

**Court of King's Bench of Alberta**

**Citation: National Bank of Canada v Sunterra Food Corporation, 2026 ABKB 206**

**Date:** 20260318

**Docket:** 2501 06120/2601 03434

**Registry:** Calgary

Between:

2501 06120

**In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c-C36, as Amended**

**And in the Matter of a Plan of Compromise or Arrangement of Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd., and Sunterra Enterprises Inc.**

- and -

Between:

2601 03434

**ATB Financial**

Plaintiff

- and -

**West Market Square Inc.**

Defendant

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**Endorsement  
of the  
Honourable Justice Michael J. Lema**

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**I. Introduction**

[1] Should the CCAA stay of proceedings be extended to West Market Square Inc. (WMS), a company fifty per cent owned by Sunterra Enterprises Inc. (SEI), one of the Sunterra companies under CCAA protection?

[2] If not, should a receiver (or alternatively, an interim receiver) of WMS be appointed at the instance of ATB Financial, its secured creditor?

[3] I find that extending the stay to WMS is not warranted and that its receivership is albeit temporarily suspended until March 27, 2026, all as explained below.

**II. Analysis**

**A. Extension of stay**

[4] The Sunterra group provided the following background for its stay-extension request:

Sunterra Enterprises [SEI] holds 50% of the voting shares of [WMS], with the other 50% held by Signature Pointe Developments Inc (“SPDI”). The Court in these proceedings previously confirmed that the stay of proceedings granted by the [Amended and Restated Initial CCAA Order] provides protection from and against any actions and proceedings taken by SPDI that affect the interest of Sunterra Enterprises in WMS [see *National Bank of Canada v Sunterra Food Corporation*, 2025 ABKB 742]. However, [the Sunterra group] believes that further clarify regarding the scope of the stay of proceedings in respect of WMS is required to ensure that there is proper protection in place for WMS and the interests of [SEI] in WMS. Among other things, ATB Financial, as secured lender to WMS, has advanced a potential receivership application in respect of WMS outside of these CCAA proceedings.

The [Sunterra group is] requesting that the Court confirm that the stay of proceedings and related protections granted by the ARIO apply to WMS and its business and property, *mutatis mutandis*. [Sunterra brief dated February 21, 2026 -- paras 10 and 11].

[5] Its arguments for the stay extension are here:

Courts are authorized under Sections 11 and 11.02 of the CCAA to grant stay protection in favour of third parties that are not themselves applicants in a CCAA proceeding where **necessary and appropriate to facilitate restructuring efforts**. In determining whether or not such relief is appropriate, the factors to be considered include whether extending the stay to the third party in question would **help maintain stability and value during the restructuring proceedings**. [Footnote 16: *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para 42 ...; *KEB Hana as Trustee v. Mizrahi Commercial (THE ONE) LP*, 2024 ONSC 1678 at para 28 ...]

As referenced above, the Court in these proceedings previously confirmed that the stay of proceedings granted by the ARIO provides protection from and against any actions or proceedings taken by SPDI that affect the interest of Sunterra Enterprises in WMS.

The Applicants respectfully submit that it is appropriate to confirm in the proposed Second ARIO that the stay of proceedings and related protections granted by the ARIO apply to WMS and its business and property, *mutatis mutandis*.

Absent clear stay protection in favour of WMS, its lender or other creditors may take enforcement or other adverse steps. In particular, **ATB Financial, as secured lender to WMS, has advanced a potential receivership application in respect of WMS**. This action and any other similar action against WMS or its business and property has the **potential to undermine the Applicants' efforts to preserve and maximize value** in these proceedings as they could: (i) **materially impact the value of WMS and, in turn, Sunterra Enterprises' interest therein**, to the detriment of the Applicants and other stakeholders; and (ii) **divert key personnel and resources from the Applicants' ongoing restructuring efforts**. There is **no material prejudice to SPDI or any lender of WMS** in confirming that the stay of proceedings applies to WMS and its business and property in order to protect value for all parties. Rather, it will **promote stability and potentially facilitate discussions amongst the relevant parties**. [Footnote 17: Arthur Price affidavit, paras 29-30]

Additionally, Courts have **previously granted stays of proceedings over entities in which the applicants do not own a 100% interest**. [Footnote 18: See e.g., *In Re Hudson's Bay Company*, 2025 ONSC 1530 at para 46–48 [*HBC*] ...; *Imperial Tobacco Canada Limited, Re*, 2019 ONSC 1684 at paras 11–12 ...] [Sunterra brief, paras 20-24]

[6] Sunterra's evidence about WMS was provided by Arthur Price, who holds various director and executive roles with most of the Sunterra entities, albeit (at least per the available evidence) not with WMS. (Per an affidavit sworn February 4, 2026 by Peter Livaditis, SPDI's principal, he and Glen Price are the two directors of WMS.)

