



**SUPREME COURT OF NOVA SCOTIA**

In the matter of the Companies' Creditors Arrangement Act, R.S.C 1985, c. C-36, as amended (the "CCAA")

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") for relief under s. 11 of the CCAA and other relief

**Affidavit of Paul E. Radford, K.C.**

I, Paul E. Radford, K.C. of Halifax, Nova Scotia, make oath and give evidence as follows:

1. I am a practising member of the Nova Scotia Bar and am counsel with the law firm Patterson Law.
2. I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information and belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. I was contacted by Christene Hirschfeld, K.C. of Boyne Clarke on February 12, 2024 indicating she had clients who had received demands for payment from Royal Bank of Canada ("Royal Bank") with forbearance agreements required to be signed by Royal Bank but was unable to act given that her law firm had an agreement with Royal Bank not to act against it.
5. I obtained the names of the clients, being the Defendants in this proceeding, and conducted an internal conflict search and obtained confirmation that my firm had no conflicts on February 13, 2024 and I reached out to the Defendants to make arrangements to represent them on February 13, 2024 and reached out to Christene Hirschfeld to obtain copies of the demands and forbearance agreements, and I emailed Maurice Chiasson, counsel for Royal Bank informing him that I have been retained and seeking an extension of time for advising them on the forbearance agreements.
6. My earliest discussion with the Defendants was to learn about the companies that were the subject of the demands for payment by Royal Bank. I was informed by Alex Rice that the three numbered companies in the heading of this affidavit are operating companies (the "operating companies") owned by the three individual defendants that produced (in the same order as set out in the heading) vodka coolers and spirits, secondly, wine and thirdly, cider and that Blue Lobster Capital Limited was a real estate company owned only

by Alex Rice that owned unrelated real estate but had purchased a property from one of the operating companies to provide the operating company with cash flow.

7. In my earliest discussions with the Alex Rice and Dan Allen I discussed the financial situations of the operating companies, the terms of the forbearance agreements proposed by Royal Bank, various alternatives available to them, including filing a notice of intent for a proposal under the *Bankruptcy and Insolvency Act* or a filing under the *Companies' Creditors Arrangement Act* which would stay the proceedings by Royal Bank, and their future intentions and expectations about the operating companies being able to satisfy the demands of Royal Bank.
8. I was informed by Alex Rice and Dan Allen that they had been in negotiation with a potential buyer of the operating companies and also that they felt the companies had encountered difficulties because their chief financial officer had take a leave of absence due to illness but the operating companies were financially sound and would recover and that they would seek both a refinancing and continue the discussion of the sale and that they felt they could work with an extended date for the forbearance agreements, and were fully willing to cooperate with Royal Bank and I replied to Maurice Chiasson with two similar emails both on February 22, 2024, one regarding Blue Lobster Capital and one regarding the operating companies, and the email regarding the operating companies stated in part:

"My client agrees to cooperate with RBC in order to provide a clear and transparent path forward for the Bank to be satisfied with the financial performance of the Companies and with its security position on an ongoing basis, with the goal of repayment of RBC loans through a sale, refinancing or, if RBC considers it desirable to resume a normal banking relations with the Companies in whole or in part."

"As my clients have mentioned to Mr. Northrup, they have had significant discussions with a potential acquiring party which if a sale is consummated will substantially improve the position of the Bank either by way of complete payout or partial payout with continuation of some portion of the loans if the Bank is willing to continue any such loans on a fully secured basis. Messrs. Allen and Rice will keep the Bank informed of progress in the sale negotiations as well as providing all the required information to RBC and its advisor, E&Y, needed to evaluate the ongoing condition of the Companies. While my clients are would like to continue a banking relationship over the longer term with RBC, they appreciate this is a process set out in the forbearance letter to navigate in Special Loans.

As RBC is aware, the CFO for the Companies has been on medical leave which is a partial cause of the reduced financial reporting. The Companies are seeking to hire a bookkeeper to assist their internal accountant, who will bear most of the workload in preparing the cashflow statements and other reporting requirements under the forbearance arrangements."

9. In my emails of February 22, 2024 I also requested several amendments to the forbearance agreements and an extension of the forbearance agreements for 120 days, which was not accepted.
10. On February 29, 2024, after having met with my clients I forwarded to Maurice Chiasson the signed forbearance agreements and confirmed that my clients were willing to provide

the additional personal and corporate guarantees and collateral mortgages as additional security for Royal Bank's loans and I stated as follows:

"My clients are working on a plan to refinance and reduce if not eliminate the RBC debt that will have to occur in several transactions and thus will be requesting payouts of specific loans from RBC in exchange for releases of certain security and are cognizant that RBC must be satisfied with its security position in for the remaining indebtedness."

