SUPREME COURT OF NOVA SCOTIA
Citation: *Re Blue Lobster Capital Limited et al.*, 2025 NSSC 243

Date: 20250716
Docket: Hfx. No. 538480
Registry: Halifax

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C- 36 as Amended

AND IN THE MATTER OF an application of Blue Lobster Capital Limited, 3284906 Nova Scotia Limited, 3343533 Nova Scotia Limited and 4318682 Nova Scotia Limited, (collectively, the "**Applicants**")

Judge: The Honourable Justice Darlene Jamieson

Heard: July 7, 2025, in Halifax, Nova Scotia

Written Decision: July 16, 2025

Counsel: Darren O'Keefe and Essber Essber for the Applicant Companies
R. Brendan Bissell and Sharon Kour, for KSV Restructuring Inc.
Sara Scott and Maurice Chiasson, K.C. (not appearing), for Royal Bank of Canada
Doug Schipilow, for 4681814 Nova Scotia Limited
Caitlin Ward, for Canada Revenue Agency
Stephen Kingston and Olivia Feschuk, for potential purchaser, Shannon Lynch
Colton Smith and David Wedlake (not appearing), for potential purchaser Coast to Coast Marketing Ltd.
Gavin MacDonald, for the proposed lenders, 4723718 Nova Scotia Limited and 4725748 Nova Scotia Limited

By the Court:

The Motions

[1] There are two competing motions before me. First, a motion brought by KSV Restructuring Inc., the court-appointed monitor (the "Monitor") for Blue Lobster Capital Limited ("BLCL"), 3284906 Nova Scotia Limited ("3284 NSL" or "Spirit Co"), 3343533 Nova Scotia Limited ("3343 NSL" or "Lost Bell") and 4318682 Nova Scotia Limited ("4318 NSL" or "Annapolis Cider") (collectively referred to as the "Applicant Companies" or "Companies") for the approval of two sale agreements (the "Sale Approval Motion") for the Operating Businesses. The Monitor seeks an approval and vesting order in each proposed sale that resulted from the sale and investment solicitation process ("SISP") approved by this court on March 7, 2025.

[2] The first proposed sale transaction (the "Lynch Transaction") is between 3284 NSL and 4318 NSL, as represented by the Monitor, and Shannon Theresa Lynch, on behalf of a nominee corporation to be incorporated (the "Lynch Purchaser") for the business and assets of Spirit Co and Annapolis Cider pursuant to an Asset Purchase Agreement ("APA") dated May 31, 2025 (the "Lynch APA"). The second proposed transaction (the "Coast Transaction") is between 3343 NSL as represented by the Monitor, and Coast to Coast Marketing Ltd, and James Roue Beverage Company Ltd. for the business and assets of Lost Bell pursuant to an APA dated May 9, 2025.

[3] The Monitor further seeks an Ancillary Order which, among other things:

- seals confidential appendices to the Monitor's Fourth Report and the Supplement to the Fourth Report;

- expands the Monitor's powers and authorizes and directs the Monitor to execute the Lynch APA, the Coast APA, and all closing documents related thereto as vendor, to disclaim contracts not assumed by the Purchasers, to take all steps necessary to close the transactions, and to exercise other powers reflected in the Ancillary Order;

- authorizes the Monitor to make distributions to RBC up to the amount of its indebtedness on a per-entity basis from the proceeds of the Transactions;

- directs BLCL to ensure vacant possession of the BLCL Real Properties (as defined in the Fourth Report) and directing and authorizing the Monitor to immediately list the BLCL Real Properties for sale;

- orders Mr. Kevin Alexander Rice ("Mr. Rice") to vacate the real property located at 2138 Brunswick Street, Halifax within 30 days of the date of the Ancillary Order to allow the BLCL Real Properties to be listed for sale on a vacant basis;

- extends the stay period to October 31, 2025; and

- approves the Fourth Report, the Supplemental Report, and the Monitor's activities described in those reports.

[4] The second competing motion is brought by the Applicant Companies to among other things, terminate the *CCAA* proceedings and the Stay of Proceedings on the basis of a Redemption Proposal that they say will:

- pay out their creditors;

- terminate the Administrative Charge and DIP (Debtor in Possession) Lenders' Charge;

- establish a process for the approval of the fees and disbursements of the Monitor and its counsel;

- approve the activities of the Monitor, discharge the Monitor, and release the Monitor from any potential claims; and

- extend the Stay Period.

[5] The primary secured creditor, the Royal Bank of Canada ("RBC") supports the Monitor's motion. It takes no position with respect to the Applicant Companies' motion. The Canada Revenue Agency ("CRA") takes no position on the two motions. The two successful bidders arising from the SISP support the Monitor's motion.

Evidence filed on the Motions

[6] The following evidence was filed with the court. The Monitor filed a Fourth Report and Supplement, along with confidential appendices to both. The Monitor also filed three affidavits of Ms. Alina Stoica (sworn June 30, 2025, June 25, 2025, and July 3, 2025) that placed before the court various correspondence between the parties and with the proposed lenders. Included, for example, is the Response to Interrogatories of the Monitor dated July 3, 2025, that had been requested by the Applicant Companies, and the July 2, 2025, letter of Mr. Gavin MacDonald, counsel to the Proposed Lenders, setting out responses to questions raised by the Monitor.

[7] The Applicant Companies filed affidavits of Mr. Rice sworn on June 23, 2025, and July 2, 2025, and a solicitor's affidavit of Mr. Darren O'Keefe sworn on July 4, 2025. They also rely on Mr. Rice's prior affidavits filed in this proceeding.

[8] 4723718 Nova Scotia Limited and 4725748 Nova Scotia Limited, the Proposed Lenders, to the Applicant Companies, filed two solicitor's affidavits of Mr. MacDonald sworn on June 23, 2025, and June 25, 2025, addressing the availability of the escrow funds.

[9] RBC filed a solicitor's affidavit of Mr. Maurice Chiasson, K.C., setting out the amounts owing to RBC as of June 23, 2025.

[10] The successful Lynch bidder filed the affidavit of Ms. Shannon Theresa Lynch sworn on June 30, 2025.

Background and History of this Proceeding

[11] By way of background, the NSL Companies operate businesses relating to the manufacturing and sale of alcoholic beverages. 3343 NSL operates a winery under the name "Lost Bell Winery". 4318 NSL is engaged in the production and sale of cider under the name "Annapolis Cider Co". 3284 NSL is engaged in the production and sale of alcoholic beverages under the name "Nova Scotia Spirit Co". The NSL Companies are based in Pictou County. The production facility is located at 230 Foord Street in Stellarton, Nova Scotia.

[12] BLCL is primarily a real estate investment company. It holds various properties (both residential and commercial) for rental purposes (the "BLCL Real Properties").

[13] Mr. Rice, President of the Applicant Companies, in his affidavit dated November 27, 2024, says the NSL Companies together, are recognized as the number one producer of spirits, cider, and Ready To Drink beverages in Nova Scotia. Collectively, NS Spirit's achievements position the company as the second-largest producer of beverage alcohol products in Nova Scotia.

[14] The Applicant Companies' primary lender is RBC. RBC extended various credit facilities to the Companies. The Companies executed various security in relation to the Credit Facilities. The details are set out in the November 27, 2024, affidavit of Mr. Rice, including the various general security agreements, collateral mortgages, assignments of rents, guarantees, etc. Aside from RBC, the Applicant Companies have no other major lenders. There are other creditors, including some who hold security interests as set out in the affidavit of Mr. Mark Dunning sworn November 27, 2024, and the attached Personal Property Registry Search reports.

[15] The Companies have been attempting to refinance their debt with RBC for more than a year. On February 7, 2024, RBC issued a demand for payment to each of the Companies, together with Notices of Intention to Enforce a Security pursuant to section 244 of the *Bankruptcy and Insolvency Act,* R.S.C. 1985*,* c.B-3 ("*BIA*"). Following the issuance of the demands there were negotiations and on February 26, 2024, RBC entered into two forbearance agreements with the Companies. Additional security was provided pursuant to these agreements. The forbearance period expired on April 26, 2024 with no refinancing. RBC then set August 31, 2024, for repayment, which did not occur.

[16] On November 19, 2024, RBC filed a motion for the appointment of a receiver pursuant to section 243(1) of the *BIA* and section 43(9) of the *Judicature Act,* R.S.N.S. 1989, c. 240*.* In response, the Applicant Companies filed an application for protection under the *Companies Creditors Arrangement Act,* R.S.C. 1985, c. C- 36 ("*CCAA*").

[17] It is noteworthy that the motion documents filed by the Applicant Companies in support of their request for protection under the *CCAA*, proposed a sales, investment, and solicitation process, or SISP, to be implemented within 90 days, if their refinancing efforts failed (November 27, 2024 affidavit of Mr. Rice, para. 99).

[18] The competing applications were briefly adjourned and the parties took some time to discuss a path forward. On December 12, 2024, I was advised that RBC and the Applicant Companies had reached agreement whereby RBC would adjourn its motion to appoint a Receiver and not oppose/would consent to the *CCAA*

proceeding. The terms were set out in a letter to me of December 11, 2024. With respect to refinancing the letter stated at paragraph 7:

> The Companies shall pursue their refinancing efforts through the end of February 2025. Should a binding offer or binding offers of financing which, in total, provide for the repayment in full of the Companies' obligations to RBC, not be secured prior to the end of February 2025 on terms satisfactory to RBC, acting reasonably, the Companies shall prepare for a broader sales and solicitation process (SISP) with a view to a public launch no later than March 15, 2025. Such process can, if the Debtors so choose, continue to be pursued in conjunction with any refinancing efforts.

[19] Pursuant to an Initial Order issued by this court on December 13, 2024, the Applicant Companies were granted protection under the *CCAA*, and KSV Restructuring Inc. was appointed as Monitor in the *CCAA* proceedings.

[20] At the Comeback Motion on December 20, 2024, this court issued an Amended and Restated Initial Order (the "ARIO") extending the Stay of Proceedings to March 8, 2025. On January 21, 2025, this court granted a Charging Order approving the DIP Facility in the amount of $300,000 and granting a charge in this amount in favour of RBC. The Charging Order attaches the January 14, 2025, DIP Term Sheet. Page 3 references the SISP:

> The Bank expects that the Borrowers will immediately begin preparation for a sale and investment solicitation process (the "SISP") aimed at seeking orders for the sale of all or substantially all of the business assets of the Borrowers or significant investments in the business carried on by the Borrowers. Preparation for the SISP will run concurrent with the refinancing efforts of the Borrowers.
>
> > In the event that the Borrowers have not executed an agreement with a lender or other third party in form and substance acceptable to the Bank by February 21, 2025, which will provide for the repayment in full of all obligations owing to the Bank under the Loan Agreements, the Borrowers shall complete their preparation for the SISP and shall make application for approval of the SISP by the court no later than March 7, 2025. The Borrowers shall provide that all transactions under the SISP will be completed no later than June 30, 2025.

[21] Throughout the proceeding cashflow projections were provided to the court. In the Supplement to the Monitor's Pre-Filing Report of December 19, 2024, the Companies anticipated a negative cash flow to March 1, 2025 of $77,000. The First Report of December 20, 2024 adjusted the projected cashflow deficit to March of $128,856 and anticipated the need for DIP financing. The Second Report of January 16, 2025, in support of the DIP Facility, proposed needing $300,000 in DIP

financing to cover the cashflow deficit. By the Third Report of February 28, 2025, the Companies projected needing to draw down the DIP financing by the week of March 15 and projecting it would be fully drawn by April 19, 2025, with them potentially needing a further $220,000. To date, the Companies have been able to avoid drawing down any of the DIP financing.

[22] The Applicant Companies were unable to re-finance their debt before the end of February 2025. As a result, consistent with the December 11, 2024 letter, the Companies, in cooperation with the Monitor, moved for a SISP approval order.