[7] Here is Arthur Price's WMS-focused evidence:

Pursuant to the proposed Second ARIO, the Applicants are seeking to confirm that the stay of proceedings granted by the ARIO applies to WMS and extends its business and property.

Sunterra Enterprises holds 50% of the voting shares of WMS, with the other 50% of the voting shares of WMS held by Signature Pointe Developments Inc. ("SPDI"). WMS owns the commercial property located at 185 1 Sirocco Drive S.W., Calgary, Alberta, T3H 4R5, and is a sub landlord of a shopping facility.

I understand that the Court in these proceedings has previously confirmed that the stay of proceedings granted by the ARIO provides protection from and against actions or proceedings taken by SPDI that affect the interest of Sunterra Enterprises in WMS. However, the Applicants believe that further clarity regarding the scope of the stay of proceedings in respect of WMS is required to ensure that there is proper protection in place for WMS and the interest of Sunterra Enterprises in WMS. Specifically, I am concerned that, **in the absence of the stay of proceedings extending to WMS and its business and property, the lender to WMS or certain other creditors of WMS may take enforcement step or exercise other rights against WMS, which would negatively impact WMS and Sunterra Enterprises' interest therein and materially affect the value of WMS to the detriment of the Applicants, WMS and its other stakeholders.** Any enforcement steps or other actions taken against WMS or its business and property **would necessarily involve the Applicants' key personnel and consume resources of the Applicants,** and could be counterproductive to the Applicants' efforts to preserve and maximize value in these proceedings. I believe there is **no material prejudice to SPDI or any lender to WMS** in confirming that the stay of proceedings applies to WMS and its business and property in order to protect value for all parties.

ATB Financial, as secured lender to WMS, has advanced a potential receivership application in respect of WMS outside of these CCAA proceedings. I believe that matter with respect to WMS should be addressed within these CCAA proceedings. I also believe that commercial discussions are needed between the parties in order to reach agreement on matters with respect to WMS, and that confirming protection for WMS pursuant to these proceedings will allow for such discussions to take place.

Given the foregoing, the Applicants are requesting the stay of proceedings be extended to WMS and its business and property. [paras 27-31] [emphasis added]

[8] Additional (albeit limited) evidence about WMS came from Mr. Livaditis, who detailed its incorporation, that it operates in Calgary and elsewhere in Alberta, and that (as noted) SEI and SPDI are its two 50 per cent shareholders.

[9] Courts have extended a CCAA stay to affiliated or otherwise connected parties or other entities (e.g. partnerships or limited partnerships) not originally under the stay umbrella where the latter are “**functionally integrated and embedded** within the overall corporate and business structure” (*Corus Entertainment Inc (Re)*, 2025 ONSC 6192 (Kimmel J.) at para 11), are “**inextricably intertwined** in the business of the debtor companies” (*Angus A2A GP Inc*, 2025 ABKB 51 (Feasby J.) at para 79), “carry on operations that are **integral and closely interrelated**

to the business of the [already-shielded] Applicants” and whose “operations and obligations ... are **so intertwined** with those of the applicants that **irreparable harm would ensue if the requested stay [extension] were not granted**” (*Canwest Global Communications Corp (Re)*, 2009 CanLII 55114 (ONSC) (Pepall J. as she then was) at para 29, carry on a “[b]usiness [that] is **integrated** among the [already shielded] Applicants (*Cinram International Inc (Re)*, 2012 ONSC 3767 (Morawetz J. as he then was) at para 61), are “**highly integrated** into the business of the [already shielded] wholly-owned subsidiaries” (*BZAM Ltd Plan of Arrangement*, 2024 ONSC 1645 (Osborne J. as he then was) at para 43), are businesses and operations that “are **significantly intertwined** with those of the [already shielded] Applicant” (*Re Chalice Brands Ltd*, 2023 ONSC 3174 (Kimmel J.) as para 39), are “**significantly intertwined** with the [already shielded] Calpine corporations” (*Re Calpine Canada Energy Limited (CCAA)*, 2006 ABQB 153 (Romaine J.) at para 31), are “**highly integrated with and indispensable to the business** of the [already shielded] Applicants” (*In re Hudson’s Bay Company*, 2025 ONSC 1530 (Osborne J. as he then was) at para 47), and same (as *Hudson’s Bay*) assessment in *Imperial Tobacco Canada Ltd (Re)*, 2019 ONSC 1684 (McEwen J.) at para 12).

