that both applicable standards are met.

Preliminary Issue #1: Section 244(1) Notices

20. At the 14 January 2025 hearing, DCL acknowledged that its s. 244(1) BIA Notices of Intention to Enforce Security were issued on 11 January 2025 and therefore, absent a consent from the Caryi Group, that this was prior to the s. 244(2) stipulated period and would require the Court to find under s. 243(1.1)(b) that it was appropriate to waive the 10-day notice otherwise expected in order to grant the relief requested.

21. Section 244(2) states:

> (2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

22. Section 243(1.1) states:

> (1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless
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> a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
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> b) the court considers it appropriate to appoint a receiver before then.

23. After the Caryi Group's CCAA Application was withdrawn, it was understood by all parties in Court that the Applicants would bring a new application for a s. 243 receiver to be appointed rather than an interim receiver, and that it would be heard on 24 January 2025. It was further understood that this would be after DCL's 10-day notice period had expired, however, it was self-evident that the other Applicants in this proceeding were in a different position as they had not yet issued their s.244(1) Notices and it would not be possible to have them fully expired.

24. All Applicants proceeded to issue and serve their s. 244(1) Notices between the hearing and the present date, but none will be formally outside of the 10-day period by 24 January 2025.

25. On 20 January 2025, one day before the expiry of DCL's s. 244(1) Notice, the Companies made s. 50.4 NOI filings. The implications of this are dealt with further below.

26. Although the Companies will suffer no material prejudice from a lack of further formal notice, and there is no competing application to deal with their irremediable insolvency (which was previously characterized as an urgent issue in its CCAA Application), the Caryi Group now claims that they will be objecting to the Receivership Application based on failure to receive notice from all Applicants at least 10 days before the 24 January 2025 hearing.

27. Given the language of s. 243(1.1), it was impossible as of 14 January 2025 for any party other than DCL to strictly comply with s. 244(2) before the next agreed-upon Court hearing date. This was easily discernible at the hearing but was not explicitly raised by counsel for the Caryi

Group as a potential objection to be argued on 24 January 2025.

28. Section 243(1.1) grants the Court broad discretion to waive the statutory notice period. The Applicants submit that waiver of the ten-day period between issuance of s. 244(1) Notices and appointment of a receiver stated in s. 243(1.1) is appropriate in this context.

29. The purpose of the 10-day notice requirement is to provide a debtor company with the opportunity to negotiate and reorganize its affairs before a receiver is appointed.[1] As of the 14th, the secured creditors had indicated (and DCL confirmed on their behalf at the hearing) that as a group they were seeking to enforce and supporting a receivership. On that date at latest, the actual issuance of such notices was no more than a technicality.

30. Common law reasonable notice is easily satisfied in these circumstances – the fact that the sole basis for the alleged urgency underlying the CCAA Application seems to have been the fact of the Caryi Group having defaulted across most of its secured loans indicates they were 'on notice' of enforcement even before the hearing, despite the formal steps not having been taken. They cannot legitimately argue not having reasonable notice after having attempted to gain CCAA protection on this basis and having been advised in Court of this upcoming step.

31. Given the acknowledged need for professional administration of the insolvent estate, and concurrent withdrawal of the CCAA Application, it is unclear why the Caryi Group would not simply waive the notice period as is permitted, other than to be unnecessarily obstructive.

32. Based on the Caryi Group apparently taking this position, it seems clear that the CCAA Application was not issued in good faith and that the short-notice (2-clear day) filing was not due to urgency but intended to catch the secured creditors off-guard and prevent them from replying in a cohesive way to the CCAA Application on the merits.

33. It is similarly incongruous with the requirements to act in good faith and due diligence that the Caryi Group's counsel argued against the necessity of an interim receiver at the last hearing but then filed their BIA Notices of Intent a week later. These actions are a legitimate concern for the Applicants and the broader group of creditors.

34. Pursuant to s. 243(1.1) (b), it is therefore "appropriate" for the Court to find the Applicants are

[1] *Pandion Mine Finance Fund LP v Otso Gold Corp.*, 2022 BCSC 136 **[TAB 1]**

not bound by the 10-day notice requirement and to appoint the Proposed Receiver per s. 243.

Preliminary Issue #2: Request to Lift Stay of Proceedings

35. As noted above, the Companies have each filed Notices of Intent pursuant to s. 50.4 of the BIA. At the hearing, the Applicants will seek leave to lift the stay of proceedings that would otherwise apply under s. 69.4 of the BIA.