[23] On February 27, 2025, the Applicant Companies filed a notice of motion seeking this court's approval of an order approving the SISP set out in the Monitor's Third Report and authorizing the Monitor to conduct the SISP in accordance with its terms. The affidavit of Mr. Rice, President of the Applicant Companies, sworn on February 27, 2025, was filed in support of the motion. Mr. Rice said the Companies had continued engaging with potential third party lenders and facilitating the Monitor's involvement in those discussions as authorized under the Refinancing Process Permitted in the Initial Order. Under the heading 'Approval of SISP' in the affidavit, Mr. Rice said the following:

> 7. The applicants seek approval of a proposed SISP to solicit interest in and seek opportunities for
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> (i) one or more sales or partial sales of all, substantially all, or certain portions of the Business,
>
> (ii) invest in, restructuring, recapitalization, refinancing or other form of reorganization of the Business, or
>
> (iii) some combination thereof.
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> 8. The timelines prescribed in the SISP are as set out in the Monitors' Third Report.
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> 9. The SISP is to be conducted by the Monitor, in consultation with Applicants and RBC. Credit bids and insider bids are expressly permitted under the SISP terms and any such bidders are required to declare their intention to participate in the SISP as bidders in accordance with the timelines set out in the SISP. Once a credit bidder or insider bidder has declared an intention to bid, they will be treated as potential bidders and their access to information about other bids and bidders will be limited to only the information permitted to be disclosed to all potential bidders participating in SISP.
>
> 10. The SISP is intended to broadly canvass interest to maximize value for creditors and stakeholders. The timeline of the SISP was developed in consultation with the Monitor and RBC.

> 11. I can report that there have already been some marketing efforts including that the Applicants have been in discussions with a number of interested parties who may wish to participate in the SISP. The list of interested parties and other parties who have expressed interest in participating in the SISP (or potentially participating in the SISP) has been provided by the Applicants to the Monitor.
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> 12. The SISP is designed to balance the need to broadly canvass for interest in the Business with the Applicants' financial challenges and liquidity needs. The SISP timelines allow a reasonable opportunity for bidders to conduct due diligence and develop and submit competing offers. The Monitor will be primarily responsible for conducting the SISP to ensure even-handed treatment of bidders and fairness of the process
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> 13. The Applicants respectfully request the approval of the SISP, with a view to concluding a transaction for the Business that is better for the general body of creditors and stakeholders than a wind-up and liquidation.

[24] On March 7, 2025, I granted the SISP Approval Order, approving the SISP process as set out in the Monitor's Third Report dated February 28, 2025. The Order also extended the Stay of Proceedings up to and including June 30, 2025. The Stay was subsequently further extended to July 7, 2025 and then to July 31, 2025.

[25] The milestones after court approval of the SISP process were as follows:

1. Distribute teaser and confidentiality agreement -- March 14, 2025
2. Bid Deadline -- May 9, 2025
3. Review and negotiate bids -- 1-14 days after the bid deadline
4. Selection of Successful Bidder(s) -- Immediately following negotiation of the bids, in consultation with RBC
5. Court approval and closing(s) -- As soon as possible, with the objective of completing a transaction by June 30, 2025, unless extended with the consent of RBC

[26] The SISP contained provisions to address participation in the sales process by the companies and/or their management:

> 9. If the Companies and/or Management participate in the SISP as Potential Bidders, they may not receive disclosure about any other Potential Bidder or negotiations carried on in the SISP. Any and all offers submitted in the SISP shall be submitted to the Monitor and reviewed exclusively by it, in consultation with RBC. The Monitor may share and discuss the offers received in the SISP with the Companies and Management if they do not participate in the SISP as Potential Bidders. The Companies and Management must declare their intention in writing to participate as Potential Bidders in the SISP to the Monitor prior

to the commencement of the SISP, after which they shall not be entitled to participate in the SISP as Potential Bidders without the consent of the Monitor.

[27] With respect to the real properties (three residential properties, two commercial properties, and one warehouse) the SISP provided that the Monitor would solicit listing proposals from two local realtors in each relevant market. A bidder could submit offers for the Operating Businesses and the Real Properties (section 3.5 of the Monitor's Third Report).

[28] Pursuant to the SISP, interested parties were required to submit offers by May 9, 2025, at 5pm AST. To be a Qualified Bid for the Operating Businesses, an offer had to, among other things:

(a) be for all or part of the assets of the business, assets or shares of the Operating Businesses;

(b) be substantially in the form of the Template APS, with any changes to the offer blacklined against the template, subject to any changes that the Monitor may accept;

(c) include a provision stating that the offer is irrevocably open for acceptance until 30 days after the Bid Deadline;

(d) be accompanied by a cash deposit of not less than 10% of the proposed purchase price;

(e) include an acknowledgement that the proposed transaction is to be completed on an "as is, where is" basis and that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any representation by the Companies, the Monitor or their respective agents, employees or advisors;

(f) not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the purchaser's obligation to complete the transaction (except for approval by the Court); and

(g) include written evidence, satisfactory to the Monitor in consultation with the RBC, that the bidder has the requisite consents (if required) and the financial ability to complete the proposed acquisition.

[29] The Monitor's Fourth Report indicates that after consultation with the Applicant Companies and RBC, the Monitor advised the realtors that it would not

be listing the BLCL Real Properties prior to the Bid Deadline. Certain potential bidders had indicated the BLCL Real Properties would be an integral part of their bids. It was decided to consider the SISP offers before listing the properties.

[30] Pursuant to the SISP process, 32 parties executed the Non-Disclosure Agreement and performed due diligence, including being provided access to the Virtual Data Room. Twelve qualified bids were received.

[31] After its review, the Monitor discussed the offers with RBC (as required by the SISP Approval Order) and invited five of the Qualified Bidders to submit revised offers by no later than May 16, 2025, at 12pm EST. The Monitor's Fourth Report notes:

> 4. Following the Revised Bid Deadline, the Monitor continued negotiations with certain of the leading bidders to, among other things:
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> a) clarify the terms of their offers;
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> b) review the allocation of the purchase price among the Applicants' businesses and assets, including the BLCL Real Properties; and
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> c) consider the projected recoveries to stakeholders, including creditors of the Operating Businesses, on a per-entity basis, based on the purchase price allocations.
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> …
>
> 6. The Lynch Transaction and Coast Transaction were considered to be the best available transactions for the Operating Businesses and provide for the highest potential recovery for the creditors of those companies. Neither of the Transactions includes the BLCL Real Properties…

[32] The Monitor retained the law firm Lawson Creamer to provide an opinion on whether RBC's security interests were valid and enforceable as against the Applicants. In its Supplement to the Fourth Report, the Monitor indicated that the Security Opinion confirmed the validity and enforceability of RBC's security over the Applicants' business and assets, subject to the standard assumptions and qualifications therein.

[33] The Monitor has provided a summary of the offers received by the bid deadline and the revised bid deadline, subject to a requested order sealing the contents until the transactions close. A temporary Sealing Order is in place, pending this Decision.

[34] The Monitor accepted the Lynch offer on June 2, 2025, and the Coast offer on June 5, 2025.

[35] The Monitor says the Lynch and Coast Transactions are projected to generate material recoveries for the unsecured creditors of the Operating Businesses. The Monitor's Fourth Report states:

> 1. The Transactions are projected to generate material recoveries for the unsecured creditors of the Operating Businesses. The Monitor will, in due course, seek the Court's authority to conduct a process to determine claims against the Operating Businesses and to make distributions to creditors (a "Claims Process").
> 2. The Monitor expects that such distributions will exceed 50% of the unsecured claims, and potentially significantly more.

[36] With respect to the BLCL Real Properties, the Monitor says that, although certain offers included the real property, the value those bidders allocated to the Operating Businesses was less than the value of the two chosen bids, and the value allocated to the BLCL Real Properties was less than the estimated net realizable value of the properties if sold on stand-alone basis. The intent is to list these properties if the Sale Approval Motion is successful.

[37] The Applicant Companies submitted a Plan of Arrangement (the Monitor describes it as an "outline of a plan") at the bid deadline of May 9, 2025. It is disputed whether this was a bid within the SISP. The Monitor says the Plan/bid provided for lower recoveries for creditors than the two Transactions, and had several conditions, including financing. The Monitor consulted with RBC's advisors concerning the Applicant Companies' Plan/bid and was advised that RBC did not support it. The Monitor concluded it was not a leading or viable bid.

[38] Mr. Rice said in his affidavit that between March 15, 2025 and May 9, 2025, the Companies continued to pursue a refinancing. He further stated that before and during the SISP, the Companies repeatedly confirmed to the Monitor that they were still pursuing refinancing efforts consistent with the *CCAA* Process Agreement (December 11, 2024, letter from RBC). He stated the Companies were repeatedly reassured by the Monitor that if they raised sufficient funds to repay their debt in its entirety, there would be no choice but to support an exit from the *CCAA* process.

[39] Mr. Rice said that on May 7, 2025, the Monitor was advised that the Applicant Companies would be forwarding a Plan of Arrangement and then counsel for the Applicant Companies provided a draft Plan of Arrangement on May 9, 2025 (the SISP Closing Date) for consideration alongside the SISP bids as opposed to filing it separately for court approval. He said counsel made it clear that this proposal was

"submitted as a Plan of Arrangement pursuant to sections 4.1 (1) and 4.1 (2) of the CCAA."

[40] Mr. Rice further said that on May 20, 2025, the Companies' counsel followed up with the Monitor regarding the draft Plan of Arrangement. The Monitor advised that the draft Plan was not acceptable and was not supported by RBC, but did not offer them any detailed explanation. As a result, they did not file an Application for a First Meeting of Creditors, but continued exploring their refinancing options with a view to raising sufficient funds to pay all creditors in full and exit the *CCAA* process.

[41] Exhibit "B" to Mr. Rice's affidavit of June 23, 2025 is a copy of the May 9, 2025, letter to the Monitor on the deadline for bid submissions. I was not provided with copies of any of the referenced enclosures. The letter states in part:

> We write with reference to the above noted, and in connection with the Blue Lobster Group's Sale, Investment and Solicitation Process (the "SISP"). Please accept this as Blue Lobster Group's formal submission in the SISP. We would welcome the opportunity to further discuss this with the Monitor.
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> The SISP contemplates that parties may submit proposals to restructure the business within the SISP, and this proposal/bid is submitted as a plan of arrangement pursuant to s. 4.1(1) and 4.1(2) of the CCAA (hereinafter a "Plan")
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> …
>
> As you know, since the Monitor commenced the SISP on 14 March 2025, the Blue Lobster Group has been conscientiously assisting the Monitor, including with due diligence requirements for the potential bidders, while also working diligently to find alternate financing in a new equity partner in order to submit a Plan (now presented as a bid in this SISP) which would see their secured and unsecured creditors paid in full.
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> In keeping with the underlying aims of the CC AA, the Blue Lobster Group believes the plan now proposed is in the best interests of all stakeholders…
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> …
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> While we are confident that we are presenting an offer that will reflect the most advantageous resolution to this CCAA proceeding, we note that the Monitor in accordance with the SISP terms, is not obligated to accept the highest bid in the SISP, but rather, the "best offer". The "best offer" is naturally one that considers the interests of all stakeholders in the process, including the Blue Lobster Group current owners, employees and other stakeholders.
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> …
>
> We believe the Plan as presented will effectively represent the "best offer" when considered in respect of offers received in the SISP and when given due regard to the

> purposes of the CCAA. While presented as a Plan, we would respectfully request that this be considered in tandem with the parallel process of reviewing the qualified bids submitted in the SISP, so that the Monitor has a full picture of what is on offer, and what is at stake.
>
> We have included copies of our clients' Meeting Order Application along with a copy of the proposed Plan as drafted. We would appreciate having the Monitor's assistance and support (as contemplated in paragraph 31 of the ARIO and otherwise) in putting forward this Plan as a bid within the SISP context, or alternatively in presenting the Plan to creditors as originally intended.

[42] Mr. Rice stated the following concerning the recent financing or redemption plan (the "Redemption Plan"), whereby the Applicant Companies seek to terminate this *CCAA* proceeding:

> 20. On 08 June 2025, we confirmed available financing through a third-party private lender, 472318 Nova Scotia Limited (the "Lender") sufficient to pay all known secured and unsecured creditors with uncontested claims in full. On 16 June 2025, it was confirmed that there were no further conditions for the advance of funds from the Lender other than an order being issued from the Honourable Supreme Court terminating the CCAA process.
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> 21. I am informed and do verily believe that $8,000,000.00 of the refinance proceeds have now been advanced to the law firm Cox & Palmer as intermediary escrow agent (hereinafter the "Escrow Agent"). I am informed by the Escrow Agent and do verily believe that an additional $380,000.00 is being transferred to the Escrow Agent by the Lender and will be available on or before 25 June 2025.
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> 22. Based on our records and calculations attached hereto as Exhibit "C", the funds being advanced by the Lender are sufficient to pay all secured and known unsecured creditors with uncontested pre-filing claims in full. As a result, the Companies no longer require creditor protection under the CCAA. The Companies' leases will continue in the ordinary course, as will post-filing claims.

