

December 20, 2024

Raffi A. Balmanoukian  
Registrar in Bankruptcy  
Supreme Court of Nova Scotia  
The Law Courts  
1815 Upper Water Street  
Halifax, NS B3J 1S7

Dear Mr. Registrar:

**Re: In the Matter of the Bankruptcy of Atlantic Sea Cucumber Ltd.**  
**Hfx No. 45461**  
**Estate No. 51-2939212**

1. We write as counsel to Atlantic Golden Age Holding Inc. (“AGAH”) with respect to this matter. We had previously filed our submission in respect of this matter, and a hearing was conducted on or about November 22, 2024 (the “**Hearing**”). Following the Hearing, the parties were requested by the Registrar to prepare post-filing submissions on a specific point of law (the “**Post-Hearing Request**”). In particular, the Registrar made the following request of the parties:

Giving the matter some further reflection, I think I also want to hear from the parties on the applicability of the parol evidence rule to the 2018 loan documentation. If I decide that (a) the AGAH funding is debt, not equity and (b) the 2018 loan documentation does not provide for secured readvancements after a balance reaches zero, whether I should consider the evidence of AGAH’s stated “intent,” as indicated by the accountant and/or the corporate principal, to this effect.

2. We would ask that you please accept the within as our submissions made on behalf of AGAH in respect of the Post-Hearing Request. For the reasons that follow, AGAH submits that the evidence tendered in support of its objective intent at the time that the 2018 loan agreement was executed by AGAH and Atlantic Sea Cucumber Ltd. (the “**2018 Loan Agreement**”) is proper evidence and consideration of the same does not offend the parol evidence rule.



3. An opportunity for rebuttal on the position of Weihei Taiwei Haiyang Aquatic Food Co. Ltd. (“WTH”) was also provided to the other parties, and the deadline for that rebuttal submission is December 30, 2024.

### ***Parol Evidence Generally***

4. The parol evidence rule is a general rule of law which precludes admission of evidence outside of the words of a written contract that would supplement a contract that has been wholly reduced to writing. The Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SC 53 summarized the rule as follows:

[59] It is necessary to say a word about consideration of the surrounding circumstances and the parol evidence rule. The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been wholly reduced to writing (*King*, at para. 35; and *Hall*, at p. 53). To this end, the rule precludes, among other things, evidence of the subjective intentions of the parties (*Hall*, at pp. 64-65; and *Eli Lilly & Co. v. Novopharm Ltd.*, 1998 CanLII 791 (SCC), [1998] 2 S.C.R. 129, at paras. 54-59, *per* Iacobucci J.). **The purpose of the parol evidence rule is primarily to achieve finality and certainty in contractual obligations, and secondarily to hamper a party’s ability to use fabricated or unreliable evidence to attack a written contract** (*United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, 1993 CanLII 88 (SCC), [1993] 2 S.C.R. 316, at pp. 341-42, *per* Sopinka J.).

[Emphasis Added].

5. In *Elias et al v. Western Financial Group Inc.*, 2017 MBCA 110, the parol evidence rule was summarized by the Manitoba Court of Appeal in the post-*Sattva* landscape as follows:

[73] The parol evidence rule has been stated as follows in *Ahone v Holloway*, 1988 CarswellBC 336 (CA), quoting from Professor Corbin’s text, *Corbin on Contracts* (1952) at 534, (at para 16):

When the terms of a contract have been embodied in a writing to which both parties have assented as the definite and complete statements thereof, parol evidence of antecedent agreements, negotiations and understandings is not admissible for the purpose of varying or contradicting the contract so embodied,

[Emphasis in Original].

6. In this way, the rule is designed to protect the integrity of a written contract in circumstances where one party is trying to attack the validity of the contract by disputing the *intentions* of another party. As the Supreme Court of Canada notes in *Sattva, supra*, this achieves finality of written contracts at law.
7. The parol evidence rule is not designed to hamper the Court's ability to interpret a contract by considering the surrounding circumstances at the time of the contract's formation. On this point, the Supreme Court of Canada in *Sattva, supra*, held:

[60] The parol evidence rule does not apply to preclude evidence of the surrounding circumstances. Such evidence is consistent with the objectives of finality and certainty because it is used as an interpretive aid for determining the meaning of the written words chosen by the parties, not to change or overrule the meaning of those words. The surrounding circumstances are facts known or facts that reasonably ought to have been known to both parties at or before the date of contracting; therefore, the concern of unreliability does not arise.

[61] Some authorities and commentators suggest that the parol evidence rule is an anachronism, or, at the very least, of limited application in view of the myriad of exceptions to it (see for example *Gutierrez v. Tropic International Ltd.* (2002), 2002 CanLII 45017 (ON CA), 63 O.R. (3d) 63 (C.A.), at paras. 19-20; and Hall, at pp. 53-64). For the purposes of this appeal, it is sufficient to say that the parol evidence rule does not apply to preclude evidence of surrounding circumstances when interpreting the words of a written contract.

[Emphasis Added].