36. Under s. 69.4 of the BIA, a stay of proceedings may be lifted by the court if it is satisfied that the applicant is likely to be materially prejudiced by the continued operation of the stay or that it is equitable on other grounds to make such a declaration:

> **Court may declare that stays, etc., cease**
>
> **69.4** A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied
>
> > **(a)** that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
> >
> > **(b)** that it is equitable on other grounds to make such a declaration.

37. The Companies were represented by counsel at the hearing and opposed DCL's Application for an Interim Receiver based on lack of necessity (despite having alleged urgency in their withdrawn CCAA Application). The Companies argued in favour of the withdrawal of the Interim Receivership Motion and for the hearing date that they had set for a proposed 'comeback hearing' under the CCAA to be used instead for the hearing of this Receivership Application brought by the broader group of secured creditors (Applicants herein) under s. 243.

38. The Caryi Gorup then provided a letter to the Court on 20 January 2025 indicating that it was not understood that there would be a new Application advanced by the Applicants. This is categorically untrue.

39. The Applicants submit that this is a clear-cut case where lifting the stay of proceedings is equitable and where they and other parties would be materially prejudiced if it is not and if the Companies are left to remain under the control of their current directing minds and advisors.

Preliminary Issue #3: Alternative Relief under BIA s. 50.4(11) and s. 47.1(1)

40. The Applicants view it as being in the interests of justice, convenience, and favouring the efficient use of judicial resources to proceed as proposed above by lifting the stay and granting the proposed Receivership Order. In the alternative, however, the Applicants also rely on s. 50.4(11) to terminate the thirty-day period ordinarily staying actions following an NOI filing:

> **50.4(11)** The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that
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> > (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
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> > (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
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> > (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
> >
> > (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,
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> and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

41. In this case, the Applicants are certain that the behaviour of the Caryi Group fails to meet the standard of good faith and due diligence, that they will not be able to make a viable proposal, and that any proposal made would not be supported or accepted by the Applicants or other creditors. For the same reasons, the Applicants are likely to be materially prejudiced as a whole if this flagrant attempt to thwart their ability to enforce on their security in the preferred manner is allowed to prevail at the hearing and to persist for another 30 days.

42. If relief is granted under s. 50.4(11), and if the Court finds it cannot waive statutory notice for the s.244 Notices submitted by the Applicants who will not have had their 10-day period expire by the hearing date, then Applicants will rely on s. 47.1(1) in order to prevent further manipulations by the Caryi Group and install an interim receiver (using the same Proposed Receiver, GT) without further delay:

> **Appointment of interim receiver**
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> 47.1 (1) If a notice of intention has been filed under section 50.4 or a proposal has been filed under subsection 62(1), the court may at any time after the filing, subject to subsection (3), appoint as interim receiver of all or any part of the debtor's property,

(a) the trustee under the notice of intention or proposal;

(b) another trustee; or

(c) the trustee under the notice of intention or proposal and another trustee jointly.

43. Section 47.3 states:

> **When appointment may be made**
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> (3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of
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> (a) the debtor's estate; or
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> (b) the interests of one or more creditors, or of the creditors generally.

44. The Applicants submit that relief could also be granted under these alternative grounds given the actions of the Caryi Group and, consequently, the need to protect the interests of the creditors generally. This is not the most straightforward path for the Court to take, however, as it would require the Applicants draft a new form of order to appoint an interim receiver, bring another application to court with a new round of supporting materials seeking a s. 243 order, and appear in Court for a third hearing date to achieve the same result.

A Receivership is Just and Convenient

45. In making its determination on a receivership application, a court must have regard to all of the circumstances, including the nature of the property and the rights and interests of all parties in relation thereto. The factors a court may consider when determining whether it is just and convenient to appoint a receiver are well established. In ***Bank of Montreal v Linden Leas Limited***[2], the Court considered an application to appoint a receiver over the respondent's main asset, a cattle herd. The Court cited with approval the following list of considerations:

> 26 In The 2013-2014 Annotated Bankruptcy and Insolvency Act, Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra (Carswell: Toronto, Ontario 2013-2014) the authors set out at p. 1018 the factors I consider in determining whether it is appropriate to appoint a receiver. These are:
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> a) Whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not

[2] *Bank of Montreal v Linden Leas Limited*, 2018 NSSC 82 **[TAB 2]**

appointed;

b) The risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;

c) The nature of the property;

d) The apprehended or actual waste of the debtor's assets;

e) The preservation and protection of the property pending judicial resolution;

f) The balance of convenience to the parties;

g) The fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan;

h) The enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulty with the debtor and others;

i) The principle that the appointment of a receiver is extraordinary relief that should be granted cautiously and sparingly;

j) The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;

k) The effect of the order on the parties;

l) The conduct of the parties;

m) The length of time that a receiver may be in place;

n) The cost to the parties;

o) The likelihood of maximizing return to the parties; and

p) The goal of facilitating the duties of the receiver.