[43] Mr. MacDonald, as counsel to the Proposed Lenders, confirmed in his June 23, 2025, affidavit the details of the escrow funds held in the amount of $8 million plus another amount of $380,000 to be received on June 25, 2025. A supplemental affidavit of Mr. MacDonald sworn on June 25, 2025, states:

> 1. I confirm that I have irrevocable authorization from the lenders to release the Escrow Funds, upon the issuance of the CCAA Termination Order, to pay the Applicants' creditors in accordance with such directions as are provided by the Court.
>
> [Emphasis added]

[44] The Monitor filed a Supplement to its Fourth Report indicating that the amount of the proceeds held for redemption did not result in better recovery to creditors than the proposed transactions:

> 1. The Monitor has prepared a comparison of the Rice Proposal to the Transactions, which is attached as Confidential Appendix "1" to this Supplemental Report (the "Offer Comparison"). As reflected in the Offer Comparison, the Transactions provide a better recovery for unsecured creditors of the Operating Businesses than the Rice Proposal. This is because, *inter alia*, approximately $1.38 million of the Rice Proposal proceeds are to be used to repay BLCL's debts, which are owing to RBC, CRA and its unsecured creditors, whereas the full amount of the proceeds from the Transactions are to be paid to creditors of the Operating Businesses.
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> 2. As reflected in the Offer Comparison, notwithstanding the Rice Proposal states that all creditors will be paid in full, that is not the case.

[45] By letter of July 2, 2025, counsel for the Proposed Lenders addressed a number of questions posed by the Monitor in writing on June 29, 2025, concerning the Applicant Companies' proposed Redemption Plan. The Monitor put before the court the July 2, 2025, letter and attachments. The Applicant Companies filed a July 2, 2025, letter response to questions raised by the Monitor concerning the proposed transaction details. I will discuss these further below.

[46] There is no dispute that the Applicant Companies have continued to operate the Operating Businesses in the ordinary course (under the supervision of the Monitor), have not used the DIP financing that was put in place, and have paid approximately $1 million in process fees since the *CCAA* proceeding was initiated.

Parties' Positions

The Monitor

[47] The Monitor says the difficulty with the Applicant Companies' motion to redeem is that to terminate a SISP and a *CCAA* proceeding because the shareholders are unhappy with their commercial outcome would render moot the process and harm the integrity of this and future processes. The Monitor says it is too late in the process for the Applicants to seek to shut down the SISP and the *CCAA* proceeding to avoid a sale. A debtor cannot both avail itself of protections under the *CCAA*, and also seek to terminate the process when it is unhappy with the result of the SISP.

[48] The Monitor submits that the Court must consider the effect of the Applicant's motion on the court-approved SISP conducted in accordance with the

SISP Order, in which bidders have participated in good faith and spent resources on due diligence and negotiations.

[49] The Monitor says the reasoning in receivership sale process cases where debtors seek to redeem, is analogous to the *CCAA* context and largely comes down to balancing the integrity of the sale process against the debtor's interest. The Monitor further refers to caselaw holding that it is only in the narrow instance where an offer provides "exceptional value" in comparison to the proposed transaction and the debtor attends court with the appropriate cash in hand to support the proposal that the Court would even consider a late-breaking offer. The Monitor says that given that the Transactions will maximize value for the creditors of the Operating Businesses, it is clear that the value of the Redemption Proposal is not, relative to the Transactions, "exceptional" in value.

[50] With respect to the proposed Redemption Plan, the Monitor says the Applicants and the Proposed Lenders have refused to provide the Monitor with copies of the Closing Documents. No disclosure has been provided to the Monitor about the terms upon which the Proposed Lenders may terminate the Escrow Agreement, nor the terms upon which the Proposed Lenders may issue notices for the return the escrow funds after August 15, 2025 (section 3.1 of the Escrow Agreement).

[51] The Monitor further says the Applicants and Proposed Lenders have not disclosed the identities of the investors, shareholders, or beneficial owners of the Proposed Lenders. The Proposed Lenders have, however, confirmed that Mr. Rice is one of the shareholders, investors and/or beneficial owners of the lenders. They have also confirmed that the loans are guaranteed by Mr. Rice, The Rice Family Trust (2020) and 3342963 Nova Scotia Limited. The Proposed Lenders have not identified any other shareholder of the Applicants that has provided any guarantees.

[52] The Monitor notes that the Proposed Lenders state that an investor of theirs participated in the SISP. The Proposed Lenders do not name this person or identify the bid with which the investor was associated. The Monitor further indicates that the Proposed Lenders state that "a number" of the Proposed Lenders' financiers, lenders, investors, shareholders and beneficial owners *did not* participate in the SISP. Based on this disclosure it is not clear to the Monitor exactly how many of the Proposed Lenders' financiers, lenders, investors, shareholders and beneficial owners participated in the SISP either directly or indirectly.

The Applicant Companies

[53] The Applicant Companies say they oppose the Monitor's motion on the basis that the Transactions are unnecessary, as the Applicants can now meet their debt obligations and exit the *CCAA* independently. They say their motion is not an affront on the SISP but is a separate motion exercising a procedural right conferred by the *CCAA*. The Applicant Companies do not challenge the SISP nor do they assail the Monitor's role in the SISP. In short, the Applicant Companies' position is that notwithstanding the SISP, they are entitled to pay out their creditors and exit the *CCAA* proceedings at any time up to a Sale Approval and Vesting Order ("AVO"), unless that right is specifically foreclosed in the ARIO or the SISP Order. They say there are no other considerations for the court, other than the overall objectives of the *CCAA*.

[54] They say the SISP is not complete as it is subject to this Courts approval of the proposed two APAs. Further, they say the Monitor did not comply with the SISP order and list the BLCL properties with a real estate agent, and therefore the once single-phase SISP is now bifurcated into two phases and is ongoing.

[55] They say the cases referred to by the Monitor are not applicable in a *CCAA* proceeding. They say receivership cases are of little value here. Unlike in a receivership, the concept of "redemption" is a fundamental component of *CCAA* proceedings. In fact, "redemption" (refinance, recapitalization, or reorganisation) is the main objective of the *CCAA*, unlike receiverships where the main objective is liquidation. Here the main goal of the *CCAA* proceeding is for a company to return to solvency, avoid a liquidation, and exit the process. They say these aims are not part of the practice or jurisprudence in receivership, foreclosure, power of sale, or PPSA collateral sale. They say under the *CCAA* the discontinuance of the proceedings based on a return to solvency resembles a traditional redemption. At all times during the *CCAA* proceeding and the SISP, it is open to a company to file a Plan of Arrangement. They argue that there is nothing in the *CCAA*, the ARIO, or the SISP Order that forecloses that statutory right. They say the Companies did not file a Plan of Arrangement given the circumstances surrounding this matter but are willing to do so should the Court believe that is the best path forward.

[56] They further say the Companies agreed to enter the *CCAA* proceeding on a consent basis, on the express understanding that during the SISP (a requirement of RBC) they could continue their refinancing efforts. They say the bidders must have known that the Companies were actively trying to refinance during the process. They

further state that it was incumbent on the Monitor to make every bidder aware of these ongoing refinancing efforts.

[57] With respect to the costs incurred by the Lynch and Coast bidders, the Applicant Companies say it should have been abundantly clear to any participant in the SISP that no transaction was guaranteed until an asset vesting order is issued by the Court. If it is not issued, the cost of their participation is not recoverable.

[58] They say the Monitors argument that the Termination Motion will have a chilling effect on future SISPs is a red herring. The caselaw is clear that the SISP Order could have foreclosed the Companies' right to refinance up until the Transaction approval date, but it did not. They say the SISP could have included a drop-dead date for the Companies to refinance, as all parties knew that effort was ongoing. They argue that the chilling effect on debtors will be of far greater impact than the effect on prospective purchasers.

[59] The Applicant Companies argue they are the only party that stands to be prejudiced. They say the creditors will be paid under both scenarios.

[60] The Applicants propose by way of a *CCAA* Termination Order that the *CCAA* proceedings will terminate when the Monitor serves the Monitor's Certificate on the Service List certifying that the Monitor has been advised in writing by counsel for the Applicants that the Remaining Activities have been completed:

> (a) the beneficiaries of the Administration Charge are to be paid in full for any amounts covered by the Administration Charge;
>
> (b) the DIP Lender is to be paid in full for any amounts advanced under the DIP Facility and covered by the DIP Charge;
>
> (c) the Applicants are to provide notice to all known creditors that the *CCAA* Proceedings are being terminated and the stay of proceedings lifted;
>
> (d) the Monitor and its counsel are to return the balance of any retainer paid to them by the Applicants (less any reserves); and
>
> (e) Cox & Palmer will administer payments on behalf of the Applicants to all claimants.

[61] The Applicant Companies argue the proposed purchasers do not have standing to be heard on this motion as their position should be advanced through the Monitor. They also say there are evidentiary deficiencies in the claim for throw away costs

sought by the successful bidders. With respect to the Lynch affidavit, they say they are not arguing inadmissibility but that the affidavit failed to provide a basis for the evidence it purported to tender.

[62] Although the Applicant Companies raised issues with the affidavit of Ms. Lynch, ultimately all parties agreed that if I granted the motion to redeem, the throw away costs of the successful bidders, if awarded, could be addressed by way of an agreed upon process.

Other Stakeholders' Positions

Royal Bank of Canada (secured creditor)

[63] RBC supports the Monitor's motion to approve the two Transactions. It took no position on whether the Applicant Companies should be entitled to redeem. It says the Redemption Proposal raises concerns relating to the amount owed to RBC, claims of CRA, and other concerns. RBC has advised the Applicant Companies that the amount owing set out in Mr. Rice's affidavit is incorrect. The most recent Waterfall (creditor payout statement) is not up to date concerning legal fees and Ernst and Young fees. They raise concerns about the Redemption Proposal being unclear with regard to the manner in which the full extent of creditor claims will be determined. They say there is no claims process referenced and no indication as to how amounts owing will be determined and how discrepancies or disagreements would be resolved.

[64] RBC has also raised concerns about the lack of clarity with respect to payment of CRA. In the event the Companies fail to make the requisite payments to CRA, the Bank believes there is a risk that CRA could issue a demand for payment to the Bank for any amounts it received in relation to any priority claim. At the hearing, counsel for the Applicant Companies indicated that they were prepared to pay the deemed priority payments to CRA. RBC acknowledged that protections could be put in place to reduce this concern but pointed out they do not yet exist nor have they been described to the Bank. The Bank is "very opposed to any risk being transferred to it..." The Bank supports the Sale Approval Motion as none of the issues outlined above are present in that context.

The Proposed Purchasers

[65] The Lynch proposed purchaser filed an affidavit of Ms. Shannon Lynch, President and Chief Executive Officer of Cape Breton Beverages and Trans-Atlantic

Preforms Limited. Ms. Lynch refers to *Peakhill Capital v. 1000093910 Ontario Inc.,* [2024] O.J. No. 3311, an Ontario Court of Appeal decision, to support her position that she has standing before this court. Ms. Lynch encouraged the court not to grant the Applicant Companies' motion, as at this late stage it would be unfair to the successful bidders and would undermine confidence in court-approved sale processes in the future.

[66] Ms. Lynch argued that if the court does allow the Applicant Companies' motion, they should be obliged to compensate the successful bidders for their throw away costs. She said these costs as of June 29, 2025 are $171,022.40, and increasing.

[67] Coast to Coast Marketing Ltd. and James Roue Beverage Company Ltd. (the "Coast Purchasers") take the position that they participated in the SISP in good faith and held a reasonable expectation that as one of the successful bidders they would be able to complete the purchase. They remain ready and willing to close the Coast APA. The closing date in the Coast APA is within three business days following the Sale Approval Order, so it was necessary to begin working towards closing and preparing to operate the assets and business on closing.

[68] The Coast Purchasers also submit that if the Termination Motion is successful they should be compensated for their time, costs and expenses incurred in negotiating the Coast APA and working towards closing. They say they will submit a detailed breakdown of costs and expenses to the Monitor.

