

COURT FILE NUMBER 2501-06120
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, 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., **SUNTERRA ENTERPRISES INC**

APPLICANT **SIGNATURE POINTE DEVELOPMENTS INC.**
RESPONDENT **SUNTERRA ENTERPRISES INC.**
DOCUMENT APPLICATION TO LIFT STAY AND INTERIM OPPRESSION REMEDY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT PARLEE MCLAWS LLP
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NOTICE TO RESPONDENT, SUNTERRA ENTERPRISES INC.

This application is made against you. You are a respondent. You have the right to state your side of this matter before the applications judge.

To do so, you must be in Court when the application is heard as shown below:

Date: TBD
Time: TBD
Where: **Calgary Courts Centre**
 601 – 5th Street SW
 Calgary AB, T2P 5P7

Before Whom: **Presiding Justice M.J. Lema or substitute**

Go to the end of this document to see what else you can do and when you must do it.

Remedy sought:

Lifting the Stay of Proceedings

1. An Order Lifting the Stay of Proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36, as amended ("**CCAA**"), imposed by the *CCAA* Initial Order dated April 22, 2025 and extended by further order(s), for the limited purpose of allowing the Applicant to bring this Application to preserve the assets of West Market Square Inc., in accordance with the Unanimous Shareholder Agreement dated May 31, 1999 (the "**USA**").

Interim Oppression Remedy (Preservation of Assets)

2. An interim Order pursuant to section 242(3) of the *Business Corporations Act*, RSA 2000, c B-9 ("**ABCA**"):
 - (a) Declaring that the refusal of Sunterra Enterprises Inc. to consent to the payout of the credit facility owing to ATB Financial is unfairly prejudicial to and unfairly disregards the interests of Signature Pointe Developments Inc. and West Market Square Inc.
 - (b) Dispensing with the requirement for the consent or resolution of the directors and/or shareholders of Sunterra Enterprises Inc. under the USA solely for the purpose of authorizing the payout of the ATB facility; and
 - (c) Authorizing Signature Pointe Developments Inc. to advance funds (the "**Preservation Loan**") to West Market Square in an amount sufficient to pay out the ATB indebtedness in full;

Security and Terms of Preservation Loan

3. An Order declaring that:
 - (a) The Preservation Loan shall be secured by a first-ranking charge over the assets of West Market Square Inc., identical in priority to the security currently held by ATB Financial; and
 - (b) The interest rate and repayment terms of the Preservation Loan shall be:

- (i) Accrued and deferred until the earlier of the sale of West Market Square Inc., or the exit of Sunterra Enterprises Inc. from CCAA protection, and/or should a dispute arise amongst the parties as to a reasonable interest rate and repayment terms, such dispute shall be determined at a later date by this Honourable Court .

Costs

4. An Order for costs of this Application to be paid by Sunterra Enterprises Inc., on a solicitor-and-client basis, or such other costs as this Court deems just.
5. Such further and other relief as this Honourable Court may consider appropriate.

Grounds for Making this application:

The Parties & Shareholdings in West Market Square

6. Signature Pointe Developments Inc. (the “**Applicant**” or “**SPDI**”) is a corporation incorporated pursuant to the laws of the Province of Alberta and operates in Calgary, Alberta and elsewhere in Alberta. Peter Livaditis is both the sole director and voting shareholder of SPDI.
7. Sunterra Enterprises Inc. (“**Sunterra**”) is a corporation incorporated pursuant to the laws of the Province of Alberta and operates in Calgary, Alberta and elsewhere in Alberta. Sunterra has six (6) directors and five (5) shareholders, which includes Glen Price.
8. West Market Square Inc. (“**WMS**”) is a corporation incorporated pursuant to the laws of the Province of Alberta and operates in Calgary, Alberta and elsewhere in Alberta. SPDI and Sunterra Enterprises Inc. are both 50% voting shareholder in WMS.
9. On May 31, 1999, Sunterra, SPDI, and WMS entered into a Unanimous Shareholders’ Agreement which provided that both Sunterra and SPDI would have 1,000 Class “A” Common Shares in WMS (the “**USA**”).

Summary

Urgency and Preservation of Assets

10. SPDI and the Sunterra are equal 50% shareholders in WMS, which owns the commercial property located at 1851 Sirocco Drive S.W., Calgary, Alberta, T3H 4R5.

11. Sunterra failed to pay the indebtedness under the Share Pledge Agreement by December 15, 2025, *infra*. As a result, WMS has defaulted on its credit facilities with ATB.
12. ATB has issued a formal demand for repayment and has indicated its intention to enforce its security by January 26, 2026.
13. As of January 30, 2026, ATB has frozen all accounts of WMS and WMS is unable to pay vendors. In addition, on January 30, 2026, via email, ATB stated:

We are writing to you in your capacity as President/Corporate Representative for West Market Square Inc. ("WMS"). As you are aware, our Demands expired on Monday, January 26, 2026 and we have received no correspondence from WMS on their position. As such, we are exercising our right to offset a portion of the debt with the funds sitting in the WMS GIC (GIC ending in 5310) as well as the funds in the WMS bank account (account ending in 4724). Going forward, if WMS intends to request additional credit for the purpose of funding critical payments, we would be open to considering funding requests from WMS outlining the critical nature of the payment, the amount and timing of such payment. Any further credit extensions would necessarily be in ATB's sole discretion.

14. If ATB enforces its security (by foreclosure or receivership), the equity in WMS will likely be extinguished, causing irreparable harm to both SPDI and Sunterra and destroying a material asset of the CCAA Applicant, Sunterra.

