IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Trustee of Estate of David Podollan v. David Podollan,* 2024 BCSC 89

Date: 20240118
Docket: S202923
Registry: Vancouver

Between:

Trustee of Estate of David Podollan

Plaintiff

And

David Podollan and Leah Podollan

Defendants

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Plaintiff:	S.R. Andersen H. Bayley
Counsel for the Defendants:	T. Young L.D. Nykolaychuk
Place and Dates of Hearing:	Vancouver, B.C. August 25 and September 25, 2023
Place and Date of Judgment:	Vancouver, B.C. January 18, 2024

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INTRODUCTION

[1] On the eve his biggest creditor's application for the appointment of a receiver over his business, David Podollan transferred substantially all of his assets—real property, an aircraft and boats—to his estranged spouse, Leah Podollan, and he kept all of the debt. A bankruptcy petition was filed a few months later and Mr. Podollan was subsequently adjudged bankrupt. The assets have been sold and the proceeds (save from the sale of the Mexican properties to which I will return) are being held in trust pending the outcome of this proceeding.

[2] On August 16, 2021 the transfers of the company owned assets were found to be void by Madam Justice Sharma.

[3] This summary trial application involves the transfer of assets owned personally by Mr. Podollan. The licenced insolvency trustee of the Estate of David Podollan ("the Trustee") seeks to set aside the transfers of personally held property from the bankrupt, Mr. Podollan, to his then-wife, Ms. Podollan, pursuant to a separation agreement they signed on October 17, 2019. The Trustee argues that these transfers are void as *transfers* undervalue pursuant to s. 96(1)(b)(i) or alternatively under s. 96(1)(a) of the *Bankruptcy and Insolvency Act*, *R.S.C. 1985, c. B-3* [*BIA*].

[4] Ms. Podollan argues that the transfers were not under value and that even if the Trustee succeeds in setting aside the transfers, the Trustee takes its funds subject to her entitlement under the *Family Law Act, S.B.C. 2011, c. 25* [*FLA*].

[5] In these reasons for judgment for clarity and ease of reference I will refer to Mr. Podollan as David and Ms. Podollan as Leah. I mean no disrespect by doing so. I will refer to David and Leah collectively as the parties.

[6] Additionally, all references to legislation are to the *BIA*, unless otherwise specified.

BACKGROUND

[7] Leah and David began a relationship in 1997 and married in July 2003. They have one child together.

[8] Throughout their relationship, the parties enjoyed a high quality of life that included multiple homes, luxury vehicles, extravagant gifts and vacations and plenty of disposable income. David operated a number of companies involved in real estate development and the operation of hotels, restaurants and pubs. Although David and his companies employed Leah, she claims that she had little knowledge of his personal and corporate financial situation as David kept that information from her. Leah claims that the relationship with David was abusive and dysfunctional.

[9] According to the parties, they separated on February 16, 2019, but remained living together but apart in the family home in Coldstream.

[10] Leah attests that on August 16, 2019, David handed her a handwritten list of 12 properties, a plane and two boats, and offered to transfer all to her "in exchange for resolving all issues in our marriage and separation". She accepted the offer. The two of them then signed the list and dated it August 16, 2019. According to Leah, at David's request, sometime in September 2019, she typed out the agreement and backdated it to August 16, 2018. The document entitled "Separation Agreement" is signed by both of the parties. Leah attests that this Agreement was typed up to give to the parties' lawyer to base the "formal" separation on. I will refer to this as the Separation Agreement. Of significance are the following provisions:

1) [the parties] "have agreed to live together but separately apart" …" since February 16, 2019—the official Separation date";

2) "Decisions with respect to parenting schedule, child support, visitation and spousal support will be made and agreed upon at a later date when both parties agree to live apart";

3) "For the sake of this Agreement, matters that are settled are with respect to division of assets, property, debts and taxes";

4) Both parties will keep their respective RRSPs;

5) "Any acquired debt by either or both parties to August 16th, 2019 are the responsibility of David";

6) David agrees to pay any and all debt in Leah's name that has been accrued to August 16, 2019. Debts to be paid are all credit cards in Leah's name to August 16, 2019, any overdraft on any bank account in Leah's name to August 16, 2019, and any outstanding taxes that Leah owes to August 16, 2019;

7) The parties agree that Leah will continue to earn her annual salary of: $145,920.06 from the Podollan Group of Companies until February 01, 2025;

8) The parties agree that a plane, two boats and 12 properties, including at least one hotel and two condominiums in Cancun will be transferred from David to Leah "effective immediately";

9) "This agreement has been fairly negotiated and represents the intentions and expectations of David Paul Podollan and Leah Marlene Podollan. Each of us acknowledge that we:
   • Have read the entire agreement carefully;
   • Know and understand the contents of this agreement;
   • Are fully aware of the effect, purpose and intent of this agreement
   • Are signing the agreement voluntarily without any undue influence or coercion by the other person or anyone else."

[Emphasis added]

[11] The parties then jointly retained a lawyer to formalise the Separation Agreement into a legal document—herein referred to as the Formal Agreement. In a

covering letter to the parties dated October 18, 2019 (which was endorsed by the parties), the lawyer confirms that his firm was acting as a document preparation service only and that the parties had neither asked for nor were provided with legal advice.