Canada Revenue Agency

[69] CRA takes no position on the legal issues before the Court. It confirmed that the Applicant Companies approached CRA about making a payment arrangement outside of the *CCAA* process. CRA said it agreed to this in principle, and that the Applicant Companies can direct payment to the deemed trust first, as these are voluntary payments. There was no final agreement, as the numbers have not been agreed to. CRA identified a concern with respect to cashflow, and whether or not the Companies could both keep current under the various taxing statutes and also make the payment arrangements. CRA confirmed that it could not carve out of any kind of deemed trust claim against RBC, as this is not permitted by statute.

The Law and Analysis

Standing

[70] Both successful bidders (Lynch and Coast Transactions) filed briefs in support of the Monitor's Sale Motion and opposing the Applicant Companies' motion. The Applicant Companies say the bidders lack standing to oppose their motion as their interests are merely commercial and they are not parties to the *CCAA* proceeding. They do not object to their having standing to bring to the courts attention their claim for "throw away" costs should the Applicant Companies motion be granted. They say the Ontario Court of Appeal decision in *Peakhill Capital*, *supra,* can be distinguished because there the Court granted standing after the AVO was issued, for the purposes of an appeal. With respect, I disagree.

[71] In *Peakhill Capital*, *supra* the Ontario Court of Appeal dealt with an appeal by a stalking horse bidder of a decision to allow the debtor to redeem in the face of a receiver's recommendation to proceed with a transaction resulting from a court supervised sales process. With respect to standing of the bidder, the court said:

> 6 We disagree that 255 lacks the standing to appeal the Order. 255 provided the stalking horse bid for the court-approved sale process pursuant to an agreement it entered into with the Receiver (the "Stalking Horse Agreement"). At the completion of the sale process, the Receiver selected 255 as the successful bidder. The Receiver then moved for an AVO to complete the Stalking Horse Agreement transaction.
>
> 7 The motion judge's Order, which dismissed the Receiver's motion and terminated the Stalking Horse Agreement, adversely affected 255 as the successful bidder in a court-approved sale process. 255 thereby has an interest in the subject matter of the proceeding that entitles it to seek appellate review of the Order: *Royal Bank of Canada v. Soundair* Corp.(1991), 4 O.R. (3d) 1 (C.A.), 1991 CarswellOnt 205, at paras. 39-40; *Winick v. 1305067 Ontario Limited*, (2008), 41 C.B.R. (5th) 81 (Ont. S.C.), at paras. 3 and 4.
>
> 8… In any event, if 255 required leave to appeal, we would grant leave for a number of reasons: 255 raises an issue of general importance to insolvency practice, namely, the reasonableness of granting a debtor leave to redeem at the 11th hour in the face of a receiver's recommendation to proceed with a transaction resulting from a court-supervised sales process; the appeal certainly raises a serious question; and given the expedited scheduling of this appeal, the appeal would not hinder the progress of the receivership proceeding: *Cardillo* , at para. 50. 255 is entitled to seek appellate review of the Order.

[72] The Court of Appeal framed the bidder's standing as "an interest in the subject matter of the proceeding that entitles it to seek appellate review of the Order" (para. 7), including the issue of "the reasonableness of granting a debtor leave to redeem at the 11th hour in the face of a receiver's recommendation to proceed with a transaction resulting from a court-supervised sales process" (para. 8). I see no basis

in the *Peakhill Capital, supra,* decision to support the Applicant Companies' argument that there is no standing at first instance to oppose the Applicant Companies' motion. Further, I see no basis to conclude the scope of a successful bidder's standing is restricted in the manner suggested to only throw away cost arguments. Clearly, in *Peakhill Capital*, *supra*, the successful bidder had standing on the central issue of whether to allow the 11th hour redemption, not simply to seek their throw-away costs. The interests of a successful bidder who has negotiated an agreement with a court-appointed receiver should be heard.

[73] In addition, there are other decisions where standing has been granted to a successful bidder at a first instance motion (see for example, *Winick v. 1305067 Ontario Ltd*., [2008] O.J. No. 695, at paras. 3 and 4). I note as well that the court in *Soundair, supra,* emphasized the importance of considering the interests of a successful bidder at para. 40.

[74] Under section 11 of the *CCAA* I am authorized to make any appropriate order "on the application of any person interested in the matter". I am of the view that the caselaw has interpreted this to include standing for a successful bidder in a court-supervised sale process. Standing is granted to both successful bidders under the SISP.

The Monitor's Motion to Approve the Lynch and Coast Transactions

[75] I will now address the Sale Approval Motion brought by the Monitor and then determine if the Applicant Companies' motion to redeem and exit the *CCAA* proceeding should change this result. The Monitor's motion is to approve the two transactions selected from the SISP process. As noted above the Applicant Companies do not challenge the SISP process nor the Monitor's actions within the process. They say the Monitor ran a clean and professional process.

[76] As set out in section 36 of the *CCAA*, a debtor company can sell its assets outside of the ordinary course of business, if it is authorized to do so by the Court. Section 36(3) sets out the factors for consideration by the court in deciding whether to authorize such a sale:

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

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditor 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.

[77] The caselaw that has developed under s. 36 illustrates that a court in assessing the above criteria is to ask whether in considering the transaction as a whole, the proposed sale is appropriate, fair, and reasonable. (See for example, *Veris Gold Corp. (Re*), 2015 BCSC 1204, at paragraph 23; *Quest University Canada (Re)*, 2020 BCSC 1883, at paragraphs 176 and 177.)

[78] The factors for consideration in s. 36(3) overlap with the common law test established by the Ontario Court of Appeal in *Soundair, supra*. That decision sets out the principles for consideration by the Court on a motion to approve the sale of assets in an insolvency proceeding. They include: whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently; the interests of all parties; the efficacy and integrity of the process by which offers have been obtained; and whether there has been unfairness in the working out of the process.

[79] As a court-appointed Monitor, KSV is an officer of the court responsible to the court and to all interested parties for the performance of its duties under the order from which it derives its authority (*Bennett on Receiverships*, 2nd ed. at page 25). To the extent that an order requires a receiver to exercise discretion, the court will defer to the exercise of the receiver's business judgment unless it appears that the receiver's conduct was improvident based on the information available to it at the time (*Soundair, supra* at paragraphs 21 – 22).

[80] I am satisfied that the process carried out by KSV was reasonable and appropriate and meets the criteria set out in *Soundair, supra.* Further, the Lynch and Coast transactions satisfy the criteria in section 36 (3) of the *CCAA*. I make the following findings (based on statements of the Monitor in its Fourth Report and Supplement, and the other materials before the court):

-I am of the view, having reviewed all of the materials before the court, that the process under which the bids were obtained and the APAs were arrived at was consistent with commercial efficacy and integrity. The information before me illustrates that all relevant stakeholder interests were considered and balanced by the Monitor.

-The SISP motion was brought by the Applicant Companies and was consented to by them and approved by the court on notice to the service list.

-The process set out in the SISP provided for fair, transparent and thorough marketing of the Applicant Companies' businesses and assets. The SISP undertaken by the Monitor was carried out in accordance with the SISP Order. The Monitor ran the SISP in a fair, open and transparent manner.

-The Monitor sufficiently canvassed the market. The Monitor sought interest from local and national beverage companies, and other strategic and financial parties. The SISP involved contacting 156 potential parties, advertising the opportunity on a prominent industry website, engaging with 32 parties that signed a NDA, and considering 12 Qualified Bids.

-The Monitor is of the view, and I agree, that additional time spent marketing the Operating Businesses will not result in a superior transaction, given the significant bidder participation in the SISP. Further, with respect to Lost Bell, the company is not currently operating on a cash flow positive basis and any further marketing period will result in further carrying costs for the winery and operations which may not be recovered through a further marketing of Lost Bell's business.

-I am of the view the Monitor made sufficient effort to get the best price for the operating businesses and did not act improvidently.

-The Applicant Companies participated in the SISP by submitting a Plan or bid.

-The Lynch Transaction provides for Spirit Co. and Annapolis Cider to continue as going concern businesses and preserves employment for substantially all of their employees. Similarly, the Coast Transaction provides for Lost Bell to continue as a going concern and preserves employment for its employees. The businesses of the Applicant Companies will live on and the

interests of the employees and trade suppliers of the Companies will continue. Economic activity is preserved.

-The Monitor is of the view that from the SISP process, the Lynch Transaction and Coast Transaction provide the highest available realization for creditors of the Operating Businesses. I have reviewed the Monitor's reports and the confidential appendices to the Report and Supplement which provide the Monitor's assessment of the various bids and am in agreement.

-The terms of the Lynch APA and Coast APA are commercially reasonable.

-The Monitor has confirmed that the Purchasers have provided deposits and the transactions are unconditional except for court approval.

-RBC, the Companies' senior secured creditor consents to the approval by the court of the Lynch Transaction and the Coast Transaction.

-I note that Ms. Lynch indicated in her affidavit that she is President and Chief Executive Officer of both Cape Breton Beverages Limited, which is a 76-year-old-family-owned bottling franchise based in Cape Breton, and of Trans-Atlantic Preforms Limited, a 35-year-old PET preform manufacturer also located in Cape Breton. This depth of industry knowledge is worthy of note.

-The Monitor decided not to list the BLCL Real Properties for sale separately. The SISP provided for a specific process to list and sell the properties through local realtors. However, in consultation with RBC, the Monitor deferred listing the properties to allow a canvassing for offers for the *en bloc* business and assets of the Applicants, including the BLCL Real Properties. It explained that while certain offers submitted in the SISP included the BLCL Real Properties, the value that those bidders allocated to the Operating Businesses was (i) less than the value of the Lynch Transaction (even before considering the value of the Coast Transaction); and (ii) the value allocated to the BLCL Real Properties was less than the estimated net realizable value of the BLCL Real Properties if sold on a stand-alone basis, based on information provided to the Monitor by several local realtors.

When the Monitor did not accept the May 9, 2025 Companies' Plan or bid, counsel to BLCL advised the Monitor that Mr. Rice would object to the approval of any transaction. The Monitor says that in the context of potential

> opposition from Mr. Rice to any transaction, the Monitor discussed with the Applicants' counsel delaying the listing of the real property to allow Mr. Rice the opportunity to refinance the BLCL Real Properties, if he wished. Mr. Rice has not agreed to such an arrangement.
>
> These were reasonable decisions, in the best interests of the creditors.

[81] To summarize, the Monitor completed the SISP in accordance with the court order. I accept the Monitor's advice as a court officer that the two transactions will result in full satisfaction of amounts owing to RBC by the operating businesses and significant recoveries for the unsecured creditors. In my opinion, the principles and guidelines set out in s. 36(3) of the *CCAA* and *Soundair, supra,* have been adhered to by the Monitor and, accordingly, it is appropriate that the transactions be approved, subject to consideration of the Applicant Companies' motion to redeem and exit the *CCAA* proceeding.

Motion for approval of the Applicant Companies' Redemption Plan and to exit the CCAA

Was There an Agreement Allowing the Applicant Companies to Refinance at any Time, Despite the SISP?

[82] The Applicant Companies say they were repeatedly reassured by the Monitor that if they raised sufficient funds to repay their debt in its entirety, there would be no choice but to support an exit from the *CCAA* process (see Mr. Rice's affidavit at paras 10, 11, and 16). In contrast, the Monitor's evidence is that it advised Mr. Rice that, if the Applicants were able to source financing on an unconditional basis sufficient to repay creditors in full prior to the bid deadline in the SISP, it would consider supporting a motion by the Applicants to terminate the SISP (see Supplement to the Monitor's Report at s. 2(6)). The Monitor says its comment was not, and could not be, unequivocal, as the Monitor would need to consider the terms of any such proposal as well as the circumstances of the *CCAA* proceedings when such an option was presented.

[83] The Applicant Companies do not challenge the credibility of the Monitor and say there is no need for the court to assess credibility. They say the intention of the parties can be determined solely from the documents. I agree and am of the view, for the reasons set out below, that the understanding of Mr. Rice is not supported by the documentation.

[84] The Applicant Companies argue that they specifically set out in the December 11, 2025, letter, which they call the *CCAA* Process Agreement, that they could continue to seek refinancing during the SISP. I agree that this was contemplated during the preparation of the SISP process and up to the bid deadline, but there is nothing that supports their position there was a specific carve-out agreement whereby, throughout the entire process, including post bid deadline and post selection of the successful bidder(s), they could refinance and automatically bring an end to the SISP.

