Clerk's Stamp

COURT FILE NUMBER	24-2806908
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED **AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 915245 ALBERTA LTD. o/a PRAIRIE TECH OILFIELD SERVICES**
DOCUMENT	**BENCH BRIEF OF 915245 ALBERTA LTD. o/a PRAIRIE TECH OILFIELD SERVICES IN SUPORT OF AN APPLICATION FOR A SECOND EXTENSION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**DLA Piper (Canada) LLP** Barristers and Solicitors Suite 2700, Stantec Tower 10220 103 Avenue NW Edmonton, AB T5J 0K4 Attention: Jerritt Pawlyk / Kevin Hoy Phone: 780-429-6835 Fax: 780-670-4329 Email: jerritt.pawlyk@dlapiper.com / kevin.hoy@dlapiper.com File No.: 108761-00001

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I. INTRODUCTION

1. The Applicant, 915245 Alberta Ltd., o/o Prairie Tech Oilfield Services (the "**Company**"), is an oilfield services company presently restructuring in proceedings under *Bankruptcy and Insolvency Act*,[1] having filed a Notice of Intention to Make a Proposal ("**NOI**") on May 22, 2022.

2. The Company obtained an Order of this Honourable Court dated March 21, 2022, extending its NOI restructuring proceedings through to May 5, 2022. The Company now seeks a further 45-day extension of the time in which it is required to file its proposal pursuant to section 50.4(9) of the *BIA*.

II. FACTUAL BACKGROUND

3. The Company is an oilfield service provider with a base of operations located in Elk Point, Alberta. The majority of the Company's revenues are derived from the provision of oil and water hauling services to participants in the oil and gas industry.

4. The Company rents the majority of its heavy equipment from a related corporation, namely 1369247 Alberta Ltd. ("**136 AB Ltd.**").[2] 136 AB Ltd. and the Company are both controlled by the same shareholder, namely Dwayne Vogel, who serves as officer and director for both entities.

5. In 2020, the Company significantly enlarged its fleet of heavy equipment to prepare for anticipated increased volumes of work following its subsidiary's entry into an agreement with Cenovus Inc. Following the onset of the COVID-19 pandemic and the decrease in energy prices, Cenovus Inc. terminated its agreement with the Company's subsidiary, leaving the Company with increased equipment rental liabilities with a corresponding increase in revenues.[3]

6. The Company's equipment rental obligations left it with insufficient revenues to pay its debts as they became due. In the face of an impending debt enforcement action by a

[1] RSC 1985, c B-3, [the "***BIA***"].
[2] March 15, 2022, Affidavit of Dwayne Vogel, at para 13, [the ***First Vogel Affidavit***].
[3] *Ibid*, at paras 30 - 32.

major supplier of the Company, namely, the Cornerstone Co-operative, the Company filed an NOI pursuant to section 50.4(1) of the *BIA* on February 22, 2022.

7. The stay of proceedings imposed against the Company's creditors and the timeline for the filing of the Company's Proposal were extended to May 5, 2022, by the March 21, 2022, Order of this Honourable Court.

8. In late-March of 2022, the Company brought forward an Application seeking the replevin of pieces of equipment impounded by mechanics (the "**Replevin Application**"). Due in part to time allocated to the Replevin Application, the Company and its restructuring counsel have not yet finalized the parameters of potential key terms of its Proposal for discussion with its creditors.[4]

9. The Company's restructuring plan centres on the reduction of its sizable equipment rental burden by way of surrendering equipment to 136 AB Ltd. so as that such equipment may be sold. The Company has made arrangements with 136 AB Ltd. for the surrender and sale of portion of the Company's rented equipment at an auction scheduled for May 2, 2022.[5] Following the auction, the Company forecasts that its weekly equipment rental obligations will be reduced by approximately $12,000.[6]

10. The Company intends to put forward a Proposal that entails: (a) full payment to its secured creditors; and (b), payment of a compromised value of its indebtedness to its unsecured creditors. The Company intends to utilize its future net revenues to pay amounts owing to its creditors under the terms of its Proposal.

11. The Company has receipted over $1,700,000 in sales revenues since the commencement of its restructuring proceedings.[7] Due, in part, to anticipated reductions in equipment rental payments, the Company forecasts net-positive cash-flow in the approximate amount of $153,000 for the 13-week period ending the week of July 15, 2022.[8]

[4] Affidavit of Dwayne Vogel, dated April 25, 2022, at para 19 [the **Third Vogel Affidavit**].
[5] Third Vogel Affidavit, at para 14.
[6], Report of the Proposal Trustee, Deloitte Restructuring Inc., dated April 25, 2022, at Appendix "B", [the **Second Report**].
[7] Second Report at Appendix "A".
[8] Second Report, at Appendix "B."

III. ISSUES

12. The Company submits that only one overarching issue need be determined by this Honourable Court:

    a. Should the Court exercise its discretionary authority under section 50.4(9) of the *BIA* to grant a second 45-day extension of the time for the Company to file its proposal in these proceedings?

IV. ARGUMENT

a. A Second Extension is Warranted

13. The Company argues that a Second Extension Order is warranted. The scheme of Division I of the *BIA* provides that a debtor restructuring in NOI proceedings will be deemed bankrupt if it does not file an approved proposal with the Office of the Superintendent in Bankruptcy within the time prescribed for doing so.[9]

14. Section 50.4(9) of the *BIA* authorizes this Court to extend the period of time in which an insolvent debtor is required to file its proposal for additional 45-day periods, up to a maximum of 5 months following the expiry of the initial 30-day period prescribed by the *BIA*. The Act states as follows at section 50.4(9):

> **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

[9] *BIA*, *supra* note 1, at s 50.4(8).

