2024 **Hfx No. 538745**

SUPREME COURT OF NOVA SCOTIA

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 by Blue Lobster Capital Limited, 3284906 Nova Scotia Limited, 3343533 Nova Scotia Limited and 4318682 Nova Scotia Limited (collectively, the "**Applicants**")

REPLY MEMORANDUM OF THE MONITOR

July 3, 2025

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TO: **The Service List**

To the Honourable Justice Jamieson, KSV Restructuring Inc., in its capacity as court-appointed monitor (the "**Monitor**"), submits:

A. OVERVIEW

1. This reply memorandum responds to the Applicants' Rebuttal Brief served June 30, 2025 (the "**Applicants' Rebuttal**").

2. The Applicants have put forward various iterations of a "proposal" or a "plan" during this proceeding. The Monitor uses those terms as shorthand, with their common meanings, to refer to the various steps proposed by the Applicants at various points to exit this *Companies' Creditors Arrangement Act* ("**CCAA**") proceeding. In this context they are not used as defined terms under the CCAA, and nothing should be read into the Monitor's use of those terms.

3. Regardless of the terms used, the Applicants' motion is for the Court to issue an order terminating this CCAA proceeding, which they assert will allow escrow funds to be released to pay creditors. The Applicants themselves have characterized the relief sought as their "right to redeem"[1] and their key proposition is that "in the context of a CCAA, a redemption should be permitted at any time before an AVO is issued."[2]

4. The issue before this Court, in the Monitor's view, is not whether a CCAA termination order should be granted over the objection of the Monitor (as the Applicants have framed it in various of their submissions) as the Monitor's position is merely a factor in the Court's review of the Applicants' proposal to redeem. The core issue to be determined by this Court is whether it is appropriate to allow a debtor to "redeem" after offers have been accepted on the basis

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[1] Applicants' Rebuttal, paras. 24-25.
[2] Applicants' Rebuttal, para. 39.

contemplated by a court-approved sale process, which by its terms included refinancing efforts.

5. This Court need not break new ground. There is a large and established body of case law on redemption that is directly applicable in the present circumstances where a debtor is proposing to pay out creditors to retain its property. In such instances, Courts weigh the need to protect the integrity of the sale process with the right of a debtor to redeem. The Applicants invite this Court to disregard the entire body of case law on the basis that they were receiverships, and not proceedings under the CCAA.

6. In contrast, the Monitor submits there is no distinction in this context and to follow the path suggested by the Applicants would be an inappropriate precedent. The evolution of the insolvency regime in Canada is toward alignment – with the increasing use of liquidating CCAAs and conversely, receiver-managers in receiverships to preserve and maintain operations – the lines between proceedings are not as distinct as the Applicants suggest. As the Supreme Court of Canada has held, "ultimately, the relative weight that the different objectives of the CCAA take on a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval."[3]

7. More critically, the Court's consideration of the integrity of the process is subject to the same standards, whether in a receivership or CCAA proceeding. A Court is required to apply the *Soundair* principles both in a receivership and under the CCAA and to consider the integrity of the process in the same manner in both types of proceedings.

8. The right to redeem is not unlimited or open-ended, as the Applicants suggest. The unfortunate reality is that in some instances a Court may conclude that a debtor has come with too little, too late, having regard to the competing principle of maintaining confidence in court-

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[3] *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, para 46.

supervised sale processes generally.

B. FACTS

9. The facts relevant to the Court's analysis are as set out in the Fourth Report of the Monitor dated June 17, 2025 (the "**Fourth Report**"), the Supplement to the Fourth Report of the Monitor (the "**Supplemental Report**") and the confidential appendix thereto (the "**Offer Comparison**") that provides a schedule of offers received in the sale and investment solicitation process (the "**SISP**").

