

Clerk's Stamp

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

MATTER 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

DOCUMENT **BENCH BRIEF OF SIGNATURE POINTE DEVELOPMENTS INC.**  
(in the NOTICE OF RESPONDING APPLICATION OF SIGNATURE POINTE DEVELOPMENTS INC. responding to the Applicants' Application for the SISP Approval Order, Second ARIO, and CRO Appointment Order)

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**BENCH BRIEF OF SIGNATURE POINTE DEVELOPMENTS INC.**

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## I. INTRODUCTION

1. Signature Pointe Developments Inc. (“**SPDI**”) does not oppose the Applicants’ application for the Sales and Investment Solicitation Process (“**SISP**”) Approval Order, the appointment of the Chief Restructuring Advisor (“**CRO**”), or the extension of the Stay Period to October 30, 2026.
2. SPDI supports a court-supervised process to maximize value for all stakeholders. SPDI has engaged constructively with both the CRO and the Monitor since this Court’s decision of March 18, 2026 (2026 ABKB 206) and will continue to do so.
3. However, SPDI seeks two narrow, targeted protective conditions in the SISP Approval Order to preserve its existing security interest in Sunterra Enterprises Inc.’s (“**Sunterra Enterprises**”) 50% shareholding in West Market Square Inc. (“**WMS**”). Those shares are subject to a Share Pledge Agreement dated October 25, 2023, under which SPDI holds a first-priority security interest. The Event of Default under the Share Pledge has occurred and SPDI’s enforcement rights are currently stayed by the CCAA stay.
4. The proposed SISP, as currently drafted, does not contain any provision requiring notice to SPDI if a bid includes the pledged WMS shares, and does not protect SPDI’s security from being extinguished by a vesting order without SPDI being heard. SPDI asks this Court to fill that gap.
5. SPDI has reviewed the revised proposed orders served on April 27, 2026. The revisions are technical and do not address SPDI’s concerns

## II. BACKGROUND

### *A. SPDI’s Interest in WMS*

6. SPDI is the fee simple owner of the lands at Plan 9911775, Block 3 (Certificate of Title 231 047 873), on which the West Market Square shopping centre is located at 1851 Sirocco Drive SW, Calgary (the “**Lands**”).
7. SPDI subleases the Lands to WMS under a Ground Sublease dated May 31, 1999 (as amended and restated September 13, 2022). WMS operates the shopping centre. SPDI and Sunterra Enterprises each hold 50% of the issued and outstanding shares of WMS. The relationship is governed by a Unanimous Shareholders’ Agreement dated May 31, 1999.

### *B. The Share Pledge Agreement*

8. On October 25, 2023, Sunterra Enterprises (as “Pledgor”), SPDI (as “Secured Party”), and WMS (as “Issuer”) entered into a Share Pledge Agreement (the “**Share Pledge**”). Under the Share Pledge, Sunterra Enterprises pledged its 1,000 Class “A” Common Shares in

WMS (the “**Pledged Shares**”) to SPDI as security for the repayment of a \$4,00,000 loan obtained by WMS from ATB Financial for the sole benefit of Sunterra Enterprises.

9. The Pledged Share Value was fixed by agreement at \$4,500,000 (Article 2.4(b)). The parties agreed that no party would dispute the Pledged Share Value in any manner.
10. An Event of Default occurred on December 15, 2025, when WMS failed to pay the ATB Loan in full (Article 5.1(a)). SPDI’s security interest in the Pledged Shares became enforceable on that date, subject to the CCAA stay.
11. The Share Pledge has been in evidence in these proceedings since SPDI’s First Affidavit (Exhibit “H” to the Affidavit of Peter Livaditis sworn February 4, 2026). This Court has discussed SPDI’s security position at paragraphs 47–52 of the March 18, 2026 Decision.

### ***C. The ATB Assignment and Sounio***

12. On March 13, 2026, ATB Financial assigned all of its debt and security against WMS to Sounio Ventures Inc. (“**Sounio**”), SPDI’s nominee. ATB was paid \$8,304,732.40 in full. The assignment was completed on a voluntary commercial basis, consistent with this Court’s observations at paragraph 51 of the March 9, 2026 Endorsement (2026 ABKB 175).<sup>1</sup> The assignment was acknowledged by this Court in the Epilogue to the March 18, 2026 Decision.<sup>2</sup>
13. Sounio now holds all first-priority security over WMS, including the mortgage, the General Security Agreement, and the General Assignment of Leases and Rents. Interest accrues on the outstanding balance. The forbearance granted by Sounio to WMS expired on April 30, 2026. No payments have been received from WMS.