Basis for Lifting the Stay

15. It is equitable to lift the stay because:
 - (a) Prejudice: SPDI, WMS, and Sunterra will suffer material prejudice (loss of its investment) if the stay remains. Sunterra will suffer no prejudice, as the relief sought (paying off a debt) preserves their asset value;
 - (b) Balance of Convenience: The prejudice to SPDI outweighs any procedural inconvenience to Sunterra, as the relief sought (paying off a debt) preserves the Debtor's property for the benefit of all creditors; and
 - (c) Purpose: Lifting the stay to permit the preservation of WMS's assets advance the remedial purpose of the CCAA by preventing the destruction of value through a forced liquidation.

Oppression Remedy (Section 242 ABCA)

16. The USA requires the consent of Sunterra for new borrowing. Sunterra has refused to provide such consent, despite having no ability to pay its share of the debt and despite the imminent loss of the property.
17. This refusal effectively creates a deadlock that will result in the destruction of each parties' business. Such conduct is oppressive, unfairly prejudicial, and unfairly disregards the interests of the SPDI, who has a reasonable expectation that the parties will act to save the business from foreclosure.

The Share Pledge Agreement

18. On October 25, 2023, Sunterra, SPDI, and WMS entered into a Share Pledge Agreement in connection with a \$4,000,000.00 loan obtained by WMS from ATB Financial (the "**Loan**"). The Loan was obtained solely for the benefit of Sunterra, and neither WMS nor SPDI received any benefit from the Loan proceeds.
19. As security for Sunterra's obligations in respect of the Loan, Sunterra pledged its shares in WMS to SPDI. The Share Pledge Agreement fixed the value of the pledged shares at \$4,500,000.00 and provided SPDI with enforcement rights in the event of default, including the right to take ownership of the pledged shares.
20. The Loan was to be repaid by Sunterra on or before December 15, 2025.
21. On October 27, 2023, WMS entered into a commitment letter with ATB Financial confirming the Loan, which was repayable on or before December 31, 2025.

The Indebtedness & Enforcement

22. On April 22, 2025, this Court issued a 'CCAA Initial Order' under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c C-36, as amended, resulting in a stay of proceedings.
23. On January 12, 2026, ATB Financial issued a Notice of Intention to Enforce Security against WMS, recalling the Loan and all related indebtedness and demanding payment of \$9,809,924.63 by January 26, 2026 (the "**Indebtedness**").

24. The recall of the Indebtedness has exposed WMS to immediate enforcement risk, including the risk that ATB Financial will enforce against WMS's primary asset, being its leasehold interest in the West Market Square property in Calgary, Alberta.
25. Any enforcement against WMS would materially impair the value of WMS and, in turn, materially diminish the value of SPDI's 50% shareholding and its security interest arising from the Share Pledge Agreement.
26. The USA expressly contemplates the use of a Special Shareholder Loan which may be used to address the Indebtedness of WMS, subject to unanimous shareholder approval.
27. Following the recall of the Indebtedness, SPDI repeatedly sought to implement a Special Shareholder Loan in accordance with the USA, which would allow SPDI to advance funds sufficient to repay the Indebtedness in full and eliminate the enforcement risk facing WMS. Sunterra and Glen Price, as a director of WMS and of Sunterra ("**Mr. Price**"), have failed to authorize this Special Shareholder Loan.
28. Sunterra and Price have failed or refused to authorize the Special Shareholder Loan, notwithstanding SPDI's willingness and ability to repay the indebtedness and the availability of a contractual mechanism under the USA to do so.
29. As a result, SPDI is prevented from advancing the funds necessary to protect WMS from enforcement, leaving SPDI, WMS, and Sunterra's interests vulnerable to harm that is unnecessary, avoidable, and disproportionate.

Sunterra's Oppressive Conduct

30. Sunterra and Mr. Price have disregarded the reasonable expectations of SPDI by conducting themselves in a manner that is oppressive and unfairly prejudicial to, or that unfairly disregards, the interests of SPDI. Particulars of the oppressive conduct include, but are not limited to, the following:
 - (a) Refusing or failing to authorize the implementation of a Special Shareholder Loan expressly contemplated by the USA, notwithstanding SPDI's willingness and ability to advance funds sufficient to repay the indebtedness owing to ATB Financial in full;

(b) Exposing WMS to immediate and avoidable enforcement proceedings by ATB Financial, despite the availability of a contractual mechanism that would eliminate the enforcement risk and preserve WMS's assets and value;

(c) Acting in a manner that unfairly disregards SPDI's interests as a 50% shareholder and secured party by permitting enforcement that would materially diminish the value of SPDI's shareholding and security;

(d) Prioritizing the interests of Sunterra, including Sunterra's position arising from CCAA proceedings, over the best interests of WMS and all of its shareholders;

(e) Failing to act in good faith and in the best interests of WMS by refusing to approve a transaction that would preserve corporate value and prevent unnecessary loss;

(f) Conducting the affairs of WMS in a manner that results in disproportionate, unnecessary, and avoidable harm to SPDI; and

(g) Such further and other particulars of oppressive conduct as may be proven before this Honourable Court.

(the "**Oppressive Conduct**")

31. The Plaintiff pleads and relies on the *Business Corporations Act*, RSA 2000, c B-9, and any amendments thereto.

Material or evidence to be relied on:

32. The Affidavit of Peter Livaditis, to be filed;

33. The Reports of the Monitor, if any;

34. Such further and other materials as counsel may advise.

Applicable Acts, Rules and regulations:

35. The *Business Corporations Act*, RSA 2000, c B-9;

36. *Companies' Creditors Arrangement Act*, R.S.Cc. 1985 C-36, as amended; and

37. Such further and other Acts, Rules and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

38. None.

How the application is proposed to be heard or considered:

39. In person or via Web-ex

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.