[85] The December 11, 2024, letter says at paragraph 7 of the terms:

> The Companies shall pursue their refinancing efforts through the end of February 2025. Should a binding offer or binding offers of financing which, in total, provide for the repayment in full of the Companies' obligations to RBC, not be secured prior to the end of February 2025 on terms satisfactory to RBC, acting reasonably, the Companies shall prepare for a broader sales and solicitation process (SISP) with a view to a public launch no later than March 15, 2025. Such process can, if the Debtors so choose, continue to be pursued in conjunction with any refinancing efforts.
>
> [Emphasis added]

[86] The Charging Order that I granted on January 21, 2025, attached the January 14, 2025, DIP Term Sheet. Page 3 references the SISP:

> The Bank expects that the Borrowers will immediately begin preparation for a sale and investment solicitation process (the "SISP") aimed at seeking orders for the sale of all or substantially all of the business assets of the Borrowers or significant investments in the business carried on by the Borrowers. Preparation for the SISP will run concurrent with the refinancing efforts of the Borrowers.
>
> > In the event that the Borrowers have not executed an agreement with a lender or other third party in form and substance acceptable to the Bank by February 21, 2025, which will provide for the repayment in full of all obligations owing to the Bank under the Loan Agreements, the Borrowers shall complete their preparation for the SISP and shall make application for approval of the SISP by the court no later than March 7, 2025. The Borrowers shall provide that all transactions under the SISP will be completed no later than June 30, 2025.
> >
> > [Emphasis added]

[87] The above indicates that during the preparation for the SISP, the refinancing efforts of the Applicant Companies could run parallel. The wording is clear and

without ambiguity. The wording does not represent an agreement to allow the refinancing efforts to continue post bid deadline and post successful bidder selection.

[88] The Monitor argues that the wording of the SISP at section 3.1.4 forecloses any further refinancing or restructuring post bid deadline. It states:

> The Monitor will solicit bids to acquire all or part of the business and assets of the Operating Businesses and/or the Companies, or to invest or refinance the Operating Businesses and/or the Companies, pursuant to the SISP.
>
> [Emphasis added]

[89] I am of the view that this language contemplates receiving any refinancing proposals or bids of the Applicant Companies as part of the SISP, in other words by the bid deadline. It is not sufficient language to completely foreclose the right of the debtor companies to redeem.

[90] Consistent with the December 11, 2025 letter, the DIP Term Sheet, and the SISP, the Applicant Companies submitted a Proposal/bid at the bid deadline of May 9, 2025. They say:

> We write with reference to the above noted, and in connection with the Blue Lobster Group's Sale, Investment and Solicitation Process (the "SISP"). Please accept this as Blue Lobster Group's formal submission in the SISP. We would welcome the opportunity to further discuss this with the Monitor.
>
> The SISP contemplates that parties may submit proposals to restructure the business within the SISP, and this proposal/bid is submitted as a plan of arrangement pursuant to s. 4.1(1) and 4.1(2) of the CCAA (hereinafter a "Plan")
>
> …
>
> We believe the Plan as presented will effectively represent the "best offer" when considered in respect of offers received in the SISP and when given due regard to the purposes of the CCAA. While presented as a Plan, we would respectfully request that this be considered in tandem with the parallel process of reviewing the Qualified Bids submitted in the SISP, so that the Monitor has a full picture of what is on offer, and what is at stake.
>
> [Emphasis added]

[91] The Applicant Companies submitted their Proposal/bid within the deadline. Their letter of May 9, 2025, stated that the SISP "contemplates that parties may

submit proposals to restructure the business within the SISP," which is exactly what they did.

[92] There is no language anywhere that suggests a carve-out, or that the Companies were not subject to the SISP process and deadlines. In February, when the Applicant Companies made their motion to this court to approve the SISP, they could have proposed a timeframe for their redemption. They chose not to do so. Contrary to the Companies' argument, none of the documents carve out a time frame for their refinancing efforts, post bid deadline.

[93] Having said the above, there remains a right of the debtor to redeem, despite the timing issue, but it cannot be an unlimited right as the Applicant Companies argue it is. In essence, they say a debtor company in a *CCAA* proceeding can redeem at any time prior to an AVO, as long as they can demonstrate they have the funds to pay out their creditors.

[94] As a starting point, there is no language in any of the orders precluding a right to redeem. The parties all agree the issue here is about timing. The objection raised by the Monitor is not whether a debtor could ever exercise a right of redemption after the date that bids have closed and a successful purchaser has been chosen. Rather, it is about the timing of the request. The Companies are seeking to redeem after the sales process for the operating businesses has concluded; after two successful bids have been chosen; and after APAs have been negotiated and require only court approval to take effect.

The CCAA and its Purpose

[95] It is important to situate this matter in the context of the legislation. The Supreme Court of Canada in *9354-9186 Que. v Callidus*, 2020 SCC 10, said that Canada's insolvency statutes, including the *BIA* and the *CCAA*, pursue an array of objectives:

> [40] Together, Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect the wide ranging and potentially "catastrophic" impacts insolvency can have (*Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 1). <u>These objectives include: providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company</u>…
>
> [Emphasis added]

[96] The *CCAA* is a remedial statute that permits the reorganization or restructuring of companies and the compromise of creditor claims through a plan of arrangement. Historically, it involved attempting to facilitate the reorganization and survival of the debtor company as a going concern. This overarching objective of giving debtor companies a method to find a path out of their financial difficulties and avoid liquidating their assets remains. For example, the purpose of a stay of proceedings under the *CCAA* is to give the applicant breathing room, because debtor companies retain more value as going concerns than in liquidation: *Canada v. Canada North Group Inc*., 2021 SCC 30, at paras. 19 to 21. Continuing as a going concern benefits the shareholders, employees, and other firms doing business with the debtor company. In *Canada North*, *supra,* Côté J. speaking for the majority on this point stated:

> [20] The view underlying the entire CCAA regime is thus that debtor companies retain more value as going concerns than in liquidation scenarios . . . The survival of a going-concern business is ordinarily the result with the greatest net benefit. It often enables creditors to maximize returns while simultaneously benefiting shareholders, employees, and other firms that do business with the debtor company . . . Thus, this Court recently held that the CCAA embraces "the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress . . . and enhancement of the credit system generally" (*9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10, at para. 42, quoting J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* . . .

[97] However, as the Supreme Court pointed out in *Callidus*, *supra*, proceedings under the *CCAA* have evolved to also permit outcomes that do not preserve the pre-filing debtor company in a restructured state but rather involve some type of liquidation of the debtor's assets. These types of scenarios are commonplace and are referred to as " liquidating CCAAs" (para. 42).

[98] The Court in *Callidus, supra,* noted that courts began allowing forms of liquidation under the *CCAA* pursuant to their broad discretion under the legislation and that since s. 36 came into effect in 2009, it has been used to effect liquidating CCAAs. The Court also discussed the diverse forms liquidating CCAAs may take:

> [43] Liquidating CCAAs take diverse forms and may involve, among other things: the sale of the debtor company as a going concern; an "en bloc" sale of assets that are capable of being operationalized by a buyer; a partial liquidation or downsizing of business operations; or a piecemeal sale of assets (B. Kaplan, "*Liquidating CCAAs: Discretion Gone Awry?",* in J. P. Sarra, ed., *Annual Review of Insolvency Law* (2008), 79, at pp. 87-89). The

> ultimate commercial outcomes facilitated by liquidating CCAAs are similarly diverse. Some may result in the continued operation of the business of the debtor under a different going concern entity (e.g., the liquidations in *Indalex* and *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299 (Ont. C.J. (Gen. Div.)), while others may result in a sale of assets and inventory with no such entity emerging (e.g., the proceedings in *Re Target Can ada Co.*, 2015 ONSC 303, 22 C.B.R. (6th) 323, at paras. 7 and 31). Others still, like the case at bar, may involve a going concern sale of most of the assets of the debtor, leaving residual assets to be dealt with by the debtor and its stakeholders.
>
> [44] *CCAA* courts first began approving these forms of liquidation pursuant to the broad discretion conferred by the Act. The emergence of this practice was not without criticism, largely on the basis that it appeared to be inconsistent with the *CCAA* being a "restructuring statute" (see, e.g., *Uti Energy Corp. v. Fracmaster Ltd.*, 1999 ABCA 178, 244 A.R. 93, at paras. 15-16, aff'g 1999 ABQB 379, 11 C.B.R. (4th) 204, at paras. 40-43; A. Nocilla, "The History of the Companies' Creditors Arrangement Act and the Future of Re- Structuring Law in Canada" (2014), 56 *Can. Bus. L.J.* 73, at pp. 88-92).
>
> [45] However, since s. 36 of the *CCAA* came into force in 2009, courts have been using it to effect liquidating CCAAs. Section 36 empowers courts to authorize the sale or disposition of a debtor company's assets outside the ordinary course of business. Significantly, when the Standing Senate Committee on Banking, Trade and Commerce recommended the adoption of s. 36, it observed that liquidation is not necessarily inconsistent with the remedial objectives of the *CCAA*, and that it may be a means to "raise capital [to facilitate a restructuring], eliminate further loss for creditors or focus on the solvent operations of the business" (p. 147). Other commentators have observed that liquidation can be a "vehicle to restructure a business" by allowing the business to survive, albeit under a different corporate form or ownership (Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at p. 169; see also K. P. McElcheran, *Commercial Insolvency in Canada* (4th ed. 2019), at p. 311). Indeed, in *Indalex*, the company sold its assets under the *CCAA* in order to preserve the jobs of its employees, despite being unable to survive as their employer (see para. 51).
>
> [Emphasis added]

[99] The *CCAA* proceeding is designed to be flexible. It gives a supervisory role to judges and typically one judge oversees the entire *CCAA* proceeding. The supervisory judge has broad discretion under s. 11 but, as the Court said in *Callidus, supra,* it is not boundless:

> [49] The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three "baseline considerations" (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is

> appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).

[100] The remedial objectives the Court referred to in paragraph 49 above from *Century Services Inc v. Canada (A.G.),* 2010 SCC 60, are as follows:

> 59 Judicial discretion must of course be exercised in furtherance of the *CCAA's* purposes. The remedial purpose I referred to in the historical overview of the Act is recognized over and over again in the jurisprudence. To cite one early example:
>
> > 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.
> >
> > (*Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 O.A.C. 282 (Ont. C.A.), at para. 57, *per* Doherty J.A., dissenting)

[101] The Applicant Companies say that the case law dealing with sales processes and redemption requests under receiverships are distinct, because receiverships are liquidating and *CCAA* proceedings are restructuring. While that is the purpose of the *CCAA* proceeding, both liquidating CCAAs and SISPs are commonplace. Here there was agreement that a sales process would be implemented by a date certain, if there was no refinancing. Once in that sales process, any difference in purpose of receiverships and *CCAA* proceedings has little impact. The *CCAA* proceeding became a liquidating CCAA, with the clear consent of the Applicant Companies. As *Callidus*, *supra*, pointed out, liquidating CCAA's take many forms and, in the present circumstances, if I were to approve the two proposed sales transactions it will result in the businesses continuing as going concerns.

[102] With respect to a debtor's right to redeem, I am of the view that where a court-approved sales process has been undertaken, there is a balancing required that considers the debtor's right to redeem against the integrity of the process, including the potential prejudice to those involved. I have reviewed numerous cases, primarily in the receivership context, although some, as I will reference below, are from the *CCAA* realm, and am of the view that there has been an evolution of the law with respect to the interests to consider where a redemption request is made at a point in the process when the SISP transaction agreement awaits only court approval. This development tracks back to the court's concern about the integrity of the process. There are various decisions in the receivership context where courts have protected the integrity of the sale process after weighing the right to redeem against the impact

on the integrity of the process. There are other cases that deal with late bids. In both cases the courts have considered the integrity of the sales process.

[103] The Applicant Companies argue that the only considerations applicable when there is cash to redeem are the overarching objectives of the legislation set out in *Callidus, supra,* at para. 40. I am of the view that these objectives must permeate all *CCAA* proceedings, but different aspects of the objectives are highlighted here, as the caselaw below illustrates.

[104] I refer to the following cases in support of my conclusion that the balancing process requires the analysis of a number of interests and other considerations that I will set out below. Needless to say, the specific circumstances of each case will determine the result (see *Ron Handelman Investments Ltd. v. Mass Properties Inc.,* 2009 CarswellOnt 4257; *Business Development Bank of Canada v. Marlwood Golf & Country Club Inc*., 2015 ONSC 3909; *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc*., 2020 ONSC 3659; *Kruger v. Wild Goose Vintners Inc*., 2021 BCSC 1406; *Rose-Isli Corp. v. Frame-Tech Structures Ltd*., 2023 ONSC 832; *Rose-Isli Corp v Smith*, 2023 ONCA 548; *Peakhill Capital Inc v 1000093910 Ontario Inc*, 2024 ONCA 558; and *Cameron Stephens Mortgage Capital Ltd. Spotlight on Lawrence Inc*., 2025 ONCA 374).

