Court File No. & Estate No. CV-19-627184-00CL (31-2560674)
CV-19-627185-00CL (31-2560984)
and CV-19-627186-00CL (31-2560986)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF QUADRIGA FINTECH SOLUTIONS CORP., WHITESIDE CAPITAL CORPORATION AND 0984750 B.C. LTD. D/B/A QUADRIGA CX AND QUADRIGA COIN EXCHANGE

FACTUM OF THE TRUSTEE
(Re: Approval of the Settlement Agreement)
(Returnable October 16, 2019)

October 11, 2019

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PART I - OVERVIEW

1. Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. d/b/a Quadriga CX and Quadriga Coin Exchange were granted protection from their creditors under the *Companies' Creditors Arrangement Act* pursuant to an initial order of the Nova Scotia Supreme Court dated February 5, 2019. Ernst & Young Inc. was appointed as the Monitor of the Applicants in the CCAA Proceedings.

2. On February 28, 2019, the Nova Scotia Court issued the Rep Counsel Order appointing Miller Thomson LLP and Cox & Palmer as Representative Counsel of the affected users of the Quadriga platform except for certain individuals who opt-out of representative in accordance with the Rep Counsel Order (the "**Affected Users**").

3. On April 11, 2019, a Termination and Bankruptcy Assignment Order was issued by the Nova Scotia Court and on April 15, 2019, each of the Applicants were assigned into bankruptcy under the *Bankruptcy and Insolvency Act*.

4. Ernst & Young Inc. was appointed as the Trustee-in-Bankruptcy of each bankrupt estate at the first meeting of creditors and five individuals were named as Estate Inspectors, including four (4) members of the Committee of Affected Users and one (1) individual from their legal team.

5. On September 10, 2019, the Nova Scotia Court granted an order transferring the Bankruptcy Proceedings to the Ontario Superior Court of Justice (Commercial List).

6. This factum is filed by the Trustee in connection with its motion returnable October 16, 2019, for orders seeking, among other things:

(a) The Settlement Approval Order, substantially in the form of the draft order attached at Tab 4 to the Motion Record, that:

(i) approves the Settlement Agreement dated October 3, 2019 between the Trustee, Jennifer Robertson, the Estate of Gerald Cotten, Thomas Beazley and the Controlled Entities;

(ii) approves and ratifies the execution of the Settlement Agreement by the Trustee, and Representative Counsel on behalf the Official Committee in respect of certain release provisions, and authorizes and directs the Trustee take such additional steps and execute such additional documents as may be necessary or desirable in order to complete the transactions contemplated by the Settlement Agreement;

(iii) declares that all transfers of the Settlement Assets by Quadriga to Jennifer Robertson, the Estate/Gerald Cotten, Thomas Beazley and the Controlled Entities (collectively, the "**Settling Parties**") are "transfers at undervalue" and voided and set aside as against the Trustee;

(iv) declares that any Settlement Assets that were not directly transferred by Quadriga to the Settling Parties, were acquired with assets/property or proceeds of assets/property that were transferred to the Settling Parties by Quadriga and such transactions are "transfers at undervalue" and voided and set aside as against the Trustee, and as such, the Settlement Assets of the Settling Parties are property of the Quadriga estate vested in the Trustee (including any accrued income forming part of the Settlement Assets);

(v) approves the compromises, releases, and injunctions set out in the Settlement Agreement;

(vi) varies the Asset Preservation Order of the Nova Scotia Court dated April 11, 2019 to reflect the terms and effect of the Settlement Agreement, and orders continuation of the disclosure obligations by third parties set out in the Assets Preservation Order; and

(b) The Transfer Order, substantially in the form of the draft order attached at Tab 5 of the Motion Record, directing the applicable land registrars in Nova Scotia and British Columbia to enter the Quadriga estate or the Trustee as holding title to the real estate properties transferred pursuant to the Settlement Agreement.

PART II - THE FACTS

7. The facts with respect to this motion are more fully set out in the Fourth Report of the Trustee dated October 7, 2019 (the "**Fourth Report**"). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in Fourth Report.

A. Background

8. The Companies were involved in the business of operating a platform for cryptocurrency exchange. Following the death of the Companies' chief executive officer, Mr. Gerald Cotten, Quadriga became unable to satisfy withdrawal requests from Affected Users due to their inability to access and/or locate their cryptocurrency reserves. As result, the Companies sought and were granted protection from their creditors under the CCAA on February 5, 2019.

Fourth Report at para 1, Trustee's Motion Record at Tab 2

9. During the CCAA Proceedings, the Monitor commenced an investigation of the Companies' business and affairs pursuant to section 23(1)(c) of the CCAA. The Monitor discovered a series of concerning conduct, including:

(a) a lack of basic corporate or accounting records;

(b) significantly flawed financial reporting infrastructure and operational controls;

(c) no segregation of assets owned by Quadriga and those held on behalf of the platform's users;

(d) extensive reliance on the use of third party processors with limited governance arrangements, oversight or reporting functions in relation to currency maintained by third parties;

(e) significant transfers of cryptocurrency from Quadriga's platform to competitor exchanges in the name of Mr. Cotten and personal accounts controlled by Mr. Cotten;

(f) accounts on the Quadriga platform that were created by Mr. Cotten and funded with artificial deposits that were then used to withdraw cryptocurrency from Quadriga's platform;

(g) significant "cash" transactions that the Monitor was unable to verify; and

(h) missing fiat funds and cryptocurrency reserves.

Fourth Report at paras 12-13, Trustee's Motion Record at Tab 2.

10. Among the concerning conduct uncovered by the Monitor was evidence that Mr. Cotten transferred wealth outside of Quadriga to fund personal expenses and purchases of personal assets. Certain transfers were made directly to his wife, Ms. Jennifer Robertson, and used to pay personal expenses and purchase personal assets in her name or the name of corporations that she controlled.

Fourth Report at paras 14-15, Trustee's Motion Record at Tab 2

11. Most of these transfers from Quadriga to Mr. Cotten and Ms. Robertson and the subsequent purchases made by Mr. Cotten and Ms. Robertson using funds that originated from Quadriga occurred within three years from the commencement of the CCAA Proceedings.

Fourth Report at paras 16-17, Trustee's Motion Record at Tab 2.