[Emphasis added]

46. The court in *BMO v. Linden Lees* emphasized that "considerable weight" can be given to the fact that the security documents provide for the appointment of a receiver. After weighing the above factors and noting that a provision for the appointment of a receiver in the loan documents strongly supports an appointment, the court concluded that it was just and convenient to appoint a receiver to oversee the sale of a portion of the respondent's cattle herd.

47. The Applicants each have authority under their respective security documents to appoint a private receiver. Even if they did not, case law also demonstrates that it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, nor is it necessary for a

creditor to "check all of the boxes" with respect to the applicable factors.[3]

48. The factors noted in the above list from *BMO v. Linden Lees* easily favour receivership here. Applying that case to the facts at bar, the Applicants say as follows:

    a. The Caryi Group has admitted insolvency, which is a direct breach of the security documents supporting the loans issued to them by each of the Applicants.

    b. The Applicants' security documents allow them to appoint a receiver in the event of default. As such, each of the Applicants are currently in a position to appoint a receiver.

    c. The Caryi Group has admitted that they do not have competent management, such that the assets in questions are naturally at higher risk due to a lack of management and proper oversight. The assets, primarily real estate, will need to be safeguarded under the supervision and management of a qualified professional, such as the Proposed Receiver. As noted previously, there are concerns with respect to the ongoing repair and maintenance of life safety systems in several of the Caryi Group properties, many of which are multitenant historic properties.

    d. Based on past actions, the Applicants have legitimate reason to expect that they would otherwise encounter difficulty in dealing with the Caryi Group's directing minds:

        (a) they were unwilling to negotiate with potential purchasers making *bona fide* offers on Caryi Group assets in the period leading up to the CCAA filing, and it is reasonably anticipated that this conduct will continue;

        (b) they advanced their CCAA motion on the basis of alleged urgency that apparently did not exist;

        (b) when the motion for an Interim Receiver was filed, their first response was to threaten to immediately **cancel** the insurance on the Caryi Group properties and provide the keys to the lenders, thereby recklessly putting the properties at risk;

        (c) they have indicated intention to resign from their positions with the Caryi Group, thereby leaving it without active management; and

[3] *Royal Bank of Canada v. Eastern Infrastructure Inc.*, 2019 NSSC 243 **[TAB 3]**

(d) Caryi Group counsel has unreasonably refused to waive the statutory notice period with respect to the Applicants' s.244(1) BIA Notices, with nothing to gain other than to delay the within proceedings and waste more Court time and resources.

49. While it is acknowledged that the appointment of a receiver is extraordinary relief that should be granted cautiously and sparingly, the Applicants say it is necessary here for the reasons outlined above. Without a receiver or any competing plan being advanced, there will be no one directing operations or ensuring the assets of the Caryi Group do not go to waste. It appears clear that there is a significant risk that current management will not cooperate with a privately appointed receiver to facilitate an informal liquidation of the security assessed. A court appointment is necessary to enable the receiver to carry out its duties efficiently.

50. As noted in the Pre-Filing Report, the Proposed Receiver is intended to be in place no longer than six (6) months, during which it will liquidate the Caryi Group assets for the benefit of its creditors. At this juncture, the Caryi Group has already attempted self-liquidation for over a year with no success, and as such, a formal process is necessary.

51. The cost of a receivership relative to other mechanisms by which the assets of the Caryi Group could be liquidated in a common proceeding is demonstrated in the Pre-Filing Report where the Proposed Receiver compares the cost of a receivership to the cost of a CCAA. By far, a receivership is more cost effective. Further, by working with a professional Receiver who has a core competency in real estate, such as the proposed Receiver, there is a high likelihood that the receivership will maximize the return to the creditors.

52. DCL's prior materials cited various authorities supporting a receivership instead of a CCAA in similar real estate-oriented circumstances – this approach has significant precedential support, as it has been generally rare for courts to grant CCAA protection for real estate companies due to the nature of their security structures and operations, and particularly where there is a broad consensus amongst secured creditors as to a receivership being the preferred approach.[4] The Applicants include some of these materials as citations to this Memorandum despite having no clear opponent and the analysis now being largely academic.

