

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:

**DUORO CAPITAL LIMITED, GRAYSBOOK 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

WRITTEN SUBMISSION of the RESPONDENTS

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A. Overview

1. This memorandum is filed by the Respondents, 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 February 18, 2025, up to and including April 4, 2025, pursuant to section 50.4(9) of the BIA;

- b) approving a debtor-in-possession facility term sheet (“**DIP Agreement**”) executed by the Respondents on February 13, 2025, with Atlantic Central. (the “**DIP Lender**”) pursuant to which this DIP Lender has agreed to advance to Caryi Group of Companies the total amount of \$750,000.00;

- c) granting the following priority charges as against the assets, property, and undertakings of the Caryi Group of Companies (the “**Property**”) which charges shall rank in priority to all other secured interests, trust, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively “**Encumbrances**”) in favour of any person:

- i. an **Administration Charge** against the Property in the amount of \$200,000.00 as security for the payment of the professional fees and disbursements incurred and to be incurred by Deloitte Restructuring Inc. (the “**Proposal Trustee**”), counsel to the Proposal Trustee. counsel for the Caryi Group of Companies, and counsel for the Lenders and its Financial Advisor, Doane

Grant Thornton Limited (“**Financial Advisor**”) in connection with this proceeding and before and after making this order; and

ii. “**DIP Lender Charge**” against the Property as security for the Respondents’ obligations under the DIP Agreement pursuant to s. 50.6 of the BIA;

d) approving the proposed Sale and Investment Solicitation Process;

e) approving the activities of the Proposal Trustee as set out in the First and Second Report;

f) administratively consolidating the separate notices of intention to make a proposal filed by the Respondents; and

g) amending the style of cause as enumerated in the administrative consolidation order.

B. Concise Statement of Facts

2. Capitalized terms used in this memorandum and not otherwise defined herein have the meaning given to them in the affidavit of Joanne Caryi sworn on January 23, 2025. (the “**Caryi Affidavit**”).
3. Steven Caryi had a vision to revitalize heritage properties by combining both the modern and historic elements, resulting in a new purpose and life for the older buildings Mr. Caryi purchased over the years and specific to this proceeding.
4. 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 United States of America.

5. 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.
6. They have various credit facilities secured against them, and in particular:
 - (a) the National Film Board is secured by a mortgage extended by League and Graysbrook;
 - (b) the Halifax Club is secured by a mortgage extended by Assumption and Graysbrook;
 - (c) the Free Mason'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;
 - (e) Granville Hall is secured by a mortgage extended by Atlantic Central and Graysbrook;
 - (f) the property in Prince Edward Island is secured by a mortgage extended by Saltwire Network Inc. and Assumption;
 - (g) the Tramway is secured by a mortgage extended by League and;
 - (h) the Sonic Building is secured by a mortgage extended by 4518276 Nova Scotia Limited and 3046475 Nova Scotia Limited.
7. The Caryi Group of Companies are indebted to the secured lenders in the amount of approximately \$47,000,000.00 and Mr. Caryi (his estate) has guaranteed approximately \$29,000,000.00 of that indebtedness.
8. The Caryi Group of Companies filed their Notice of Intention to Make a Proposal ("NOI" or "NOIs") on January 20, 2025. This Honourable Court adjourned without day an application filed by the Applicants for a Receivership on January 24, 2025, and invited the Respondents to file this motion.

C. Administrative Consolidation and Amendment

9. Each Respondent filed a NOI. As such, there are five separate NOIs. In order to efficiently manage the filing with this Honourable Court and the Office of the Superintendent of Bankruptcy the Caryi Group of Companies seek an administration consolidation of the various estates into one for filing and reporting purposes.
10. The Caryi Group of Companies also seek to amend the style of cause so they will be known as the Applicants and not the Respondents. Normally, they would have filed an application seeking an extension but have filed a motion in the proceeding already instituted by the Lenders.
11. Pursuant to *Nova Scotia Civil Procedure Rule* 83.03 a party can amend an application with either permission of the parties or with the permission of the judge. The test to amend is well known: an application to amend should be granted unless it is shown that the moving party is acting in bad faith or that by allowing the amendment the other party will suffer prejudice that cannot be compensated for in costs.
12. The Caryi Group of Companies are not acting in bad faith in seeking this amendment. They are simply trying to ensure that creditors, stakeholders and the public are not confused by the parties seeking relief from this Honourable Court and there is no prejudice to any party that cannot be compensated for in costs.
13. Thus, it is respectfully submitted that the administration consolidation and amendment be granted in its entirety.

D. Extension of Time to file a proposal

14. 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.