[10] Neither Arthur Price’s affidavit nor those sworn by Mr. Livadistis on February 4 and 19, 2026 (i.e. to the extent the latter may have provided additional windows into the point) showed the degree of integration or connection between WMS’s operations and those of the rest (or some of) the Sunterra group. Or even asserted high integration or anything akin. Or (as discussed further below) show the significance of WMS’s (possible) equity in the ground lease (i.e. after factoring out ATB’s claim) to Sunterra’s overall restructuring plans.

[11] I understand that Sunterra operates a retail outlet in the property that SPDI owns and in respect of which WMS has a ground lease.

[12] But no evidence showed, even assuming some connection between that outlet and the rest of the Sunterra group, connection to the extent required by the above cases i.e. “functional integrated and embedded”, “inextricably intertwined”, “integral and closely interrelated”, etc.

[13] Courts have extended CCAA stays to connected affiliates or other entities for other reasons, such as where the currently “outside” parties are **co-borrowers** with the CCAA-shielded parties or **guarantors** of their obligations (*Lydian International Ltd (Re)*, 2019 ONSC 7473 (CJ Morawetz) at paras 14-17 and 39; *Corus Entertainment* at para 11; *Canwest Global* at para 30; *McEwan Enterprises Inc*, 2021 ONSC 6453 (CJ Morawetz) at paras 19 and 44(a)), and *Imperial Tobacco* at para 12).

[14] And where the inclusion of the outside party or parties is necessary for the **performance of critical reclamation obligations** (*Mantle Materials Group (Re)*, 2024 ABKB 19 (ACJ Nixon) at paras 59 and 60).

[15] And where the outsiders “**hold copyright and intellectual property rights** [apparently beneficial to the entire group], have **contractual relationships with critical suppliers and other third parties**, and are engaged in **important aspects of the overall [enterprise]**” (*Corus Entertainment* at para 11).

[16] And where the outsiders are **parties to agreements with an insider entity** (i.e. with an entity sheltered by the CCAA stay) and where **proceedings by third parties against the outsiders “would have a detrimental effect on the [insiders’] ability to restructure and**

implement [a proposed transaction] and **would lead to an erosion of value in the [overall enterprise]**” (*Cinram International* at para 61(b)).

[17] And where the outsiders have “**tax attributes** which could be beneficial to the [larger enterprise]” and where they will be **included in contemplated SISP [sales and investment solicitation] process**, such that “the stay should apply to them to give comfort to potential bidders that enforcement actions against those parties will be stayed while a sales process is being conducted” (*BZAM* at paras 43 and 45).

[18] And where, absent a stay extension, “**enforcement proceedings ... against any of the [outsiders] ... would cause significant disruption to [the restructuring entity]**, would have a **detrimental effect on [its] restructuring efforts**, and ... could [result in] a **significant erosion of value to the Business** to the detriment of all stakeholders” (*McEwan* at para 44(b)).

[19] And where “**claims against the [outsider] entities ... are derivative of the primary liability of the Target Canada Entities [i.e. those already stay-sheltered]**” (*Target Canada Co (Re)*, 2015 ONSC 303 (RSJ Morawetz as he then was) at para 49).

[20] And where an outside entity “**acts as the only employer** within the Chalice Group [i.e. the sheltered entities] and funds payroll”, where other outside entities “**hold [certain] cannabis licences** [apparently beneficial to the entire group], **operate the cultivation and production facilities** [apparently for the entire group][,] and operate **sixteen retail stores**”, “certain creditor and landlord-driven **enforcement actions ... taken against [the outsiders] may put the licences at risk**” and may “**materially destroy value and negatively impact a going-concern sale of the [overall enterprise]**” (*Chalice Brands* at para 38).

[21] And where “[a]ny proceedings commenced against the [outsiders] would **necessarily involve the [restructuring entities]’ key personnel and consume [their] limited resources**” (*Hudson’s Bay Company* at para 48).

