

Court File Number: SJM/125/2023

Numéro du dossier :

IN THE COURT OF KING'S BENCH
OF NEW BRUNSWICK

COUR DU BANC DU ROI DU
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIÈRE INSTANCE

JUDICIAL DISTRICT OF SAINT JOHN

CIRCONSCRIPTION JUDICIAIRE DE
SAINT JEAN

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY
THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD.,
SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE
LOBSTERS LIMITED, ARSENAULT'S FISH
MART INC.

B E T W E E N:

ENTRE :

THE TORONTO-DOMINION BANK

Applicant

- and -

REQUÉRANT

SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY
THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD.,
SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE
LOBSTERS LIMITED AND ARSENAULT'S
FISH MART INC.

- et -

INTIMÉ

Respondents

NOTICE OF MOTION
(FORM 37A)

AVIS DE MOTION
(FORMULE 37A)

TO: THE RESPONDENT

DESTINATAIRE :

To: The Service List (see Schedule
"A" attached hereto)

Deloitte Restructuring Inc., in its capacity as Monitor of the Respondents (the "**Monitor**"), will apply to the Court before the Court at the Saint John Law Courts, 10 Peel Plaza, Saint John, New Brunswick on the **15th day of April, 2024 at 2:00 p.m. (ADT), via teleconference**, for an order as set out hereunder.

Le requérant demandera à la Cour au Palais de Justice de _____, le _____ 2023, à _____ h _____, d'obtenir l'ordonnance décrite ci-dessous.:

You are advised that:

Sachez que :

- (a) You are entitled to issue documents and present evidence at the hearing in French or English or both;
- (b) The Monitor intends to proceed in the ENGLISH language; and
- (c) If you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 5 days before the hearing.

- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;
- (b) le requérant a l'intention d'utiliser la langue ANGLAISE; et
- (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 5 jours avant l'audience.

MOTION

On hearing of this Motion, Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as the court-appointed monitor (the “**Monitor**”) of South Shore Seafoods Ltd., Captain Cooke’s Seafood Inc., By the Water Shellfish (2012) Inc., Can-Am Lobster & Shellfish Ltd., South Shore Seafoods International Ltd., Bridge Lobsters Limited and Arsenault’s Fish Mart Inc. (collectively, the “**Debtors**”), intends to apply for the following relief pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”):

1. If necessary, abridging the time for service of this Notice of Motion, the sixth report of the Monitor dated January 24, 2024 (the “**Seventh Report**”) and/or the Record on Motion, or excusing the lack of service of this Notice of Motion and/or the Record on Motion;
2. An order (the “**Ancillary Order**”) substantially in the form of the draft attached hereto as Schedule “B”, among other things:
 - a) extending the Stay Period (as defined below) from April 30, 2024, until and including August 30, 2024;;
 - b) declaring that the Debtors, and their collective former employees meet the criteria established by section 3.2 of the *Wage Earner Protection Regulations*, SOR/2008-222 (the “**WEPPA Regulation**”) issued pursuant to the *Wage Earner Protection Act*, SC 2005, c. 47 (the “**WEPPA**”) and are individuals to whom the WEPPA applies; and

- c) approving the activities of the Monitor, as set out the Seventh Report of the Monitor dated April 11, 2024.

3. Such further and other relief as to this Honourable Court may deem just.

Upon hearing of the Motion, the Monitor intends to argue the following grounds and rely upon the following statutory provisions or rules:	A l'audience de la motion, la partie donnant l'avis de motion invoquera les motifs et les dispositions législatives ou règles suivantes;
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Background

- 4. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Seventh Report;
- 5. On September 21, 2023, upon an application by The Toronto-Dominion Bank (the “**Applicant**”), the Debtors obtained protection under the CCAA by orders of this Court (the “**Initial Orders**”);
- 6. The Initial Orders, among other things:
 - a) appointed Deloitte as the Monitor;
 - b) appointed David Boyd, a representative of Resolve Advisory Services Ltd., as the chief restructuring officer (in this capacity, the “**CRO**”); and
 - c) approved a stay of proceedings up to and including October 1, 2023 (as subsequently extended, the “**Stay Period**”);
- 7. On October 5, 2023, this Court granted an order extending the Stay Period to October 25, 2023.

