

2023

Hfx No. 45461
Estate No. 51-2939212

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

IN THE MATTER OF THE BANKRUPTCY OF ATLANTIC SEA CUCUMBER LTD.

WRITTEN SUBMISSION
of msi Spergel Inc.

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I. Overview

1. The Trustee in Bankruptcy, Msi Spergel Inc. has filed a notice of motion with supporting material for, *inter alia*,

(a) an Order abridging and validating the time for service of this notice of motion and supporting materials pursuant to Rule 6 of the *Bankruptcy and Insolvency General Rules*, C.R.C. 1978, c. 368, as amended, and dispensing with further service thereof;

(b) an Order for confidentiality pursuant to *Nova Scotia Civil Procedure Rule* 85.04 as regards the Confidential Supplement to the Third Report of the Trustee dated April 8, 2026; and

(c) an Order pursuant to section 30 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (“**BIA**”), approving the sale of the property, assets and undertakings of Atlantic Sea Cucumber Ltd. as set out in the Trustee’s Third Report and in the Confidential Supplement and granting an asset vesting order

II. Concise Statement of Facts

2. This Court issued an order approving a sale and investment solicitation process (“**SISP**”) on October 2, 2025. The Bid Deadline was January 30, 2026, and, on or about February 13, 2026, the Trustee selected the successful bidder. The Trustee has now filed this motion seeking Court approval of the sale.

III. Issues

3. Should this Court issue an order for the following relief: (a) abridging and validating time for service, (b) a confidentiality, and (c) sale approval.

IV. Law and Argument

(a) abridgement

4. The relief sought in this motion is pursuant to the BIA and therefore the *Bankruptcy and Insolvency General Rules* supersede the *Nova Scotia Civil Procedure Rules* in the event of any inconsistency.

5. BIA Rule 3 states:

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

6. As this is a matter where the BIA does not specify a minimum notice requirement, BIA Rule 6 applies, which states:

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an ex parte application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

7. In terms of measuring the four days provided for under BIA Rule 6, the period of time is governed by BIA Rule 4, which stipulates clear business days:

If a period of less than six days is provided for the doing of an act or the initiating of a proceeding under the Act or these Rules, calculation of the period does not include Saturdays or holidays.

8. In accordance with BIA Rule 6(1), the motion materials will be served electronically by email. No opposition is anticipated. Proof of service by affidavit will be filed in advance of the hearing of the pending motion.

9. Although the Trustee anticipates filing and serving the notice materials within the foregoing timeline, it has included a request for the abridgment of time in case there is any breakdown in service. BIA 6(4) grants the Court authority to amend these time limits, including to reduce them. Given the nature of the relief sought and the surrounding circumstances, the Trustee submits that this is an appropriate circumstance for the Court to abridge the time for the hearing of this matter if such abridgement is required.

(b) confidentiality

10. *Nova Scotia Civil Procedure Rule 85* addresses access to Court records. Specifically,

85.04 (1) A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with law to do so, including the freedom of the press and other media under section 2 of the Canadian Charter of Rights and Freedoms and the open courts principle.

(2) An order that provides for any of the following is an example of an order for confidentiality:

(a) sealing a court document or an exhibit in a proceeding;

11. Sealing Orders may be granted when (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent the serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects. See, *Sherman Estate v. Donovan*, 2021 SCC 25 at para 38.

12. Courts have previously identified the public interest of Sealing Orders following a bidding or sales process in a receivership. In *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2, the Court said the following in response to a request for a Sealing Order:

[39] In the insolvency context, especially where there is a sale process, it is a standard practice to keep all aspects of the bidding or sales process confidential. Courts have found this appropriately meets the *Sierra Club* test as modified by *Sherman Estate*, as sealing this information

ensures the integrity of the sales and marketing process and avoids misuse of information by bidders in a subsequent process to obtain an unfair advantage. The important public interest at stake is described as the commercial interests of the Receiver, bidders, creditors and stakeholders in ensuring a fair sales and marketing process is carried out, with all bidders on a level playing field. [Tab 2]

13. And they have found that a Temporary Sealing Order, sealing commercially sensitive information relating to a sales process that has not closed, is necessary to protect such information as stated in *Rose-Isli Corp v. Frame-Tech Structures Ltd.*, 2023 ONSC 832:

[138] The requested partial sealing order is limited in its scope (only specifically identified confidential exhibits) and in time (until the Transaction is completed). It is necessary to protect commercially sensitive information that could negatively impact the Company and its stakeholders if this transaction is not completed and further efforts to sell the property must be undertaken.