> (c) no creditor would be materially prejudiced if the extension being applied for were granted.[10]

15. To qualify for any extension order (be it an initial extension order or subsequent extension order), an insolvent debtor must satisfy the three conjunctive criteria enumerated in sections 50.4(9)(a)-(c) - specifically that: (a) it has acted and continues to act in good faith and with due diligence; (b) it will be likely to put forward a viable proposal to its creditors; and (c), it is able to demonstrate that none of its creditors will be materially prejudiced by the granting of an extension order.

16. In *Cantrail Coach Lines Ltd., Re*,[11] the British Columbia Supreme Court (the "BCSC") clarified the nature of the standard that a debtor is required to meet in a section 50.4(9) application:

> 11 I am satisfied on reading the case law provided by counsel that in considering this type of application an objective standard must be applied. In other words, what would a reasonable person or creditor do in the circumstances. The case of *N.T.W. Management Group Ltd., Re*, [1993] O.J. No. 621 (Ont. Bktcy.), a decision of the Ontario Court of Justice, is authority for the proposition that the intent of the *Act* and these specific sections is rehabilitation, and that matters considered under these sections are to be judged on a rehabilitation basis rather than on a liquidation basis.
>
> 12 I am also satisfied that it would be important in considering the various applications before me to take a broad approach and look at a number of interested and potentially affected parties, including employees, unsecured creditors, as well as the secured creditor that is present before the Court.[12]

17. The following paragraphs explain why it is submitted that the Company satisfies the criteria set out in sections 50.4(9)(a)-(c) of the BIA.

(a) Acting in good faith and with due diligence

18. Section 50.4(9)(b) of the BIA contains two discrete components: (i) that the applicant debtor is acting and will continue to act in good faith; and (ii) that it is acting and will continue to act with due diligence.

[10] *Ibid,* s 50.4(9), emphasis added.
[11] 2005 BCSC 351 (CanLii), 10 CBR (5th) 164 [***Cantrail***].
[12] *Ibid* at paras 11-12 [emphasis added].

19. In *H & H Fisheries Ltd., Re*,[13] the Nova Scotia Supreme Court (the "**NSSC**") indicated that the meaning of an applicant acting in "good faith" within the context of section 50.4(9)(b) of the BIA is tantamount to not acting in bad faith.[14] In its BIA section 50.4(9)(a) analysis, the NSSC specifically stated that "[t]he converse of good faith is bad faith and bad faith requires a motivation and conduct that is unacceptable".[15]

20. Absent a finding that the Company has acted or is acting in bad faith or that it has failed to exercise due diligence, this Court must hold that the Company is acting in good faith within the meaning of *BIA* section 50.4(9)(a). It is submitted that no evidence . Further, the Proposal Trustee concurs that the Company has acted and that it continues to act in good faith and with appropriate due diligence.[16]

21. The Company submits that it would it would be necessary for evidence to show that it has acted in bad faith—i.e., by engaging in unacceptable conduct with an unacceptable motive—in order for the Court to find that it has not acted in good faith within the meaning of section 50.4(9)(a) of the BIA. Nothing in the record suggests that the Company has acted in bad faith—to the contrary, the Proposal Trustee, having worked with the Company since its NOI filing, agrees that the Company has been acting in good faith.

(b) Likely able to make a viable proposal

22. In 2013 in *Andover Mining Corp. (Re)*,[17] the BCSC emphasized that an applicant debtor need not meet an onerous standard in demonstrating that it will be likely to make a viable proposal. There, the Court noted that the concept of viability is an objective standard, and that it should not be conflated with certainty:

> Turning to s. 50.4(9)(b), a viable proposal is one that would be reasonable on its face to a reasonable creditor; "this ignores the possible idiosyncrasies of any specific creditor": *Cumberland* at para. 4. It follows that Enirgi's views about any proposal are not necessarily determinative. The proposal need not be a certainty and "likely" means "such as might well happen."(*Baldwin*, paras. 3-4). And Enirgi's statement that it has lost faith in Andover is not determinative under s. 50.4(9): *Baldwin* at para. 3; *Cantrail* at paras. 13-18).[18]

[13] 2005 NSSC 346 (CanLii), 18 CBR (5th) 293.
[14] Ibid at para 16-17.
[15] *Ibid* at para 17.
[16] Second Report, at para 22.
[17] 2013 BCSC 1833 (CanLii), 6 CBR (6th) 32, [*Enirgi Group*].
[18] *Ibid* at para 66 [emphasis added].

23. In 2020 in *Scotian Distribution Services Limited (Re),*[19] the NSSC clarified that the courts will afford applicant debtors the benefit of any doubt in assess whether the criteria under section 50.4(9)(b) of the *BIA* has been established:

> 24 To say that virtually all economic prospects in the near to medium term are moving targets is a considerable understatement. The applicant must still demonstrate that it is "likely [to] be able to make a viable proposal" with the extension in place, but in the current context I consider this to be a threshold in which the benefit of any doubt should be accorded to the applicant. This does not relieve the burden of proof on the applicant of establishing that likelihood to a civil standard; it does, however, indicate that at least on a first extension, it will not likely be a difficult standard to meet.
>
> 25 I can take further judicial notice that especially in the current environment, a bankruptcy of an operating enterprise would almost inevitably be nasty, brutish, and anything but short. Creditors would be well advised to consider the viability and desirability of a proposal through that lens.[20]

24. Recently, in *Flasha Holdings Ltd (Re)*,[21] the Alberta Court of Queen's Bench indicated that, in the face of evidence filed by an applicant debtor suggesting the debtor would be able to put forward a viable proposal, it would be necessary for an interested party opposing the debtor's application for extension to furnish evidence establishing that the debtor will be incapable of putting forward a viable proposal. [22]

25. Thanks to the implementation of the Company's restructuring plan -- i.e. surrendering surplus equipment for sale to reduce secured guaranteed indebtedness and equipment rental liabilities -- the Company forecasts that it will produce net positive revenues through to the end of the week of July 15, 2022.[23] That the Company is capable of producing net positive cash flow, coupled with the fact that the Company's liabilities exceed the value of its assets, is suggestive of the fact that the Company will likely be able to put forward a viable Proposal.