10. The facts in this matter are largely not in dispute.

(a) The Applicants had been attempting to refinance their debt with the Royal Bank of Canada ("**RBC**") even well prior to the commencement of the CCAA proceeding.[4]

(b) In November 2024, RBC sought to appoint a receiver and the Applicants responded by seeking protection under the CCAA.[5]

(c) RBC agreed not to object to the CCAA proceeding on the condition, among others, that the Applicants would commence a sale and investment solicitation process if the Applicants' refinancing efforts were not complete by the end of February 2025.[6]

(d) The Applicants did not refinance by the end of February 2025.[7]

(e) The Applicants applied for an order approving the SISP.[8]

(f) The Applicants continued to pursue a refinancing throughout the SISP, made a

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[4] Affidavit of Kevin Alexander Rice sworn June 23, 2025 (the "**Rice Affidavit**") at para. 4.
[5] Rice Affidavit at para. 5.
[6] Rice Affidavit at para. 7.
[7] Rice Affidavit at para. 9.
[8] Rice Affidavit at para. 9.

proposal at the bid deadline (which bid was not accepted by the Monitor), and continued those efforts after the bid deadline.[9]

(g) A disputed fact arises when the Applicants state that 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."[10] In contrast, the Monitor's evidence is that it advised Alex Rice, the Applicants' principal, 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.[11] The Monitor's 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 at the time such option was presented.[12]

(h) The Applicants advised the Monitor on May 7, 2025 that they intended to file a plan of arrangement.[13]

(i) The Applicants provided a draft plan of arrangement to the Monitor on May 9, 2025, the bid deadline under the SISP.[14] The draft plan was conditional on, among other things, financing and a sale of Lost Bell, the Applicants' winery business.

(j) The Monitor received 12 qualified bids in the SISP.[15]

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[9] Rice Affidavit at paras. 11 and 16.
[10] Rice Affidavit at para. 10.
[11] Supplemental Report at Section 2(6).
[12] Supplemental Report at Section 2(6).
[13] Rice Affidavit at para. 13.
[14] Rice Affidavit at para. 14.
[15] Fourth Report at Section 4.2(2); Offer Comparison.

(k) The Monitor consulted with RBC on the bids and the draft plan of arrangement, as required under the SISP.[16]

(l) RBC did not support the plan of arrangement.[17]

(m) The Monitor, RBC and the Applicants' counsel engaged in discussions to resolve objections to the transactions and a memorandum of understanding was drafted in that regard, but Mr. Rice did not execute the memorandum of understanding.[18]

(n) The Monitor served its Notice of Motion to seek an order approving the Transactions on June 17, 2025.[19]

(o) On June 23, 2025, the Applicants filed a motion to, among other things, terminate the CCAA proceedings.[20]

C. THE APPLICANTS' PROPOSED TRANSACTION

11. The Monitor has previously expressed its concern that the Applicants are seeking to terminate the CCAA proceeding without transparent disclosure of the proposed transaction pursuant to which funds will be advanced to repay creditors with "uncontested" claims.[21]

12. On June 23, 2025, Gavin MacDonald, counsel to 4723718 Nova Scotia Limited and 4725748 Nova Scotia Limited (the "**Proposed Lenders**") delivered an affidavit stating that Cox & Palmer was holding $8,000,000 in escrow and that "the only outstanding material condition" for

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[16] Fourth Report at Section 4.2(3).
[17] Fourth Report at Section 11(5); Rice Affidavit at para. 18.
[18] Fourth Report at Section 11(7).
[19] Notice of Motion of the Monitor dated June 17, 2025.
[20] Notice of Motion of the Applicants dated June 23, 2025.
[21] Letter from Sharon Kour to Darren O'Keefe dated June 25, 2025 as appended to the Affidavit of Alina Stoica dated June 25, 2025.

the release of funds was the issuance of an order terminating the CCAA.[22]

13. On June 25, 2025, Mr. MacDonald delivered a further affidavit stating that he had "irrevocable authorization from the lenders to release the Escrow Funds, upon the issuance of the CCAA Termination Order".[23]

14. The Monitor has requested disclosure of the details of the transaction.[24] Among other things, the Monitor requested disclosure of the Escrow Agreements, any financing term sheets, any transaction documents and the identity of the shareholders, investors, and beneficial owners of the Proposed Lenders.

15. The Applicants and Proposed Lenders have provided copies of the Escrow Agreements, a summary of financing terms (but not copies of the applicable term sheets), and have not provided any other transaction documents.[25]

16. Notably, the escrow agreements between the Applicants and the respective Proposed Lenders (the "**Escrow Agreements**") refer specifically to certain Closing Documents (as defined in the Escrow Agreements), and specify that the escrow funds shall be released:

(a) to the creditors of the Applicants upon notice from the Applicants and the Proposed Lender that all conditions precedent in the Closing Documents have been satisfied or waived.

