Court of King's Bench of Alberta

Citation: Compeer Financial, PCA v National Bank of Canada, 2026 ABKB 771

Date: 20261030
Docket: 2601 08146/
2501 06120
Registry: Calgary

Between:

2601-08146

Compeer Financial, PCA

Plaintiff/Respondent

- and -

National Bank of Canada

Defendant/Applicant

Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd., Sunterra Enterprises Inc. and Ray Price

Third Party/Respondents

- and -

Between:

2501 06120

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. and Sunterra Enterprises Inc.

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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 Farms Enterprises Ltd., and Sunterra Enterprises Inc.

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Memorandum of Decision
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] Should the *CCAA* stay of proceedings, which expires today (October 30, 2026), be extended to January 29, 2027? With Sunterra satisfying the statutory factors for an extension and no material opposition, I grant that extension.

[2] Should the stay of proceedings be lifted to allow the owner of certain leased premises to evict the tenant (one of the Sunterra entities)?

[3] Per the owner, the lease has expired, and the Court lacks the power, or should in any case decline to exercise a power, to effectively revive the lease by keeping the stay in place. Accordingly, it must or should be lifted.

[4] Per the tenant, the lease has not expired and, in any case, the Court has the power, in balancing interests in the lift-stay analysis, to allow it to continue occupying the premises for two more months. During that period, it hopes to advance its sales-and-investment-solicitation (SISP) work and convince the landlord to enter a new lease with itself (refinanced) or a third-party purchaser of its business.

[5] I find that the *CCAA*'s remedial powers are intended to assist an insolvent debtor in restructuring, refinancing, or disposing of its assets as they exist from time to time. In the case of leased assets, when the leases expire naturally (i.e. by their own terms), the assets cease to form part of the business. The CCAA does not or should not deprive third parties of their assets when the debtor lessee ceases to have any right to them. Viewed differently, the lessors cannot, or should not, be compelled to effectively extend expired leases.

[6] Accordingly, I lift the stay to permit the owner to take eviction proceedings, albeit not until November 14, 2026, as explained further below.

II. State of the lease

[7] Sunterra is the longtime – since 1996 – tenant of the premises in question.

[8] After expiry of a long-running lease, Sunterra and the former owner entered into a month-to-month tenancy, which ran until July 1, 2026.

[9] At that time, they entered into a fixed-term lease expiring October 31, 2026.

[10] Sunterra argues that the landlord verbally agreed to a short lease extension, on a month-to-month basis, beyond October 31, with the landlord also agreeing not to terminate the lease while Sunterra advances its SISP process, albeit no later than December 31, 2026.

[11] Here is Sunterra's evidence on the extension, per Arthur Price (senior Sunterra executive):

> In April 2026, Sunterra … engaged with [the former owner] with respect to the Premises and the consensual overholding arrangement then in place as part of [Sunterra's] efforts to bring forward the SISP and concurrently advanced the Plan / Restructuring Path. On April 28, 2026, the same day as the SISP Approval Order was granted by the Court, myself and [another Sunterra executive] met with Mr. James Jenkins [representative of the former owner]. **At that meeting, we discussed the SISP**, which [Sunterra] had brought forward in an effort to identify potential transactions in respect of [Sunterra] and its business, including [the Sunterra entity operating the store in question], **and how the SISP would interact with the arrangements between [that entity] and [the former owner] in respect of the Premises.**
>
> Given the possibility that the SISP could result in a transaction in respect of [that entity] or its businesses or assets, **the parties determined in this context to enter into a short-term arrangement. A short-term arrangement would enable any party interested in acquiring [that entity's] business through the SISP to negotiate its own terms with [the former owner] and engage with [it] as part of that process.**
>
> The arrangement agreed with [the former owner] coming of that discussion was that there would be continuity for [that entity] at the Premises while the SISP was carried out, and that the outcome of the SISP would crystallize next steps in respect of the Premises.
>
> **Given the above, the parties ultimately determined to enter into a Revival and Amending Agreement made effective July 1, 2026 …. The July 2026 Agreement revived the lease for a term expiring on October 31, 2026** …. The July 2026 Agreement also reduced the rent payable under the lease to reflect the circumstances of these CCAA proceedings.
>
> **When [the Sunterra entity in question] finalized the July 2026 Agreement, it understood, based on the April 28, 2026 meeting with [the former owner], that the July 2026 Agreement was intended to permit [that entity] to remain in the Premises while the SISP was carried out to its conclusion.** When the July 2026 Agreement was entered into, the Stay Period, as extended by the Second [amended and restated initial *CCAA* order], ran until October 30, 2026 on the basis that there would be additional clarity regarding the results of the SISP at this time. **The October 31, 2026 expiry of the Revived Term was chosen to correspond generally with the timeline of the SISP, not to provide for an end**

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> **to [the entity's] occupancy at the Premises. [The entity] understood, based on the April 26, 2026 meeting with [the former owner], that it would remain in the Premises following the expiry of the Revived term on a month-to-month basis while the SISP was carried to its conclusion.** [Price affidavit, paras 14-18] [emphasis added]

[12] The landlord disputes that such or any extension was agreed to.