26. Further, the Proposal Trustee concurs that the Company will be likely be able to put forward a viable proposal in these proceedings.[24] Accordingly, it is submitted that the criteria in section 50.4(9)(b) is easily made out in the instant case.

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[19] 2020 NSSC 131 (CanLii), 78 CBR (6th) 258.
[20] *Ibid* at paras 24-25 [emphasis added].
[21] 2021 ABQB 435 (CanLii), [2021] AWLD 2181 [***Flasha Holdings***].
[22] *Ibid*, at para 24.
[23] Second Report, at Appendix "B".
[24] *Ibid*, at para 22.

(c) No material prejudice to any creditor

27. The BCSC's decision in *Cantrail* spoke to the meaning of the phrase "materially prejudiced" in the context of *BIA* section 50.4(9)(c) analysis:

> 21 Under the third aspect of the test, I must be satisfied that no creditor would be materially prejudiced if extension being applied for were granted. That aspect of the test uses the term "materially prejudiced." There is a difference, in my view, between being prejudiced and being materially prejudiced. Again, consulting the *Concise Oxford Dictionary* materially means **substantially or considerably**. The creditor here must be substantially or considerably prejudiced if the extension being applied for is granted.[25]

28. The BCSC cited the *Cantrail* decision with approval in *Enirgi Group*. There, the Court noted that the BIA section 50.4(9)(c) test is objective, and declined to find prejudice given that there was no evidence that a creditor's security would be compromised by the grant of an extension:

> 76 The third requirement under s. 50.4(9) is that no creditor should be materially prejudiced if an extension is granted. As emphasized in Cantrail at para. 21 the test is not prejudice but material prejudice. It is also an objective test: Cumberland at para. 11. In the subject case there is no evidence that the security in the first promissory note would be less if an extension was granted.[26]

29. The Company submits that there is no evidence to suggest that the grant of a second 45-day extension will, in and of itself, cause a substantial or even marginal prejudice to any of the Company's creditors. Indeed, the Company continues to provide oilfield services to its clients, which will generate future accounts receivable thereby increasing the value available to Company's creditors.

30. Further, the Proposal Trustee is unable has not identified any reason why the granting of a second extension would cause material prejudice to any creditor.[27] The Company thus submits that the criteria in section 50.5(9)(c) of the *BIA* is satisfied.

[25] *Cantrail, supra* note 3 at para 21 [emphasis added].
[26] *Enirgi Group, supra* note 8 at para 76.
[27] Second Report, at para 22.

V. CONCLUSION

31. In light of all of the above, the Company respectfully submits that it is appropriate for this Honourable Court to grant the relief requested in its April 25, 2022, Application for a Second Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of April, 2022.

DLA PIPER (CANADA) LLP

Per: _____
Jerritt Pawlyk
Counsel for 915245 Alberta Ltd.

DLA PIPER (CANADA) LLP

Per: _____
Kevin N. Hoy
Counsel for 915245 Alberta Ltd.

VI. INDEX OF AUTHORITIES

TAB 1

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***In the Matter of the Proposal of Cantrail Coach Lines Ltd.***
2005 BCSC 351

Date: 20050301
Docket: B050363
Registry: Vancouver

IN THE MATTER OF THE PROPOSAL OF CANTRAIL COACH LINES LTD.

Before: Master Groves

Oral Reasons for Judgment

In Chambers
March 1, 2005

Counsel for Petitioner	H. Ferris
Counsel for Creditor (Volvo)	R. Finlay
Place of Trial/Hearing:	Vancouver

[1] **THE COURT:** This is my decision on the matter of the proposal of Cantrail Coach Lines Ltd. who I will refer to as Cantrail.

[2] Cantrail applies to the Court pursuant to s. 50.4(9) of the ***Bankruptcy and Insolvency Act*** for extension of time for filing a proposal.

[3] VFS Canada Inc., who I will refer to as Volvo, a secured creditor of Cantrail, opposes the application and cross-

good faith? I would say on this point it was not argued nor does it appear to be disputed that they are. Secondly, would they likely make a viable proposal if the extension were granted. Thirdly, they must show no creditor would be materially prejudiced by the extension.

[11] I am satisfied on reading the case law provided by counsel that in considering this type of application an objective standard must be applied. In other words, what would a reasonable person or creditor do in the circumstances. The case of ***Re: N.T.W. Management Group Ltd.*** [1993] O.J. No. 621, a decision of the Ontario Court of Justice, is authority for the proposition that the intent of the ***Act*** and these specific sections is rehabilitation, and that matters considered under these sections are to be judged on a rehabilitation basis rather than on a liquidation basis.

[12] I am also satisfied that it would be important in considering the various applications before me to take a broad approach and look at a number of interested and potentially affected parties, including employees, unsecured creditors, as well as the secured creditor that is present before the Court.

[13] Considering those factors and considering the remaining two steps of the test under s. 50.4(9), the second aspect of the test is would Cantrail likely be able to make a viable

[20] I am impressed thus far with the efforts of Cantrail and with the efforts of the trustee, Patty Wood, in trying to get this matter resolved. I am satisfied that the insolvent company, in my view, would likely be able to make a viable proposal, a proposal that is at least feasible, a proposal that would be practicable from an economic standpoint, if the extension being applied for were granted.

[21] Under the third aspect of the test, I must be satisfied that no creditor would be materially prejudiced if extension being applied for were granted. That aspect of the test uses the term "materially prejudiced." There is a difference, in my view, between being prejudiced and being materially prejudiced. Again, consulting the *Concise Oxford Dictionary* materially means substantially or considerably. The creditor here must be substantially or considerably prejudiced if the extension being applied for is granted.