[105] As stated above, a fundamental consideration is the integrity of the court-approved sale process. As Justice Kimmel said in *Rose-Isli Corp. v. Frame-Tech Structures Ltd*., 2023 ONSC 832, at paragraph 78:

> Of more direct concern in this case is the impact that allowing 273 Ontario to exercise its right of redemption would have on the integrity of the court approved Sales Process. The policy considerations that weighed heavily on the court in *B&M Handelman*, at para. 22 are of equal concern in this case:
>
> > A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

[106] The Ontario Court of Appeal upheld Justice Kimmel's reasoning in *Rose-Isli Corp., supra,* and it has also recently reinforced this reasoning in *Cameron Stephens Mortgage Capital Ltd. v. Spotlight,* 2025 ONCA 374:

11 In my view, it is important to bear in mind why the motion judge refused the adjournment request in this case. As his reasons make clear, he was skeptical about whether the moving parties would have been able to justify their being permitted to exercise their equity of redemption at such a late date, even if they had not needed an adjournment to give them more time to attempt to raise the necessary funds. As he explained:

> In order even to consider an extremely late-breaking proposal to exercise the equity of redemption in the face of a Transaction that has been fully negotiated and executed and is ready to close, the party seeking to redeem must turn up with "cash in hand", i.e. must be ready to fully redeem the mortgage(s) on the property at issue. Even in those circumstances, the relevant case law provides that [a] late-breaking offer, unless it provides exceptional value in comparison to the proposed transaction, should not be allowed to interfere with the integrity of the receivership sale process.

12 The Receiver points out that in *Rose-Isli Corp. v. Smith*, 2023 ONCA 548, a decision released less than two years ago, a panel of this court addressed the factors that should be considered by judges when deciding whether to give priority to a debtor's right to redeem, in cases where a receiver is proposing to sell the debtor's assets. The court endorsed the following principles, at para. 9:

> • In considering a request by an encumbrancer to redeem a mortgage on property in receivership, a court should consider the impact that allowing the encumbrancer to exercise its right of redemption would have on the integrity
> of a court-approved sales process;
>
> • Usually, if a court-approved sales process has been carried out in a manner consistent with the principles set out in *Royal Bank of Canada v. Soundair Corp*, (1991), 4 O.R. (3d) 1 (C.A.), a court should not permit a latter attempt to redeem to interfere with the completion of the sales process. In our view, the reason the *Soundair* principles apply to circumstances where an encumbrancer seeks to redeem a mortgage is that once the court's process has been invoked to supervise the sale of assets under receivership, the process must take into consideration all affected economic interests in the properties in question, not just those of one creditor; and
>
> • In dealing with the matter, a court should engage in a balancing analysis of the right to redeem against the impact on the integrity of the court-approved receivership process.

13 The court added, at para. 10:

> We adopt the rationale for those guiding principles articulated in *B&M Handelman Investments Limited v. Mass Properties Inc.* (2009), 55 C.B.R. (5th) 271 (Ont. S.C.), where the court stated, at para. 22:

> A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.
>
> [Emphasis added]

[107] The Applicant Companies point out that in *Bank of Montreal v Hester Creek Estate Winery Ltd*., 2004 BCSC 724, the British Columbia Supreme Court found that the integrity of the court process was not compromised by allowing a debtor or its trustee in bankruptcy to redeem the mortgaged property on the eve of an application to approve a sale of the property. In that case the court said:

> 29 In my opinion, it will require truly extraordinary circumstances, which do not exist here, for the court to hold that a debtor or its trustee in bankruptcy should be prevented from redeeming mortgaged property upon payment in full of the amount owed to the secured creditor prior to the pronouncement of an order absolute or an order approving a sale.

[108] In my view the law has changed since the *Hester Creek, supra,* decision. The more recent cases focus on the impact of a late redemption request on the integrity of the sales process. I note that the 2021 decision of the British Columbia Supreme Court in *Wild Goose*, *supra*, adopted the line of cases I have set out above and weighed the right to redeem against the integrity of the court-approved sales process to find that the integrity of the process outweighed the debtor's right to redeem in the circumstances. I note in *Wild Goose*, *supra*, the sale solicitation order expressly reserved the right to redeem up until the bid deadline.

[109] Where a debtor seeks to redeem security after a sale has been negotiated by a court officer, but before a sale has been approved by the court, balancing the various interests and the efficacy and the integrity of the sales process under which an offer was obtained may favour approval of the sale despite any right to redeem. The right to redeem is to be given its due weight but the court must weigh it in light of the potential prejudice on all sides (*B&M Handelman Investments Limited v. Mass Properties Inc.* (2009), 55 C.B.R. (5th) 271 (O.S.C.J.) at paras. 21-22; *Business Development Bank of Canada v. Marlwood Golf & Country Club Inc.,* 2015 ONSC 3909 at paragraphs. 26-27; *BCIMC Construction Fund Corporation v. The Clover on Yonge Inc.,* 2020 ONSC 3659, at paragraphs 36 to 41, 47, 49 to 52 and 66 to 69.)

[110] For example, the court in *BCIMC Construction*, *supra,* stated at para 36:

> In *[B&M] Handelman*, the Receiver had already run a bid process, had selected a purchaser and was moving to approve the purchase. Different considerations arise at that late a stage. Allowing debtors to redeem property on the sale approval motion would discourage potential purchasers from submitting bids in the first place and threaten the utility of the receivership process more generally.

[111] The Applicant Companies argue that there are different considerations applicable in the receivership cases noted above. They say that they are liquidation cases, whereas the *CCAA* has a different purpose, one of restructuring and preserving the debtor as a going concern. They argue that many cases deal with mortgage redemption and the particularities of redeeming mortgages. In my view, the same principles that govern in receivership cases apply to a sales process in a *CCAA* proceeding. In particular, I see no difference between the principles applicable where a court-approved SISP has been used in the receivership context and a right to redemption is raised just prior to the AVO and the same situation in a *CCAA* proceeding. The fundamental concern of the court with respect to the integrity of court-approved sale processes is common to both statutory regimes.

The Importance of Integrity of Process in CCAA Proceedings

[112] The applicability of the *Soundair* principles on a sale approval under s. 36 of the *CCAA* is illustrative of the importance of the integrity of a sales process to the *CCAA* statutory regime. The *Soundair* criteria focus on the integrity of the process. To do as the Applicant Companies urge, and abandon the integrity of the process analysis solely because the SISP has taken place in the *CCAA* context, runs counter to *Soundair, supra,* and to all of the policy reasons that support protecting the integrity of a court-approved process. I wish to discuss this further.

[113] The *Soundair* principles have been consistently applied in *CCAA* proceedings both pre-and-post-the 2009 legislative amendments (see *Ivaco Inc., Re,* 2004 CarswellOnt 3563; *White Birch Paper Holding Co., Re*, 2010 QCCS 4915; Target *Canada Co. (Re),* 2015 ONSC 1487; *Bloom Lake, g.p.l., Re*, 2015 QCCS 1920). Courts, when considering the s. 36(3) factors, have indicated they are not exhaustive and that they overlap with the *Soundair* factors. Further, *CCAA* cases after *Soundair, supra,* have confirmed that integrity of the process is integral to the administration of the *CCAA* (see, for example, *Tiger Brand Knitting Co*., Re, [2005] O.J. 1259, at para 31; *Eddie Bauer of Canada Inc., Re,* [2009] O.J. No. 3784, at paras. 18 to 21;

Grant *Forest Products Inc., Re,* 2010 ONSC 1846, at paras. 30 to 33; *AbitibiBowater, Re*, 2010 QCCS 1742, at paras. 35 to 36.)

[114] Various decisions in *CCAA* proceedings have discussed the importance of the integrity of the process in the context of late bids. For example, in *Tiger Brand*, *supra*, the court declined to extend the time for a bid on the basis that once a sales process is put forward, absent a violation of the *Soundair* factors, the process should be honoured (paras. 35 to 42). *Tiger Brand, supra,* specifically referenced some of the same concerns as expressed in the receivership cases, when at para. 37 it quoted as follows from *Soundair, supra*:

> 37 At this point in time, I am of the view that to allow the offering process to in effect be reopened by enjoining the Monitor from completing a proposed transaction would amount to an unfairness in the working out of the process to the prospective purchaser, to Geetex and to GMAC the secured creditor. As well, it would interfere with the efficacy and integrity of the process and prefer the interests of one party (the USWA, albeit an important one) over others. As noted at paragraph 46 of *Soundair:*
>
> > [46] It is my opinion that the court must exercise extreme caution before it interferes with the process adopted by a receiver to sell an unusual asset. It is important that prospective purchasers know that, if they are acting in good faith, bargain seriously with a receiver and enter into an agreement with it, a court will not lightly interfere with the commercial judgment of the receiver to sell the asset to them.

[115] In a Quebec *CCAA* proceeding, *AbitibiBowater, Re*, 2010 QCCS 1742, the court dealt with a contemplated sale that was opposed by an unsuccessful bidder. The standing issue aside, the court discussed the focus being the integrity of the process as set out in *Soundair, supra*.

[116] In addition, in *Harbour Grace Ocean Enterprises Ltd., Re*, 2024 NLSC 47, a monitor had accepted a bid from a purchaser and had entered into a binding agreement before the majority shareholder and a secured creditor of the company submitted its bid. The Company brought a motion to approve the sale and the majority shareholder objected. In that case, Justice MacDonald first decided whether the AVO should be granted and then considered whether the late bid by the shareholder changed that result. The court analyzed the SISP process and the role of the shareholder, who was considering a credit bid during the process. There was no bid by the deadline. The shareholder argued there were reasons for not doing so, including that the Monitor prohibited it from submitting a bid. The court rejected the shareholder's complaints.

[117] In refusing to order the Monitor to accept the bid, despite the fact that the secured creditors could benefit from the potentially higher bid, the court referred to *Terrance Bay*, *supra*, a *CCAA* decision of Justice Morawetz (as he then was). In that case, Justice Morawetz was dealing with a late bid that was approximately $7 million more in value than the accepted bid. Based on the criteria of s. 36 and the overlapping *Soundair* principles, he refused to reopen the process. He specifically referred to the third consideration of efficacy and integrity of the process and referenced the oft-quoted paragraph 46 of *Soundair, supra,* which I have set out above.

[118] In *Harbour Grace*, *supra*, the court applied the following principles that resemble those in the receivership cases:

> -Authorizing a sale outside of the SISP should only be done in the most extraordinary circumstances when the court believes the Monitor did not act providently to obtain the best price;
>
> -The court should exercise extreme caution before interfering with the SISP especially when the court approves an agreement to sell an unusual asset like a shipyard;
>
> -The court should not sit on an appeal and review in minute detail every element of the Monitor's actions during the SISP;
>
> -The court must consider the interests of all parties, including the purchaser.

[119] Justice MacDonald concluded by highlighting the integrity of the sales process, saying:

> 115 The integrity of a SISP is fundamental to the proper operation of insolvency restructuring proceedings. Participants must believe that receivers, monitors and courts will treat them fairly. Gray, an insider, a secured creditor, a shareholder, a former DIP lender and an active participant in this *CCAA*, asks that I find that the rules of the SISP do not apply to it. This I will not do. …

[120] The Applicant Companies seek to distinguish cases like *Harbour Grace, supra,* on their facts, saying *Harbour Grace,* for example, was a situation involving a majority shareholder late bidder in a complex undercurrent of in-fighting, rather than, as here, a debtor company attempting to redeem. However, the underlying principle of integrity of the process permeates throughout the caselaw, regardless of the specific facts.

[121] In short, I am of the view that the court's consideration of the integrity of the process is subject to the same standards, whether applied in a receivership or in a

CCAA proceeding. There is simply no reason to conclude that because the debtor seeks to redeem in a *CCAA* proceeding, the principles widely accepted in receivership proceedings and accepted in other contexts in *CCAA* proceedings should be disregarded. The integrity of the process is as important in a *CCAA* proceeding involving a court-approved sales process as it is in a receivership.