12. To the Monitor's knowledge, neither Mr. Cotten nor Ms. Robertson had any material sources of income other than the funds they received from Quadriga. The income for tax purposes reported by Mr. Cotton and Ms. Robertson was modest and none related to Quadriga.

Fourth Report at paras 18-20, Trustee's Motion Record at Tab 2.

13. On April 11, 2019, the Monitor obtained an Asset Preservation Order on a consensual basis with Ms. Robertson that required Ms. Robertson, Mr. Cotten's Estate and various other related entities to disclose all of their respective assets to the Trustee and refrain from selling or disposing of such assets except with the consent of the Monitor. In its Fifth Report dated June 19, 2019, the Monitor indicated that due to the findings during its investigation, it intended to seek recovery of the assets subject to the Asset Preservation Order, as the Monitor believed that the assets constituted preferences or transfers at undervalue under the BIA or may be subject to other causes of action asserted by the Trustee.

Fourth Report at paras 21-22, Trustee's Motion Record at Tab 2.

B. The Settlement Agreement

14. Shortly after the Trustee released the preliminary findings of its investigation in its capacity as Monitor in the CCAA Proceedings, it began arm's length negotiations with counsel to Ms. Robertson. The negotiations were successful and produced an agreement (the "**Settlement Agreement**") whereby nearly all of the assets of Ms. Robertson, the Estate, and the assets of entities owned by Ms. Robertson or the Estate (the "**Controlled Entities**") are to be returned to the Trustee for the benefit of the Quadriga estate, along with a vehicle being returned to the Companies by Ms. Robertson's stepfather, Thomas Beazley (such assets are defined in the Settlement Agreement as the "**Settlement Assets**").

Fourth Report at paras 23, 25 & 28, Trustee's Motion Record at Tab 2.

15. The Settlement Agreement also provides for the continued cooperation of Ms. Robertson and Mr. Beazley with the Trustee on various issues, including asset and information disclosure matters that may assist with additional recovery efforts by the Trustee.

Fourth Report at para 28, Trustee's Motion Record at Tab 2.

16. The Settlement Agreement is summarized in the Fourth Report and a copy of the Settlement Agreement is appended to the Fourth Report. For ease of reference, the Settlement Agreement is also attached hereto as Schedule "A".

17. When the Trustee takes possession of the Settlement Assets, its intention is to liquidate them for the benefit of Quadriga's stakeholders, including the Affected Users.

Fourth Report at para 26, Trustee's Motion Record at Tab 2.

18. The Trustee consulted with Representative Counsel and the Inspectors throughout the Settlement Agreement negotiations. The Trustee also engaged with the Official Committee as the settlement requires that the Affected Users release certain interests. The Trustee, the Representative Counsel, the Inspectors and the Official Committee support the Settlement Agreement. The Official Committee (which includes the Inspectors) has approved the Settlement Agreement.

Fourth Report at paras 23 & 32, Trustee's Motion Record at Tab 2.

PART III - ISSUES

19. The issues before this Court, as addressed below, are:

(a) should this Court grant the Settlement Approval Order; and

(b) should this Court grant the Transfer Order.

PART IV - THE LAW

A. The Settlement Approval Order Should Be Granted

i. The Settlement Agreement should be approved

20. Due to the importance of the Settlement Agreement, the breadth of parties affected by the Settlement Agreement, and the need to seek relief from the Court on other aspects of the Settlement Agreement, the Trustee is requesting that this Court formally approve the Settlement Agreement under the Settlement Approval Order.

21. Section 34(1) of the BIA permits a trustee to seek directions from the court on "any matter affecting the administration of the estate of a bankrupt" and the court "give in writing such directions, if any, as to it appear proper in the circumstances." Section 34(1) of the BIA has previously been used by trustees to bring motions before the court for advice, directions and approval respecting a decision to accept, subject to court approval, a proposed settlement.

> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 at s. 34(1) [***BIA***].
> *Re Graham Mining Ltd*, [2001] OJ No 2160 (Sup Ct Jus) [***Graham Mining***], appeal dismissed [2002] OJ No 1550 (CA), Trustee's Book of Authorities ("**Trustee's BOA**") at Tab 1.

22. The Trustee has the authority to settle Quadriga's claims as per s. 30(1)(h) and (i) of the BIA on the terms set out in the Settlement Agreement, which permits the Trustee, with the permission of the Inspectors, to "compromise and settle any debts owing to the bankrupt" and "compromise any claim made by or against the estate". In this case, the Official Committee and Inspectors were involved in the negotiation of the Settlement Agreement and both overlapping groups support the Settlement Agreement. Both Court approval and Inspector approval of the Settlement Agreement are conditions precedent under the Settlement Agreement.

> Fourth Report at para 32, Trustee's Motion Record at Tab 2.

BIA s. 30(1)(h) and (i).

23. In *Graham Mining*, the trustee and receiver presented the court with a complex settlement agreement that included full and final releases for certain parties. The court authorized the trustee and receiver to enter into the settlement, writing that under s. 30(1)(h) and (i), the trustee's power to make settlements with the approval of the inspectors is absolute. Justice Cameron held that the court should only interfere with the terms of a settlement when there is a lack of *bona fides* or it is unreasonable from the standpoint of the bankrupt estate. In the case at hand, while the Inspectors will approve the Settlement Approval, court approval is still necessary as it is a condition of the Settlement Agreement.

Graham Mining, supra, at para 54, Trustee's BOA at Tab 1.

24. Similarly, in *Cochard, Re*, the court approved the settlement of a lawsuit involving the bankrupt's property because the proposed settlement was reasonable and made in good faith by the trustee.

Re Cochard, 2005 ABQB 679, Trustee's BOA at Tab 2.

25. The Trustee submits that the Court also has the authority to approve the Settlement Agreement pursuant to s. 183(1) of the BIA which provides the courts with "auxiliary and ancillary jurisdiction" in bankruptcy. The section vests in the courts the necessary power and jurisdiction to authorize and sanction acts required to be done by a trustee for the due administration and protection of the bankrupt estate.

Re Wiggins, [2003] OJ No 3685 (Sup Ct Jus) at paras 6-7, Trustee's BOA at Tab 3.