[22] There is no doubt that Volvo has been prejudiced by the circumstances which have befallen Cantrail and befallen Volvo as a secured creditor. The ***Act*** in and of itself, and the possibility of a proposal, does create simple prejudice by staying the obligations of a person attempting to make a proposal during the period of time in which the proposal is being formulated. There is no evidence before me of anything

TAB 2

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
Citation: *H &H Fisheries Limited, Re,* 2005 NSSC 346

Date: 20051219
Docket: SH B259148
Registry: Halifax

IN THE MATTER OF: H & H Fisheries Limited

DECISION

Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: December 14, 2005 in Halifax, Nova Scotia

Counsel: Victor J. Goldberg and Martha L. Mann for
H & H Fisheries Limited
Stephen J. Kingston and Bob Mann, articled clerk, for
the Bank of Nova Scotia

of the application have been established on a balance of probabilities before extending the time for filing a proposal. It is, in essence, a three part test and if the applicant fails on any part the court would not then be satisfied, requiring the application to be dismissed.

[14] **Has HHFL satisfied the court that it has acted in good faith and exercised due diligence?**

[15] There is some merit to the arguments advanced by BNS and the court is particularly concerned about a party HHFL signing a commitment letter with the clear undertaking noted above that all its operating accounts were to be maintained with BNS. This is for the obvious purpose of providing BNS with an opportunity to monitor and protects its interests as a creditor and clearly HHFL in moving all its trading, operating business to its CIBC accounts has committed a breach of contract, a breach of the commitment it made in the original committal letter executed by both parties December 2, 2004.

[16] Does a breach of contract automatically constitute bad faith? The answer is, "not necessarily", but it is evidence that must be weighed very carefully and the evidence here does show a deliberate failure to notify BNS of this redirection of operating funds and at one point a signed invoice or record which was somewhat misleading with respect to the possibility of some relatively minor accounts having been directed to the CIBC in error.

[17] The converse of good faith is bad faith and bad faith requires a motivation and conduct that is unacceptable. If, for example, the diversion of operating/trading proceeds had been diverted to the CIBC for the purposes of personal gain for any officer, director or shareholder of HHFL, an example of which would be payment to ones family or a pay-down on a mortgage or judgment on ones home, etc., or to enhance the third level of a secured creditor being Mr. Hartlen's company, R. Hartlen Investments Inc., then clearly such would amount to bad faith and quite possibly fraud. It is clear that the motivation for moving the funds to the CIBC account was, in one word, for the purpose of "survival". Funds were essential in that I accept the view expressed by HHFL that had it continued to direct its operating/trading funds to BNS the probability is almost a certainty that BNS would have utilized such funds to pay-down its advances precluding the company from having any operating funds and the door to the plant would have been shut. This result would not have been, and is not at this time, in the best

interest of either party and coincidentally the seventy-five employees who are at the moment gainfully employed by HHFL. I make it clear that it is not necessary that there be fraud for the conduct to fall short of good faith. HHFL have also fallen behind in many other aspects of the original commitment letter but they have responded and provided documentation, bank records, reconciliation of invoices with cash withdrawals. Its recent conduct probably directed by the trustee entirely mitigates against any suggestion of the diversion being for personal gain other than as I have said, a course of conduct taken for the benefit of both parties some other ninety-six outstanding creditors and the seventy-five employees. In some cases a breach of contract may be such of itself that it precludes acceptance on a balance of probabilities that the overall conduct meets the good faith requirement.

[18] It is argued by HHFL that only its conduct since the filing of the Notice of intention November 3, 2005 should be considered and with respect, I am inclined to disagree. The manner in which a party conducts itself in the past, particularly the immediate past, is often an indicator of likely conduct in the immediate future. In addition, what you have here is a breach of the contract/commitment letter which occurred before November 3, 2005 and continued and overlapped the date of the filing of the Notice of intention.

[19] The court does have the opinion of a respected trustee whose sworn testimony by affidavit has not been challenged and Mark S. Rosen, LLB, FCIRP, has been involved for some time and very active in endeavouring to come to grips with the challenge and has met with and communicated with officials of BNS, BDC and many of the unsecured creditors. After reciting in detail the extent of such activity he deposes in paragraph 14 of his affidavit of December 1, 2005 as follows:

> 14. I have been working with and receiving information from Messrs. Hartlen and Limpert as well as Harley Hiltz, the director of marketing and production for the Company, who at all times have been fully co-operative. From my experience and dealings with the Company, I believe that the Company has acted and is acting in good faith and with due diligence in working towards formulating a viable proposal. I believe that the Company would likely be able to make a viable proposal if the extension is granted.

My finding on this prerequisite is that by a relatively small margin HHFL has satisfied the court on a balance of probabilities that it has been and is likely to act in good faith. In reaching this conclusion I have not taken into account the

TAB 3

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Andover Mining Corp. (Re),* 2013 BCSC 1833

Date: 20131004
Docket: B131136
Registry: Vancouver

In the Supreme Court of British Columbia in Bankruptcy and Insolvency

In the Matter of the notice of Intention to Make a Proposal of

Andover Mining Corp.

And in the matter of

The Application by Enirgi Group Corporation under ss. 50.4(11) and 47.1(1)(b) of the B*ankruptcy and Insolvency Act*, R.S.C. 1985, c. B-5

Between:

Enirgi Group Corporation

Creditor

And

Andover Mining Corp.

Insolvent Person

Before: The Honourable Mr. Justice Steeves

Reasons for Judgment

Counsel for the Creditor:	D.R. Brown M. Nied
Counsel for the Insolvent Person:	M.R. Davies
Place and Date of Trial/Hearing:	Vancouver, B.C. September 24, 2013
Place and Date of Judgment:	Vancouver, BC. October 4, 2013

[65] With regards to due diligence, since August 2013 Andover has obtained the September 24, 2013 letter from Ophir that says the latter "is in the process" of finalizing a loan of $3,000,000 to Andover. This is not a firm commitment of funds and nor does it need to be under s. 50.4(9); it does reflect some diligence on Andover's part. Mr. Blankstein also deposes that he has been having discussions with another party but he cannot reveal the name of that party because he is concerned that Enirgi will obstruct those discussions, as they did with Chief in June 2013. This latter information is not particularly helpful. Nonetheless I conclude that Andover has acted with sufficient due diligence.