(b) to the Proposed Lender upon notice from the Proposed Lender that the Escrow

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[22] Affidavit of Gavin MacDonald sworn June 23, 2025 at para. 6.
[23] Affidavit of Gavin MacDonald sworn June 25, 2025 at para. 4.
[24] Letter from Sharon Kour to Darren O'Keefe and Gavin MacDonald dated June 29, 2025 as appended to the Affidavit of Alina Stoica dated June 30, 2025.
[25] Letter from G. MacDonald dated July 2, 2025 as appended to the Stoica Affidavit.

Agreement has been terminated for any reason; and

(c) to the Proposed Lender upon notice from the Proposed Lender to return the escrow funds on or after August 15, 2025.[26]

17. The Applicants and the Proposed Lenders have refused to provide the Monitor with copies of the Closing Documents which set out the conditions precedent to be satisfied or waived prior to funds being release to creditors. 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.

18. From what has been disclosed, however, it is apparent that the Applicants are in substance contemplating a restructuring. The Proposed Lenders have confirmed, among other things, that:

(a) the escrow funds were advanced pursuant to loan and security documents (which have not been disclosed by the Applicants or the Proposed Lenders);

(b) the security granted in respect of the loan includes collateral mortgages over the Applicants' property, general security agreements, and unlimited personal guarantees from Mr. Rice and The Rice Family Trust (2020);

(c) the share capital of the Applicants will be restructured as part of the transaction, however the final structure has yet to be settled;

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[26] Escrow Agreement, Section 3.1(2) as appended to the Affidavit of Alina Stoica dated July 3, 2025 (the "**Stoica Affidavit**").

(d) certain assets of the Applicants will be sold to generate additional working capital for the businesses and BLCL has covenanted to sell certain assets as mandatory repayments of its loan; and

(e) not all creditor claims will be paid in cash from the escrow funds, most notably the claim by Beck Flavors will continue to be litigated, the claims of CRA and ACOA will be paid pursuant to payment plans, and post-filing payments will be paid "in the ordinary course of business".[27]

19. The Applicants and Proposed Lenders have not disclosed the identities of the investors, shareholders, or beneficial owners of the Proposed Lenders, however, the Proposed Lenders have confirmed that Mr. Rice is one of the shareholders, investors and/or beneficial owners of the Proposed Lenders.[28] They have also confirmed that the loans are guaranteed by Mr. Rice, The Rice Family Trust (2020) and 3342963 Nova Scotia Limited.[29] The Proposed Lenders have not specified any other shareholder of the Applicants that has provided any guarantees.

20. The Proposed Lenders state that an *investor in the Proposed Lenders participated in the SISP*.[30] The Proposed Lenders do not provide the identity of this person nor the bid with which the investor was associated. The Proposed Lenders state that "a number" of the Proposed Lenders' financiers, lenders, investors, shareholders and beneficial owners *did not* participate in the SISP.[31] 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.

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[27] Letter from Gavin MacDonald dated July 2, 2025 as appended to the Stoica Affidavit at Exhibit "A".
[28] Letter from G. MacDonald dated July 2, 2025 as appended to the Stoica Affidavit.
[29] Letter from G. MacDonald dated July 2, 2025 as appended to the Stoica Affidavit.
[30] Letter from G. MacDonald dated July 2, 2025 as appended to the Stoica Affidavit.
[31] Letter from G. MacDonald dated July 2, 2025 as appended to the Stoica Affidavit.

D. THE SISP

21. The Applicants state, on the one hand, that they do not challenge the conduct of the SISP nor do they assail the Monitor's role in the SISP.[32] On the other hand, they assert that the SISP lacks both clarity and certainty because the SISP is deficient.[33]

22. There are a number of problems with that assertion by the Applicants. The first is that the Applicants brought forward the motion to approve the SISP. Any lack of clarity or certainty, as a general matter, is not a result of the Monitor's conduct of the SISP.

