



**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: Stay Extension**

**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 presiding Judge at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Tuesday, May 21, 2024, at 9:45 a.m for the order set out in Part 1 below.

The Applicant estimates that the application will take 30 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. An Order substantially in the form attached hereto as **Schedule "B"** (the "**Stay Extension Order**"), which, among other things, abridges the time for filing and service of this Notice of Application and extends the Stay Period, as defined in the Amended and

Restated Initial Order of the Supreme Court of British Columbia (the “**Court**”) made on March 11, 2024 (the “**ARIO**”) from May 24, 2024 to August 15, 2024;

**Part 2: FACTUAL BASIS**

2. Pursuant to an Order of the Court made on February 28, 2024, the Respondents were granted protection under the CCAA and Alvarez & Marsal Canada Inc. was appointed monitor of the Respondents (in such capacity, the “**Monitor**”).
3. 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.
4. On March 11, 2024, this Court granted 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;
5. 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.
6. At the Comeback Hearing, the Court also granted an order setting out a Sale and Investment Solicitation Procedure (the “**SISP**”).

### Extension of Stay of Proceedings

7. The Monitor seeks the Stay Extension Order to carry out the SISP with a view to bringing forward a transaction for court approval.
8. Since the First Report of the Monitor dated March 7, 2024, the Monitor has attended to the following activities:
  - (a) reviewing the daily cash receipts and disbursements of the Respondents, reconciled to bank statements;
  - (b) preparing weekly variance reporting of actual receipts and disbursements;
  - (c) reviewing and approving the Respondents' disbursements;
  - (d) engaging in on-going dialogue and consultation with the Interim Lender in respect of cash management issues;
  - (e) overseeing the wind-down of the Respondents' trucking business, which included:
    - (i) verifying the existence of leased assets through inspection of VIN numbers against listings provided by management;
    - (ii) in conjunction with management, assisting with the review of the assets required for the ongoing operations;
    - (iii) preparing an analysis to determine potential equity in leased equipment;
    - (iv) coordinating with management and the various lessors regarding on-going use of select leased equipment;
    - (v) assisting management with coordinating the release of redundant leased equipment;
    - (vi) reviewing insurance policies and certifications to ensure there is adequate coverage is in place for the operations and the equipment and cancel ICBC coverage no longer required;
    - (vii) working with management to track trucking activity costs such as fuel and mechanic time incurred during the transition of the trucking operations;
  - (f) in consultation with management, updating the 13-week cash flow forecast on a weekly basis (the "**Cash Flow Forecast**");

- (g) updating the Monitor's website as required;
- (h) reviewing monthly payroll remittances to the Canada Revenue Agency;
- (i) implementing the SISP, including:
  - (i) preparing a sale teaser and populating the Monitor's data room;
  - (ii) distributing teaser documents and confidentiality agreements to potential interested parties;
  - (iii) reviewing and amending a draft Transaction Agreement template;
  - (iv) distributing the Transaction Agreement template to potential interested parties;
  - (v) corresponding with interested parties regarding with respect to the SISP; and
  - (vi) attending the Respondents' premises for site visits with interested parties.
- (j) drafting a Second Report to Court.

### **Part 3 LEGAL BASIS**

9. The Monitor relies on:

- (a) the CCAA and, in particular, ss. 11, 11.02, and 11.03;
- (b) the *Supreme Court Civil Rules*, BC Reg 168/2009 and in particular Rule 22-4;
- (c) the inherent and equitable jurisdiction of this Honourable Court; and
- (d) such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

### **The Stay Should Be Extended**

10. Section 11.02(2) of the CCAA provides that the Applicant may apply for an extension of the stay of proceedings for a period that the Court considers necessary on terms that the Court may impose. In accordance with section 11.02(3) of the CCAA, the Applicant must satisfy the Court that:

- (a) circumstances exist that make the extension of the stay of proceedings appropriate; and

- (b) the Respondents have acted, and are acting, in good faith and with due diligence.
11. A stay of proceedings is the "central tool" by which this Court maintains the status quo for a debtor company, allowing it the necessary time, flexibility, and "breathing room" to carry out a supervised restructuring or organized sales process while continuing its ongoing operations.
- 1057863 B.C. Ltd (Re)*, 2022 BCSC 876, paras. 31, 35 [1057863], citing *Timminco Limited (Re)*, 2012 ONSC 2515, para. 15.
12. The baseline considerations and requirements for a stay extension are that a stay is "appropriate" and that the debtor company subject to the CCAA is acting in good faith and with due diligence.
13. The basic purpose of the CCAA must be considered when determining what relief authorized by the CCAA is "appropriate" in the circumstances:
- The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA - avoiding the social and economic losses resulting from liquidation of an insolvent company. [...] appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.
- 1057863*, para. 33, citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para 70.
14. The Respondents have been acting in good faith and with due diligence, in these CCAA proceedings. In addition, the Petitioner and the Interim Lender, The Bank of Nova Scotia, support the Stay Extension Order.
15. The Stay Extension Order is necessary to allow for sufficient time to complete the SISP. In particular, the Monitor requires additional time to review multiple bids received on May 10, 2024 with the goal of moving forward with a transaction agreement with the successful bidder.
16. Pursuant to the Cash Flow Forecast, the Respondents have sufficient liquidity to continue their business operations in the ordinary course during the extended stay period. Granting the Stay Extension Order does not prejudice stakeholders and increases the likelihood that a transaction that maximizes value for the benefit of stakeholders can be achieved.