[66] Turning to s. 50.4(9)(b), a viable proposal is one that would be reasonable on its face to a reasonable creditor; "this ignores the possible idiosyncrasies of any specific creditor": *Cumberland* at para. 4. It follows that Enirgi's views about any proposal are not necessarily determinative. The proposal need not be a certainty and "likely" means "such as might well happen."(*Baldwin*, paras. 3-4). And Enirgi's statement that it has lost faith in Andover is not determinative under s. 50.4(9): *Baldwin* at para. 3; *Cantrail* at paras. 13-18).

[67] I turn to a review of the assets of Andover in order to consider whether they provide some support for the viability of any proposal from Andover. The evidence for this review is from the affidavit of Mr. Blankstein.

[68] Alaska (wholly owned by Andover) is expecting, as a result of preliminary discussions, a N143101 Resource Calculation for a property to show approximately 1,200,000,000 pounds of copper with a gross value of about $3,600,000,000. An immediate net value of $60,000,000 and $120,000,000 is estimated, depending on the world price of copper. The State of Alaska is confident enough in the property that it has financed a road to it. In a separate property, Alaska has an estimated mineralization of 4,000,000 tons of 4.5 % copper and Andover has spent approximately $10,000,000 in developing this project. Alaska is solvent and up to date in its financial obligations.

rich and cash poor. But it is not "trying to box with a ghost" (as in *Cumberland*) to conclude that the assets of Andover support the view that it is likely that it can present a viable proposal. As above, there is also the prospect of a $3,000,000 cash loan from Ophir and that is some evidence of an imminent injection of cash into Andover. It has not materialized as yet but it is further evidence of the likelihood of a viable proposal. A certainty is not required and I conclude that a proposal is likely in the sense it might well happen.

[75] Enirgi points out that it holds the largest portion of unsecured debt of Andover (more than 80%) and it submits that this gives them a veto over any proposal. That may take place but thus far there is no proposal and Enirgi will have to make a business decision about its response in the event one is presented. Again, as an issue under s. 50.4(9), a proposal does not have to be acceptable to Enirgi. As well, I also note comments from the Court of Appeal, in the context of the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, that questioned the legal basis of a creditor forestalling an application for a stay and whether the court's jurisdiction could be "neutralized" in that way: *Asset Engineering LP v. Forest & Marine Financial Limited Partnership*, 2009 BCCA 319 at para. 26, cited in *Pacific Shores Resort & Spa Ltd. (Re),* 2011 BCSC 1775, at paras. 40-41.

[76] The third requirement under s. 50.4(9) is that no creditor should be materially prejudiced if an extension is granted. As emphasized in *Cantrail* at para. 21 the test is not prejudice but material prejudice. It is also an objective test: *Cumberland* at para. 11. In the subject case there is no evidence that the security in the first promissory note would be less if an extension was granted. Enirgi asserts that Andover is restructuring its assets but there is no evidence of that and, in the event it occurs, remedies are available on short notice. Unlike in *Cumberland,* the debtor here is not converting inventory into cash. It is true that the note (or notes) is non-interest bearing but Enirgi knew that when it became an assignee in March 2013 and the note had not been unpaid since October 2012. I conclude that there is some prejudice to Enirgi but not material prejudice.

TAB 4

SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131

Date:20200406
Docket: No. 43999
Registry: Halifax
Estate Number: 51-2624515

In the Matter of: The Proposal of Scotian Distribution Services Limited

Judge:	Raffi A. Balmanoukian, Registrar
Heard:	March 27, 2020, in Halifax, Nova Scotia (via Teleconference)
Counsel:	Tim Hill, QC, for the Applicant

[22] No creditor objected, and there is no evidence that the extension would cause material prejudice to any creditor. Although this burden, too, is on the applicant, I can take judicial notice that proposals, if performed, generally result in a greater net recovery to creditors overall; while there is some indication that the applicant will seek to resile from certain obligations, the test is whether the extension would be prejudicial, not whether the proposal itself would be.

[23] This would be the applicant's first extension under 50.4(9), which allows for a series of extensions of up to 45 days each, to a maximum of five months.

[24] To say that virtually all economic prospects in the near to medium term are moving targets is a considerable understatement. The applicant must still demonstrate that it is "likely [to] be able to make a viable proposal" with the extension in place, but in the current context I consider this to be a threshold in which the benefit of any doubt should be accorded to the applicant. This does not relieve the burden of proof on the applicant of establishing that likelihood to a civil standard; it does, however, indicate that at least on a first extension, it will not likely be a difficult standard to meet.

[25] I can take further judicial notice that especially in the current environment, a bankruptcy of an operating enterprise would almost inevitably be nasty, brutish,

and anything but short. Creditors would be well advised to consider the viability and desirability of a proposal through that lens.

[26] This Court will, no doubt, face a considerable additional case load as the economic fallout of the current human disaster works its way through what is and remains a robust legal process. An applicant should have every reasonable opportunity to avail itself of a restructuring rather than a bankruptcy, assuming it otherwise meets the requirements of BIA 50.4(9).

Conclusion

[27] The application is granted, and I have issued the order allowing the time to file a proposal to be extended to and including May 11, 2020.

Balmanoukian, R.

TAB 5

CITATION: Mustang GP Ltd. (Re), 2015 ONSC 6562
COURT FILE NOs.: 35-2041153, 35-2041155, 35-2041157
DATE: 2015/10/28

SUPERIOR COURT OF JUSTICE – ONTARIO – IN BANKRUPTCY

RE: IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MUSTANG GP LTD.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST POWER MUSTANG GENERATION LTD.