[122] The right to redeem in a *CCAA* proceeding is not an unlimited right, that can be exercised at any time without regard to the court-approved process. Seeking redemption at a sale approval motion triggers various considerations given the late stage in the proceeding. As noted above, I have reviewed many of the cases dealing with redemption requests during a sales process and, in particular, after a successful bidder has entered into an APA, subject to court approval, and am of the view that the following considerations are applicable. This is not an exhaustive list, and these are circumstance-specific inquiries.

Considerations:

Cash in Hand

[123] It must be a prerequisite to even considering a right to redeem request, after a SISP process has concluded and an APA has been negotiated with the successful bidder, subject to court approval, that the debtor comes to court with cash in hand. In other words, there must be a clearly demonstrated ability and readiness to immediately redeem or meet all of their obligations in full. In my view this is a threshold question.

[124] Various cases discuss the need for a cheque or cash in hand. For example, *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, states:

> 24 The Receiver objects to any adjournment. As the Receiver points out an adjournment will result in a delay and will not change the outcome. Setting aside whether the Financing Offer may come to fruition, the proposed $23.5 million in financing is not enough for the Debtor to redeem the outstanding mortgages on the property. The Receiver states that the Debtor would need more than $32.8 million in financing to pay out the mortgagees in full.
>
> 25 The jurisprudence provides for a balancing act that the court must engage in when faced with a debtor who wants to redeem. After a receiver has gone through an exhaustive bidding process, including the costs associated therewith, to find a purchaser, the court may still permit a last-minute redemption where the debtor comes with a cheque in hand: *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*2024 ONSC 4000 at para. 7-9.

> Further, in the exceptional circumstances where the court may permit a last-minute redemption, the cheque in hand must be sufficient to cover all the outstanding obligations: *Vector Financial Services v. 33 Hawarden Crescent*, 2024 ONSC 1635, at para. 97.
>
> [Emphasis added]

[125] Do the Applicant Companies have cash in hand sufficient to cover all of their outstanding obligations?

[126] The Applicant Companies say (and their Proposed Lenders confirm) that they have obtained loans in the amount of $8,380,000, which are held in escrow, with their release subject only to "issuance of the CCAA Termination Order." The loans are subject to this court agreeing to terminate the *CCAA* proceeding, which I will discuss further below.

[127] There are a number of creditors of the companies, secured and unsecured. The Redemption Proposal does not pay out 100% of the obligations of the debtor companies immediately. They say the $8,300,000 will pay off RBC in full as well as the pre-filing unsecured creditors, with the exception of CRA, the Atlantic Canada Opportunities Agency ("ACOA"), which will be addressed by payment plans in the normal course of business. There are also vehicle leases that will be addressed. The Applicant Companies argue their most recent Waterfall (or creditor payout statement) calculation indicates there will be $617,000 available once all the creditors are paid with the exception of ACOA, CRA and the post-filing creditors. The CRA deemed trust is approximately $530,000. They say even if they pay the deemed trust up front, which they are prepared to do, they still have surplus funds, not including payables. They further say allowing the redemption will avoid the continuing cost of the *CCAA* process and the Monitor conducting a further sales process regarding the BLCL Real Properties.

[128] With respect to the Companies' ability to operate post closing, they say they have been operating in the ordinary course (with the *CCAA* protections); they obtained but did not use the DIP facility; they discharged approximately $1 million in process costs; and as of June 29, 2025, they have $388,000 in the bank. They expect there to be a positive upward adjustment to working capital due to accounts payable in the high season for the company.

[129] RBC and the Monitor raise a number of concerns with this position. RBC says there is a lack of clarity with respect to payment of CRA. For example, it says that in the event that the Companies fail to make the requisite payments to CRA, there is

a risk that CRA could issue a demand for payment to RBC for any amounts it received in relation to any priority claim. At the hearing Mr. O'Keefe advised that the Companies now intend to pay the deemed trust amount. This did not satisfy RBC's concerns, as there are no protections in place and they are opposed to any risk. RBC further says the numbers presented do not include up to date professional fees of RBC counsel and the advisors, Ernst and Young. They say that if there are any discrepancies in the numbers, the proposal's lack of a claims process opens the door to unreasonable decisions on amounts owing.

[130] The Monitor says the Companies have presented the Redemption Proposal as if it is a "cash on the barrel" situation but it is much more like a plan of arrangement, simply a new and improved version of what the Companies presented on the May 9, 2025, SISP bid deadline. In addition to the RBC concerns, the Monitor says that the professional fees in the most recent Waterfall or creditor payout statement are understated, and the post-filing creditors are not included in the proposed payments. The Monitor says the amounts owing to RBC and the pre-filing secured creditors are understated due to accruals for fees and interest. The Monitor has difficulty delving further into the numbers in the Waterfall, as operations will depend on being extended credit by trade suppliers. Overall, the Monitor has concern with the Waterfall being a reliable way to break down the financial picture of the company. The Monitor is not able to confirm that, based on the Redemption Proposal, the total amounts for the creditors as set out by Mr. Rice, will be paid nor whether there are unknown creditors.

[131] The Monitor raises two further concerns that I agree are problematic. First, they reiterate RBC's concern that there will not be a claims process. Without a claims process, the Monitor does not know what the total obligations of the Applicant Companies actually are, or what will happen if creditors say they are owed money and the Companies do not acknowledge the debts. Second, the Companies' approach relies on what they say will be a going concern business with the Companies doing well and able to pay. The Monitor says with no visibility regarding the details of the loan transactions, they cannot provide a report to the court or to the stakeholders as to whether the arrangements by which the Companies propose to stay in business are viable or not.

[132] I note that CRA also expresses concern with respect to cashflow and whether or not the Companies could both keep current under the various taxing statutes and also meet the CRA payment arrangements.

[133] The Applicant Companies seek termination of the *CCAA* proceeding, but in my view, it is unclear what this proposed termination is based upon. From the limited materials provided there appear to be other agreements and arrangements behind the initial payment of $8,380,000. The funds are coming from two numbered companies, but it is not simply a loan. It appears to be a required term that assets be sold. It is unclear what assets. It is expressly stated that there will be a recapitalization and a reorganization of the share structure of the Applicant Companies. As the Monitor points out, while the funds are presented as "cash on the barrel", when one examines the limited information available it looks more like a wider plan of arrangement. It appears they are proposing a restructuring outside of the *CCAA* proceeding, to be done once they have exited from the *CCAA* proceeding. The wider set of transactions related to the loans have not been disclosed to this court, to the Monitor, or to the stakeholders.

[134] The Applicant Companies addressed their *CCAA* exit plan and path forward outside the *CCAA* process, only when forced to do so when issues were raised by the Monitor and RBC. The Applicant Companies assume that if their Waterfall indicates they have sufficient funds to pay their creditors, then immediate exit of the *CCAA* proceeding is automatic, without any further consideration by this court. They say they are now solvent and have the means to terminate the *CCAA* proceeding, therefore, the transactions resulting from the SISP are unnecessary.

[135] The Applicant Companies have put minimal information before the court concerning the detail of the transactions behind the loans, relying almost entirely on details coming from the Proposed Lenders. The information put before the court was at the urging of the court and of the Monitor. For example, the original motion documents dated June 23, 2025, contained absolutely no information as to the plan forward for the Applicant Companies. The information contained in the July 2, 2025, letters was as a result of concerns raised at the pre-hearing appearance by the Monitor and the court. The Applicant Companies maintain, however, that the underlying transactions to the loans are not relevant as long as they have the cash to pay.

[136] The following are some of the questions posed and documents requested by the Monitor, and the answers provided by the Proposed Lender and Applicant Companies in their response letters of July 2, 2025:

> 8. Whether any of the assets or shares of the Applicants will be sold pursuant to this arrangement, or whether the share capital of the Applicants will be restructured as part of the refinancing.

Proposed Lender Answer:

> The share capital will be restructured as part of the refinancing-the final structure has not been settled. This restructuring will consolidate the three operations into a single enterprise and simplify future financing, licensing and distribution agreements.
>
> With respect to the operating businesses, certain non-core assets of the Applicants will be sold in order to generate additional working capital for the businesses (e.g. the vacant lot in Gaspereau, having an assessed value just under $200,000). The BLCL loan includes covenants to sell certain assets as mandatory repayments of the loan.

The Applicant Companies answered the same question as follows:

> No assets will be sold as part of the transaction. There will be no share reorganization as part of the refinancing, but a share reorganization will likely occur afterwards.

11. Any transaction documents related directly or indirectly to the Escrow Funds, including any asset or share purchase agreements and subscription agreements.

Proposed lender Answer:

> These agreements (to the extent they are executed in escrow) will come into effect post-repayment (and following termination of the CCAA), they are private and the parties decline to disclose them as they are not relevant to the Monitor's analysis.

The Applicant Companies answered the same question as follows:

> The Applicants are not aware of any documents that relate directly or indirectly to the Escrow Funds, other than the Escrow Agreements.

12. Any agreements, resolutions, directions, commitments or other documents executed by the Applicants, their Board, or their shareholders in relation to the Escrow Funds and any related transaction, including any loan and security documents.

Proposed lender Answer:

> These documents (to the extent that they are executed in escrow) are irrelevant to the analysis of the Monitor.

The Applicant Companies answered the same question as follows:

> The Applicants are not under any obligation to provide copies of these agreements to the Monitor and are bound by confidentiality provisions which prevent them from doing so.

[137] The Applicant Companies say any conditions behind the loans are irrelevant as the money is available, with no conditions. However, release of the loans in the amount of $8,380,000, which are held in escrow, is subject to "issuance of the *CCAA* Termination Order." According to counsel for the Proposed Lenders, he has "irrevocable authorization from the lenders to release the Escrow Funds, upon the issuance of the *CCAA* Termination Order, to pay the Applicant Companies' creditors in accordance with such directions as are provided by the court." As counsel for the Proposed Lenders stated during the hearing, the transactions cannot close during the *CCAA* process as they would require court approval. The loans are stated to be conditional upon the *CCAA* proceeding being terminated, yet neither the Applicant Companies nor the Proposed Lenders are prepared to provide transparency to the court concerning these very transactions. This lack of transparency is troubling. I wish to discuss some of my concerns further.

[138] The Proposed Lenders say that at least one of the investors participated in the SISP. That person or entity has not been identified. We also know the Applicant Companies participated in the SISP. Without further detail, I am left to guess whether this is simply a late-breaking bid from prior bidders who were unhappy with the outcome of the SISP.

[139] I have concerns regarding the Applicant Companies' approach to court supervision. Once a *CCAA* proceeding is underway there must be disclosure and transparency. The court's oversight function is impossible without such transparency. The Applicant Companies say they are now solvent and it would be best to have the shareholders operate the Companies. But I do not know who the shareholders will be as a result of the proposed transactions with the Proposed Lenders. The Applicant Companies are asking this court to, in essence, pretend that the *CCAA* proceeding never happened. Without any disclosure of the restructuring, the financial backing, the financial projections, the business plans etc., the Applicant Companies are asking this court to simply trust that they will work everything out, outside the *CCAA* proceeding. I have significant concerns with this approach to a court-supervised process.

[140] It is important that neither the Monitor nor RBC support the termination of the *CCAA* process. Each have expressed concerns with the Redemption Proposal that I have discussed above. Further, given the lack of transparency as to the details

concerning the transaction with the Proposed Lenders, and as the Monitor has indicated, without the information set out above, I am simply unable to assess whether the Applicant Companies will continue to meet their obligations as they come due (see *Re JTI-MacDonald Corp*., 2010 ONSC 4212 at paras. 12-14). Creditors could be prejudiced. The Companies have said they will not be implementing a claims process, therefore, if they were to exit the *CCAA* proceeding, there is no plan for how discrepancies or disagreements as to amounts owing to creditors will be worked out. Whether this would unduly prejudice creditors is unknown, but it is of concern.

[141] I am of the view that the Applicant Companies have not met the threshold requirement of cash in hand to meet all of their obligations. I share the concerns of the Monitor and RBC with respect to the Redemption Plan. Further, I simply do not know if the Companies have sufficient capital to implement this new plan. I do not have the kind of compelling evidence that the Applicant Companies can satisfy all of their obligations that is necessary to consider interfering with a sales process at this late stage. It appears they do have cash in hand to pay substantially all of the creditors, but I have significant concerns with respect to the lack of transparency surrounding what is, in essence, a restructuring that they propose to do outside the *CCAA* proceeding. If the Companies had provided further details of the transactions, I may well have agreed the Redemption Plan met the cash in hand requirement. There is simply insufficient information to assuage my concerns.