26. The Trustee believes the Settlement Agreement should be approved as it provides significant benefits to the Quadriga estate, the Affected Users and other stakeholders. The benefits of the Settlement Agreement include, among other things:

(a) the transfer of the Settlement Assets—which have a cumulative net realizable value of approximately $12 million—to the Trustee for the benefit of the Quadriga estate, which will have the effect of improving the expected distributions to Quadriga's stakeholders;

(b) the avoidance of the costs and time associated with litigation, which costs and delays the Trustee would have had to otherwise incur if it had to pursue the recovery of the Settlement Assets through litigation;

(c) the timely realization of the Settlement Assets by the Trustee, which has the effect of improving the timeliness of any distributions to Quadriga's stakeholders and allows for the realization of the Settlement Assets before they depreciate any further in value;

(d) the cessation of the payments being made to Ms. Robertson pursuant to the Asset Preservation Order (payments that may have continued during any litigation with Ms. Robertson);

(e) obligations on behalf of Ms. Robertson and Mr. Beazley to cooperate with (i) the Trustee's investigation; (ii) the efficient transfer and monetization of the Settlement Assets; (iii) the avoidance of costs associated with replacing the executor of the Estate which may have been necessary outside of a negotiated settlement; and (iv) the identification and pursuit of potential other sources of recovery for the Quadriga estate and Affected Users; and

(f) the avoidance of any costs and delays in respect of any determination of the validity of the secured loan provided by Ms. Robertson immediately prior to the initial application to finance the CCAA proceedings.

Fourth Report at para 31, Trustee's Motion Record at Tab 2.

27. The value of the assets that Ms. Robertson retains (i.e. those assets that are excluded from the Settlement Assets) is relatively minimal and includes a number of items that the Trustee believes would generate minimal value in a liquidation. The estimated aggregate net realizable value of the Excluded Assets is likely less than the costs that would have been

incurred had the Trustee litigated its claims against Ms. Robertson, the Estate and the Controlled Entities.

> Fourth Report at para 31(c), Trustee's Motion Record at Tab 2.

28. For these reasons, the Trustee respectfully submits that it is appropriate for the Court to approve the Settlement Agreement.

ii. The Official Committee should be authorized to enter into the Settlement Agreement and compromise claims on behalf of Affected Users

29. The Settlement Agreement was negotiated in consultation with Representative Counsel, the Inspectors and the Official Committee, which are representative of Quadriga's most significant stakeholder group, the Affected Users.

> Fourth Report at para 32, Trustee's Motion Record at Tab 2.

30. The Official Committee, which includes the Inspectors, has approved the Settlement Agreement; however, in accordance with the Rep Counsel Order of the Nova Scotia Court, court approval is required for the Official Committee to enter into the Settlement Agreement and compromise the claims of Affected Users:

> …the Official Committee of Affected Users shall be entitled to, on advice of Representative Counsel, to reach any settlement agreements, advocate on behalf of the Affected Users and compromise any rights, entitlements or claims of the Affected Users, subject to approval of the Court.
>
> Fourth Report at para 30, Trustee's Motion Record at Tab 2.
> Rep Counsel Order dated February 28, 2019 at para. 10.

31. The ability to seek Court approval was contemplated in the Rep Counsel Order. To facilitate the execution and implementation of the Settlement Agreement, it is appropriate for the Court to approve and ratify the execution of the Settlement Agreement by Representative

Counsel on behalf the Official Committee in respect of the release provisions related to potential claims of Affected Users. The releases to be provided by the Official Committee to the Settling Parties form a fundamental part of the Settlement Agreement as the Settling Parties may not have returned the Settlement Assets to the Trustee if the Settlement Agreement did not provide finality and the Affected Users could continue to pursue claims against the Settling Parties separate and apart from the Quadriga Estate.

Fourth Report at paras. 24 & 30, Trustee's Motion Record at Tab 2.

iii. The transfers by Quadriga of the Settlement Assets or property used to acquire the Settlement Assets constitute transfers at undervalue

32. As part of the Settlement Approval Order, the Trustee requests that this Court declare as "transfers at undervalue" and voided and set aside as against the Trustee:

(a) all transfers of any Settlement Assets by Quadriga to Ms. Robertson, the Estate/Mr. Cotten, Mr. Beazley and the Controlled Entities; and

(b) all transfers of any Settlement Assets that were not directly transferred by Quadriga to the Settling Parties but were acquired with assets/property or proceeds of assets/property that were transferred to the Settling Parties by Quadriga.

33. If the Court does find the direct and indirect transfers of property are "transfer at undervalue", the Settlement Approval Order provides that the Settlement Assets are deemed to be the property of the Quadriga estate vested in the Trustee pursuant to the applicable provisions in the BIA.

34. The relevant provision in the BIA is s. 96(1), which provides the following:

Transfer at undervalue

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of

> those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if
>
> […]
>
> (b) the party was not dealing at arm's length with the debtor and
>
> > (i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or
> >
> > (ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and
> >
> > > (A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or
> > >
> > > (B) the debtor intended to defraud, defeat or delay a creditor.

35. "Transfer at undervalue" is defined in s. 2 of the BIA to mean the following:

> […] a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.

36. The purpose of the transfer at undervalue provisions is the "return to the bankrupt's estate assets that had been transferred by the debtor for no consideration or consideration that is less than their value" and the goal "is to protect creditors against the debtor's improper efforts… to remove assets from his or her estate."

> *Pitblado LLP v. Houde*, 2015 MBQB 85 at para. 35-37, Trustee's BOA at Tab 4. See also *National Telecommunications Inc., Re*, 2017 ONSC 1475 at para 4, Trustee's BOA at Tab 5; *Cameron Estate, Re*, 2011 ONSC 6471 at para 14, Trustee's BOA at Tab 6.

37. Section 96(1)(b), which applies in this case, provides for a five part test in order to declare a transfer at undervalue that may be set aside and void as against the trustee: (i) there must be a disposition of property by Quadriga to the Settling Parties; (ii) the disposition by Quadriga must be for no consideration or consideration "conspicuously less" than the consideration provided; (iii) the Settling Parties must not have been dealing at arm's length with Quadriga; (iv) the transfers must have occurred within five years of the initial bankruptcy event; and (v) Quadriga must have been insolvent at the time of the transfer or was rendered insolvent by it. The trustee must prove these elements on a balance of probabilities.

> *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344 at paras 37-40, Trustee's BOA at Tab 7.
> *Cambone v Okoakih*, 2016 ONSC 792 at para 190, Trustee's BOA at Tab 8.