BEFORE: Justice H. A. Rady

COUNSEL: Harvey Chaiton, for Mustang GP Ltd., Harvest Ontario Partners Limited Partnership and Harvest Power Mustang Generation Ltd.

Joseph Latham for Harvest Power Inc.

Jeremy Forrest for Proposal Trustee, Deloitte Restructuring Inc.

Robert Choi for Badger Daylighting Limited Partnership

Curtis Cleaver for StormFisher Ltd.

No one else appearing.

HEARD: October 19, 2015

ENDORSEMENT

Introduction

[1] This matter came before me as a time sensitive motion for the following relief:

(a) abridging the time for service of the debtors' motion record so that the motion was properly returnable on October 19, 2015;

In the same decision, at para. 59, Deschamps J. also quoted with approval the following passage from the reasons of Doherty J.A. in *Elan Corp. v. Comiskey* (1990), 41 O.A.C. 282, at para. 57 (dissenting):

> The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.
>
> …
>
> Given that there was no alternative for a going-concern solution, it is difficult to accept the Court of Appeal's sweeping intimation that the DIP lenders would have accepted that their claim ranked below claims resulting from the deemed trust. There is no evidence in the record that gives credence to this suggestion. Not only is it contradicted by the CCAA judge's findings of fact, but case after case has shown that "the priming of the DIP facility is a key aspect of the debtor's ability to attempt a workout" (J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2007), at p. 97). The harsh reality is that lending is governed by the commercial imperatives of the lenders, not by the interests of the plan members or the policy considerations that lead provincial governments to legislate in favour of pension fund beneficiaries. The reasons given by Morawetz J. in response to the first attempt of the Executive Plan's members to reserve their rights on June 12, 2009 are instructive. He indicated that any uncertainty as to whether the lenders would withhold advances or whether they would have priority if advances were made did "not represent a positive development". He found that, in the absence of any alternative, the relief sought was "necessary and appropriate".
>
> [Emphasis in original]

[31] I recognize that in the *Comstock* decision, the court was dealing with a *CCAA* proceeding. However, the comments quoted above seem quite apposite to this case. After all, the *CCAA* is an analogous restructuring statute to the proposal provisions of the *BIA*.

c) administration charge

[32] The authority to grant this relief is found in s. 64.2 of the *BIA*.

> **64.2 (1)** ***Court may order security or charge to cover certain costs:*** 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.
>
> **64.2 (2)** ***Priority:*** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

[33] In this case, notice was given although it may have been short. There can be no question that the involvement of professional advisors is critical to a successful restructuring. This process is reasonably complex and their assistance is self evidently necessary to navigate to completion. The debtors have limited means to obtain this professional assistance. See also *Re Colossus Minerals Inc.*, 2014 ONSC 514 (S.C.J.) and the discussion in it.

d) the D & O charge

[34] The *BIA* confers the jurisdiction to grant such a charge at s. 64.1, which provides as follows:

> **64.1 (1)** On application by 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) 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 property of the person is subject to a security or charge – in an amount that the court considers appropriate in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

TAB 6

2021 ABQB 435, 2021 CarswellAlta 1349, [2021] A.W.L.D. 2181, 332 A.C.W.S. (3d) 19

2021 ABQB 435
Alberta Court of Queen's Bench

Flasha Holdings Ltd (Re)

2021 CarswellAlta 1349, 2021 ABQB 435, [2021] A.W.L.D. 2181, 332 A.C.W.S. (3d) 19

In the Matter of the Notice of Intention to Make a Proposal of Flasha Holdings Ltd. Under the Bankruptcy and Insolvency Act

Arundel Capital Corporation (Applicant / Respondent) and Flasha Holdings Ltd. (Respondent / Applicant)

In the Matter of the Notice of Intention to Make a Proposal of Paul Flasha Contracting Ltd. Under the Bankruptcy and Insolvency Act

Paul Flasha Contracting Ltd. (Applicant) and Arundel Capital Corporation (Respondent)

G.S. Dunlop J.

Heard: May 28, 2021
Judgment: June 2, 2021
Docket: Edmonton B203-733822, B203-733823

Counsel: J. Flanagan, for Arundel Capital Corporation
B. Smith, for Flasha Holdings Ltd. and Paul Flasha Contracting Ltd.
B. Maruyama, for Faber Inc.
G. Body, for Canada Revenue Agency

Subject: Income Tax (Federal); Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency
VI Proposal
VI.2 Time period to file
VI.2.a Extension of time

Headnote

Bankruptcy and insolvency --- Proposal — Time period to file — Extension of time
Insolvent companies owed debts including $1,323,583 to creditor, secured by equipment, approximately $200,000 to CRA for source deductions, and $200,000 for surface leases — Companies obtained expression of interest for refinancing their secured debt with advance of $1,575,000 but, before they could make proposal incorporating such finding, they had to confirm amount owing to CRA which was currently under review with no indication when review would end — Creditor applied to terminate period for companies to make proposal; companies and proposal trustee applied to extend date for making proposal — Creditor's application dismissed; companies' application granted — Since creditor was holding $106,681 in funds which was earmarked to pay CRA, setting that off left net amount of $1,216,902 owing to it — Proposal trustee advised that payment plan had been reached with provincial plan, such that surface lease debt did not need to be satisfied in proposal, and that discussions with CRA suggested that review would not significantly change amount of tax debt — Precedents creditor cited were distinguishable, as it seemed likely that financing in amount of $1,575,000 would be sufficient to pay out CRA, creditor and others and creditor had admitted that it would vote in favour of proposal that saw it paid in full, which distinguished facts — Creditor had failed to show that companies would not likely be able to make viable

proposal that would be accepted by creditors, while companies had shown that they would likely be able to make viable proposal if extension was granted — Any depreciation of equipment that secured creditor's leases during period to extended deadline would not reduce its value below $1,500,000 so creditor would not suffer prejudice due to depreciation as result of extension — Appropriate extension was 45 days and, as creditor had essentially conceded its leases were finance leases, it was not appropriate for it to receive lease payments from date of Notices of Intention.