[13] I find for the landlord, for these reasons:

1. Sunterra cites discussions in April 2026 as the basis of its understanding that the lease would be extended, effectively, for sufficient time to allow the SISP process to be completed. However, after those discussions, it agreed to the fixed-term lease-revival agreement i.e. with the extension (from July 1, 2026) running only until October 31, 2026. Here is the revived lease on this point:

   > Upon the effective date of this Agreement [July 1, 2026], the Lease shall be deemed revived and restored to full force and effect as if no termination, expiration or lapse had occurred. **The term of the revised Lease … shall commence on July 1, 2026 and shall expire on October 31, 2026, unless sooner terminated in accordance with the terms and conditions of the Lease.** [article 2] [emphasis added]

2. The revived lease makes no reference to any pre-existing agreement that it, or any alternative lease, would run as long as needed for SISP-completion purposes or, in any case, beyond October 31, 2026;

3. The revived lease states that "This agreement constitutes the entire agreement between the parties in connection with the subject matter hereof" (article 8). I find that the "subject matter hereof" is the leasing relationship between the parties as of July 1, 2026, which was (per the revived agreement) that Sunterra could stay only until October 31, 2026;

4. The entire-agreement point is reinforced by article 18.4 ("Sole Agreement") of the original (and now revived) lease:

   > This Lease sets forth all of the warranties, representations, covenants, promises, agreements, conditions and understandings between the parties concerning the Premises and the Shopping Centre and there are no warranties, representations, covenants, promises, agreements, conditions or undertakings, either oral or written, express or implied, between them other than as set forth in this Lease.

5. Sunterra's circa-April evidence is inconsistent, First are the incompatible references to the need for a "short-term arrangement" for SISP-completion purposes and "[g]iven the above [i.e. given the need for such an arrangement] the parties ultimately determined to enter into a Revival and

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Amending Agreement made effective July 1, 2026", on the one hand, and the supposed understanding, on the other, that Sunterra could remain in occupation as long as the SISP was advancing (i.e. an open-ended lease).

Sunterra says that "[t]he October 31, 2026 expiry of the Revived Term was chosen to correspond generally with the timeline of the SISP, not to provide for an end to [the Sunterra entity's] occupancy at the Premises." If that had been the intention of the July extension, the agreement would have expressly said so i.e. not fixed the lease end at October 31;

6. the other inconsistency relates to timing. Recall this passage from the Price affidavit:

> [The Sunterra entity] understood, based on the April 26, 2026 meeting with [the former owner], that it would remain in the Premises following the expiry of the Revived term on a month-to-month basis while the SISP was carried to its conclusion.

The parties did not execute the revived agreement until July 1, 2026. Sunterra provided no evidence that, as of the April meeting, either side had committed to the July arrangement. Sunterra fails in attempting to show that, as of April, the parties had committed to a short-term fixed lease (July-October) followed by an open-ended ("while the SISP runs") extension;

7. the inescapable inference is that Sunterra anticipated completing its SISP work and presenting the resulting refinanced entity or a third-party purchaser to the landlord by October 31. Sunterra's problem is that it has not completed the SISP work by that date;

8. in any case, a lease term of (effectively) "as long as needed for the SISP to be completed" is insufficiently certain. Per ***Gourlay et al v Canadian Department Stores Ltd***, [1933] SCR 329:

> It has been long established that a covenant in a lease, which provides for a renewal of the term, in order to be valid must designate with reasonable certainty the date of the commencement and **the duration of the term to be granted**. **This certainty as to duration must appear from the express limitation of the parties or from reference to some collateral matter—itself certain or capable of being made so before the lease takes effect—which may, with equal certainty, be applied in measurement of the continuance of the term.** [emphasis added]

"As long as needed to complete the SISP" does not meet this test.