(a) The Settlement Assets were the result of dispositions of property from Quadriga to the Settling Parties

38. In order to constitute a "transfer at undervalue" a party must receive a disposition of property from the debtor. If the court finds that a transfer at undervalue occurred, that disposition can be set aside and void as against the trustee-in-bankruptcy such that the Trustee may reclaim the property transferred by the debtor. In addition to property that is directly transferred by the debtor, the trustee may trace a property claim into proceeds of the original property transferred by the debtor where that property is "sold, disposed of, realized or collected." Further, the trustee may trace the funds to "any other person" if the original transferee resold or transferred the property or paid over the proceeds from the property. Subsections 98(1) and 98(2) of the BIA provide the following:

> 98 (1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annullable and set aside, and has sold, disposed of, realized or collected the property or any part of

> it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.
>
> (2) The trustee may recover the property or the value thereof or the money or proceeds therefrom from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been so sold, disposed of, realized or collected.

39. Allowing the Trustee to pursue not only the return of the original property transferred by the debtor but any assets acquired using the original property or income generated on the original property is consistent with the purpose of the transfer at undervalue provisions as it prevents the shielding of property by converting or disposing of the property originally received by the debtor.

See *Re Dale* (1924), 5 CBR 65 (Ont Sup Ct), Trustee's BOA at Tab 9.

40. In this case, all of the Settlement Assets were either transferred to the Settling Parties by Quadriga or are derived from assets or property that were transferred by Quadriga to the Settling Parties. As a result, the Trustee submits it is entitled to seek recovery of the Settlement Assets as "transfers at undervalue" provided the other aspects of the test are satisfied.

41. The Trustee, in the course of its investigation, uncovered the following examples of how the Settlement Assets were acquired by the Settling Parties:

(a) third party payment processors, which held deposits from Quadriga users, were instructed on various occasions by Mr. Cotten to distribute significant amounts of funds directly to Mr. Cotten, Ms. Robertson or related companies;

(b) in a particular instance, a bank account of Mr. Cotten was solely funded with transfers from a third party payment processor and the account still held significant funds at the time of Mr. Cotten's death;

(c) in at least one instance, the funds from a third party payment processor were directed to a solicitor that acted for Mr. Cotten and Ms. Robertson in connection with a real estate acquisition in the week following the transfer;

(d) Quadriga transferred various funds to Ms. Robertson who in turn lent the funds to Robertson Nova Property Management Inc. ("**RNPM**") to fund the purchase of the real estate owned by that company;

(e) Mr. Cotten instructed Affected Users in certain instances to fund their accounts on the Quadriga platform by transferring funds to a bank account of a separate company personally owned by Mr. Cotten; and

(f) certain accounts were created under aliases by Mr. Cotten on the Quadriga platform, credited with significant deposits without any evidence that the deposit actually occurred and then used to transfer cryptocurrency from Quadriga to personal accounts and wallet addresses of Mr. Cotten.

Fourth Report at para 15, Trustee's Motion Record at Tab 2.

42. The Trustee is not aware of any material sources of income for Mr. Cotten or Ms. Robertson other than funds received from Quadriga and their tax returns, or lack thereof, indicate they had no other material sources of income. The Trustee submits it is reasonable for the Court to infer based on the lack of sources of income that the property which they acquired was derived either directly or through funds originated from Quadriga.

Fourth Report at paras 18-20, Trustee's Motion Record at Tab 2.

43. Ms. Robertson has also confirmed that all of the Settlement Assets being returned to the Trustee by her and the companies controlled by her (which includes RNPM) were either transferred by Quadriga or Mr. Cotten, or acquired using property, or proceeds of property, originally transferred by Quadriga or Mr. Cotten. Further, to the best of her knowledge, all of Mr. Cotten's property (now the Estate's property) and the property of entities previously owned by Mr. Cotten, was sourced from Quadriga and was either transferred by Quadriga or acquired using property, or proceeds of property, transferred by Quadriga.

> Affidavit of Jennifer Robertson sworn October 3, 2019 ("**Robertson Affidavit**") at paras 8(b) & 8(c), Trustee's Motion Record at Tab 3.

44. In addition, section 2.8 of the Settlement Agreement provides that the parties agree that the transfer of Settlement Assets represents the return of assets to the Quadriga estate which "all originated from the Companies":

> The Parties agree that the transfer of the Settlement Assets to the Trustee represents the return of Assets to the Trustee by Robertson, the Estate, Beazley and the Controlled Entities which all originated from the Companies and that the transfers shall be effected by the Approval Order by declaring prior transfers by the Companies to Cotten, Robertson, the Estate, the Controlled Entities and Beazley "transfers at undervalue" under the BIA and ordering that such transfers are void and set aside as against the Trustee pursuant to the BIA as supported by the Approval Order Affidavit and the Third and Fifth Reports. The Parties further agree that the Approval Order shall deem the Settlement Assets to be the property of the Trustee in accordance with the BIA.
>
> Fourth Report at Appendix "C", section 2.8, Trustee's Motion Record at Tab 2.

45. For the above reasons, the Trustee respectfully submits that it is reasonable for the Court to conclude that the Settlement Assets are the result of dispositions of property by Quadriga by virtue of either being transferred by Quadriga or acquired with property originally transferred by Quadriga through purchases or income.

(b) The transfers by Quadriga were at undervalue

46. In order to constitute a transfer at undervalue under the BIA, the debtor must have received "no consideration" or "consideration…conspicuously less than the fair market value of the consideration given by the debtor." Pursuant to s. 96(2), "the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee."

> BIA, s. 2 & 96(2).

47. The Monitor’s investigation, as previously set out, identified significant transfers of property from Quadriga to the Settling Parties. Fragmented record keeping makes it hard to quantify the exact value of these transfers; however, the Settlement Assets being returned to the Trustee as part of the Settlement Agreement have an estimated net realizable value of approximately $12 million, suggesting that the Settling Parties received at least $12 million (and likely far more) in actual consideration from the Companies.

> Fourth Report at paras 16, 31(a) & 40, Trustee’s Motion Record at Tab 2.

48. Ms. Robertson has confirmed that she and the entities she owns did not provide any consideration to Quadriga for the property transferred to her. She further believes, after reviewing new factual information discovered during the course of the CCAA Proceedings and Bankruptcy Proceedings, that Mr. Cotten and entities he owned did not provide Quadriga with any consideration for the property transferred to him (with the possible exception of Mr. Cotten’s compensation for his role as chief executive officer). A 2015 employment agreement found by the Trustee suggested that such compensation was $65,000 per annum, and should be viewed in light of the activities uncovered by the Trustee. The Trustee was unable to find any documents other than the 2015 employment agreement indicating compensation properly distributed to Mr. Cotten (in the form of salary, dividends or otherwise).

