



FORCE FILED

No. S241161
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

BIFANO CONSOLIDATED INC.,
BIFANO FARMS INC.
NATA FARMS INC.,
SSC VENTURES (NO. 105) LTD. AND
SPALLUMCHEEN FARM LTD.

RESPONDENTS

NOTICE OF APPLICATION

Re: Sealing Order

Name of Applicant: Alvarez & Marsal Canada Inc., in its capacity as Monitor of the Respondents

To: The Service List attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Applicant to the Honourable Madam Justice Fitzpatrick at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Monday, June 24, 2024, at 9:45 a.m for the order set out in Part 1 below.

The Applicant estimates that the application will take 10 minutes.

- ☐ This matter is within the jurisdiction of an Associate Judge.
- ☒ This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. Orders abridging the time for service of this Notice of Application to the time actually given and deeming service good and sufficient.
2. An Order substantially in the form attached hereto as **Schedule "B"**, sealing the Confidential Supplement (the "**Confidential Supplement**") to the Third Report to Court (the "**Third Report**") of the Monitor dated June 19, 2024 in the Court file.
3. Such further and other relief as counsel may request and this Court may grant.

Part 2: FACTUAL BASIS

Background

4. All capitalized terms used but not otherwise defined in this Notice of Application shall have the meaning given to them in the Third Report, the Monitor's First Report to Court dated March 7, 2024 or the Monitor's Second Report to Court (the "**Second Report**") dated May 16, 2024, as applicable.
5. Pursuant to an Order of the Court made on February 28, 2024 (the "**Initial Order**"), the Respondents were granted protection under the CCAA and Alvarez & Marsal Canada Inc. was appointed monitor of the Respondents (in such capacity, the "**Monitor**").
6. Pursuant to the terms of the Initial Order, the Court, among other things:
 - (a) granted a stay of proceedings until March 11, 2024 and set March 11, 2024 as the date for a comeback hearing (the "**Comeback Hearing**") in these proceedings;
 - (b) granted the following charges over the property of the Respondents as security for the obligations of the Respondents to the beneficiaries of such charges:
 - (i) the Administration Charge, up to a maximum of \$150,000, to secure the fees and disbursements of counsel for the Respondents, the Monitor and the Monitor's counsel;
 - (ii) the Interim Lender's Charge, up to a maximum of \$250,000, to secure the Interim Financing Obligations owing to the Interim Lender, The Bank of Nova Scotia; and
 - (iii) the Directors' Charge, up to a maximum of \$150,000, in favour of the directors and officers of the Respondents.
7. On March 11, 2024, this Court granted an Amended and Restated Initial Order (the "**ARIO**"), which, among other things:
 - (a) extended the stay of proceedings until May 24, 2024; and
 - (b) increased the Interim Lender's Charge to a maximum of \$1,500,000;
8. As set out in the ARIO, the priority of the various court ordered charges are as follows:
 - (a) first, the Administration Charge;
 - (b) second, the Interim Lender's Charge; and
 - (c) third, the Directors' Charge.

9. At the Comeback Hearing, the Court also granted an order setting out a Sale and Investment Solicitation Procedure (the “SISP”).
10. By Order of the Court dated May 21, 2024, the stay of proceedings was extended to July 12, 2024.

The SISP

11. As noted in the Second Report, the Monitor amended the bid deadline to May 10, 2024 (the “**Bid Deadline**”). As of the Bid Deadline, the Monitor had received three (3) bids, all of which were received prior to May 10, 2024 and accompanied by a deposit. The bids are summarized in the Confidential Supplement.¹
12. Since the Bid Deadline, the Monitor has held discussions with each party that submitted a bid to clarify particulars of their bid and to request any additional information that was required to evaluate their bid.²
13. After the bids were clarified, the Monitor held meetings with the Petitioner to review the bids, to seek feedback from the Petitioner and to identify, if possible, any bid that may be deemed a “Successful Bid” (as defined in the SISP).³
14. On May 24, 2024, the Petitioner formally advised the Monitor that it did not support advancing any bid received as a “Successful Bid”.⁴
15. The Monitor has notified all bidders that their bid was not accepted as a “Successful Bid” and as at the date of this Third Report, the Monitor has returned all of the bid deposits received from those submitted bids.⁵

Part 3: LEGAL BASIS

Sealing Order for the Confidential Supplement

16. The Monitor seeks to file the Confidential Supplement under seal.
17. The test for a sealing order is set out in the Supreme Court of Canada decision in *Sherman Estate v. Donovan*, which reframed the two-step inquiry in the *Sierra Club* test into three-steps, requiring an applicant for a sealing order to establish that:
 - (a) court openness poses a serious risk to an important public interest;

¹ Third Report, para 7.2.

² Third Report, para 7.3.

³ Third Report, para 7.4.

⁴ Third Report, para 7.5.

⁵ Third Report, para 7.6.

- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sherman Estate v. Donovan*, 2021 SCC 25, 458 DLR (4th) 361, at para 38.**

- 18. In restructuring and liquidation proceedings under Canadian insolvency statutes, courts regularly grant time-limited sealing orders over pricing and related information contained in conjunction with sale approval orders, in order to avoid jeopardizing any subsequent sales process that might occur if the approved sale does not close.
- 19. The Ontario Superior Court of Justice also recently confirmed that protection of a sales process and the maximization of recovery in such a process is an important public interest that justifies granting a limited sealing order.