8. On October 25, 2023, this Court granted the following orders:
- d) The Sale and Investment solicitation Process order (the “**SISP Order**”) approving a sale and investment solicitation procedure (the “**SISP**”) and authorizing the Monitor to implement the SISP and administer the sale of the Purchased Assets; and
 - e) The Second Amended and Restated Initial Order extending, *inter alias*, the Stay period from October 25, 2023 to January 31, 2024.
9. On January 29, 2024, this Court granted the following orders:
- f) The Approval and Vesting Order (the “**AVO**”) authorizing the sale of the Companies’ assets in accordance with the terms of the Sale Agreement dated January 12, 2024 (the “**Sale Agreement**”) to Phillips Bridge Seafood ULC (the “**Transaction**”)
 - g) The Ancillary Order providing for, *inter alias*, the extension of the Stay the Stay Period from January 31, 2024 to April 30, 2024;
 - h) The Priority Claims Order for the purposes of settling any claims that rank in priority to the claims of the Applicant, The Toronto-Dominion Bank;
10. On March 19, 2024, this Court issued an Amended Approval and Vesting Order to facilitate the conveyancing of certain of classes of assets, among the Purchased Assets to newly incorporated affiliates of the Purchaser, namely, Phillips Bridge Properties Canada ULC and Phillips Bridge Logistics ULC.

The Transaction

11. The Monitor, the Debtors (?) and the Purchaser continue to work actively and in good faith to complete the Transaction in a timely manner. Since the issuance of the AVO, the parties have agreed to two amendments to the Sale Agreement which contemplated, *inter alias*:

- i) the extension of the Outside Date from February 28, 2024 to March 31, 2024 and subsequently from March 31, 2024 to April 30, 2024;
- j) the extension of the closing date to March 20, 2024 and subsequently to April 5, 2024;
- k) the reimbursement by the Purchaser of all operating costs, including interest on the DIP Facility from March 29, 2024 to closing;
- l) confirming that the deposit was now non-refundable in the event the Transaction does not close; and
- m) confirming that the BDC Mortgage on title to the BDC Mortgaged Properties initially intended to remain as a Permitted Encumbrance in the Sale Agreement was to be paid out on closing.

12. The Transaction is currently scheduled to close on April 15, 2024 and the Monitor is of the view that the Purchaser continues to have the financial capacity and capability to consummate the Transaction in a timely manner.

Extension of the Stay Period

13. The Stay Period currently expires on April 30, 2024 and the Monitor seeks to extend the Stay Period until and including August 30, 2024;
14. The requested extension will allow the Monitor to complete the Transaction, convey the Purchased Assets to the Purchaser, complete the Priority Claims Process and other remaining issues in the estate, including distribution;
15. The Monitor has filed cash flow with the Seventh Report which shows that if the Stay Period is extended, the Debtors will have sufficient funds to cover their expenses during the extended Stay Period;
16. The Monitor is of the view that the requirement of good faith and due diligence has been met;

WEPPA

17. The Debtors are former employers for the purposes of section 5(5) of the WEPPA Regulation and that the employment of the Debtors' collective employees was ended as prescribed by section 3 of the WEPPA Regulation;
18. Section 5(1) of the WEPPA Regulation provides that an individual is eligible to receive payment thereunder if, amongst other things, (i) the individual is owed eligible wages by a former employer; (ii) the former employer is subject to proceedings under the CCAA; and (iii) a Court determines that the WEPPA Regulations are met.

19. The Monitor is of the view that it is appropriate for this Court to declare that the Debtors, and their collective employees meet the criteria as prescribed in the WEPPA, in order for terminated employees to access their statutory entitlement to unpaid termination and/or severance pay.

Approval of Activities and Reports

20. The activities of the Monitor are set out in detail in the Seventh Report and are consistent with its mandate pursuant to the Initial Orders, as amended and restated.

Other Grounds

21. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

22. Rules 1.03, 2.01 and 3.02 of the Rules of Court, NB Reg 82-73; and

23. Such further and other grounds as counsel may advise and this Court may permit.

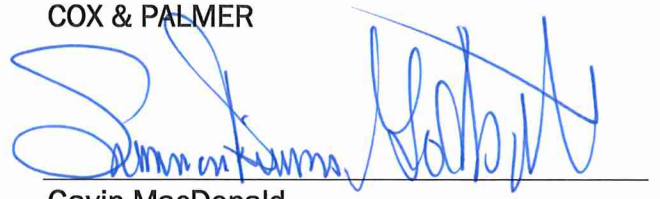
Upon hearing of the Motion, the following affidavits or other documentary evidence will be presented:	À l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées :
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24. The Seventh Report, including the appendices attached thereto;

25. Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED AT MONCTON, NEW BRUNSWICK THIS
11 day of April, 2024.

COX & PALMER



Gavin MacDonald

Simon-Pierre Godbout

Solicitors for the Moving Party, Deloitte Restructuring Inc. in its capacity as the court-appointed monitor of South Shore Seafoods Ltd., Captain Cooke's Seafood Inc., By the Water Shellfish (2012) Inc., Can-Am Lobster & Shellfish Ltd., South Shore Seafoods International Ltd., Bridge Lobsters Limited and Arsenault's Fish Mart Inc.