> Fourth Report at para 18, Trustee’s Motion Record at Tab 2.
> Robertson Affidavit at paras 8(d) & 8(e), Trustee’s Motion Record at Tab 3.

49. The test for determining whether a difference in consideration is “conspicuously less than fair market value” under the BIA requires that the court consider all relevant factors, including the margin for error in valuing the assets in question. Quadriga’s limited financial records make a margin of error an unavoidable factor; however, the Trustee submits that even

when accounting for a margin of error, the difference between the consideration given by the Settling Parties is conspicuously less than the actual consideration that the Settling Parties received from the Companies (that being a total of at least $12 million). The Trustee knows of no evidence to refute this conclusion.

> *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344 at para 113, Trustee's BOA at Tab 7.

(c) The Settling Parties were not dealing at arm's length with Quadriga

50. The BIA at s. 4(5) contains a rebuttable presumption that for the purposes of s. 96(1)(b), persons are deemed to not be dealing with each other at arm's length:

> Persons who are related to each other are deemed not to deal with each other at arm's length while so related. For the purpose of paragraph 95(1)(b) or 96(1)(b), the persons are, in the absence of evidence to the contrary, deemed not to deal with each other at arm's length.

51. The Trustee has found no evidence to rebut the presumption that the Settling Parties and Quadriga were not dealing at arm's length, and Ms. Robertson has confirmed that she and Mr. Cotten were not dealing at arm's length with Quadriga. Further, an evaluation of the definition of "related person" set out in the BIA shows that Settling Parties and the Companies are deemed to not act at arm's length with each other for purposes of section 96(1) of the BIA:

> 4(2) For the purposes of this Act, persons are related to each other and are related persons if they are
>
> > (a) individuals connected by blood relationship, marriage, common-law partnership or adoption;
> >
> > (b) an entity and
> >
> > > (i) a person who controls the entity, if it is controlled by one person,
> > >
> > > (ii) a person who is a member of a related group that controls the entity, or

> (iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii)
>
> (c) two entities
>
> (i) both controlled by the same person or group of persons,
>
> (ii) each of which is controlled by one person and the person who controls one of the entities is related to the person who controls the other entity […]

BIA, s. 4(2).
Robertson Affidavit at para. 8(a), Trustee's Motion Record at Tab 3.

52. Based on the definition of "related parties", each of the Settling Parties were related to the Companies in the following way:

(a) Mr. Cotten was the sole director and shareholder of the Companies, meaning he had control over the Companies;

(b) Ms. Robertson was related to the Companies through her marriage to and previous common law partnership with Mr. Cotten;

(c) The Controlled Entities were related to the Companies by means of being corporations that were owned directed or indirectly by either or both of Mr. Cotten and Ms. Robertson; and

(d) Mr. Beazley, as stepfather of Ms. Robertson and father-in-law to Mr. Cotten, was related to the Companies by marriage, common-law partnership or adoption.

Robertson Affidavit at paras 4 to 5, Trustee's Motion Record at Tab 3.
The Fifth Report of the Monitor dated June 19, 2019 at para 3, Trustee's Motion Record at Tab 2: Appendix "A".

53. As such, the Settling Parties were related to the Companies as contemplated in s. 96(1)(b).

(d) The transfers occurred within five years of the date of the initial bankruptcy event

54. Section 2 of the BIA defines the date of the initial bankruptcy event to include the day on which proceedings under the CCAA were commenced. In this case, the CCAA Proceedings commenced on February 5, 2019. Five years prior to this date is February 5, 2014.

55. The Trustee believes, based on its investigation to date, that most transfers from Quadriga to the Settling Parties occurred within three years of the start of the CCAA Proceedings. For example, of the 16 real estate properties owned by the Estate, Ms. Robertson and the Controlled Entities, the first was purchased on May 12, 2016 and 14 were purchased after January 1, 2017. This timeline is consistent with the size of the Companies. Between 2014 and 2016, it appears Quadriga generated modest revenues. The popularity of cryptocurrency and the commodity value appreciation served as a catalyst for Quadriga's rapid growth in 2017 and 2018.

Fourth Report at para 17 & 37, Trustee's Motion Record at Tab 2.

56. Ms. Robertson has also confirmed that she met Mr. Cotten in November, 2014, which is within the five year period prior to the initial bankruptcy event. As such, all of the assets or property transferred to her by Quadriga occurred within the reviewable period. Ms. Robertson has further stated that at the time of meeting Mr. Cotten, she understood Quadriga was a relatively small company and Mr. Cotten did not have any significant assets other than personal cryptocurrency deposited in Quadriga.[1] For that reason, she believes all of the Estate's current property and property of entities that are owned by the Estate was transferred to them by Quadriga within the five years prior to the Companies filing for CCAA protection.

---

[1] Cryptocurrency does not form any part of the known Settlement Assets.

Robertson Affidavit at paras 8(b) & 8(f), Trustee's Motion Record at Tab 3.

57. In such circumstances, the Trustee respectfully submits that it is reasonable for the Court to conclude that the transfers in question occurred within five years of the date of the initial bankruptcy event and it is appropriate for the Court to make the declaration sought in the Settlement Approval Order.

(e) Quadriga was insolvent at the time of the transfers at undervalue

58. The Trustee respectfully submits that it is reasonable for the Court to conclude that "the debtor was insolvent at the time of the transfer or was rendered insolvent by it" as contemplated in section 96(1)(a) of the BIA.

Fourth Report at para 41, Trustee's Motion Record at Tab 2.

59. Although the burden of evidence is on the Trustee to prove, on a balance of probabilities, the insolvency of Quadriga at the time of the transactions, courts have previously held that where the evidentiary record is fragmented, as it is here, the trustee's burden of evidence is reduced to adducing a *prima facie* case for insolvency, which will only be rebutted if a defendant provides adequate evidence to the contrary.

Robinson v Countrywide Factors Ltd, [1977] SCJ No 76 at para 101, Trustee's BOA at Tab 10.