8. This commentary regarding the parol evidence rule makes strong practical sense when considering the general principles of contractual interpretation confirmed by the Supreme Court of Canada in the same case:

[47] Regarding the first development, the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" (*Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21, [2006] 1 S.C.R. 744, at para. 27, per LeBel J.; see also *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, [2010] 1 S.C.R. 69, at paras. 64-65, per Cromwell J.). To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the

parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed. . . . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

(*Reardon Smith Line*, at p. 574, *per* Lord Wilberforce).

...

[50] With respect for the contrary view, I am of the opinion that the historical approach should be abandoned. Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.

[Emphasis Added]

9. In light of the above, the parol evidence rule continues to exist in a limited fashion. It is to be applied in the context of disputes between parties to a contract where evidence of subjective intent or conduct during the course of the contract is elicited by a party to attack the validity of the contract. Outside of this context, the Supreme Court of Canada has confirmed that the Court is required to review evidence on the objective intent of the parties as the “surrounding circumstances” of the contract.
10. Ultimately, what is key is a determination as to the reasonable expectation of the parties at the time a contract has been entered into. In *Elias, supra*, the Manitoba Court of Appeal noted:

[76] Contracts should not be construed in a manner so as to defeat the reasonable expectations of the parties. In my view, this principle is particularly important in the context of commercial contracts, such as the ones at issue in this appeal, which were the subject of extensive negotiations between sophisticated parties. Parties to such a contract have legitimate expectations that the contract will be enforced and construed in accordance with their reasonable expectations. Indeed, the parties often will have entered into other arrangements with third parties based on an assumption that their reasonable expectations will be fulfilled. As noted in *IFP Technologies* (at para 192):

Whether expectations are reasonable can be informed by the commercial context of a contract: *Mesa [Operating Ltd Partnership v Amoco Canada Resources Ltd]*, 1994 ABCA 94 (CanLII), 1994 CarswellAlta 89 (CA)], *supra* at para 20. Reasonable expectations of contracting parties are to be found in the contract itself rather than the court's abstract perception of what is "fair". [T]he reasonable expectations of the parties operate so as to imply a term limiting one party's ability to perform a contract in a manner which undermines the interests of the other party.

[Emphasis in Original].


11. Any evidence can be reviewed to determine what the surrounding circumstances of the contract were. In fact, AGAH submits the evidence it has provided must be reviewed by this Court to provide for a fulsome understanding of the surrounding circumstances of the 2018 Loan Agreement.

***Applicability to the 2018 Loan Agreement***

12. In this case, given the words of the Supreme Court of Canada in *Sattva, supra*, AGAH submits that the concept of the parol evidence rule is somewhat of a "red herring". AGAH submitted evidence in the form of two (2) affidavits for the specific purpose of demonstrating what the circumstances were as the 2018 Loan Agreement was being signed. That evidence is both admissible in the ordinary course and is necessary for this Court to fulfill its mandate and interpret the 2018 Loan Agreement.
13. This Court has asked its question based on a hypothetical: what is to be done if the Court finds that the AGAH funding is debt, not equity, but that the 2018 Loan Agreement does not provide for secured readvancements on the face of it. The question becomes whether the evidence tendered by AGAH's director and its accountant should be considered to answer the question. AGAH submits that it is necessary to consider that evidence before the surrounding circumstances can be determined.
14. In her Affidavit, Rong Lu of Bluenose Accounting Chartered Professional Accountants notes her involvement in the design of the corporate structure of AGAH and Atlantic Sea Cucumber Ltd. She then discusses the surrounding circumstances at the time the 2018 Loan Agreement was signed:

11. The AGAH Loan was done by separate instrument and is not, in any way, a shareholder loan between related companies. There was no intention on my part, when designing the corporate structure for AGAH and ASCL, for AGAH to have or hold equity in ASCL.
  12. The size of the debt by ASCL to AGAH has varied since 2018 because the AGAH Loan acted as a line of credit. ASCL would be advanced funds by AGAH as its operations needed it.
  13. The AGAH Loan was recorded on the financial statements of ASCL as a liability. It was also recorded that the funds were advanced from AGAH.
15. In his Affidavit, Songwen Gao, director of AGAH, confirms the same intention regarding the 2018 Loan as a revolving line of credit.<sup>1</sup>
  16. AGAH submits that this is the exact type of evidence that should be reviewed by this Court when interpreting the 2018 Loan Agreement. The parol evidence rule has no applicability with respect to this evidence. In the post-*Sattva* world, any evidence which sheds light on the surrounding circumstances must not only be welcomed by the Court, but reviewed fulsomely in order to properly interpret the 2018 Loan Agreement.
  17. Consequently, AGAH urges this Court to review the Affidavits in detail with a particular regard to the stated objective intentions regarding AGAH, Atlantic Sea Cucumber Ltd., and the revolving nature of the 2018 Loan.
  18. AGAH repeats and relies upon the relief sought as described in its initial submissions to this Honourable Court.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of December, 2024.

  
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 Solicitors for Atlantic Golden Age Holding Inc.

<sup>1</sup> See paragraphs 18 to 33 of the Affidavit of Songwen Gao