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SCHEDULE "A" – SERVICE LIST

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART
INC. (each a "Company" and collectively the "Companies")**

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.**

RESPONDENTS

SERVICE LIST

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<p>STEWART MCKELVEY Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2</p> <p>Maurice Chiasson, K.C. Tel: 902.420.3300 mchiasson@stewartmckelvey.com</p> <p>Counsel for the Respondents</p>	<p>SOUTH SHORE SEAFOODS LTD., CAPITAL COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, AND ARSENAULT'S FISH MART INC.</p> <p>Michel Jacob michel@southshoreseafoods.ca</p> <p>Tim Williston tim@southshoreseafoods.ca</p> <p>The Respondents / Debtors</p>
<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street, West Toronto-Dominion Centre Toronto, ON M5K1K7</p> <p>Leanne Williams Tel: 416.304.0060 lwilliams@tgf.ca</p> <p>Patrick Power PPower@tgf.ca</p> <p>Lawyers for Business Development Bank of Canada and BDC Capital Inc.</p>	

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PPSA Registrants

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THE BANK OF NOVA SCOTIA 10 Wright Boulevard Stratford, ON N5A 7X9	THE ROYAL BANK OF CANADA 10 York Mills Road, 3rd Floor Toronto, ON M2P 0A2

Municipalities

Municipality of the District of Argyle Argyle Municipal Office 5 J.E. Hatfield Ct., PO Box 10 Tusket NS B0W 3M0 Attention: Marsha d'Eon, Director of Finance Email: mdeon@munargyle.com	TOWN OF BORDEN PO Box 89 20 Dickie Road Borden-Carleton, PE C0B1X0 Tel: 902-437-2225 Fax: 902-437-2610
CITY OF SUMMERSIDE 275 Fitzroy Street, Summerside PE C1N 1H9 Tel: (902) 432-0103	

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Municipalities:

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SCHEDULE "B"
DRAFT ANCILLARY ORDER
(Stay Extension and WEPPA)

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART
INC. (each a "Company" and collectively the "Companies")

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.

RESPONDENTS

ORDER
(Stay Extension and WEPPA)

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the court-appointed Monitor (the "**Monitor**") of South Shore Seafoods Ltd., Captain Cooke's Seafood Inc., By the Water Shellfish (2012) Inc., Can-Am Lobster & Shellfish Ltd., South Shore Seafoods International Ltd., Bridge Lobsters Limited and Arsenault's Fish Mart Inc. (collectively, the "**Debtors**"), for an order approving, among other things:

- (i) the extension of the Stay Period (as defined in the Amended and Restated Initial Order dated October 25, 2023 (the "**Amended and Restated Initial Order**") as subsequently extended) from April 30, 2024 to August 30, 2024;

- (ii) declaring that the Debtors, and their collective former employees meet the criteria established by section 3.2 of the *Wage Earner Protection Regulations*, SOR/2008-222 (the “WEPPA Regulation” issued pursuant to the *Wage Earner Protection Act*, SC 2005, c. 47 (the “WEPPA”) and are individuals to whom the WEPPA applies;
- (iii) approving the activities of the Monitor, as set out in the seventh report of the Monitor dated April ____, 2024 (the “**Seventh Report**”); and

was heard on the 15th day of April, 2024;

UPON reading the Notice of Motion, the Seventh Report;

AND UPON hearing the submissions of counsel for the Applicant, the Monitor and those other parties present, and no one appearing on the Service List, although duly served as appears from the Affidavit of Service of _____ dated April ____, 2024;

AND UPON reading the material as filed by counsel,

IT IS HEREBY ORDERED AS FOLLOWS:

SERVICE

1. The service of the Notice of Motion, the Record on Motion and the Seventh Report, as set out in the Affidavit of Service, is deemed adequate so that this Motion is properly returnable today and further service thereof is hereby dispensed with.

STAY EXTENSION

2. The Stay Period, as defined in the Amended and Restated Initial Order (as subsequently extended), be and is hereby extended up to and including August 30, 2024.

APPROVAL OF THE MONITOR'S ACTIONS

3. The actions of the Monitor, as specified in the Seventh Report, be and are hereby approved.

WEPPA

4. The Debtors, and their collective former employees, meet the criteria established by section 3.2 of the *Wage Earner Protection Regulations*, SOR/2008-222 (the “WEPPA Regulation” issued pursuant to the *Wage Earner Protection Act*, SC 2005, c. 47 (the “WEPPA”) and are individuals to whom the WEPPA applies.

GENERAL

5. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Dated at Saint John, New Brunswick, this ____ day of April, 2024.

Justice of the Court of King's Bench
of New Brunswick