60. Quadriga appears to have generated modest revenues between 2014 and 2016. Revenues grew substantially in 2017 and 2018, but during this period operating expenses and other costs increased and the Trustee has learned of other significant use and loss of cryptocurrency during this timeframe including the examples set out in the Fourth Report at paragraph 37.

Fourth Report at para 37, Trustee's Motion Record at Tab 2.

61. In addition, the Monitor/Trustee identified multiple suspicious accounts on the Quadriga platform, the most significant of which was held in the name of Chris Markay. The Chris Markay account was credited with significant unsupported deposits, yet large volumes of real cryptocurrency were withdrawn from Chris Markay's account off the Quadriga platform, including to other exchanges where the cryptocurrency was liquidated for unaccounted for cash and used for margin trading that resulted in significant losses. When these withdrawals occurred, they would have presumably been drawn from the funds deposited by other Quadriga users; accordingly, Quadriga would have been unable to meet all of its liabilities owing to its users following such withdrawals.

Fourth Report at para 38, Trustee's Motion Record at Tab 2.

62. Finally, the Monitor/Trustee has learned that Quadriga did not have any bitcoin reserves in its cold wallets since April 2018 and never had bitcoin reserves equal to the amount of bitcoin owed to Affected Users as of the commencement of the CCAA Proceedings.

Fourth Report at para 39, Trustee's Motion Record at Tab 2.

63. Based on the cumulative information available to the Trustee, the Trustee believes it is reasonable to reach the conclusion that Quadriga was insolvent at the time of the transfers to the Settling Parties, as contemplated by s. 96(1)(d) of the BIA. The Trustee is unaware of any evidence that could rebut the evidence establishing Quadriga's insolvency.

64. In such circumstances, the Trustee respectfully submits that the transfers to the Settling Parties were "transfers at undervalue" and can be voided and set aside as against the Trustee. A declaration by this Court to that effect is appropriate in the circumstances.

iv. The Trustee has a proprietary interest in the Settlement Assets

65. As set out above, the Settlement Assets fall into two categories: (a) assets or property transferred by Quadriga to the Settling Parties (for example, the bank account of Mr. Cotten that was funded solely with Quadriga funds and continued to hold significant cash upon his death, would fall into this category); and (b) assets and property that were acquired by the Settling Parties (i) using property, or proceeds of property, originally transferred by Quadriga, or (ii) accrued from income generated or earned in respect of the property originally transferred by Quadriga (for example, the real estate acquired by Ms. Robertson and entities owned by her (including RNPM) and rental income earned thereon would fall into this category). The Trustee submits that it has a proprietary interest in both categories of assets under the BIA.

66. In respect of the first category of assets, the transfers at undervalue which resulted in the Settling Parties receiving these assets should be set aside and void as against the Trustee. As a result, the assets previously transferred to the Settling Parties remain the property of the Quadriga estate properly recoverable by the Trustee.

67. In respect of the second category of assets, s. 98(1) provides the Trustee a proprietary interest in any "money or other proceeds" which resulted from a person selling, disposing, realizing or collecting upon any property acquired from a "transfer at undervalue." As set out above, s. 98(1) specifically provides:

> 98(1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annullable and set aside, and has sold, disposed of, realized or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, <u>shall be deemed the property of the trustee</u>. [emphasis added]

68. The caselaw also supports the principle that the Trustee's entitlement to the proceeds of the property that was transferred from Quadriga to the Settling Parties is broad and includes property that has been exchanged for new property and income collected therefrom. In *Re Dale*, a bankrupt, prior to bankruptcy, transferred his automobile to his wife by a bill of sale that was void against his creditors. The wife exchanged the automobile for another one. The court held that the new automobile was the property of the estate that could be recovered by the trustee: "The [new] car I hold, therefore, is the property of the trustee in bankruptcy, and I direct [the wife] forthwith to deliver the same up to the trustee…"

Re Dale (1924), 5 CBR 65 (Ont Sup Ct) at para. 8, Trustee's BOA at Tab 9.

69. As detailed above, all of the Settlement Assets, even if they were not directly transferred from Quadriga, originated from Quadriga as they were acquired with property, or proceeds of property, originally transferred by Quadriga or income collected thereon. Pursuant to s. 98(1) of the BIA, the Trustee is deemed to have a property interest in this resulting property of the Settling Parties and the Trustee submits it is appropriate for the Court to declare such property to be the property Quadriga estate vested in the Trustee.

v. Variation of the Asset Preservation Order

70. As part of the Settlement Approval Order, the Trustee is requesting that this Court amend the Asset Preservation Order of the Nova Scotia Court to unfreeze the Settlement Assets and the Excluded Assets to permit the transactions contemplated by the Settlement Agreement to occur. By doing so, this Court would promote efficiency, lower the Trustee's costs and avoid the delay associated with seeking separate relief from the Nova Scotia Court.

71. The Orders issued by the Nova Scotia Court dated September 10, 2019 transferring the Bankruptcy Proceedings to Ontario declared that this Court "may seize any matter related to or ancillary to the [Bankruptcy] Proceedings." The Trustee believes that this authorization and the court's inherent jurisdiction permit this Court to amend the Asset Preservation Order.

B. The Transfer Order Should Be Granted

72. The Transfer Order will assist with transferring title of the Settlement Assets which are real property to the Quadriga estate in an efficient and cost-effective manner. The Transfer Order does not affect any encumbrances registered against the Settlement Assets which are real property.

73. As such, the Transfer Order should be granted by this Court.

PART V - ORDER SOUGHT

74. For all of the foregoing reasons, the Trustee respectfully requests that the Court grant the Settlement Approval Order and the Transfer Order substantially in the forms of the proposed orders included with the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of October, 2019.