Table of Authorities

Cases considered by *G.S. Dunlop J.*:

Cumberland Trading Inc., Re (1994), 23 C.B.R. (3d) 225, 1994 CarswellOnt 255 (Ont. Gen. Div. [Commercial List]) — distinguished

1252206 Alberta Ltd. v. Bank of Montreal (2009), 2009 ABQB 355, 2009 CarswellAlta 900 (Alta. Q.B.) — distinguished

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
s. 50.4(9) [en. 1992, c. 27, s. 19] — referred to

s. 50.4(9)(a) [en. 1992, c. 27, s. 19] — referred to

s. 50.4(9)(b) [en. 1992, c. 27, s. 19] — referred to

s. 50.4(9)(c) [en. 1992, c. 27, s. 19] — referred to

s. 50.4(11) [en. 1992, c. 27, s. 19] — referred to

s. 50.4(11)(b) [en. 1992, c. 27, s. 19] — referred to

s. 50.4(11)(c) [en. 1992, c. 27, s. 19] — referred to

APPLICATION by creditor to terminate period for insolvent companies to make proposal; APPLICATION by companies and proposal trustee to extend period.

***G.S. Dunlop J.*:**

1. Introduction

1 Arundel Capital Corporation applies to terminate the period for Flasha Holdings Ltd. to make a proposal. Flasha Holdings, Paul Flasha Contracting Ltd. and their proposal trustee, Faber Inc., apply to extend the date for them to make a proposal.

2 The relevant provisions of the *Bankruptcy and Insolvency Act* are:

> 50.4(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.
>
> . . .
>
> (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
>
> (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
>
> (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
>
> (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,
>
> and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

3 Arundel submits that the Flasha corporations will not likely be able to make a proposal that will be viable and will be accepted by the creditors, thus meeting the tests of s 50.4(11)(b) and (c) of the Act. In particular, Arundel submits that the Flasha corporations are unlikely to be able to make a proposal that would include paying the secured creditors and the Canada Revenue Agency in full, and that Arundel will not accept any proposal that does not including paying Arundel in full. Arundel concedes that it would likely accept a proposal that included paying out Arundel in full, but it submits that such a proposal is unlikely, based on the facts presently known.

4 In opposition to Arundel's application and in support of the extension application, the Flasha corporations submit that they will likely be able to make a proposal that would include paying Arundel in full. If so, then neither of the tests in s 50.4(11) relied upon by Arundel would be met, and the likely viable proposal portion of the test for an extension in s 50.4(9)(b) would also be met. In addition, the Flasha corporations submit that they have acted and are acting in good faith and that no creditor would be materially prejudiced by an extension, completing the other components of the test for an extension in s 50.4(9)(a) and (c).

5 Arundel makes no submissions regarding the Flasha corporations' good faith, but it submits that Arundel would be materially prejudiced by an extension because the equipment which is its security is depreciating. The Flasha corporations submit that the equipment is worth far more than what is owed to Arundel so any depreciation will not materially prejudice Arundel.

6 Arundel also submits, in the alternative, that if an extension is granted it should be on conditions including that it receive the lease payments due from the date of Flasha Holdings' Notice of Intention to Make a Proposal and that it be provided with proof that the equipment which is its security is insured.

7 The proposal trustee supports the Flasha corporations in all of the submissions set out above. The Canada Revenue Agency supports the extension application, but otherwise takes no position on these applications.

8 These two applications turn on the following issues:

- whether the Flasha corporations will likely make a proposal that includes paying out Arundel in full;
- whether the depreciation of the equipment during any extension period will prejudice Arundel; and
- if an extension is granted, what conditions, if any, should apply.

2. Likely Proposal

9 The Flasha corporations have obtained an expression of interest by Travelers Restructuring Capital Inc to refinance their secured debt with an advance of $1,575,000. However, before they can make a proposal incorporating new financing by Travelers, the Flasha corporations must confirm the amount owing to CRA for source deductions, which was listed as $195,620 in the Notices of Intention, but which CRA is presently reviewing. CRA has not advised when that review will be complete. At the hearing of these applications on May 28, 2021, the proposal trustee advised that the final amount owing to CRA is expected to be close to the amount estimated in the Notices of Intention.

10 Arundel submits that the Flasha corporations are unlikely to make a proposal that includes paying Arundel in full because the $1,575,000 in financing offered by Travelers will not be sufficient to pay CRA, Arundel and the other secured creditors.

11 Arundel's submission is based on the following secured, potentially preferred and CRA amounts owing:

- $1,323,583 owed to Arundel;
- $200,000 owed to CRA for source deductions;
- $100,000 owed to ATB; and
- $200,000 owed to the Provincial Crown for surface leases.

12 Although the Flasha corporations take issue with the figure put forward by Arundel for the amount it is owed, for the purposes of this application, I accept the figure provided by Arundel during the hearing of these applications on May 28, 2021. However, the principal of the Flasha corporations, Steven Flasha, deposes in his affidavit that Arundel is holding $106,681 in funds which was earmarked to pay CRA, but has not been advanced. Setting that amount off against what Arundel says is presently owing, leaves a net amount of $1,216,902 owing to Arundel. Arundel also claims it is owed legal fees, but did not provide a figure for those. The Flasha corporations say they need to know what Arundel's claimed legal fees are before they provide their position on that.