9. even more uncertainty came from Sunterra's argument on the application on October 29th. Per its counsel, the asserted extension (beyond October 31) was in fact "as long as needed to complete the SISP but no longer than

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December 31, 2026." Nothing in Sunterra's evidence about the April meeting and its understanding coming out of that meeting reflected any outside date, December 31 or otherwise;

10. further, as reflected in the short excerpt above, Sunterra's evidence was that the asserted extension would be on a "month to month basis" (albeit with the "until SISP completed" gloss). However, it did not address other terms, such as rent, for the asserted extension period. (For an inventory of essential lease terms, see ***Parking Specialists Inc v York Condominium Corp No 194***, 2026 ONSC 4424 (Mathen J.) at para 73.) Notably, when the long-running lease was replaced by a month-to-month extension, the parties expressly referenced article 17.10 of the original lease i.e. as the template for the month-to-month continuation, with it providing all necessary terms. I find that the circa-April mere reference to "month to month basis" left other essential terms unaddressed, providing another reason to find no post-October 31 lease;

11. as well, Sunterra's "understandings" evidence is insufficient: see ***Dimension 3 Trading Enterprises (Int) Inc v Rowe***, 2002 ABQB 641 (Master Funduk) (para 10). Sunterra's description of its "understanding" of a post-October 31 arrangement was limited to it being "based on the April 26, 2026 meeting" i.e. with no details of what was said or done there on that subject, by whom, to whom, and so on; and

12. finally, Sunterra produced no evidence of any follow-up correspondence or communication of any kind on this subject, even after receiving a "lease expiring on October 31" notice from the former owner on September 15. It is inconceivable that, if Sunterra in fact understood (on some basis) that the parties had agreed to a post-October-31 lease, it would not have sought to confirm that understanding with or assert that position to the landlord (past or present) at some point between April 26 and a few days ago, when Sunterra filed its *CCAA*-stay-extension materials (reflecting its lease-will-run-past-October-31 position) or, at minimum, immediately on receiving the September 15 notice.

[14] Sunterra miscalculated. It assumed its SISP work would be done in enough time to present the results to the landlord in advance of October 31. It thus committed to a lease running only to that date, hoping that (with fruitful SISP efforts) it would convince the landlord to extend the lease beyond that date, with itself or a third-party purchaser of the Britannia entity.

[15] I find that Sunterra in fact had and has no genuine understanding that the lease will run beyond October 31. As explained above, such running is entirely incompatible with the making of the July-October lease. And no other circumstance points to the possible existence of a post-October-31 lease.

[16] No reasonable person could conclude, on the facts here, that any lease was agreed to beyond October 31.

[17] I find that Sunterra's "understanding" is simply a last-ditch (and baseless) bid for more time on the Britannia front.

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[18] All to say: no lease will be in place after October 31.

III. Lifting the stay

[19] All agree that, if Sunterra continues in occupation after October 31, the owner cannot evict it without the *CCAA* stay being lifted.

[20] Sunterra says that, even if no ongoing lease exists, the Court has the jurisdiction, in balancing the interests of all affected parties (and here its position is echoed by the Monitor), to decline to lift the stay through to December 31. This would allow Sunterra to continue to advance the SISP, carry on business through the anticipated-to-be-busy pre-Christmas period, and, if the SISP and negotiate-with-landlord efforts are unsuccessful, take all necessary shut-down steps in an orderly manner before handing back the premises at year's end.

[21] The owner says that the *CCAA* does not empower the Court to effectively extend a naturally-expired lease (i.e. the stay must be lifted) or, in any case, the balancing of interests favours restoring the property to the landlord (i.e. the stay should be lifted).

[22] I find for the owner, for these reasons:

1. the purpose of the *CCAA* is to preserve the status quo i.e. preserve the insolvent entity's assets, rights and privileges (effectively, "your resources are sheltered from enforcement steps; do your best to restructure, refinance, or sell them"). Where a lease naturally expires, the leased asset ceases to be part of the sheltered resources. While the *CCAA* shelter prevented any premature eclipsing of the lease, the sheltering has no logical connection to property over which the insolvent has no further rights, as with a naturally expiring lease;
2. if the lessor agrees to an extension, that is one thing. But where the lessor wants the property returned, the lessee has no rational basis for objecting;
3. I do not interpret the *CCAA* stay power as barring the return of such property i.e. in which the insolvent has no further rights. Sunterra did not offer a convincing rationale for the *CCAA* being so interpreted. In any case, I do not see any. Whether it be real or personal leased property, I cannot see any defensible reason for blocking the return of lease-expired property to the lessor;
4. both sides acknowledged a paucity of case law on this issue. Sunterra said that is because it is apparent that the Court's broad *CCAA* powers allow *de facto* lease extensions (via declined stay-lifting) as part of the overall balancing-of-interests exercise.
5. I prefer the owner's reading i.e. it is because there is no apparent rationale for allowing the insolvent party to pursue its *CCAA* efforts, in part, via assets owned by others i.e. in which it has no rights;
6. the issue is akin to the question of whether third-party assets can be sold, with the insolvent's assets, under the *CCAA*. Per ***8640025 Canada Inc (Re)***, 2017 BCCA 303, the answer is no (paras 48-60). Or otherwise whether third-party assets can be folded into the *CCAA* exercise: answer