[139] The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the property, and to avoid any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved Ora Transaction.

[140] These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, 458 D.L.R. (4th) 361, at para. 38.

[141] Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with approval and vesting orders.

14. The Trustee respectfully submits that this is an appropriate case for this Court to exercise its discretion to “seal” the Confidential Supplement because the Confidential Supplement contains sensitive commercial information regarding the realization analysis it performed to arrive at its opinion to allow the Applicant to purchase the Property.
15. The Trustee is concerned that if the Confidential Supplement were made publicly available, the disclosure of this sensitive information would negatively impact any future sale efforts, in the event that the proposed sale transaction does not close.
16. The draft Order for Confidentiality, as drafted, will expire when the sale is closed and the Trustee files its Certificate or pending further order of this Court. The Confidential Supplement would accordingly be available to any interested party at that time.
17. Accordingly, the Trustee respectfully requests that this Court issue an Order for Confidentiality as regards the Confidential Supplement.

(c) sale approval

18. A Trustee has broad powers to sell or otherwise dispose of a bankrupt’s estate pursuant to s. 30(1)(a) of the BIA which states in part, the following:
 - (a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
19. A summary of what a Court must ultimately be satisfied of in order to approve a sale was set forth in *Accountable Mortgage Investment Corp. v. Nanaimo 22 Development (BT) Ltd.*, 2023 BCSC 2337:

[23] In a court ordered sale, the court must be satisfied:

- a) that the sale process was conducted in a business-like manner;
- and

b) that the proposed sale is provident in all of the circumstances as noted in *Mission Creek Mortgage Ltd. v. Angleland Holdings Inc.*, 2013 BCCA 281 at para. 40, and *Kokanee Mortgage MIC Ltd. v. 669655 B.C. Ltd.*, 2014 BCSC 458 at para. 24 and more recently *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, 2020 BCSC 888, at para. 34.

[24 As to whether or not the proposed sale is provident in all the circumstances, a provident sale is not necessarily one that achieves the highest price that could be achieved if certain assumptions are made, including as to future improvements being contemplated.

20. “Provident” has also been described to mean that the “marketing and sales process has been fair and proper one for all, that the proposed price reflects the fair market value for the property”. See, *Kokanee Mortgage MIC Ltd. v. 669655 B.C. Ltd.*, 2014 BCSC 458 at para. 27.
21. However, a Trustee may not sell a bankrupt’s property to a person who is related to the bankrupt without court approval pursuant to s.30(4) of the BIA. A person is related if they are a director or officer of the bankrupt (s. 30(5)(a) of the BIA) or have direct or indirect control of the bankrupt (s. (s. 30(5)(a) of the BIA).
22. The Trustee acknowledges that Songwen (Sam) Gao is a related person pursuant to s.30(5) of the BIA because he is the officer and director of Old Atlantic and was the officer and director of ASC.
23. As a result, the Trustee has the onus to demonstrate that the sale should be approved pursuant to s. 30(6) of the BIA. See, *Kokanee Mortgage MIC Ltd.* at para. 4. These non-exhaustive factors are similar to s. 36 of the *Companies’ Creditors Arrangements Act*, R.S.C. 1985, c C-36 (“CCAA”). The non-exhaustive list is as follows:

Factors to be considered

In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition of the property was reasonable in the circumstances;

(b) the extent to which the creditors were consulted;

(c) the effects of the proposed sale or disposition on creditors and other interested parties;

(d) whether the consideration to be received for the property is reasonable and fair, taking into account the market value of the property;

(e) whether good faith efforts were made to sell or otherwise dispose of the property to persons who are not related to the bankrupt; and

(f) whether the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition of the property.