[22] And where declining to extend the CCAA stay would “**defeat the entire purpose**” of a CCAA restructuring (*Hudson Bay Company* at para 44) or “would **undermine the intent of the stay**” (*Imperial Tobacco* at para 12).

[23] And also where (as an additional material factor) extending the stay would not materially prejudice creditors of the outside entities (*McEwan Enterprises* at para 44(c)) and *Imperial Tobacco* at para 12).

[24] Most of these pro-extension factors are not present here.

[25] Sunterra emphasized the following factors (outlined above and reproduced here for ease of reference):

[The proposed ATB receivership] and any other similar action against WMS or its business and property [have] the **potential to undermine the Applicants’ efforts to preserve and maximize value** in these proceedings as they could: (i) **materially impact the value of WMS and, in turn, Sunterra Enterprises’ interest therein**, to the detriment of the Applicants and other stakeholders; and (ii) **divert key personnel and resources from the Applicants’ ongoing restructuring efforts**. There is **no material prejudice to SPDI or any lender of WMS** in confirming that the stay of proceedings applies to WMS and its business and property in order to protect value for all parties. Rather, it will **promote**

**stability and potentially facilitate discussions amongst the relevant parties.**

[Footnote 17: Arthur Price affidavit, paras 29-30]

[26] I examine these in turn, starting with the **perceived negative impact of a receivership on WMS's value.**

[27] Sunterra did not explain the perceived “potential ... [material] impact to the value of WMS” i.e. from the receivership proposed by ATB.

[28] SEI's 50 per cent ownership of WMS (i.e. its equity stake in WMS) is necessarily net of ATB's secured claim, currently standing at approximately \$8.4 million, plus interest and costs.

[29] Sunterra did not explain how the proposed receivership (whether standard or interim) would eclipse whatever net equity WMS has in the ground lease in question or in its assets overall i.e. if that is what Sunterra means by material impact.

[30] For its part, SPDI raised the spectre of the lease being terminated (by it) if a receivership occurred, with that as an event of default under the ground lease. However, under a tri-party agreement, SPDI cannot terminate the lease without ATB's consent. And with the ground lease as ATB's core security, it is hard to conceive why it would consent. As well, the tri-party agreement expressly contemplates survival of the ground lease under a receivership e.g. in s 3 (Covenants of Sublessor).

[31] To the extent Sunterra is concerned about equity diminishment (i.e. not full eclipsing) in the receivership, it did not explain how a court-supervised receivership could or at least would result in subpar realization on the ground lease or other WMS assets i.e. explain how realization on the lease and other assets in the receivership would yield subpar recoveries i.e. compared to the recoveries theoretically possible under the CCAA restructuring process. That is, explain why Sunterra would not be able, advancing its position as 50 per cent shareholder of WMS, to advance whatever positions and arguments and present whatever evidence it can in a receivership proceeding to maximize whatever net equity is available in WMS i.e. after clearance of ATB's secured claims.

[32] To the extent Sunterra is concerned about professional fees ATB would incur, Sunterra itself is incurring professional fees (with justification) in its efforts to restructure or arrange for new financing i.e. it should not fault ATB for engaging professional advisers to protect its interests as well. In any case, Sunterra (or, more specifically, WMS) can tax those fees if perceived as excessive.

[33] ATB's entire claim must be paid before SEI (and SPDI) can recover any equity out of WMS (i.e. failing coming to terms with ATB on arrears payment and reinstatement of ongoing payments). Sunterra has failed to show a materially better prospect of recovering such equity under the CCAA proceeding compared to the proposed receivership.

[34] Plus, Sunterra placed great emphasis on a ground-lease appraisal estimating that, if the lease's options to renew for a total of fifteen years (three sequential options to renew for five years each) are all exercised, the ground lease has a value ranging between \$11,260,000 and \$17,200,000 i.e. well above (even at the lower figure) ATB's current claim of the noted approximately \$8.4 million (plus interest and costs).

[35] This contrasts to a value range of between \$4,570,000 and \$9,400,000 if the options are factored out.

[36] Sunterra noted that SPDI obtained the appraisal and had advised the appraiser that the options would not be exercised, putting the higher range out of reach (per SPDI).