11. On March 11, 2024 I emailed Maurice Chiasson stating that Blue Lobster Capital had received an offer to purchase its residential condominium property in Charlottetown, PEI and stating that the excess proceeds from the sale would be applied to indebtedness of Blue Lobster Capital.
12. On March 13, 2024 I received from Maurice Chiasson the forms of additional collateral mortgage security required by Royal Bank to be executed by my clients.
13. On March 22, 2024 by letter I delivered the executed guarantees and collateral mortgages to Maurice Chiasson which included the following:
 

"Mr. Allen and Mr. Rice have delivered all the deliverables that to their knowledge have been required from them under the Forbearance Agreements. If your client is not satisfied with the communications from them or in meeting any other obligations under the Forbearance Agreements , please let me know as I understand from them, contrary to what we verbally discussed, that they have been in contact with Mr. Northrup and wish to use their best efforts to continue to meet their obligations under the Forbearance Agreements. They are actively seeking and anticipate having success in refinancing the RBC debts."
14. On April 29, 2024 Maurice Chiasson emailed me stating the Royal Bank was aware from communications from my clients that it was seeking financing from Farm Credit Canada and asking me to send him a copy of any discussion paper and asking about sales activity on the Charlottetown condominium and stating that there was a "yacht" owned by Blue Lobster Capital in British Columbia and indicating that if the forbearance is to be continued Royal Bank would want a mortgage on that yacht.
15. On May 2, 2024 I replied by email to Maurice Chiasson attaching a copy of a Discussion Paper dated April 29, 2024 from Farm Credit Canada ("FCC") for loans that include refinancing existing debt, a report that the clients have applied to three other chartered banks to payout and replace Royal Bank's operating facilities, and I provided details of the "yacht", which is in fact a fishing vessel, that is held for sale and stating that other Blue Lobster Capital properties may be offered for sale.
16. On May 14, 2024 by email Maurice Chiasson requested updated information on several matters to which I replied by email on May 21 that FCC would likely take between 45 and 75 days to complete underwriting , that Blue Lobster Capital would either sell some properties but would need Royal Bank's cooperation by agreeing to release collateral mortgages on Blue Lobster properties to allow them to be sold or refinanced, that operating lines of credit for the operating companies are being discussed with three chartered banks with particular interest by CIBC and that the fishing vessel is listed for sale and that there are interested purchasers and that proceeds of sale will be applied to Royal

Bank loans and that the Director of Finance of the operating companies is looking for a proposal on any term loan payments from Royal Bank.

17. On June 15, 2024 I replied to Maurice Chiasson's email of May 28, 2024 with a report on the status of the FCC offer stating that FCC is waiting for Grant Thornton to finalize the review engagement report on the June 30, 2023 financial statements, and that upon receipt of those financial statements it could quickly prepare an offer, that the Charlottetown condo is under a firm agreement for sale with a closing date of July 16, 2024 and that the net proceeds of this sale will be applied towards Royal Bank's loans. I also raised the issue that the statements made by Maurice Chiasson that all Royal Bank loans had to be paid out at the same time causes a chicken and egg dilemma as refinancing can't be done with the all indebtedness collateral mortgages on the properties of Blue Lobster Capital. I also enquired why there isn't a schedule of payments for the term loans in the term loan agreements proposed by RBC.
18. On June 21, 2024 I replied to Maurice Chiasson's email of June 18, stating that the Director of Finance of the operating companies has been providing updates and timelines for requested information to Royal Bank's financial consultant, Ernst & Young and attaching a copy of an email showing delivery of certain financial information. I further questioned why Royal Bank wouldn't agree to sale by Blue Lobster Capital of any of its properties individually unless all loans owing by all companies were paid off at the same time, given that Royal Bank couldn't realize any more on its realization efforts by sale of a property than Blue Lobster could by an arms length sale of a property. The concluding sentence in my email is: "As I see it my clients are cooperating and have a solid plan to retire all RBC debt. I intend to provide updates as to progress and welcome any comments you have or concerns that RBC has on progress or outstanding issues."
19. On July 9, 2024 I sent an email report to Maurice Chaisson stating that FCC is awaiting the finalization of the review engagement report from Grant Thornton on the June 30, 2023 annual financial statements, which is going through a process for approval of the formal notes which I am informed relates to the forbearance situation. I also reported on the need for a payout statement for the Royal Bank mortgage on the Charlottetown condo to allow it to be sold on July 16 and that there is an interested buyer of the fishing vessel and stating that the term loan agreements still don't have payment schedule.
20. On July 22, 2024 I received an email from Maurice Chiasson stating that he confirms receipt of payment of the net proceeds from sale of the Charlottetown condo to be applied to the term loan of Blue Lobster Capital and that the balance was applied to the operating loan of 3284906 Nova Scotia Limited and he doesn't have an indication if my clients will sign the term loan agreements and that the operating loan credit limit for 3284906 Nova Scotia Limited is to be reduced over July and August from \$100,000 to \$25,000 because the term loans are not being repaid.
21. I replied by email on July 23, 2024 stating that my clients are willing to sign the term loan agreements but ask for some cash flow considerations due to the Liquor Control Board of Ontario strike which has affected cash flow, requesting that the reduction of the line of credit phased in be delayed slightly until mid September, that the proceeds from sale of Blue Lobster Capital's properties over and above the amount of the term loan be applied to Blue Lobster Capital's loans, and explaining that Grant Thornton has still not delivered its review engagement report on the June 30, 2023 financial statements.