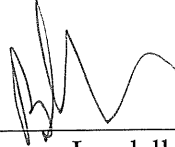
**Part 4: MATERIAL TO BE RELIED ON**

1. The First Report of the Monitor dated March 7, 2024;
2. The Second Report of the Monitor, to be filed;
3. The Initial Order dated February 28, 2024;
4. The Amended and Restated Initial Order dated March 11, 2024;
5. The SISP Order, dated March 11, 2024; and
6. Such further and other materials as counsel may advise and this Honourable Court may permit.

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 16 day of May, 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, British Columbia, V6C 3L2, e-mail address: bgibbons@lawsonlundell.com; telephone number: 604-685-3456.

*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 ☐ Associate Judge

**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"**

**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, AS AMENDED**

**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**

**SERVICE LIST**

(Last Updated: April 30, 2024)

<b>Fasken Martineau DuMoulin LLP</b>	<b>Dentons Canada LLP</b>
Attention: Lisa Hiebert Kibben Jackson Mishaal Gill Ashley Kumar	Attention: Jordan Schultz Emms Newbery Chelsea Denton
Email: <a href="mailto:lhiebert@fasken.com">lhiebert@fasken.com</a> <a href="mailto:kjackson@fasken.com">kjackson@fasken.com</a> <a href="mailto:mgill@fasken.com">mgill@fasken.com</a> <a href="mailto:akumar@fasken.com">akumar@fasken.com</a>	Email: <a href="mailto:Jordan.schultz@dentons.com">Jordan.schultz@dentons.com</a> <a href="mailto:emma.newbery@dentons.com">emma.newbery@dentons.com</a> <a href="mailto:Chelsea.denton@dentons.com">Chelsea.denton@dentons.com</a>
<i>Counsel for The Bank of Nova Scotia</i>	<i>Counsel for Bifano Consolidated Inc., Bifano Farms Inc., SSC Ventures (No. 105) Ltd. And Spallumcheen Farm Ltd.</i>

<p><b>Owen Bird Law Corporation</b></p> <p>Attention: Heather Frydenlund Scott Stephens</p> <p>Email: <a href="mailto:hfrydenlund@owenbird.com">hfrydenlund@owenbird.com</a> <a href="mailto:sstephens@owenbird.com">sstephens@owenbird.com</a></p> <p><i>Counsel for CWB National Leasing Inc.</i></p>	<p><b>Department of Justice Tax Law Services</b></p> <p>Attention: Yianni Pappas Erin Krawchuk Angela Lam Sunmeet Dhaliwal</p> <p>Email: <a href="mailto:Yianni.Pappas-Acreman@justice.gc.ca">Yianni.Pappas-Acreman@justice.gc.ca</a> <a href="mailto:Erin.Krawchuk@justice.gc.ca">Erin.Krawchuk@justice.gc.ca</a> <a href="mailto:Angela.Lam@justice.gc.ca">Angela.Lam@justice.gc.ca</a> <a href="mailto:Sumeet.Dhaliwal@justice.gc.ca">Sumeet.Dhaliwal@justice.gc.ca</a> <a href="mailto:AGC_PGC_VANCOUVER@JUSTICE.GC.CA">AGC_PGC_VANCOUVER@JUSTICE.GC.CA</a></p> <p><i>Counsel for the Attorney General of Canada on behalf of HMTK in Right of Canada as represented by the Minister of National Revenue.</i></p>
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## Emails

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SCHEDULE "B"

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:

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SPALLUMCHEEN FARM LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE JUSTICE

)  
)  
)  
)

TUESDAY, THE 21<sup>st</sup> DAY  
OF MAY 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 Thursday, May 23, 2024, and UPON HEARING Bryan C. Gibbons, counsel for the Monitor, and those other counsel listed on **Schedule "A"** attached hereto; AND UPON READING the material filed, including the Second Report of the Monitor; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R. S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES 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.

## STAY EXTENSION

2. The Stay Period (as defined in the Amended and Restated Initial Order of this Court dated March 11, 2024) with respect to the Respondents is hereby extended up to and including August 15, 2024.

## GENERAL

3. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal regulatory or administrative bodies, including any court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.
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:

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

By the Court.

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Registrar

**Schedule "A"**

**List of Counsel**

<b>Counsel</b>	<b>Party</b>
Bryan C. Gibbons	The Monitor, Alvarez & Marsal Canada Inc.

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***

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SPALLUMCHEEN FARM LTD.

RESPONDENTS

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**ORDER MADE AFTER APPLICATION**

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925 West Georgia Street,  
Vancouver BC V6C 3L2

Phone: 604-685-3456

Attention: Bryan C. Gibbons

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

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RESPONDENTS

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NOTICE OF APPLICATION

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Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
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V6C 3L2  
Phone: (604) 685-3456  
Attention: Bryan C. Gibbons