[37] Sunterra argued that the option belongs to WMS and that, via a unanimous shareholders' agreement, SEI and SPDI have an equal say over such questions i.e. "non-exercise" is not SPDI's sole call to make. That is, the focus should be on the higher range and SEI's 50 per cent stake in that considerable net equity.

[38] However, that ignores the apparent fact (per Mr. Livaditis's February 4, 2026 affidavit) that:

... WMS has failed to provide the rent payment and has defaulted on its rental agreement with SPDI [as landlord under the ground lease] for the subject property. [The] rental payment for February [2026], in the amount of \$39,383.40 was not paid when it was due on February 1, 2026.

[39] Sunterra did not provide any evidence contradicting that evidence.

[40] Under the ground lease, WMS's option to renew for the noted three sequential five-year terms is conditional (in part) on full performance of its lease obligations:

[WMS] shall have duly and regularly performed **each and every one of the terms, covenants and conditions contained in [the] Lease**. [part of article 1.2]  
[emphasis added]

[41] The current obligation to pay monthly rent (i.e. for the period June 1, 2024 to May 31, 2029) is detailed in article 2.1(b). Per article 6.1, WMS's obligation to pay the required monthly rent is one of its covenants.

[42] Sunterra did not explain how, in these circumstances, the options to renew and the associated additional value come into play i.e. with an express precondition to renewing no longer satisfiable and nothing in the lease providing for an effective erasure of a rent-payment default i.e. if it were later cured.

[43] I find that Sunterra has not demonstrated that a receivership would result in materially differential recoveries on WMS's net equity in the ground lease.

[44] As for "**diverting key personnel and consuming resources**", as noted above Sunterra did not explain its apparent refusal of SPDI's proposal to pay out ATB entirely i.e. why the "ATB crisis" should not have been addressed by that proposed payment.

[45] In any case, whether in a receivership or inside the CCAA proceeding, Sunterra (and SPDI) need to determine how to pay out ATB in full or, if possible, bring WMS current with ATB (and presumably cover ATB's enforcement-to-date costs) i.e. some person or persons inside Sunterra and some Sunterra resources will have to be dedicated to addressing the ATB issue either way.

[46] And no evidence shows any differential between the two processes on this aspect.

[47] In any case, and recognizing that SPDI was unsuccessful in arguing that that it was "entitled" to pay out ATB's balance within the meaning of s 73 of the *Law of Property Act*, as explained in *National Bank of Canada v Sunterra Food Corporation*, 2026 ABKB 175 (with SPDI not a co-mortgagor, guarantor or other surety for WMS, and not otherwise having a legal right to clear ATB's balance i.e. in the sense of obliging ATB to accept the tendered payment),

SPDI apparently has sufficient funds on hand (i.e. its own funds) to pay out ATB's entire balance (including interest and costs) and can tender that payment to ATB. That is, not because it has legal standing (for whatever reason) to clear the debt (as contemplated in s 73 *LPA*) but because, even if viewed as a legal stranger to WMS's mortgage debt to ATB, SPDI can nonetheless tender payment to ATB. And the law recognizes that, as long as SPDI's intention via such payment is acquiring ATB's position (i.e. not discharging the mortgage debt), it can so acquire that position.

[48] That is not to say that ATB is obliged to accept the payment in the way it would be if SPDI were a co-borrower or a guarantor or other surety.

[49] But it is hard to conceive what commercial reason ATB would have to declining to accept a payout of its full balance, with interest and costs, or for thereafter declining to assign its position, including its security, to SPDI.

[50] Here I cite *Winter (Re)*, 1954 CanLII 175 (SK CA):

... In *Chitty on Contracts*, 20th ed., p. 1055, the learned author states:

**“Where a stranger pays off an existing mortgage such payment raises a *prima facie* presumption in equity that he does not thereby intend to amortise the debt but proposes to keep it alive for his own benefit.”**

*Vide also Leake on Contracts*, 8th ed., p. 705. In *Butler v. Rice* [1910] 2 Ch 277, 79 LJ Ch 652, it was held by Warrington, J. at pp. 653 and 655 that **if a stranger pays off a mortgage on an estate there is a presumption that he intends to keep it alive for his own benefit and the fact that the mortgagor, the owner of the property, has not requested him to make the payment is not material.**

In *Halsoury*, 2nd ed., vol. 23, p. 348, it is stated:

**“Although there has been no actual transfer of the mortgage a person who advances money for the purpose of paying it off and whose money is thus applied becomes an equitable assignee of the mortgage and is entitled to have it kept alive for his benefit.”**

The authorities cited in support are *Cracknall v. Janson* (1879) 11 Ch D 1, 48 LJ Ch 168; *Chetwynd v. Allen* [1899] 1 Ch 353, 68 LJ Ch 150, and *Butler v. Rice*, *supra*.