15. The current stay of proceedings is set to expire at the end of the day February 19, 2025, The Caryi Group of Companies is proposing to conduct a sales and investment process (“SISP”). Accordingly, it seeks a 45-day extension so it can proceed with the SISP.
16. 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).

17. 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.
18. As will be described below, the Company submits that each of the factors of 50.4(9) of the BIA are satisfied.

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

19. 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.

20. 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.

21. 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.
22. The Caryi Group of Companies has retained Deloitte, and it has been corresponding with the Applicants and their financial advisor Doane Grant Thornton Limited. Additionally, the Caryi Group of Companies have prepared a cash flow forecast and prepared a SISP with support of Deloitte to commence should this Court grant the Order.
23. Specifically, the Caryi Group of Companies are:
 - 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;
 - ii. maintaining insurance coverage;
 - iii. communicating with stakeholders; and
 - iv. ensuring critical repairs and maintenance were completed.
 - b. continuing discussions with real estate brokers engaged by the Caryi Group of Companies and sharing agreements of purchase and sale with the Proposal Trustee;
 - c. 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;
 - d. shutting down the operations at the Halifax Club, including the cigar lounge and shop;
 - 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;

- i. working with the Proposal Trustee to prepare the initial cash flow statement filed with the Office of the Superintendent of Bankruptcy on January 29, 2025;
 - j. working with the Proposal Trustee to prepare the Second Cash Flow Statement; and
 - k. working with the Proposal Trustee and its counsel to develop the Sales and Investment Solicitation Process.
24. 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

25. 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.
26. The Caryi Group of Companies submits that the evidence before the Court satisfies this requirement. In particular, the Caryi Group of Companies has proposed, and if approved, commence immediately its SISP for the benefit of all stakeholders.

(c) No creditor is materially prejudiced

27. 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.

28. 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.
29. 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. The Respondents respectfully submit that it has the knowledge and experience in managing the Caryi Group of Companies to achieve a greater net recovery for all creditors and stakeholders than the Applicants.

(d) Relief sought under section 50.4(9)

30. 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. Debtor-in-Possession

31. Section 50.6 of the BIA gives the Court the jurisdiction to approve a DIP financing charge. It provides as follows:

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor’s cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case

may be. The security or charge may not secure an obligation that exists before the order is made.

Priority

(3) The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

32. Section 50.6(5) enumerates a list of factors to guide the court's decision whether to grant the DIP financing and corresponding priority charge:

Factors to be considered

(5) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the debtor is expected to be subject to proceedings under this Act;

(b) how the debtor's business and financial affairs are to be managed during the proceedings;

(c) whether the debtor's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

(e) the nature and value of the debtor's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

33. Courts have routinely concluded that DIP financing and a corresponding priority charge are appropriate where the evidence demonstrates that a debtor would cease operations if the relief was not granted, the proposal trustee supports the DIP facility, and the DIP lender would not participate without the protection of a security charge.

34. The Caryi Group of Companies submits that the DIP Agreement and DIP Lender's Charge are appropriate in this case for the following reasons:

- i. the cash flow projections demonstrate that, without interim financing, the Company will be unable to continue operating as a going concern and cease operations, which will deteriorate the value of the Company's Business and seriously jeopardize the Company's ability to make a proposal;
- ii. advances under the DIP Facility are conditional upon Court approval of the DIP Agreement and the granting of the DIP Lender's Charge;
- iii. the debtor's Business will continue to be managed in the ordinary course with the additional oversight of the Proposal Trustee;
- iv. notice has been provided to all secured creditors and no objection has been raised;
- v. the Proposal Trustee believes the DIP Agreement and DIP Lender's Charge are reasonable and necessary; and

F. The Administration Charge Should be Granted

35. The Caryi Group of Companies is seeking the Administration Charge, in the amount of \$200,000.00, to secure the professional fees and disbursements incurred and to be incurred by the "Proposal Trustee" counsel to the Proposal Trustee, counsel for the Respondents and counsel for the Applicants and its Financial Advisor, in connection with this proceeding and before and after making this order.

36. Section 64.2 of the BIA authorizes this Court to grant a super-priority charge on a debtor's property to secure professional fees:

64.2 (1) 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.