[142] Failure to meet the threshold criteria of cash in hand means I do not need to proceed to the weighing analysis. However, regardless of my conclusion with respect to the threshold question, I do intend to consider the other criteria for assessing a redemption request during or after a *CCAA* sales process. As I will explain below, after balancing the competing interests, I am of the view that the integrity of the sales process takes precedence in the specific circumstances before me.

The Timing of the Request Within the Sales Process and Potential Prejudice

[143] I am of the view that any right to redeem must be considered in light of the timing of the request to redeem. In other words, at what point in the court-approved sales process, is the request made, and how will it impact the other stakeholders? There must be a balancing of the interests to ensure the integrity of the process is protected. Here the Applicant Companies' motion to redeem and exit the *CCAA* proceeding is being presented after the SISP process, after two successful bidders

were chosen to purchase the Operating Businesses, and after the Monitor filed its motion seeking court approval of the two transactions.

[144] The potential prejudice to other stakeholders must be considered in the balancing process. This consideration is in keeping with one of the principal functions of the judge supervising the proceeding, which is to balance the interests of the various stakeholders. Firstly, as indicated above I have considered the interests of the secured and unsecured creditors. Creditors rely on the process for the protection of their interests. Further, the opinion of the creditors as to which of the transactions before the court ought to be accepted should be taken into account. The two proposed purchasers also have an interest in the integrity of the process, having bid and had their bids accepted, subject to court approval. Proposed purchasers will have incurred costs in preparing their bids, providing deposits, arranging financing, undertaking due diligence, negotiating with the Monitor, entering into the APA, and ensuring the ability to close within the contractual timeframe. They entered the bidding process relying on the court-approved sale process being conducted fairly, in accordance with its terms. I have considered as well that in the present circumstances there are no conditions attached to the two transactions. All they await is court approval of the AVO.

The Integrity of the Court-Approved Sale Process

[145] This factor is related to the timing of the redemption request. Approval of the Redemption Proposal at this late date - the same time as the sales approval motion - would, in my view, have a chilling effect on *CCAA* sales processes and impact the trust that potential bidders have in the court-approved process.

[146] At least one of the lenders was involved in bidding during the sales process. Mr. Rice, who is a significant shareholder, is part of the lending group. The Applicant Companies submitted a bid/proposal by the SISP bid deadline. Regardless of what they wish to call it, it was clearly a proposal within the sales process. I cannot help but think that the Redemption Proposal is a late breaking plan or bid by bidders who are dissatisfied with the sales process results. In these circumstances, if the Redemption Proposal were allowed, the perception of unfairness would be even more heightened. It could discourage potential purchasers from submitting bids and jeopardize the *CCAA* process generally.

The Debtor's Right to Redeem and Potential Prejudice to the Debtor

[147] Clearly consideration must be given to the right to redeem and the debtor's potential prejudice. In this regard, I recognize the Applicant Companies will be prejudiced if I approve the Lynch and Coast Transactions, as the shareholders have a significant interest in retaining the assets. They have built the business and have tried to refinance their debt for more than a year. Companies are certainly more than just assets and company liabilities. They support people, other businesses and the communities in which they operate.

[148] Consideration of prejudice to the debtor if their Redemption Proposal is denied must be assessed in all of the circumstances. In the present circumstances, I cannot disregard the fact that the Applicant Companies have been involved in the sale process throughout. They were the moving parties in the motion to approve the SISP. They had every opportunity to redeem up to the bid deadline, could have asked for an extension to the bid timeline, could have brought their motion before the bids were accepted, could have attempted to negotiate a provision in the SISP that they could redeem post-bid deadline/end of the sale process, and the bidders could have been given notice of this possibility. As discussed above, I do not accept their position that the Monitor should have included this carve-out in the SISP order and should have provided notice to the bidders of their right to redeem. As noted previously, the SISP expressly included among the transactions being solicited any bids to "refinance the Operating Businesses and/or the Companies", and required that any such transaction be submitted by the bid deadline. The Applicant Companies have had legal counsel throughout, and it was up to them if they wished to have a carve-out in the SISP.

[149] The Applicant Companies did present a bid/Plan at the bid deadline. Clearly, from their May 9, 2025, correspondence to the Monitor, they recognized the importance of the sales process and the need to submit a bid if they wished to be considered. While they now call what they are proposing exercising their right of redemption, what they are doing is attempting to bring forward an improved restructuring proposal to that of May 9, 2025, but at the 11th hour. In my view courts should scrupulously assess a request to redeem where the debtor participates in the SISP bidding, fails, and then seeks redemption.

[150] It was the Applicant Companies who commenced the *CCAA* proceeding to access the extraordinary protections that the legislation provides. These protections impact the rights of creditors and other parties in a manner that few other statutes permit. I agree with the Monitor that the *quid pro quo* in a *CCAA* process is that the debtor submits itself to the supervision of the court through its court-appointed

officer, the monitor, and abides by the processes that are approved by the court to administer the restructuring proceeding. In essence, what the Applicant Companies seek to do here is to advance an improved restructuring transaction that they should have advanced in the SISP. The effect of the success of their motion would be to circumvent the SISP.

Clean Hands

[151] I am of the view (as noted in *Business Development Bank of Canada v. Marlwood Golf,* 2015 ONSC 3909, at para. 27) that a further consideration relating to the debtor is whether they have come to the court with clean hands. Bad faith conduct by the debtor could derail their request to redeem. Here there is absolutely no suggestion of inappropriate actions on the part of the Applicant Companies.

Value of the Proposed Redemption Plan in comparison to the Successful Bidder Transaction

[152] A further consideration is whether the proposed redemption plan represents a greater recovery than the successful bidder transactions. A greater recovery is not necessarily determinative as it is simply part of the balancing needed in light of the impact on the integrity of the process. When a redemption plan represents exceptional value to the creditors, as compared to the proposed transaction, this may weigh heavy in the balancing process. But if the redemption plan looks more like a late breaking-bid or improved restructuring plan, as in my view it does here, the *Soundair* principle may come into play, to the effect that prices in post-deadline offers are relevant only to the extent they show that the price contained in the recommended offer was so unreasonably low as to demonstrate that the court officer was improvident in accepting it. That is not the situation here. (See *Royal Bank of Canada v 1434399 Ontario Inc*., 2025 ONSC 3516, at para. 32, citing *Cameron Stephens Mortgage Capital Ltd. v Spotlight on Lawrence Inc*., 2025 ONCA 374).

[153] Whether the accepted bid in a *CCAA* sales process is a going concern transaction is, in my view, also a consideration, given the impact on employees, trade suppliers, and economic interests in general. Here both the Lynch and Coast Transactions are going concern purchases. The Monitor says the Applicant Companies' proposal is similar to the transactions the Monitor seeks approval of, in that creditors will be repaid whether in full or close to in full, and the business will continue as a going concern, preserving the enterprise as a Nova Scotia business, and preserving employment.

[154] The Monitor who conducted the SISP in its capacity as court appointed officer and whose role or mandate is to protect the integrity of the court-approved process, is of the opinion the late Redemption Proposal does not represent better recovery to the creditors. The Supreme Court of Canada in *Callidus*, *supra*, discussed the important role played by the monitor as "an independent and impartial expert… [t]he core of the monitor's role includes providing an advisory opinion to the court as to the fairness of any proposed plan of arrangement and on orders sought by parties" (at para 52). It is appropriate to place reliance on the views of the Monitor and its business judgment concerning the Redemption Proposal and background loan transactions, as it has acted as Monitor in this proceeding since December of 2024. Rarely has a court disregarded the opinion of the monitor in a *CCAA* proceeding.

[155] Given the concerns raised by the Monitor and RBC, and the troubling lack of transparency with respect to the loan transactions, I cannot conclude that the Redemption Plan represents greater value to all concerned. In light of all of the circumstances discussed above, I accept the Monitor's advice in the Supplement to the Fourth Report that the amount of the proceeds held for redemption do not result in better recovery to creditors than the proposed transactions.

Conclusion on the Motions

[156] The Monitor carried out the sales process in accordance with well established principles. In the specific circumstances before me, protecting the integrity of the sales process contemplated by the sale solicitation order outweighs the Applicant Companies' claim that they should be entitled to redeem at this late date. I am of the view that the case law and overarching principles of restructuring require the court to override the interests of the Applicant Companies to uphold the integrity of the restructuring regime and the court-approved sale process by which it was advanced. I am of the view that the Approval and Vesting Orders should be granted.

Orders Presented by the Monitor

[157] With respect to the form of orders presented by the Monitor, being the two AVOs and the Ancillary Order, at the hearing, I canvassed all parties as to their positions on the orders. Noone raised any issues with the form or content of the orders. The Applicant Companies confirmed from their perspective, that if I were to grant the Monitor's motion, the orders as presented could be granted, including the vacant possession order.

[158] With respect to whether the court should approve the request for enhanced powers for the Monitor, I am of the view it is appropriate and necessary to enhance the Monitor's authority under the ARIO to enable it to execute closing documents and take all steps required to facilitate the orderly completion of the Lynch and Coast Transactions and the *CCAA* proceeding.

[159] The Monitor is also seeking an order that the Applicant Companies deliver vacant possession of the BLCL Real Properties within 30 days, and an order requiring persons residing in those properties to vacate them. The Monitor has indicated that it is not aware of any leases in respect of those properties, nor rents paid by any persons residing there.

[160] The stay of proceedings is currently set to expire on July 31, 2025. The Monitor recommends that the stay be extended to October 31, 2025, for the following reasons:

(a) the Applicant Companies are acting in good faith and with due diligence, and the Monitor's powers are proposed to be expanded to complete these proceedings and the transactions;

(b) the extension will allow the Monitor, with court approval, to close both the Lynch Transaction and the Coast Transaction, and to continue the SISP with respect to the BLCL Real Properties;

(c) the Monitor needs further time to initiate a claims process for the Operating Businesses' unsecured creditors and begin preparing for distributions to those creditors;

(d) RBC does not oppose the requested stay extension;

(e) the Cash Flow Forecast demonstrates the Applicants have sufficient liquidity during the extended stay period; and

(f) in the Monitor's view, the proposed extension is in the best interests of the Applicant Companies' stakeholders and will not result in any material prejudice to any party.

[161] I am in agreement and the stay is extended until October 31, 2025.

[162] The security opinion obtained by the Monitor confirms the validity and enforceability of RBC's security, subject to the standard assumptions and qualifications therein. The Monitor recommends that it be authorized to make one or more distributions to RBC in satisfaction of the amounts owing to it by the Operating Businesses. I authorize the Monitor to distribute the proceeds from the transactions up to the full amount owing to it by the Operating Businesses.

[163] It is settled law that a court can make distributions to creditors in the course of a *CCAA* proceeding. The court can make an order to provide for distributions outside of a formal *CCAA* plan of arrangement (see *Re Nortel Networks Corp*., 2014 ONSC 4777, at paras. 53 to 55).

[164] The Monitor also seeks a sealing order with respect to the confidential appendices to its Fourth Report and to the Supplement to its Fourth Report. Notice was provided to the media. No party objected to the sealing requests.

[165] I am satisfied a sealing order should be in place for a short period of time in relation to the confidential appendices. They contain sensitive commercial information relating to the sale price, details of other bids, etc. I agree the disclosure of this sensitive information could negatively impact any future sale efforts, in the event that the proposed sale transactions do not close. As a matter of proportionality, in light of the relatively short period of time during which the Confidential Appendices will be under seal, the beneficial effects of the confidentiality order sought outweigh its deleterious effects, including the effects on the public interest in open court proceedings. I am satisfied that the limited nature and scope of the proposed sealing order and its limited time frame are appropriate and satisfy the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.

[166] Finally, the Ancillary Order seeks approval of the Fourth Report of the Monitor and the activities of the Monitor referred to therein. I approve the Fourth Report and the activities described therein. The report provides insight into the numerous activities of the Monitor since the prior report. I am of the view that the Monitor's activities were reasonable and necessary and undertaken in good faith pursuant to the duties and powers set out in the *CCAA* and the orders in this *CCAA* proceeding. I am further of the view the activities were undertaken in the best interests of the Applicant Companies' stakeholders.

Conclusion

[167] In conclusion, I grant the Monitor's motion, including the Lynch AVO, the Coast AVO and the Ancillary Order. I dismiss the Applicant Companies' motion.

Jamieson, J.