### ***D. The Proposed SISP and the Gap***

14. The proposed SISP contemplates the solicitation of Investment Proposals and Sale Proposals for all or a portion of the Sunterra Group’s property and business. Sunterra Enterprises’ 50% shareholding in WMS is property of the Sunterra Group.
15. The SISP designates NBC, FCC, and Compeer as “Consultation Stakeholders” with rights to bi-weekly updates and consultation on the SISP. SPDI is not a Consultation Stakeholder.
16. The SISP does not contain any provision requiring the CRO, the Sale Advisor, or the Monitor to notify SPDI if a bid includes or affects the Pledged Shares. The SISP does not address SPDI’s Share Pledge at all.

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<sup>1</sup> [National Bank of Canada v Sunterra Food Corporation](#), 2026 ABKB 175 (CanLII), at para 51

<sup>2</sup> [National Bank of Canada v Sunterra Food Corporation](#), 2026 ABKB 206 (CanLII), at paras 71 to 76

17. The SISP expressly permits the Applicants and their related parties to participate as bidders (Phase 1 Bid Deadline, paragraph 1 of the SISP Summary). A related party of Sunterra could bid on the Pledged Shares, seeking a vesting order that extinguishes the Share Pledge.

### III. ISSUES

18. This bench brief addresses two issues:

- a) Whether the SISP Approval Order should include a notice requirement protecting SPDI's security interest if any bid includes or affects the Pledged Shares; and
- b) Whether the SISP Approval Order should confirm that no vesting order may be granted that extinguishes the Share Pledge without SPDI being given notice and an opportunity to be heard.

### IV. LAW AND ARGUMENT

#### *A. SPDI's Standing*

19. Section 11 of the *Companies' Creditors Arrangement Act R.S.C.*, 1985, c. C-36 ("CCAA") authorizes the Court "on the application of any person interested in the matter" to make any order "that it considers appropriate in the circumstances."<sup>3</sup> SPDI is a person interested in these proceedings as the holder of a first-priority security interest over property of a CCAA Applicant (the Pledged Shares), as the 50% co-shareholder of WMS, and as the fee simple owner and landlord of the Lands.

20. Section 36(2) of the CCAA requires that notice of a proposed sale or disposition be given to "the secured creditors who are likely to be affected by the proposed sale or disposition." SPDI is squarely within this class. Any sale of the Pledged Shares would directly affect SPDI's first-priority security interest.

#### *B. A Secured Creditor Must Raise Objections at the SISP Stage*

21. The Alberta Court of Appeal has confirmed that a secured creditor who fails to raise concerns at the SISP approval stage may be precluded from raising them at the sale approval stage. In *Canadian Overseas Petroleum Limited (Re)*, 2024 ABCA 190 (CanLII) ["*COPL*"], BP Energy held a *pari passu* security interest that was extinguished by a vesting order. The Court of Appeal denied leave to appeal, holding that BP was aware "as early as February 20, 2024" that its security could be affected and failed to participate in the SISP process.<sup>4</sup>

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<sup>3</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36

<sup>4</sup> *Canadian Overseas Petroleum Limited (Re)*, 2024 ABCA 190 (CanLII), at paras 7, 29, and 44

22. Similarly, in *Tool Shed Brewing Company Inc (Re)*, 2024 ABKB 234 (CanLII) [“**Tool Shed**”] the Court held that conflict-of-interest objections to a stalking-horse bid were part of the SISP process and should have been raised at the SISP approval hearing, not on the sale approval motion.<sup>5</sup>
23. SPDI acknowledges the lesson of *COPL* and *Tool Shed*. SPDI raises its concerns now, at the SISP approval stage, rather than waiting to object at the sale approval stage. The protective conditions SPDI seeks are modest and will cost the Applicants nothing if the SISP is conducted in good faith.

### ***C. The Law on Vesting Orders and Secured Creditor Rights***

24. Section 36(6) of the CCAA authorizes a sale “free and clear of any security, charge or other restriction” but mandates that “the court shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected.”
25. The Ontario Court of Appeal in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 (CanLII) [“**Dianor**”], established a three-step “cascade analysis” for vesting orders that extinguish third-party interests (the case focused on interest in land, but can be interpreted more broadly as in *CannaPiece*, *infra*): (1) the nature and strength of the interest; (2) whether the holder has consented or contractually subordinated; and (3) equitable considerations including prejudice and adequacy of compensation.<sup>6</sup>
26. In *CannaPiece Group Inc. (Re)* (2023 ONSC 841) [“**CannaPiece**”], Justice Osborne **refused** a reverse vesting order that would have extinguished a senior secured creditor’s specific-asset security interest where: (i) the secured creditor opposed; (ii) the creditor held the senior position on its specific collateral; (iii) the creditor had not consented; and (iv) the practical reality was extinguishment, not transfer. The Court applied the *Dianor* factors and held that the relief sought would be prejudicial to (and was opposed by) the first ranking secured creditor.<sup>7</sup>
27. In *PaySlate Inc. (Re)* (2023 BCSC 608) [“**PaySlate**”], the Court refused a reverse vesting order where, in part, the debtor did not provide adequate notice to creditors whose claims would be impaired by the transaction.<sup>8</sup>