22. On August 15, 2024 I reported by email to Maurice Chiasson that Alex Rice had applied for refinancing for the Royal Bank loans to Blue Lobster Capital through his mortgage broker and was told he would qualify but steps for formal approval should wait until there was confirmation that the collateral mortgages registered against them securing indebtedness of the operating companies would be discharged on the refinancing. I also reported that the Grant Thornton review engagement reports had finally been delivered to FCC and that discussions have taken place with chartered banks for operating facilities for the operating companies.
23. On August 27, 2024 Maurice Chiasson's emailed me asking for an update stating that Royal Bank had asked for payout by August 31, 2024. I replied on August 30, 2024 stating that the credit manager at FCC had been in an accident and was working part-time only and I attached an email from FCC confirming this. I noted the significant reductions in loans due to payments from the sale of the Charlottetown condo and soon the fishing vessel, the reduction in operating loans and continued loan payments and stated that the risk to Royal Bank of losses on these loans has been reduced materially from when these companies were placed in special loans and the operating companies have been providing rolling cash flow statements that show improved profitability and loan balances have been reduced and are continually being reduced and that an extension for the operating companies to refinance and pay out Royal Bank loans thus won't further prejudice the Royal Bank. I further stated:
- "My clients are continuing to vigorously pursue the final approvals to refinance the RBC debt and I on their behalf request a little more time to get this financed with will clearly result in the best outcome for RBC and the companies. I will update you with the additional progress reports as additional information is available from the two refinancing applications."
24. On September 16, 2024 I emailed Maurice Chiasson advising that the fishing vessel sale conditions had been satisfied and that closing of the sale of the vessel was scheduled for September 14, 2024.
25. On September 27, 2024 I emailed Maurice Chiasson reporting that the fishing vessel sale closed and I attached a copy of a wire confirmation showing that net sales proceeds of \$233,184.41 was deposited to the Blue Lobster Capital account for payment towards Royal Bank loans. I also stated that I was informed by my clients that FCC had informed them that it planned on making a decision very shortly.
26. On November 4, 2024 I informed Maurice Chiasson by email that FCC had issued a revised Discussion Paper dated October 4, 2024 with loan of \$5,000,000.00 but that before it would finalize it as an offer it required that the interim financial statements provided to it by the operating companies be also reviewed by Grant Thornton as the 2023 financial statements were now too old. I stated I understood from Alex Rice that Grant Thornton had indicated it expected to have the review engagements statements ready by the end of November. I further stated as follows:

"Clearly the delay in getting the 2023 financial statements finalized was at the root of the delay in getting the refinancing finalized, however considerable progress has been made including resolving the accounting staffing issues so that financial results are done on a timely basis, timely getting term loan financing approval from FCC, getting to advanced stage of approval for operating loans and for refinancing Blue Lobster Capital, and living within RBC's reduced financing parameters.



I suggest that the progress made to date is indicative of a very strong likelihood of all RBC's financing being repaid before the end of this year. The challenge in getting any final approvals for refinancing has been the cross collateralization of RBC indebtedness, as refinancing of certain loans can't be done until the longest item in the critical path for all the refinancing steps is completed.

While completion of all refinancing has taken longer than expected, it appears to be on a path to certain success in paying out RBC.

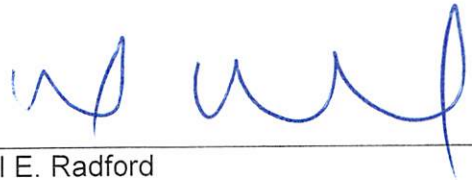
In the meantime I will keep you informed of material information regarding the remaining steps in the refinancing to pay out RBC in full."

- 27. On November 19, 2024 at 3:56 pm I received an email from Maurice Chaisson stating that the Royal Bank had lost all patience and confidence in the ability of the companies to proceed with their refinancing offers and that the bank instructed him to proceed with an application in Supreme Court on November 28, 2024 for a appointment of Ernst & Young as a receiver. I first saw this email in the evening of November 19 and I called the cell number of Maurice Chiasson and received a text reply that he was on a deadline and said he would speak the next morning.
- 28. On November 20, not hearing from Maurice Chiasson, I left a voicemail for him and he returned my call late in the day. I asked him why he filed this court application to appoint a receiver without giving me some advance notice and he responded that he specifically asked the Royal Bank for authorization to inform me before filing it and he received specific instructions not to give me any advance notice.

**SWORN** before me at Halifax,  
in the County of Halifax,  
Province of Nova Scotia,  
this 27<sup>th</sup> day of November, 2024.

  
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Signature of authority

**ANTHONY W. SCOTT**  
A Barrister of the Supreme  
Court of Nova Scotia

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Paul E. Radford