

Form 5.03

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 (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

NOTICE OF APPLICATION IN CHAMBERS

TO: The Service List as set out in Schedule "A" hereto

The applicant requests an order against you

The Applicants are applying to a judge in chambers for an initial order ("**Initial Order**"), substantially in the form attached as Schedule "**B**" hereto, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), which, *inter alia*:

- (a) abridges the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;
- (b) declares that the Applicants are debtor companies to which the CCAA applies;
- (c) appoints KSV Restructuring Inc. ("**KSV**" or the "**Proposed Monitor**") as the monitor of the Applicants in these proceedings (the "**CCAA Proceedings**"); and
- (d) stays, for an initial period of ten (10) days (the "**Stay Period**"), all actions, suits or proceedings and remedies taken or that might be taken against or in respect of the Applicants, the Proposed Monitor, or the Applicants' directors and officers, or affecting the Applicants' business or current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, except with the written consent of the Applicants and Proposed Monitor or otherwise permitted by law and with leave of this Court.

The applicant started this application by filing this notice on the date certified by the prothonotary.

Grounds for order

1. As of the date of this Application, the Applicants are insolvent and are entities to which the CCAA applies. The claims against the Applicants exceed \$5,000,000.00.
2. Details regarding the Applicants' corporate structure, financial position, stakeholder interests, and economic contributions within Nova Scotia are outlined in the Affidavit of Kevin Alexander Rice (the "Initial Affidavit").
3. The Applicants have been experiencing liquidity challenges since 2023 for a variety of reasons that are outlined in the supporting materials filed herewith. On 19 November 2024, the Applicants were served with a receivership motion by their primary secured lender, the Royal Bank of Canada (the "Receivership Motion"). This followed a prolonged informal forbearance arrangement.
4. The Applicants oppose the Receivership Motion on numerous grounds and have sought an adjournment to have the Receivership Motion heard either concurrently with this Application for an Initial Order or, preferably, at the Comeback Hearing.
5. Despite their current cash flow challenges, the Applicants' balance sheet is positive, their businesses are profitable, and their prospects of achieving a successful restructuring within a CCAA proceeding and continuing to operate as a going concern are high.
6. In comparison, the relief requested under the Receivership Motion will jeopardize the ongoing viability of the Applicants' businesses, thereby also risking the jobs of their approximately 100 employees. The proposed liquidation mandated under the Receivership Motion will ultimately see RBC repaid out of asset sales but fails to maximize the Applicants' collective going concern value and disregards broader stakeholder interests.
7. As a result, the Applicants require urgent Court protection under the CCAA. If an Initial Order is granted, the Applicants will have the opportunity to work with the Proposed Monitor to develop a plan which addresses the RBC debt and their liquidity issues but which minimizes the negative collateral impact on the Applicants businesses so that they

can remain operational and continue as a valuable contributor to the Nova Scotian economy.

8. The Applicants seeking only what is strictly necessary in their proposed Initial Order, being the imposition of a Stay and approval of the Proposed Monitor's appointment. The Applicants have determined that their cash flow is sufficient to sustain operations through the initial 10-day period and are not currently requesting administration charges.
9. Prior to the expiry of the Stay Period under the Initial Order, the Applicants will bring a further motion on notice to affected parties that will take place before the Court no later than 10 days following the date of the Initial Order (the "**Comeback Hearing**").
10. At the Comeback Hearing, the Applicants will seek an amended and restated Initial Order ("**ARIO**"). The ARIO will, *inter alia*, seek an extension of the Stay and confirm the appointment of the Proposed Monitor, update the Court on their progress toward finalizing a restructuring plan for Court approval, and seek any other additional relief that is deemed necessary in consultation with the Proposed Monitor. This is likely to include approval for debtor-in-possession financing and administration charges.

Stay of Proceedings

11. The Applicants require the Stay as part of the Initial Order and will seek an extension thereof at the Comeback Hearing.
12. The Applicants submit that the requested Stay is reasonable and necessary in the circumstances. A Stay is urgently required to provide the Applicants breathing room due to RBC's Receivership Motion.
13. With the benefit of a Stay, the Applicants can continue operating in the ordinary course while working with the Proposed Monitor to formalize a plan to preserve and maximize their value for the benefit of all stakeholders as opposed to just suit the interests of one secured creditor. This course of action will fulfil the remedial policy aims of the CCAA.

Appointment of Monitor

14. The Proposed Monitor has consented to act, subject to Court approval. The Proposed Monitor is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*,

RS.C., 1985, c. B-3, as amended (the "BIA") and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

15. The Proposed Monitor will assist the Applicants in connection with the development and implementation of a restructuring and investment plan which will ultimately be submitted for Court approval.
16. Given the Proposed Monitor's experience in matters of this nature and ability to perform monitoring functions without delay, it is believed to be in the best interests of the Applicants that the Proposed Monitor be appointed.

Other Grounds

17. The Applicants rely on:
 - (a) The provisions of the CCAA generally, including s. 11, 11 .001, 11 .02(2) thereof; and
 - (b) such further and other grounds as counsel may advise and this Honourable Court may permit.

Evidence supporting application

The applicants offer the following affidavits in support of the application:

- (a) Initial Affidavit of Kevin Alexander Rice sworn 27 November, 2024; and
- (b) Affidavit of Marc Dunning sworn 27 November, 2024

The applicants also rely on the consent of KSV Restructuring Inc. to act as Monitor, attached as **Schedule "C"**, the Pre-Filing Report of the Proposed Monitor and associated affidavits and such further and other evidence as counsel may advise and this Honourable Court may permit.

A copy of each affidavit is to be delivered to you with this notice, and further affidavits may be delivered before the deadlines provided in Civil Procedure Rule 5 – Application.

You may participate

You may file with the court a notice of contest, and any affidavits upon which you rely, no more than five days after this notice is delivered to you or you are otherwise notified of the application. Filing the notice of contest entitles you to notice of further steps in the application, including notice

of further affidavits.

Time and place

The application is to be heard by a judge on November 28, 2024 at 2:00 p.m., or such other time as a judge may permit, at The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (Tel: 902-424-4900). You have the right to be present and to be represented by counsel or to act on your own. If you are not present, the judge may proceed without you.


Possible order against you

The judge may grant a final order on the application without further notice to you if you fail to deliver your notice of contest on time, or if you or your counsel fail to appear in chambers at the above time, date, and place.

Filing and delivering documents

Contact information:

Signed November 27, 2024



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Prothonotary's certificate

I certify that this notice of application was filed with the court on November 27, 2024.

M Reid
Prothonotary

Morgan Reid
Deputy Prothonotary

SCHEDULE "A"
SERVICE LIST

SERVICE LIST

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