The authorities warrant the conclusion that, **the defendant having advanced the money to pay off the mortgage, a presumption arose that he intended to keep the mortgage alive for his own benefit. Moreover the evidence as a whole is to the effect that the defendant's object was to hold the mortgage and ultimately secure the land; there is no evidence which in any way defeats the presumption. ...**

...

As before intimated **the *prima facie* presumption that the defendant intended to keep the mortgage alive for his own benefit is supported by the evidence; indeed there is no evidence which weakens the presumption.** [paras 7-11 and 17] [emphasis added]

[51] To the same effect, see also *1413910 Ontario Inc (Bulls Eye Steakhouse & Grill) v McLennan*, 2008 CanLII 63994 (ONSC) (C. Campbell J.) (paras 8-14) and *Richardson Securities of Canada v Perdicaris*, 1984 CanLII 2273 (SKQB) (MacLeod J.) (paras 14-23).

[52] All to say: with no evidence that SPDI has abandoned its intention to pay off ATB's balance or become unable to do so since the recent application where it sought to do so under s 73 LPA, it would not appear that much "time or attention" of key Sunterra personnel or any Sunterra resources are in fact required to defuse the ATB situation i.e. with the case law (i.e. outside of s 73 LPA) supporting SPDI's ability, as a stranger to the mortgage, to tender ATB's all-inclusive balance and, if ATB accepts that payment (and no evidence shows, practically, why ATB would decline), to step into ATB's shoes i.e. to become the holder of the ATB debt claim against WMS and the associated security. Which would result in ATB and its current enforcement intentions (including receivership of WMS) being replaced by SPDI, a self-described "friendly" creditor and one willing (per its evidence at the s 73 LPA application) to provide breathing space to WMS through the now-extended CCAA period i.e. up to May 1, 2026.

[53] As for "no prejudice to ATB" in extending the stay, the question is really whether, in the circumstances here, ATB is entitled to a receivership order or not.

[54] If it is, I see withholding a receivership (i.e. via a stay extending to WMS) as creating prejudice for ATB. If a receivership is not warranted, then no prejudice to ATB would appear to result from imposing a stay.

[55] Accordingly, before concluding on the stay-extension issue, I examine whether a receivership is warranted here.

### III. Proposed receivership of WMS

[56] ATB emphasized these factors:

- a) [WMS] has a single purpose and a single secured creditor [i.e. ATB];
- b) [WMS] is in default of its obligations under the Security;
- c) ATB is entitled, under the Security, to the appointment of a receiver or receiver and manager;
- d) ATB's primary collateral is the Mortgage of the underlying leasehold. The ground Lease appears likely to be in arrears and in default. ATB is highly concerned about the depreciation of its collateral;
- e) There is evidence that [WMS] is at or near insolvency – the valuation evidence provided indicates there is no equity in [WMS] for its shareholders;
- f) If a bare [CCAA] stay is granted, it is a means to no end, as there is no possible plan, no restructuring or emergence that [WMS] had identified, and no ability of [WMS] to repay ATB's indebtedness;
- g) ATB has lost confidence and trust in the management of [WMS], who has never responded to any of ATB's requests, demands and invitations, and appears clearly to have no ability to govern [WMS's] daily affairs; [and]

h) A bare [CCAA] stay, preserving the current *status quo*, prejudices ATB and benefits no party.

[57] It summarized its position:

... there is no basis to restrain the exercise of ATB's rights. ATB's application is preservatory. Ongoing jeopardy to ATB's position will be brought under control, operations stabilized and supported by the Receiver, and rents collected and reported in a transparent process, under the Court's supervisory jurisdiction. ... due to the real risk of dissipation to ATB's security, deference should be granted to ATB's concerns as the only secured creditor. All this mitigates in favour of the appointment of the Receiver.

... there is no other remedy that will adequately protect [ATB's] interests. The balance of factors strongly favours ATB and, in the present circumstances, the appointment of a Receiver is just and convenient.

[58] Per SPDI, it (or an affiliate) is managing the property, with rents being collected, operating expenses being covered, and the "snow being cleared" i.e. the situation is normal.