23. A second problem is with the "gap" that the Applicants say is in the SISP. The Applicants recommend that future SISPs be "tailored for the specific circumstances for the case at hand. The use of a boiler plate SISP should be avoided. In this case the SISP could have included a drop-dead date for the Company to refinance as all parties knew that effort was ongoing. That in turn would provide the clarity and certainty for bidders that forms the basis of the Monitor's concern on the go forward "chilling effect"".[34]

24. The gap that the Applicants identify was, however, part of the SISP that they sought and obtained. Notwithstanding a consistent intent to attempt to refinance and repay creditors, they did not include in the SISP language expressly permitting a right to redeem nor any language specifying a mechanism to terminate the SISP after offers are accepted. If the Court is inclined to accept the Applicants' submission that lack of a drop-dead date for refinancing in the SISP means that the Applicants were entitled to refinance and terminate the SISP *at any point in the proceeding and even after the Bid Deadline*, it is equally arguable that the absence of any language in the SISP expressly preserving a debtor's right to redeem at any point in the

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[32] Applicants' Rebuttal at para. 5.
[33] Applicants' Rebuttal at para. 20.
[34] Applicants' Rebuttal at para. 21.

proceeding precludes the debtor from taking such steps. The Monitor submits that parsing the language of the SISP would not provide the Court with any assistance in this case. If the Applicants had sought a right to "redeem" even after the Bid Deadline, it was incumbent on them to include that right and to address the chilling effect that would have on the SISP generally.

25. A third problem with the Applicants' arguments about the alleged deficiency in the SISP rests in what it does, in fact, say. The SISP expressly includes among the transactions being solicited any bids to "refinance the Operating Businesses and/or the Companies"[35] and required that any such transaction be submitted by the bid deadline. If anything, the provisions of the SISP narrowed scope of the opportunity to redeem under a sale process as set out in case law.

26. The Applicants frame this Court's decision as either permitting redemption by a debtor at any time in the proceeding or depriving a debtor of its right to redeem if a SISP is conducted. They state that "going forward, any Debtor wishing to avail of the CCAA should fight as hard as possible against a SISP. If the bank recommends it, they should fight it. Any vagueness in the process will be read against them. There is no guarantee that you will be able to redeem after a SISP commences."[36]

27. This catastrophic narrative and lack of nuance oversimplifies the issue. The Monitor submits that the issue is not whether a debtor is deprived of its right to redeem if a SISP is conducted, but rather at what point in the CCAA proceeding is the right to redeem (or to file a plan) outweighed by the need to protect the integrity of the process – which includes any SISP that was conducted.

28. The Monitor advised the Applicants and Mr. Rice that it would consider supporting a

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[35] Answers to Interrogatories of the Monitor Q. 2(e), Exhibit "B" to the Stoica Affidavit.
[36] Applicants' Rebuttal at para. 23.

refinancing transaction that paid out all creditors prior to the end of the Bid Deadline.[37] The Applicants' hypothetical argument about restrictions on a right to refinance prior that point in time is both a misstatement of the law and a false criticism, since the Applicants did not refinance prior to the Bid Deadline, although they had the opportunity to do so.[38]

29. The Applicants object to the Monitor's position that the right to redeem expires upon the Monitor's acceptance of a transaction in a SISP. Instead they assert that a logical "drop dead" date is the issuance of an approval and vesting order.[39] They cite no case law for their position.

30. On the contrary, Courts have been clear that allowing redemption at a sale approval motion triggers different considerations at that late a stage. In *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.,* the Ontario Superior Court (Commercial List) held that where a receiver had already run a bid process, selected a purchaser and was moving to approve the purchase, different considerations arise. The Court held that wider issues arise than those in any particular case in that situation, because "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."[40]

31. There is no material difference between that concern on a receivership sale in that case versus any other insolvency sale process, such as the SISP in this case. The interests of restructuring generally, including obtaining the highest and best value for businesses subject to a sale process and also thereby hopefully avoiding the detrimental effects of a business fully ceasing operation or assets going to waste, are best served by a robust set of processes in which

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[37] Supplemental Report at section 2(6).
[38] Applicants' Rebuttal at para. 44.
[39] Applicants' Rebuttal at para. 28(b).
[40] *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832, para 83 citing *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 3659, para 36.

market participants can have at least some certainty.

32. It is clear, therefore that the point at which Courts generally consider a redemption to be "late" is prior to the issuance of an approval and vesting order, and is in fact when an offer that is unconditional but for Court approval is accepted.

E. THE SUBSTANCE OF THE APPLICANTS' PROPOSED TRANSACTION

33. Beyond the barrier that the timing issues above pose for the Applicants' motion, the substance of the Applicants' proposal raises many concerns.