Appointment of GT

[4] *Ashcroft Urban Developments Inc. (Re)*, 2024 ONSC 7192, paras 70, 92 **[TAB 4]**; *Cliffs Over Maple Bay Investments Ltd v Fisgard Capital Corp*, 2008 BCCA 327, para 36 **[TAB 5]**

53. The Proposed Receiver, GT, is experienced in matters of this nature, qualified, and well-positioned to consider and protect all the various interests and stakeholders of the Caryi Group. GT's Pre-Filing Report establishes a far more just, convenient, and economic plan to resolve their financial situation than that set out in the now-withdrawn Monitor's Pre-Filing Report, and no other option has been advanced to deal with the assets through a competing formal process since the 14 January 2025 hearing.

54. The Proposed Receiver's appointment will allow it to stabilize the Caryi Group's operations while it undertakes a sales process in respect of the Caryi Group's properties. GT will work with the Applicants and other secured creditors as a group and will ultimately be able to provide confidence to stakeholders that a sale of the Caryi Groups assets is conducted in a fair and impartial manner.

55. The Applicants supporting a receivership driven by GT exceed 90% of the total secured creditor group. Saltwire Inc. and Canadian Imperial Bank of Commerce are taking no position. No secured creditors are actively opposing receivership. The Caryi Group is not opposing a receivership on its merits but are inexplicably raising procedural objections despite having capitulated on the CCAA Application immediately when met with resistance.

Form of Draft Order

56. The draft Receivership Order is similar in form to other Orders issued by this Honourable Court. For ease of reference, we have provided the Court with a blackline version of the draft Order showing that it is in substantially the same form as the Court's precedent form of Order.

CONCLUSION AND RELIEF SOUGHT:

57. The Caryi Group will object to the relief sought in the Receivership Application because not all Applicants' s. 244(1) Notices were issued ten days prior to this hearing. To be clear, any deficiencies in notice originated directly from the Caryi Group's decision to file for CCAA protection on short notice and argue that a CCAA Initial Order was required on an urgent basis despite it now being very apparent that there was no legitimate emergency driving their timing.

58. In reality, the parties would not be before the Court on this application at this junction if they had not been unexpectedly forced to advance an opposition to the CCAA Application. The

Caryi Group immediately withdrew their CCAA Application upon receiving opposition and took an about-face regarding the urgent nature of the situation when the parties appeared in court, insisting that no interim receiver was necessary pending a ten-day comeback date.

59. At least one of the Applicants, DCL, would have satisfied the statutory notice requirement 'but for' the NOI filing(s), and the enforcement intentions of all Applicants were clearly communicated in Court on 14 January 2025. The circumstances justify a finding under s. 243(1.1)(b) that it is "appropriate" to waive the 10-day statutory notice period.

60. The Applicants submit that the only viable plan for the Caryi Group's liquidation was and is through the Proposed Receivership. It was never going to be arguable that liquidating assets within a CCAA would result in a materially better outcome for any party. Nor is there any other alternative properly before the Court for consideration, and the attempt at circumventing the Proposed Receivership through NOI filings evidences the type of conduct that led the Applicants to lose faith in the Caryi Group's ability to manage their own process in good faith and with due diligence in the first place.

61. The Applicants have now incurred significant expense in attempting to deal with the Caryi Group's actions both in and out of Court. The Applicants wish to have the situation remedied so that they may pursue the liquidation as economically as possible as a group using GT as Receiver. This is in the best interests of all parties. The just and convenient test easily favours a receivership.

62. Based on the foregoing, the Applicants intend to proceed with the Receivership Application on 24 January 2024 to seek the appointment of the Proposed Receiver pursuant to s.243 of the BIA. At the hearing, we will request that the Court lift the stay of proceedings, approve the filing of our s.243 motion *nunc pro tunc*, and grant the Receivership Order as requested.

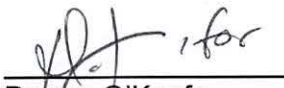
63. If the Court does not believe it is appropriate to lift the stay under s. 69.4, the Applicants will be seeking to have the NOIs terminated under s. 50.4(11) of the BIA, and to have the Proposed Receiver installed on an interim basis under s. 47.1(1), following which the Applicants will return on an application in the same nature as the one currently before the Court.

64. The Applicants repeat the foregoing and ask that the s. 244 10-day notice period be waived under s. 243(1.1)(b), the stay of proceedings lifted as applicable under s. 69.4, and that a

Receivership Order be granted under s. 243 of the BIA. Alternatively, that the NOIs be terminated under s. 50.4(11) and an interim receivership order be granted, a draft of this alternative order, if granted, will be submitted to the Court shortly following the hearing.

DATED at St. John's, 21 January 2025.

Counsel for the Applicants



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