[59] Per Sunterra, any communication breakdowns with and information shortfalls to ATB will not continue, with new advisers on board and a renewed, or new, commitment to transparency.

[60] Both also emphasized that WMS's premises are 99 per cent fully leased, with all subleases being paid in full and on time.

[61] I note the following in SPDI's evidence:

... WMS has failed to provide the rent payment and has defaulted on its rental agreement with SPDI for the subject property [i.e. under the ground lease in question]. [The] rental payment for February, in the amount of \$39,383.40 was not paid when it was due on February 1, 2026 [Livaditis affidavit sworn February 4, 2026, para 16].

ATB has indicated an intention to tender a rent payment to ... SPDI on behalf of WMS. ...

... SPDI accepted the rent without prejudice to its rights under the Lease. ... [latter excerpts from Livaditis affidavit sworn February 19, 2026, paras 32 and 33]

[62] I accept ATB's core position that its collateral – principally the ground lease – may be insufficient to cover its debt. The key here is the no-renewals value range per the noted appraisal i.e. \$4,570,000 to \$9,400,000, compared to ATB's current claim of approximately \$8.4 million, plus interest and costs. As explained above, it does not appear that the options to renew remain available. Here I also note the Monitor's view, in its fifth report, that the value of the shareholders' equity in WMS is "uncertain."

[63] Sunterra did present its own appraisal evidence e.g. to suggest more shareholder equity than per the SPDI appraisal.

[64] Even if SPDI is managing the property and the subleases are performing, with rents being collected and operating expenses being covered, the critical facts are that WMS has defaulted in

its obligations to ATB, ATB has had to pay (at minimum) the February rent under the ground lease, ATB may be in a shortfall position, ATB's security gives it the ability to appoint a receiver, WMS has (to date) been unwilling to engage with ATB (as detailed in the Greg Steidl affidavit for ATB sworn February 20, 2026, paras 15-21 and 26-34), and Sunterra has not proposed any particular plan for addressing ATB's debt i.e. other than (effectively) "discussions will continue [or start]."

[65] In these circumstances it is just and convenient that a receiver be appointed to ensure that WMS assets are in fact being properly managed, that any excess of revenues over operating expenses and receivership costs is paid to or earmarked for ATB, and that ATB's position as secured creditor is protected and same for the interests of WMS's shareholders i.e. to the extent any equity exists beyond ATB's secured claim.

#### **IV. Conclusion**

[66] I circle back to the stay extension and whether granting a stay would prejudice ATB.

[67] Having found that a receivership is warranted, I also find that blocking a receivership via a stay would prejudice ATB.

[68] Accordingly, and for the other reasons outlined above, I do not accept Sunterra's rationales, or those of SPDI, for extending the CCAA stay to WMS.

[69] As a result, the CCAA stay is not extended to WMS.

[70] On the receivership front, given the possibility that SPDI may pay ATB's claim in full (with interest and costs) or that the parties may otherwise come to terms on ATB's claims, I stay the operation of the order granted above for the appointment of a receiver and manager, until 12:00 pm (noon) on Friday, March 27, 2026. Here I emphasize the Monitor's perception that the parties were "tantalizingly close" to coming to terms on the ATB front and that nothing prevents the parties from making commercial arrangements (i.e. outside s 73 LPA) for clearance of ATB's debt.

#### **V. Epilogue**

[71] This decision was completed and ready for release yesterday morning (March 17). After completing it, I received a letter from ATB's counsel advising that ATB's claim against WMS had been resolved and that it was withdrawing its receivership application.

[72] SPDI's counsel, via separate letter yesterday, advised that it had acquired ATB's position through a related entity, albeit not including ATB's receivership application. On the WMS-stay-extension aspect, SPDI advised that a stay (if any) was no longer warranted, with the ATB receivership threat defused.

[73] Sunterra's counsel requested by letter today (March 18) that I should release my decision on both (WMS stay and receivership) aspects.

[74] I have decided to release my decision as it stood yesterday morning (with the addition of this epilogue).

[75] If the parties require any further directions on any aspect, they can request them via letter to my assistant.

[76] I thank the parties for their helpful written and oral submissions.

Heard via Webex on March 4, 2026.

**Dated** at Calgary, Alberta on March 18, 2026.

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**Michael J. Lema**  
**J.C.K.B.A.**

**Appearances:**

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