34. The first such concern is that it would be unfair to allow a participant in the SISP a second kick at the can.

35. Here, in substance, the Applicants have advanced a restructuring transaction that they should have advanced in the SISP. The proposed transaction that is the subject of this motion is not the first transaction (or plan or proposal, whichever the appropriate term) advanced by the Applicants and their shareholders. The Applicants submitted a draft plan of arrangement at the bid deadline that set out a transaction that included a conditional refinancing and conditional sale of the Applicants' Lost Bell Winery, in the form of a draft plan of arrangement with several conditions.[41]

36. The Monitor makes a distinction between the interests of the Applicants on the one hand, and the shareholders acting in their own interests on the other, in recognition that the main economic interests that are being preserved under the Applicants' transaction is the shareholder equity in the Applicants. In all other regards, the Applicants' transaction is similar to the transactions the Monitor seeks approval of, in that creditors will be repaid whether in full or close

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[41] Fourth Report, section 11(5).

to in full, and the business will continue as a going concern, preserving the enterprise as a Nova Scotia business, and preserving employment.

37. Effectively, the only difference is whether the equity of the Applicants is retained by the current shareholders, including Mr. Rice, or whether the business will continue under new ownership.

38. The Supreme Court of Canada has recognized that one valid purpose of the restructuring regime is to allow a business to survive, albeit under a different corporate form or ownership.[42] The Supreme Court's observation implicitly acknowledges that the interests of a business may be separate from the interests of its owners.

39. The economic interests being served by the Applicants' motion are the interests of the shareholders in retaining their equity. The Applicants state that for the "Company", the exceptional value provided in this process is the option to emerge from the CCAA with its debt restructured, assets intact, and to carry on business as usual.[43]

40. Under the Lynch and Coast Transactions (the "**Transactions**"), the Applicants would be paid the value of any equity in cash from the sale proceeds, assuming creditors are paid first.

41. The Monitor notes that in every case in which redemption is sought, there is a debtor seeking to retain its equity in its property. This means that if the retention of equity were considered "exceptional value", there would be exceptional value in every redemption case. In reality, Courts have not applied the phrase "exceptional value" in that manner. Rather, in each and every case where a late redemption has been denied the value of any equity is implicitly part of the interests that are overtaken by the need to maintain confidence in sales processes

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[42] *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, para 45.
[43] Applicants' Rebuttal at para. 49.

generally.

F. THE MONITOR SEEKS APPROVAL OF THE LYNCH AND COAST TRANSACTIONS

42. The Monitor has summarized the law with respect to the approval of the Transactions in its Memorandum of Law.

43. Among other things, the Memorandum of Law summarized the jurisprudence with respect to circumstances where debtor companies have attempted to exercise the right to redeem real property after the completion of a court-approved sale process. The guiding principles of whether to permit a debtor company to redeem are set out in the Ontario Court of Appeal's decision of *Rose-Isli Corp v Smith*, 2023 ONCA 548:

> - 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;
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> - 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), 1991 CanLII 2727 (ON CA), 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
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> - 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.[44]

44. In addition to the law in the Memorandum of Law, there is a line of jurisprudence that considers whether and when the Court will accept a bid received after a bid deadline in a sale

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[44] *Peakhill Capital Inc. v. 1000093910 Ontario Inc*., 2024 ONCA 558, paras 49-50, citing *Rose-Isli Corp v Smith*, 2023 ONCA 548, paras 9-10.

process. The Monitor submits that this line of jurisprudence is instructive for the present motion.

45. In considering post-bid deadline offers the court has reiterated three basic principles:

(a) when determining the providence of a court officer's sale conduct, the court should examine the court officer's acts in light of the information it possessed when it agreed to accept an offer;

(b) under *Soundair*, 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; and

(c) if the post-deadline offer does not tend to show that the court officer was improvident, then the post-deadline offers should not be considered upon a motion to confirm a sale recommended by a court officer.[45]

46. For example, in *Terrace Bay Pulp Inc, Re*, Justice Morawetz (as he then was) addressed a motion by the applicant to approve a sale arising from a sale process, and a motion by a late bidder to approve its offer which was higher than the offer arising from the sale process.[46]

47. In considering the *Soundair* factors and s. 36(3) of the CCAA, Justice Morawetz in that case declined to approve the late offer even though it was $8 million higher than the approximate $27 million offer arising from the sale process.[47] The Court held, among other things:

> 59 ... Again, it is useful to review the statements of Galligan J.A. in *Soundair*. At paragraph 46, he states:

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[45] *Xquisite Capital Corp. v. Crystal Farms Limited, et al.*, 2023 ONSC 6080, para 13; *Terrace Bay Pulp Inc., Re*, 2012 ONSC 4247 [Morawetz J] ("***Terrace Bay***"); *Harbour Grace Ocean Enterprises Ltd., Re*, 2024 NLSC 47 ("***Harbour Grace***").
[46] *Terrace Bay*.
[47] *Terrace Bay*, paras 43-66.

