

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) abridging notice periods and service requirements pursuant to section 6 of the *Bankruptcy and Insolvency Act General Rules*;

(b) 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 April 4, 2025, up to and including May 19, 2025, pursuant to section 50.4(9) of the BIA;

(c) the activities of the Proposal Trustee in the Third Report are hereby approved

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.
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. 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 and Graysbrook;

(b) the Halifax Club is secured by a mortgage extended by Assumption and Graysbrook;

(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;

(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 Building 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.

(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 five) in the amount of approximately \$47,000,000.00 and Mr. Caryi (his estate) has guaranteed approximately \$29,000,000.00 of that indebtedness.
7. On January 20, 2025, 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*, for a further stay of proceedings and to proceed with a sales investment and solicitation process ("SISP").
8. This Honourable Court granted that Order on February 18, 2025. The SISP is underway with bids currently due on or about April 21, 2025.

C. Service, Notice and Abridgement of Time

9. The relief sought in this motion is pursuant to the BIA and therefore the *Bankruptcy and Insolvency General Rules* supersede the *Nova Scotia Civil Procedure Rules* in the event of any inconsistency.

10. BIA Rule 3 states:

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

11. As this is a matter where the BIA does not specify a minimum notice requirement, BIA Rule 6 applies, which states:

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an ex parte application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

12. In terms of measuring the four days provided for under BIA Rule 6, the period of time is governed by BIA Rule 4, which stipulates clear business days:

If a period of less than six days is provided for the doing of an act or the initiating of a proceeding under the Act or these Rules, calculation of the period does not include Saturdays or holidays.

13. In accordance with BIA Rule 6(1), the motion materials will be served electronically by email. No opposition is anticipated. Proof of service by affidavit will be filed in advance of the hearing of the pending motion.
14. Although the Caryi Group of Companies anticipates filing and serving the notice materials within the foregoing timeline, it has included a request for the abridgment of time in case there is any breakdown in service. BIA 6(4) grants this Honourable Court authority to amend these time limits, including to reduce them. Given the nature of the relief sought and the surrounding circumstances, the Caryi Group of Companies submits that this is an appropriate circumstance for this Honourable Court to abridge the time for the hearing of this matter if such abridgement is required.

D. Extension of Time to file a proposal

15. 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.
16. The current stay of proceedings is set to expire at the end of the day April 4, 2025. Deloitte Restructuring Inc., in its capacity as the Proposal Trustee ("**Proposal Trustee**") is conducting the SISP. Accordingly, it seeks a 45-day extension so the court approved SISP can continue until it is completed.

17. 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).

18. 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.
19. 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

20. 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.

- 21. 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.
- 22. 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.
- 23. 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, is on or about April 21, 2025.

24. Further, 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; which include leasing matters;

ii. maintaining insurance coverage;

iii. communicating with stakeholders; and

iv. ensuring critical repairs and maintenance were completed.

b. corresponding with Halifax Regional Municipality regarding the scaffolding erected at 5212 Sackville Street, Halifax, Nova Scotia, which is commonly known as the Tramway Building.

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. responding to information requests from the Proposal Trustee in a timely fashion;

e. submitting disbursement requests (including supporting documentation) to the Proposal Trustee for review prior to any payments being made;

f. corresponding with Canada Revenue Agency to open a post-filing excise tax accounts for Ruby, BSL, 333 NSL and 455 NSL;

g. corresponding with Cox & Palmer regarding the collection of a corporate receivable; and

h. assisting the Proposal Trustee and its counsel with the SISP that is currently underway.

25. 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

26. 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.

27. 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

28. 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.

29. 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.
30. 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.

31. 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)

32. 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

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March 2025

BOYNECLARKE LLP

Joshua J. Santimaw