STIKEMAN ELLIOTT LLP
Lawyers for the Trustee

SCHEDULE "A"
SETTLEMENT AGREEMENT SUMMARY

Settlement Agreement Summary	
Parties to the Settlement Agreement	• The Trustee • Robertson • Robertson, in her capacity as the executor of the Estate • Beazley • Controlled Entities (including, RNPM, Robertson Nova Consulting Inc., Megacorp Incorporated, 2379164 Ontario Inc., and Jennifer Robertson as trustee of The Seaglass Trust) • Official Committee (in respect of certain provisions providing releases on behalf of Affected Users)
Effective Date	The Settlement Agreement becomes effective when all of its conditions have been satisfied and the Trustee delivers a certificate to this effect.
Settlement Assets	*Robertson Settlement Assets* Other than the Excluded Assets, Robertson will transfer to the Trustee, her right, title and interest in all assets including cash, investments, vehicles, loans (and related security), real estate (including the Kinross Property, which is to be vacated by October 31, 2019), personal belongings, and any further assets identified in the future. *Estate Settlement Assets* Other than the Excluded Assets, the Estate will transfer to the Trustee, its right, title and interest in all assets, including cash, investments, vehicles (including all boats, planes and cars), precious metals, claims and refunds (namely, those with respect to probate taxes), and any further assets identified in the future. *Controlled Entities Settlement Assets* The Controlled Entities will transfer to the Trustee any assets, their right, title and interest in all assets, including cash, investments, real estate, loans (and related security), vehicles, and any further assets identified in the future.

Settlement Agreement Summary	
	Beazley Settlement Assets Beazley will transfer to the Trustee any assets (a) transferred to Beazley by the Companies and/or Cotten either directly or indirectly; or (b) purchased using proceeds of assets transferred to Beazley by Quadriga and/or Cotten either directly or indirectly, including a 2017 Toyota Tacoma truck.
Excluded Assets	Robertson and the Estate will retain certain Excluded Assets. Robertson's Excluded Assets are limited to: (i) Cash, in the amount of $90,000 plus the cash in one account where she received distributions under the Asset Preservation Order up to a maximum of $10,000; (ii) Investments contained in Robertson's registered retirement savings account with a current market value of approximately $20,000; (iii) A 2015 Jeep Cherokee with an estimated black book value of $19,000; (iv) Certain jewellery, including her wedding band, with an estimated aggregate fair market value of $8,700; (v) Personal furnishings, up to a maximum aggregate appraised value of $15,000; (vi) Clothing and similar personal effects; and (vii) Issued and outstanding shares of the Controlled Entities and Quadriga Fintech Solutions Corp. The Excluded Assets to be retained by the Estate are solely the issued and outstanding shares of the Controlled Entities (for greater certainty, which includes CX Solutions) and Quadriga Fintech Solutions Corp.
Disclosure Obligations	Robertson is to provide the Trustee with a sworn statement describing, among other things, the nature, value and location of (i) present assets owned by herself, the Estate and the Controlled Entities or any affiliates or related parties of each of them; and (ii) past assets owned by herself, the Estate and the Controlled Entities in the past five (5) years. Beazley is to provide the Trustee with a sworn statement describing, among other things, the nature, value and location of (i) present assets that were transferred to Beazley by the Companies and/or Cotton or purchased using proceeds of assets transferred from the Companies, Cotten and Robertson;

Settlement Agreement Summary	
	and (ii) past assets that were transferred to Beazley by the Companies and/or Cotton or purchased using proceeds of assets transferred from the Companies, Cotten and Robertson in the past five (5) years. Robertson and Beazley agree to each be examined under oath by the Trustee pursuant to section 163 of the BIA.
Miscellaneous Agreements	(i) The Trustee agrees to the unfreezing of the Excluded Assets and any of Robertson's credit cards. (ii) The Quadriga estate agrees to pay the reasonable legal fees and disbursements of Robertson's legal counsel in connection with the implementation of the Settlement Agreement and the Cooperation Obligations, among other things. (iii)Potential reimbursement by the Quadriga estate to Ms. Robertson in respect of (a) income tax liabilities of RNPM for net rental income to a maximum amount of $7,500; and (b) income tax liabilities of the Estate in respect of investment income earned by Mr. Cotten up to a maximum amount of $200,606, in the event that she is personally liable for the tax liabilities, the tax liabilities rank in priority to the Trustee's claims against RNPM and the Estate, as applicable, and the amounts are due and payable upon the earlier of the discharge of the Trustee and December 31, 2020. Other than these specified liabilities, the Trustee and the Companies' estates have no responsibility for any tax liabilities of Ms. Robertson, the Estate, Mr. Beazley or the Controlled Entities. (iv)The Quadriga estate agrees to reimburse Robertson up to a maximum of $25,000 for actual and documented out-of-pocket expenses incurred within six (6) months of the Effective Date in respect of (a) preparing and filing Tax Returns on behalf of the Estate and the Controlled Entities; or (b) any bankruptcy, liquidation or wind-up proceedings in respect of the Controlled Entities.
Conditions to the Settlement Agreement	The following are conditions to the Settlement Agreement and occurrence of the Effective Date: (i) Court approval of the Settlement Agreement; (ii) Assignment of a loan made by RNPM and Ms. Robertson which is secured by a charge over real property in Calgary, Alberta; (iii)Ratification and approval of the Settlement Agreement by the

Settlement Agreement Summary	
	Inspectors; (iv) Robertson and Beazley must satisfy their disclosure obligations; and (v) Mr. Beazley and his wife must deliver to the Trustee a release of any and all rights and claims to the Estate Settlement Assets.
Releases	In broad terms, the Trustee and the Official Committee on behalf of Affected Users will release and forever discharge Robertson, the Estate, the Controlled Entities and Beazley of and from any and all claims related to receipt of the Settlement Assets and the Excluded Assets and any involvement or conduct with respect to the Companies and/or Cotten. Robertson, the Estate, the Controlled Entities and Beazley will release and forever discharge (a) the Companies and Trustee of and from various claims and (b) all rights and claims to the Settlement Assets. Further, Robertson, the Estate, the Controlled Entities and Beazley will not be entitled to file a proof of claim in the BIA proceedings against estates of the Companies.
Conditional Nature of Release	The releases provided by the Trustee and the Official Committee may be rescinded and voided if it is determined by this Court that: (i) Robertson wilfully failed to disclose assets that were required to be disclosed under the Settlement Agreement; (ii) Beazley wilfully failed to disclose assets that were required to be disclosed under the Settlement Agreement; (iii) Robertson and/or Beazley identify or become aware of any assets which were required to be disclosed under the Settlement Agreement and fail to notify the Trustee of such assets or fail to take reasonable steps to assist with transferring such assets to the Trustee if such assets are Settlement Assets; or (iv) Robertson and/or Beazley breach any of their Cooperation Obligations following the Effective Date.
No Further Claims	The Trustee and the Affected Users agree to not start, continue or participate in any claims against Robertson, the Estate, the Controlled Entities or Beazley in any way related to receipt of Settlement Assets and the Excluded Assets, any involvement or conduct with respect to the Companies and/or Cotten. Robertson, the Estate, the Controlled Entities and Beazley agree to not start,