> 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 the receiver and entering into an agreement with it, a court will not likely interfere with the commercial judgment of the receiver to sell the asset to them.

60 At paragraph 47, Galligan J.A. referenced the comments of Anderson J. in *Crown Trust Co. v. Rosenberg* [1986 CarswellOnt 235 (Ont. H.C.)], at p. 109:

> The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise.

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63 There have been no allegations that the Monitor proceeded in bad faith. Rather, the complaint is that the consideration in the offer by Tangshan is superior to that being offered by the Purchaser so as to call into question the integrity and efficacy of the Sales Process.

64 I have already concluded that the actions of the Receiver in marketing the assets was reasonable in the circumstances. I have considered the situation facing the Monitor at the time that it accepted the offer of the Purchaser and I have also taken into account the terms of the Late Offer. Although it is higher than the Purchaser's offer, the increase is not such that I would consider the accepted Transaction to be improvident in the circumstances.

48. Similarly, in *Harbor Grace Ocean Enterprises Ltd*, the Newfoundland Court approved a transaction over the opposition of a late bidder who sought to have its late bid approved. In denying the late bid, the Court relied on *Terrace Bay* and stated:

> Thus, when I consider if I should order the Monitor to accept the Gray bid, I should:
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> (a) authorize the sale outside of the SISP only in the most extraordinary circumstances when I believe the Monitor did not act providently to obtain the best price;
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> (b) exercise extreme caution before I interfere with the SISP especially when the Court approves an agreement to sell an unusual asset like a shipyard; and

(c) not sit on an appeal and review in minute detail every element of the Monitor's actions during the SISP.[48]

49. The court in *Harbour Grace* concluded that no extraordinary circumstances existed that should permit a bid outside the sale process to be approved. Specifically, and tellingly for the facts of this matter, the value of the late bid did not demonstrate that the approved transaction was so unreasonably low as to establish that the Monitor was improvident in accepting it.[49] Further, the bidder that submitted the late bid was an insider and there was no reason the rules of the sale process should not apply to him.[50]

50. In this case, the Monitor has not acted improvidently. There is no suggestion that it has. The Applicants' transaction does not result in higher value than the transactions accepted by the Monitor, let alone significantly higher value.

51. At the time the Monitor selected the highest and best bids, the only offer from the Applicants was a draft plan of arrangement, which was inferior to the Transactions in addition to being highly conditional and which it communicated to Mr. Rice was inferior to other bids submitted in the SISP.

52. The effect of the Applicants' motion would be to circumvent the SISP. The transactions described in the Applicants' motion are not the same as those described in the draft plan of arrangement submitted at the bid deadline and are, under any definition, late breaking.

53. The Applicant takes issue with the Monitor's opposition to the Applicants' proposal in this matter. That overlooks, however, that the Monitor is the only party in this proceeding with duties and obligations of a court-appointed officer and the only party in this proceeding mandated to

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[48] *Harbour Grace*, para 105.
[49] *Harbour Grace*, para 110.
[50] *Harbour Grace*, para 115.

protect the integrity of the process. The Monitor has no personal or economic interest in the outcome of this motion.

54. The Monitor respectfully submits that the established body of case law and overarching principles of restructuring require the Court, in this case, to override the interests of the debtors and their shareholders to uphold the integrity of the restructuring regime and the Court process by which it is advanced.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of July, 2025.

/s RECON

RECONSTRUCT LLP

LIST OF AUTHORITIES

1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10

2. *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832

3. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 3659

4. *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONCA 558

5. *Rose-Isli Corp v Smith*, 2023 ONCA 548

6. *Xquisite Capital Corp. v. Crystal Farms Limited, et al.*, 2023 ONSC 6080

7. *Terrace Bay Pulp Inc., Re*, 2012 ONSC 4247

8. *Harbour Grace Ocean Enterprises Ltd., Re*, 2024 NLSC 47