Priority

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

37. Such administration charges are routinely granted in insolvency proceedings where, as here: (a) the debtor has limited means to obtain professional assistance; (b) the involvement of professional advisors is critical to the success of the proceedings under the BIA; and (c) the quantum of the proposed charge is commensurate with the complexity of the debtor's business. See, *Mustang (Re)*, 2015 ONSC 6562 at para. 33.
38. These charges recognize the value that insolvency professionals bring to such proceedings and allow them to be properly compensated for their efforts. The Caryi Group of Companies submits that it is appropriate for this Court to grant the Administration Charge given the evidence that, among other things:
- (a) the Company requires the assistance of professional advisors to navigate the NOI proceeding;
 - (b) the beneficiaries of the Administration Charge each have a critical role that is essential to the success of the NOI proceeding;
 - (c) the roles of the beneficiaries of the Administration Charge are not duplicative;
 - (d) the quantum of the proposed Administration Charge is reasonable and appropriate in the circumstances;
 - (e) the Proposal Trustee supports the granting of the Administration Charge; and

(f) The Applicants and the DIP Lender to not oppose the Administration Charge.

G. Sales and Investment and Solicitation Process

39. The Caryi Group of Companies, together with the Proposal Trustee, have developed a SISP for the sale of the properties and assets of the Caryi Group of Companies.
40. As described in the Second Report, the Proposal Trustee has concluded that the SISP is the most viable way to maximize the realizable value of the assets for all the stakeholders.
41. Highlights of the Sale Process include the following:
 - (a) Obtain an Order of the Court approving the SISP and post a copy of the Order to the Proposal Trustee's website;
 - (b) The Proposal Trustee has prepared a teaser advertisement to market the Caryi Group of Companies' properties;
 - (c) The Proposal Trustee will advertise the Caryi Group of Companies;
 - (d) Prepare a virtual data room and provide access to all interest parties;
 - (e) The Proposal Trustee has prepared a tender package for proposed purchasers;
 - (f) Offers will be allowed on an "En Bloc" basis or by separate asset class on an "AS IS, WHERE IS" basis;
 - (g) Review bids and negotiate final agreements so an Order can be sought to close the sale/transaction.

42. The Proposal Trustee has already identified several parties who may be interested in purchasing the Caryi Group of Companies properties and assets and is also leveraging the contacts of the Financial Advisor to maximize exposure for the properties.
43. A debtor who has filed an NOI may enter into a transaction to sell assets outside of the ordinary course of business in accordance with the provisions of section 65.13 of the BIA as follows:

Restriction on Disposition of Assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a Court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

44. In deciding whether to provide the approval, a Court will be guided by the factors set out in paragraph 65.14(4) of the BIA as follows:

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

45. The approval of a proposed sale is largely a fact driven analysis, dependent on the particular circumstances of the proceedings. In *Danier Leather Inc.*, 2016 ONSC 1044, the Court noted that section 65.13 of the BIA codifies the Court's power to approve a sale of assets in a proposal proceeding, and that the provision "sets out a list of non-exhaustive factors for the Court to consider in determining whether to approve a sale of the debtor's assets outside the ordinary course of business approach (para. 21).
46. The factors set out in section 65.13(4) are similar to the jurisprudence relating to the approval of a sales transaction.
47. The seminal test as to whether Court approval should be granted was set out in *Royal Bank of Canada v. Soundair Corp.* [1991] O.J. No. 1137, (1991) 4 O.R. (3d) 1 (ONCA):

[16] As did Rosenberg J., I adopt as correct the statement made by Anderson J. in *Crown Trust Co. v. Rosenberg* (1986), 60 O.R. (2d) 87, 67 C.B.R. (N.S.) 320n, 22 C.P.C. (2d) 131, 39 D.L.R. (4th) 526 (H.C.) , at pp. 92-94 [O.R.], of the duties which a court must perform when deciding whether a receiver who has sold a property acted properly. When he set out the court's duties, he did not put them in any order of priority, nor do I. I summarize those duties as follows:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
2. It should consider the interests of all parties.
3. It should consider the efficacy and integrity of the process by which offers are obtained.
4. It should consider whether there has been unfairness in the working out of the process.

48. The test set out in *Soundair, supra*, was approved by this Honourable Court in *Bank of Montreal v. Sportsclick Inc.*, 2009 NSSC 354 at paragraph 32.
49. It is submitted that the factors set out in paragraph 65.13(4) of the BIA and *Soundair, supra*, should be considered with a view to the overall commercial reasonableness of the proposed SISP.

50. The Caryi Group of Companies do not intend to go through each factor as required by the BIA or *Soundair, supra*, but respectfully submit that the proposed SISP, through a maximization of exposure of the properties and assets to the marketplace, will meet the factors that will ultimately be necessary to obtain the sale approval of this Court.
51. The Caryi Group of Companies have consulted with the Applicants and will continue to consult with them throughout the SISP.

H. Relief Sought

52. The Caryi Group of Companies respectfully requests that this Honourable Court grant this motion and approves the activities of the Proposal Trustee, and its counsel as set out in its first and second reports.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of February 2025.

BOYNECLARKE LLP

Joshua J. Santinaw