Settlement Agreement Summary	
	continue or participate in any claims against the Trustee or the Companies in any way related to, among other things, the Settlement Assets.
Cooperation Obligations	The Settlement Agreement includes certain ongoing Cooperation Obligations for Robertson, the Estate, the Controlled Entities and Beazley, including among other things: (i) Robertson, the Estate, the Controlled Entities and Beazley shall cooperate with the Trustee as reasonably requested to implement the Settlement Agreement, including the transfer of the Settlement Assets; (ii) To facilitate the implementation of the Settlement Agreement, Robertson agrees to (a) remain as a director of any Controlled Entities where she previously held a role as director; and (b) to remain in her role as executor of the Estate; (iii) Robertson and/or the Estate agree to file a motion in a California court to obtain data from Google LLC; (iv) Robertson, the Estate and the Controlled Entities agree to provide, among other things, documents and information specified in the Asset Preservation Order; (v) To the extent not already provided, Robertson and Beazley agree to provide the Trustee with (a) documents and information related to the business of the Companies, (b) certain communications, and (c) encryption keys or passwords to access such documents and information; and (vi) Robertson agrees to provide the Trustee with any additional reasonable cooperation determined to be reasonably necessary by the Trustee.

SCHEDULE "B"
LIST OF AUTHORITIES

1. *Re Graham Mining Ltd*, [2001] OJ No 2160 (Sup Ct Jus)
2. *Re Cochard*, 2005 ABQB 679
3. *Re Wiggins*, [2003] OJ No 3685 (Sup Ct Jus)
4. *Pitblado LLP v. Houde*, 2015 MBQB 85
5. *National Telecommunications Inc. (Re)*, 2017 ONSC 1475
6. *Cameron Estate (Re)*, 2011 ONSC 6471
7. *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344
8. *Cambone v Okoakih*, 2016 ONSC 792
9. *Re Dale* (1924), 5 CBR 65 (Ont Sup Ct)
10. *Robinson v Countrywide Factors Ltd*, [1977] SCJ No 76

SCHEDULE "C"
RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

2. In this Act, […]

date of the initial bankruptcy event, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

(a) an assignment by or in respect of the person,

(b) a proposal by or in respect of the person,

(c) a notice of intention by the person,

(d) the first application for a bankruptcy order against the person, in any case

(i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or

(ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,

(e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or

(f) proceedings under the Companies' Creditors Arrangement Act; (ouverture de la faillite)

[…]

transfer at undervalue means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (opération sous-évaluée)

…

Definition of related persons

(2) For the purposes of this Act, persons are related to each other and are related persons if they are

(a) individuals connected by blood relationship, marriage, common-law partnership or adoption;

(b) an entity and

(i) a person who controls the entity, if it is controlled by one person,

(ii) a person who is a member of a related group that controls the entity, or

(iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii); or

(c) two entities

(i) both controlled by the same person or group of persons,

(ii) each of which is controlled by one person and the person who controls one of the entities is related to the person who controls the other entity,

(iii) one of which is controlled by one person and that person is related to any member of a related group that controls the other entity,

(iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other entity,

(v) one of which is controlled by a related group a member of which is related to each member of an unrelated group that controls the other entity, or

(vi) one of which is controlled by an unrelated group each member of which is related to at least one member of an unrelated group that controls the other entity.

[…]

Presumptions

4(5) Persons who are related to each other are deemed not to deal with each other at arm's length while so related. For the purpose of paragraph 95(1)(b) or 96(1)(b), the persons are, in the absence of evidence to the contrary, deemed not to deal with each other at arm's length.

…

Powers exercisable by trustee with permission of inspectors

30 (1) The trustee may, with the permission of the inspectors, do all or any of the following things:

(a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) lease any real property or immovable;

(c) carry on the business of the bankrupt, in so far as may be necessary for the beneficial administration of the estate of the bankrupt;

(d) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;

(e) employ a barrister or solicitor or, in the Province of Quebec, an advocate, or employ any other representative, to take any proceedings or do any business that may be sanctioned by the inspectors;

(f) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the inspectors think fit;

(g) incur obligations, borrow money and give security on any property of the bankrupt by mortgage, hypothec, charge, lien, assignment, pledge or otherwise, such obligations and money borrowed to be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;

(h) compromise and settle any debts owing to the bankrupt;

(i) compromise any claim made by or against the estate;

(j) divide in its existing form among the creditors, according to its estimated value, any property that from its peculiar nature or other special circumstances cannot be readily or advantageously sold;

(k) elect to retain for the whole part of its unexpired term, or to assign, surrender, disclaim or resiliate any lease of, or other temporary interest or right in, any property of the bankrupt; and

(l) appoint the bankrupt to aid in administering the estate of the bankrupt in such manner and on such terms as the inspectors may direct.

…

Trustee may apply to court for directions

34 (1) A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

…

Transfer at undervalue

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

(a) the party was dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,

(ii) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and

(iii) the debtor intended to defraud, defeat or delay a creditor; or

(b) the party was not dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor.

Establishing values

96(2) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

…

Recovering proceeds if transferred

98 (1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annullable and set aside, and has sold, disposed of, realized or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.

Trustee may recover

98(2) The trustee may recover the property or the value thereof or the money or proceeds therefrom from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been so sold, disposed of, realized or collected.

Operation of section

98(3) Notwithstanding subsection (1), where any person to whom the property has been sold or disposed of has paid or given therefor in good faith adequate valuable consideration, he is not subject to the operation of this section but the trustee's recourse shall be solely against the person entering into the transaction with the bankrupt for recovery of the consideration so paid or given or the value thereof.

…

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

[…]

IN THE MATTER OF THE BANKRUPTCY OF QUADRIGA FINTECH SOLUTIONS CORP., WHITESIDE CAPITAL CORPORATION AND 0984750 B.C. LTD. D/B/A QUADRIGA CX AND QUADRIGA COIN EXCHANGE

Court File No. & Estate No.:
CV-19-627184-00CL (31-2560674)
CV-19-627185-00CL (31-2560984)
and CV-19-627186-00CL (31-2560986)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

FACTUM OF THE TRUSTEE
(RETURNABLE OCTOBER 16, 2019)

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