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"no", per ***Quicksilver Resources Canada Inc (Re)***, 2018 ABQB 653 (C. Jones J.) (paras 52-59);

7. support also comes from ***Walgre Transport Inc (Re)***, 2025 ONSC 7143 (Kimmel J.) (paras 4-53), where a *CCAA* stay was lifted to allow an equipment lesser to recover assets in respect of which the leases had terminated before the stay (and before a pre-existing *BIA* notice-of-intention stay) i.e. in other words, to recover property in which the insolvent had no further rights;

8. applying the lift-stay factors canvassed in ***Wallace & Carey Inc (Re)***, 2025 ABKB 750 (Marion J.), I find that:

    a. the landlord has "serious grounds" or a "sound reason" for the stay being lifted, namely, it owns property over which Sunterra has no continuing rights;

    b. the landlord's proposed eviction step is thus, on the facts here, completely meritorious;

    c. on whether the prejudice caused by the stay is material and unique to the landlord, the answer is yes. Owners of property held or occupied by a *CCAA* debtor having no right to such property are in a different position that other stakeholders. They are akin to persons in a bankruptcy setting who can retrieve their property via s. 81 *BIA* i.e. via a property proof of claim, not a regular proof of claim;

    d. the relative prejudice of affected parties: I see no recognizable prejudice to Sunterra in having to step away from leased property over which it no longer has any rights. Sunterra committed to a lease ending October 31. It was unable to convince the former or current owners to extend the lease. The reality is that allowing the landlord to enforce the lease is not depriving Sunterra of any asset or right;

    e. on the balance of convenience, with Sunterra having no continuing interest in the property, there are no interests to balance i.e. no factor supports Sunterra continuing to occupy i.e. with it having no lease rights;

    f. on the status of the *CCAA* proceedings and the impact of a stay lift, as stated above, those proceedings are anchored on the insolvent's assets as they exist from time to time. Here, Sunterra has lost this (leasehold) asset. Its evaporation, purely through the running of time, is a byproduct of Sunterra's decision to lease only through October 31. That is the cause of the impacts here, not the owner's understandable bid to recover its property;

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g. on the insolvent entity's acting in good faith and with diligence, it may be that those characterizations apply to Sunterra's overall actions while under *CCAA* protection. But I find that they do not apply to this chapter. As noted above, Sunterra's arguments on the lease extension are completely spurious (i.e. have no recognizable foundation), and its last-minute efforts to advance them did not reflect due diligence;

h. on whether lifting the stay is consistent with the *CCAA*'s remedial objectives, I have explained above why those objectives cannot be pursued by dragooning property over which the insolvent has no rights; and

i. interests-of-justice-wise, same thing – Sunterra did not show why its *CCAA* efforts should be built, even in part, on assets over which it has no rights;

9. I note the absence in the *CCAA* of a "critical landlord" provision akin to the "critical supplier" provision in s. 11.4; and

10. I find ***Philip's Manufacturing Ltd Estate***, 1991 CanLII 226 (BCSC) (MacDonald J.), cited by Sunterra, to be distinguishable, with the lease there not yet expired and a live issue over whether it had been effectively renewed i.e. it did not address the expired-lease phenomenon.

[23] Accordingly, I approve the owner's application to lift the *CCAA* stay, subject to the ruling below.

IV. Conclusion

[24] The stay is extended to January 29, 2027.

[25] On the Britannia front, as explained above, no lease will be in place as of 12:01 am on November 1, 2026.

[26] The *CCAA*'s remedial principles do not support the judicial creation of a new lease against a landlord's wishes.

[27] The lift-stay analysis plainly favours restoring the owner's property i.e. property over which Sunterra will have no interest as of the noted time and date.

[28] Sunterra asked in the alternative for a short period (describing alternatively as "a week", "ten or twelve days", or "two weeks") to wrap up operations at the Britannia store.

[29] The owner insisted that the property be turned over, completely cleared out, by November 1, having leased it to a new tenant for a March 1, 2027 start-up and associated renovation work having to start on November 1.

[30] With the owner not providing detailed evidence on why in fact four months are required for that work (e.g. a construction contract, even a synopsis of one, showing the work required and a timeline), and recognizing the current circumstances (i.e. the Britannia store is (as I

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understand it) in fully operational mode i.e. no wind-down efforts have begun), I approve a 15-day wind-down period i.e. the owner cannot take eviction steps until after November 14.

[31] Sunterra must pay occupation rent at the revived-lease rate over this period.

V. Closing note

[32] I thank all parties for their helpful written and oral submissions.

Heard on the 29th day of October, 2026.
Dated at Calgary, Alberta this 30th day of October, 2026.

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

Appearances:

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For the Sunterra Parties

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