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<sup>5</sup> [Tool Shed Brewing Company Inc \(Re\)](#), 2024 ABKB 234 (CanLII), at paras 42, 101

<sup>6</sup> [Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.](#), 2019 ONCA 508 (CanLII), at paras 102 to 110

<sup>7</sup> [CannaPiece Group Inc. \(Re\)](#) (2023 ONSC 841), at paras 51 to 58, 66 to 73

<sup>8</sup> [PaySlate Inc. \(Re\)](#) (2023 BCSC 608), at paras 77, 143 to 144

28. The *Harte Gold Corp. (Re)* (2022 ONSC 653) framework further requires the Court to consider whether any stakeholder is worse off under the proposed structure than under any viable alternative.<sup>9</sup> It appears that when the affected creditor has not consented, the court must scrutinize the transaction carefully
29. While several of the foregoing authorities arose in the context of reverse vesting orders, the principles they establish are not confined to that mechanism. SPDI's concern is not limited to a reverse vesting order. Any form of vesting order — whether a standard vesting order under section 36(6) transferring the Pledged Shares to a buyer free and clear of SPDI's security, or a reverse vesting order stripping the Share Pledge into a residual entity — would extinguish SPDI's first-priority security interest in the same practical way. The *Dianor* cascade analysis, the *CannaPiece* requirement of senior secured creditor consent, and the *PaySlate* notice requirement apply whenever a court is asked to extinguish a specific-asset security interest through any vesting mechanism. SPDI asks this Court to ensure that no such order is granted — in any form — without SPDI being given notice and an opportunity to be heard.
30. In addition, these authorities establish that a vesting order extinguishing a non-consenting senior secured creditor's specific-asset security interest requires careful judicial scrutiny with full notice to the affected creditor. SPDI's request for a “no vesting without further order on notice to SPDI” condition is consistent with this case law and with the standard practice in recent Alberta and Ontario SISPs.

#### ***D. Related-Party Bidding Requires Enhanced Scrutiny***

31. Section 36(4) of the CCAA imposes additional, mandatory requirements on related-party sales. The court may authorize a related-party sale only if satisfied that: (a) good faith efforts were made to sell to unrelated parties; and (b) the consideration to be received is **superior** to any other offer.
32. In *McEwan Enterprises Inc.*, 2021 ONSC 6878 (CanLII) the Ontario Court **refused** to approve a related-party sale because no good faith arm's-length efforts had been made and the consideration was not “superior.”<sup>10</sup>
33. The proposed SISP permits the Applicants and their related parties to bid. If a related party bids on the Pledged Shares, the heightened scrutiny of section 36(4) applies. SPDI submits that no related-party bid for the Pledged Shares should be considered without SPDI being given notice and an opportunity to be heard, and without full compliance with section 36(4)'s “superior consideration” requirement.

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<sup>9</sup> [Harte Gold Corp. \(Re\) \(2022 ONSC 653\)](#), at para 38

<sup>10</sup> [McEwan Enterprises Inc.](#), 2021 ONSC 6878 (CanLII) at paras 60 to 61

### ***E. SPDI's Additional Interest as Landlord***

34. SPDI's interest extends beyond the Share Pledge. SPDI is the fee simple owner and the landlord under the Ground Sublease. Any sale of Sunterra Enterprises' WMS shareholding, or any sale of the Sunterra Quality Food Markets Inc. ("**Sunterra QFM**") grocery store business (Sunterra QFM is a CCAA Applicant and the anchor tenant at the shopping centre), directly affects SPDI's position as landlord. A new shareholder in WMS or a new operator of the grocery store space would require SPDI's cooperation. SPDI's participation in the SISP process is necessary to ensure any transaction is commercially viable.

### ***F. The Requested Conditions Are Reasonable and Precedented***

35. SISP orders routinely include protective conditions for secured creditors with interests in specific assets. In *Bellatrix Exploration Ltd. (Re)*, 2020 ABQB 332 (CanLII), it was argued that secured creditors were entitled to receive detailed information about bids and to be advised whether any bids were sufficient to pay out their claims.<sup>11</sup> In the *B+H Architects SISP Process Order* (October 27, 2025, Ontario), the Order expressly stated that "nothing herein approves the sale or vesting of any Property to the Stalking Horse Bidder" and that approval of any sale and vesting required a subsequent motion.<sup>12</sup>

36. The conditions SPDI seeks are narrower than those granted in the above cases. SPDI does not ask to be a general Consultation Stakeholder with information rights over the entire SISP. SPDI does not ask for a veto over any bid. SPDI asks only for (a) notice when a bid touches the Pledged Shares, and (b) an opportunity to be heard before a vesting order extinguishes its security. These are the minimum protections any secured creditor with a specific-asset claim would expect.