***Rose-Isli Corp. v. Frame Tech Structures Ltd.*, 2023 ONSC 832, 6 CBR(7th) 129 (Ont SCJ), at paras 137-141**

- 20. Sealing the Confidential Supplement is appropriate in the circumstances. The interest of the Respondents and their creditors in protecting the integrity of the sales process for the Respondents' assets is an important public interest.
- 21. The Confidential Supplement, which the Monitor seeks to seal, contains commercially sensitive valuation information respecting the Respondents' assets to be further marketed for sale. Were this information to be publically disclosed, it could be used by bidders in the liquidation process, which in turn may result in reduced recoveries and consequential negative impact on creditors.
- 22. The Sealing Order sought is limited in time and scope and is proportional to the interests of all parties. The limited nature of the Order means interference with the court openness principle is also limited. There is no reasonable alternative to the limited Sealing Order sought. It is therefore appropriate to grant the proposed Sealing Order over the Confidential Appendices.

Part 3: MATERIAL TO BE RELIED ON

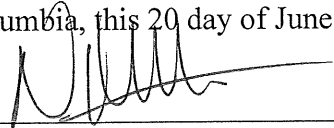
- 23. The First Report of the Monitor dated March 7, 2024.
- 24. The Second Report of the Monitor dated May 16, 2024.
- 25. The Third Report of the Monitor dated June 19, 2024.
- 26. The Initial Order dated February 28, 2024.
- 27. The Amended and Restated Initial Order dated March 11, 2024.

28. The SISP Order, dated March 11, 2024.
29. The Stay Extension Order dated May 21, 2024.
30. Such further and other material as counsel may advise and this Honourable Court may consider.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 20 day of June 2024.



Lawson Lundell LLP, Solicitors for the
Applicant, Alvarez & Marsal Canada Inc., in
its capacity as Monitor of the Respondents

This Notice of Application is filed by Bryan C. Gibbons, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, BC, V6C 3L2; Telephone No: 604-631-9152; Email: bgibbons@lawsonlundell.com.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of
Part 1 of this Notice of Application

☐ with the following variations and additional terms:

Date:

Signature of ☐ Judge ☐ Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE "A"

Service List

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AND:

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BIFANO FARMS INC.
NATA FARMS INC.,
SSC VENTURES (NO. 105) LTD. AND
SPALLUMCHEEN FARM LTD.

RESPONDENTS

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Schedule "B"

No. S241161
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SSC VENTURES (NO. 105) LTD. AND
SPALLUMCHEEN FARM LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE MADAM
JUSTICE FITZPATRICK

)
)
)
)

MONDAY, THE 24TH DAY
OF JUNE 2024

ON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as Monitor of the Respondents (in such capacity, the "**Monitor**"), coming on for hearing at Vancouver Registry on Monday, June 24, 2024, and UPON HEARING Bryan C. Gibbons and Noor Mann, counsel for the Monitor, and those other counsel listed on **Appendix "A"** attached hereto; AND UPON READING the material filed, including the Third Report of the Monitor; AND PURSUANT TO the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

Service

1. The time for service and filing of the Notice of Application is hereby abridged and validated such that this Notice of Application is properly returnable today and hereby dispenses with further service thereof.

Sealing Order

2. The following documents be sealed by the Registrar of this Honourable Court for the duration noted:

Items to be sealed

Description	Date filed: <i>(Date on Court Stamp)</i>	Number of copies filed, including any extra copies for the judge.	Duration of sealing order: <i>(to specific date or until further order)</i>	Sought	Granted	
					YES	NO
1) Entire File				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Specific Documents The Monitor's Confidential Supplement to the Third Report to the Court dated June 19, 2024	To be filed.	1	Until 30 days after the date upon which Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver and manager (in such capacity, the " Receiver "), has completed the sale of all, or substantially all, of the assets of the Respondents and has filed with the Court the certificate in the form attached hereto as Appendix "B" confirming same.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3) Clerk's Notes				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Order				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Reasons for Judgment				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Access to the sealed items is restricted to the following persons:

a. ☐ Parties

b. ☒ Counsel for the Receiver and the Petitioner

c. ☐ Others [Specify]

4. Endorsement of this Order by counsel appearing on this Application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

BRYAN C. GIBBONS
Lawyer for the Monitor, Alvarez & Marsal
Canada Inc.

By the Court.

Registrar

APPENDIX "A"

List of Counsel

Counsel	Party
Bryan C. Gibbons Noor Mann	The Monitor, Alvarez & Marsal Canada Inc.
Lisa Hiebert Mishaal Gill	The Bank of Nova Scotia
Jordan Schultz	The Respondents

APPENDIX "B"

Receiver's Certificate

No. S241161
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RECEIVER'S CERTIFICATE OF COMPLETION

Pursuant to the Order made June 24, 2024 in these proceedings (the "Sealing Order"), Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of the Respondents, files this Certificate with this Honourable Court as confirmation that it has completed the sale of all, or substantially all, of the assets of the Respondents.

Dated: _____, 202__

**Alvarez & Marsal Canada Inc., in its
capacity as Court Appointed Receiver**

Per: _____

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RESPONDENTS

SEALING ORDER



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: Bryan C. Gibbons

No. S241161
Vancouver Registry

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PETITIONER

AND:

BIFANO CONSOLIDATED INC.,
AND OTHERS

RESPONDENTS

NOTICE OF APPLICATION



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