24. A more general test has been restated as discerned in the context of the CCAA from the above factors, namely, to consider the transaction as whole and decide whether the sale is appropriate, fair and reasonable. *Re White Birch Paper Holding Co.*, 2010 QCCS 4915 at para 49, *leave to appeal ref'd* 2010 QCCA 1950.

25. In addition, the principles identified in *Royal Bank of Canada v. Soundair Corp.* 1991 CarswellOnt 205, [1991] O.J. No. 1137 (ONCA) are helpful in considering whether to approve a sale at paragraph 16:

(a) whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) the efficacy and integrity of the process;

(c) whether there has been unfairness in the working out of the process; and

(d) the interests of all parties.

26. Certain principles have been discerned by the Courts in consideration of the principles above in *Bank of Montreal v. Sportsclick Inc.*, 2009 NSSC 354, when Duncan, J., held at paragraph 33:

The decision must be assessed as a matter of business judgment on the elements then available to the Receiver. That is the function of Receiver and "... to reject [such] recommendation... in any but the most exceptional circumstances... would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them." *see*, Anderson J. in *Crown Trust Co. v. Rosenberg* (1986), 60 O.R. (2d) 87 (Ont. H.C.), at 112 ;

the primary interest is that of the creditors of the debtor although that is not the only nor the overriding consideration. The interests of the debtor must be taken into account. Where a purchaser has bargained at some expense in time and money to achieve the bargain then their interest too should be taken into account. *see*, *Soundair* at para 40;

the process by which the sale of a unique asset is achieved should be consistent with commercial efficacy and integrity. In *Crown Trust Co. v. Rosenberg*, *supra*, at page 124, Anderson J. said:

While every proper effort must always be made to assure maximum recovery consistent with the limitations inherent in the process, no method has yet been devised to entirely eliminate those limitations or to avoid their consequences. Certainly it is not to be found in loosening the entire foundation of the system. Thus to compare the results of the process in this case with what might have been recovered in some other set of circumstances is neither logical nor practical.

a court should not reject the recommendation of Receiver except in special circumstances where the necessity and propriety of doing so is plain. *see*, *Crown Trust Co.*, *supra*.

27. The inspectors approved a SISP. The SISP was conducted in an efficient and businesslike manner. The Trustee engaged Turner Drake & Partners Ltd. to conduct an appraisal of the real property. Further, the Trustee prepared marketing materials and established an electronic date room for potential bidders.

28. The Trustee also comprehensively marketed the real property and the equipment of Atlantic Sea Cucumber Ltd. (“ASC”). Advertisements were run in *The Globe and Mail* on November 28 and December 5, 2025, and *The Chronicle Herald* on November 28, December 5 and December 12, 2025, and January 9 and January 16, 2026.
29. The sale process and acquisition opportunity was posted on Insolvency Insider Canada’s website on November 28, 2025. In addition, the sale process and acquisition opportunity was published in the classified section of *Seafood Source* Online Magazine on December 5, 2025.
30. These efforts resulted in nine (9) interested parties. Ultimately two bidders submitted *en bloc* bids and the Trustee selected Old Atlantic Shore Natural Foods Ltd. (“Old Atlantic”) as the Qualified Bidder because of:
 - a. the overall consideration offered, and proceeds that would be realized by creditors;
 - b. the consideration offered for the Real Property, relative to the Turner Drake appraisal;
 - c. the proposed conditions, if any;
 - d. the effect of the transactions on all stakeholders;
 - e. transaction costs;
 - f. the speed and certainty of closing; and
 - g. the closing and post-closing services required of the Trustee.
31. The Trustee respectfully submits that the completion of the proposed sale transactions is in the best interests of all stakeholders and will not prejudice any party. As such, the Trustee respectfully recommends that this Court approve the same.

V. Relief Sought

32. The Trustee respectfully submits that the motion be granted in its entirety and an asset vesting order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April 2026.

BOYNECLARKE LLP

Joshua J. Santimaw