37. We note that paragraph 4(f) of the proposed CRO Appointment Order provides that the Chief Restructuring Advisor shall not disclose confidential information to stakeholders 'unless otherwise directed by this Court.' The notice provision SPDI seeks is precisely such a court direction — it authorizes the CRO to provide the limited notice contemplated, consistent with the CRO Appointment Order's own framework.

## **V. ORDER SOUGHT**

38. SPDI respectfully requests that the SISP Approval Order include the following terms:

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<sup>11</sup> [Bellatrix Exploration Ltd. \(Re\), 2020 ABQB 332 \(CanLII\)](#), at para 9

<sup>12</sup> [B+H Architects SISP Process Order \(October 27, 2025, Ontario\)](#) at para 3

**a) Notice Requirement:**

*"The Chief Restructuring Advisor shall provide written notice to counsel for SPDI promptly upon determining that any Phase 1 Qualified Bid, Phase 2 Qualified Bid, Binding Offer, or Alternative Transaction proposal includes, contemplates the acquisition of, or in any way affects Sunterra Enterprises Inc.'s interest in West Market Square Inc. or the Pledged Shares (as defined in the Share Pledge Agreement dated October 25, 2023 between SPDI, Sunterra Enterprises Inc., and West Market Square Inc.). Such notice shall confirm that a bid affecting the Pledged Shares has been received but shall not be required to disclose the identity of the bidder, the purchase price, or the terms of the bid."*


**b) Vesting Order Protection:**

*"Nothing in this Order approves the sale or vesting of the Pledged Shares free and clear of Signature Pointe Developments Inc.'s security interest under the Share Pledge Agreement. Any order approving the sale of the Pledged Shares or vesting the Pledged Shares in a purchaser free and clear of Signature Pointe Developments Inc.'s security interest shall be considered on a subsequent motion on not less than seven (7) days' notice to Signature Pointe Developments Inc., and shall comply with section 36(6) of the CCAA."*

39. SPDI further requests that, in the event the Applicants or any related party submits a bid that includes or affects the Pledged Shares, the Monitor's report on that bid specifically address the fairness of the bid to SPDI as the holder of a first-priority security interest over the Pledged Shares.
40. SPDI does not oppose the remaining relief sought by the Applicants, including the SISP Approval Order (subject to the above conditions), the CRO Appointment Order, and the Second ARIIO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of April, 2026.

**PARLEE MCLAWS LLP**

per   
Lenci Kadavil,  
Counsel for Signature Pointe  
Developments Inc.

## VI. TABLE OF AUTHORITIES

1	<a href="#"><i>National Bank of Canada v Sunterra Food Corporation</i>, 2026 ABKB 175 (CanLII) at para 51</a>
2	<a href="#"><i>National Bank of Canada v Sunterra Food Corporation</i>, 2026 ABKB 206 (CanLII), at paras 71 to 76</a>
3	<a href="#"><i>Companies' Creditors Arrangement Act</i>, RSC 1985, c C-36, sections 11, 36(2), 36(4), 36(6)</a>
4	<a href="#"><i>Canadian Overseas Petroleum Limited (Re)</i>, 2024 ABCA 190 (CanLII), at paras 7, 29, and 44</a>
5	<a href="#"><i>Tool Shed Brewing Company Inc (Re)</i>, 2024 ABKB 234 (CanLII), at paras 42, 101</a>
6	<a href="#"><i>Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.</i>, 2019 ONCA 508 (CanLII), at paras 102 to 110</a>
7	<a href="#"><i>CannaPiece Group Inc. (Re) (2023 ONSC 841)</i>, at paras 51 to 58, 66 to 73</a>
8	<a href="#"><i>PaySlate Inc. (Re) (2023 BCSC 608)</i>, at paras 77, 143 to 144</a>
9	<a href="#"><i>Harte Gold Corp. (Re) (2022 ONSC 653)</i>, at para 38</a>
10	<a href="#"><i>McEwan Enterprises Inc.</i>, 2021 ONSC 6878 (CanLII) at paras 60 to 61</a>
11	<a href="#"><i>Bellatrix Exploration Ltd. (Re)</i>, 2020 ABQB 332 (CanLII), at para 9</a>
12	<a href="#"><i>B+H Architects SISP Process Order (October 27, 2025, Ontario)</i> at para 3</a>