13 The best figure presently available for the amount owing to CRA is $195,620.

14 The debt owing to ATB is shown as $100,000 in the Notices of Intention. ATB did not appear on these applications.

15 Arundel admits it is not certain of what priority, if any, the Provincial Crown may have for the amounts it is owed under the surface leases. The proposal trustee's first report indicates the amount owing is estimated to be $270,000. However, at the May 28, 2021 hearing the proposal trustee advised that a payment plan has been reached with the Provincial Crown. Consequently, it appears that the surface lease debt will not have to be satisfied in any proposal.

16 There is also a debt owing to Royal Bank of Canada, secured by a truck, in the amount of $47,000.

17 All of these figures are subject to adjustment. However, on the evidence before me, it appears that the following is owing to CRA and secured creditors:

- Arundel $1,216,902;

- CRA $195,620;
- ATB $100,000;
- RBC $47,000;
- Total $1,559,522.

18 It appears to me likely that the Traveler's financing in the amount of $1,575,000 would be sufficient to pay out CRA, Arundel and the other secured creditors. Arundel admits it would vote in favour of a proposal that saw it paid in full.

19 In addition, I note that the proposal trustee advised in its first report at paragraph 30:

> Based on the information available to the Trustee, it appears that the companies are able to make viable Proposals provided HoldCo is entitled to retain the Equipment. If the Travelers refinancing proceeds, then Arundel and CRA should be paid out.

20 The proposal trustee's May 21, 2021 Extension Report also states in paragraph 17 b:

> Holdco and Opco would likely be able to make viable Proposals if the extension being applied for were granted.

21 In addition to Faber's two written reports, Dan Faber attended the hearing of the two applications on May 28, 2021 and advised that recent purchase orders and accounts receivable for the Flasha corporations are better than previously projected, that Travelers continues to be engaged in supporting a proposal, and that discussions with CRA suggest that what is owed to it will be about what was anticipated. Mr. Faber expects that the Flasha corporations will be able to make a proposal in the near future which will include paying out Arundel in full.

22 On the evidence and information before me I find that the Flasha corporations will likely be able to make a viable proposal which will include paying out Arundel in full.

23 Arundel relies upon 1252206 Alberta Ltd. v Bank of Montreal, 2009 ABQB 355, and Cumberland Trading Inc., Re[1994] O.J. No. 132 for the proposition that a creditor in a veto position need not wait to see what a proposal contains before determining that it will not vote for any proposal and on that basis terminate the proposal period. The facts here are different than in those two cases in several respects. First, Arundel says it would vote in favour of a proposal that saw it paid in full, and it appears that such a proposal will be forthcoming. That was not true in either *1252206* or *Cumberland*. Second, in *1252206*, the anticipated proposal would have required the secured creditor to assume risk by waiting for the debtor to complete its development with the aid of debtor in possession financing, hoping to achieve enough in future sales to pay the secured creditor in full. The expected proposal in this case would not involve Arundel assuming any risk; on the contrary it would have the certainty of immediate full payment. Third, in *Cumberland*, the debtor had given no indication of what the proposal would be, whereas in this case the Flasha corporations and the proposal trustee have described the intended proposal, supported by a copy of Travelers' term sheet, and they have explained that the CRA review, which is pending, is required to finalize a proposal. This is far more substantial than the "bald assertion" of a future proposal in *Cumberland*.

24 Arundel has failed to show that the Flasha corporations (and Flasha Holdings in particular) will not likely be able to make a viable proposal, and it has failed to show that they will not likely be able to make a proposal that will be accepted by the creditors. On the contrary, the Flasha corporations have shown that they will likely be able to make a viable proposal if an extension is granted.

3. Prejudice through Depreciation

25 Arundel has put forward no evidence of the rate of depreciation of the equipment which secures its leases beyond Mr. Smyth's evidence that it is being deteriorated, likely damaged and its value is being eroded.

26 According to the proposal trustee's first report, the equipment which is the subject of Arundel's leases was appraised by Arundel's parent corporation in January 2020 and valued at $3,065,600 fair market value, $2,566,900 orderly liquidation value and $2,201,700 forced liquidation value.

27 According to Mr. Flasha's affidavit, Flasha Holdings had a desktop appraisal of the equipment done in February 2021 which estimated the forced liquidation value of the equipment at over $2,000,000 and another desktop appraisal was done by Travelers in March 2021 which estimated the forced liquidation value to be approximately $2,000,000.

28 Based on the information before me, I conclude that the forced liquidation value of the equipment in March 2021 was at least $2,000,000 and that any depreciation between March 2021 and July 2021 will not reduce its value below $1,500,000 and that consequently Arundel would not suffer prejudice due to depreciation as a result of the extension sought by the Flasha corporations.

4. Period and Conditions of Extension

29 Arundel submits that the extension should be limited to 15 days and it should be on the conditions that the Flasha corporations provide proof that the equipment is insured and that Arundel receive the lease payments from the date of the Notices of Intention.

30 Arundel initially sought to have the secured equipment excluded from Flasha Holdings' proposal on the grounds its leases were true leases rather than financing leases, with its termination application in the alternative. After I adjourned Arundel's application so that questioning on affidavits could be conducted, Arundel abandoned its true lease application and returned its termination application to be heard at the same time as the Flasha corporations' extension application. In light of the time and resources lost to Arundel's true lease application, since abandoned, and in light of the fact that CRA is not able to predict when its review process will be complete, I find that the appropriate extension is 45 days.

31 During the hearing on May 28, 2021, the proposal trustee offered to provide proof of insurance, so a condition on that is not required.

32 Given Arundel's abandonment of its true lease application, it has essentially conceded that its leases are finance leases. Consequently, it is not appropriate for it to receive lease payments from the date of the Notices of Intention.

5. Conclusion

33 Arundel's application to terminate the proposal period is dismissed. The Flasha corporations' application to extend the proposal period is granted with an extension to 45 days from the date the application was heard. The application was heard on May 28, 2021 so the extension is granted to July 12, 2021. I attach no conditions to the extension.

Creditor's application dismissed; companies' application granted.