[12] The Formal Agreement is carelessly drafted. It is entitled “Separation Agreement- No Children”, yet it goes on to reference the parties’ son. It says that child and spousal support will be determined in the future once both parties are in the same house, though it clearly should have read as to be determined when they are not in the same house. This clause (which was present in the Separation Agreement) is contradicted in clause 24 of the Formal Agreement which provides that each party gives up all claims for, among other things, support. In the schedule of property the lawyer erroneously failed to list the two Mexican properties to be transferred to Leah. The Formal Agreement is signed by Leah and David purportedly on October 17, 2019, the day before the cover letter attaching the Formal Agreement was dated.

[13] I find on the evidence that the Separation Agreement accurately reflects the parties’ intentions. Accordingly, where the Formal Agreement differs from it, I accept the terms of the Separation Agreement. Specifically, I find:

1) The parties intended to determine child and spousal support once they ceased living in the same house; and

2) The two Mexican properties were to be transferred to Leah.

[14] I further find that the Formal Agreement was signed October 18, 2019. On that same date, the parties signed transfers of the properties, the plane and the boats from David to Leah.

[15] Leah claims that at the time of entering into the Separation Agreement and Formal Agreement and at the time that she and David executed the transfer forms, she did not have full disclosure or knowledge of David’s financial situation. More specifically, Leah attests that she had no knowledge that David had entered a

personal guarantee that impacted the family property. She says that she entered into the Separation Agreement in good faith and without intent to defraud, defeat or delay creditors.

[16] It is important to place the transfer of the properties/assets in a timeline with the bankruptcy proceedings.

[17] By early 2018, creditors were putting pressure on David's companies. On July 20, 2018, a receiver was appointed over David's company 1905393 Alberta Ltd. ("190") which is part of the Podollan Group of Companies. It owns two hotels among other things. On March 27, 2019, Servus, David's biggest creditor, commenced legal action against David on the guarantee he had provided them. In late May 2019, the receiver applied for an order approving the sale of 190's hotels. In his May 18, 2019 Affidavit, sworn in the application regarding the sale of the hotels, David indicates his awareness that he would be personally responsible to Servus for the shortfall resulting from the sale of the hotels. A summary trial in which Servus sought judgment against David was scheduled for July 22, 2019. It was adjourned at David's request. On August 16, 2019, the parties entered into the Separation Agreement whereby David agreed to transfer 12 properties, a plane and two boats to Leah and to keep all the debts.

[18] On October 8, 2019, David was given notice of Servus' application to have a receiver appointed over the holding company for his various businesses. Ten days later, on October 18, 2019, the parties executed with their lawyer the Formal Agreement as well as the transfer forms to transfer the properties, boats and the plane to Leah. The net value of the properties David transferred to Leah pursuant to the Separation Agreement, including the Mexican properties is approximately $6.5 million. The two boats have a value of approximately $200,000, and the plane has a value of approximately $3 million.

[19] Gordon Brown, a chartered accountant employed by the Trustee, attests to the significance of the transfers made by David to Leah as follows:

1) the total claims of creditors against David is estimated to be not less than $8.4 million which is likely more than the net realizable value of the transferred assets;

2) the Separation Agreement involved all of David's assets, excluding RRSPs, leaving him with no assets to pay creditors;

3) David was rendered insolvent by the transfers made pursuant to the Separation Agreement.

[20] I note that when he made the statements above, Mr. Brown was unaware that Leah had sold the two Mexican properties for $1.4 million USD. She is living off the proceeds.

[21] On December 23, 2019, there was an application filed to adjudge David in bankruptcy. On February 18, 2020, David was assigned into bankruptcy.

[22] There is no evidence from David on this application, nor is he represented. He has reportedly moved to Portugal and is not cooperating with the Trustee. His financial status is unknown.

[23] Leah claims that she was unaware of any bankruptcy proceedings regarding David.

[24] Leah and David have never reconciled. Leah attests that there is no possibility of that.

ISSUES

[25] The issues to be decided on this summary trial application are:

1) Whether the parties dealt with each other at arm's length;

2) Whether the Separation Agreement and ensuing transfers of property constitute a transfer under value;

3) Whether the Trustee takes its funds subject to Leah's entitlement under the *FLA*; and

4) Whether this matter is suitable for summary trial.

[26] Although suitability for summary trial is a threshold issue, I will consider it after considering the other issues as the answer to it will depend on the law and the evidence.

[27] Before turning to the issues, I will outline the applicable law.

THE APPLICABLE LEGISLATION

[28] Section 96 of the *BIA* is remedial in nature. Its purpose is to protect creditors from insolvent debtors that give their property to third parties in order to defeat legitimate claims of creditors (see *Ernst &Young Inc. v. Aquino*, 2022 ONCA 202 at paras. 22-24 [*Aquino*]). Section 96 reads in relevant part as follows:

> 96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as 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.

…

[29] As can be seen from s. 96(1), how the parties are dealing, arm's length or non-arm's length, determines the branch of the section the analysis follows.

ISSUE 1: WHETHER THE PARTIES DEALT WITH EACH OTHER AT ARM'S LENGTH

[30] For the purpose of s. 96(1)(b), persons who are related to each other by blood relationship, marriage, common-law partnership or adoption are deemed, in the absence of evidence to the contrary, not to deal with each other at arm's length: ss. 4(2) and (3).

[31] It is a question of fact whether persons, not related to one another were, at a particular time, dealing with each other at arm's length: s. 4(4).

[32] Leah argues that she and David were dealing at arm's length. They were separated at the time and their interests were adverse regarding the division of family property and debt.

[33] The Trustee takes the position that the parties were not dealing at arm's length. Through a notice to admit, David agrees (by failing to respond to the notice to admit) that he and Leah were married at all relevant times and were not dealing at arm's length.

[34] The Trustee relies on the following cases: *Hofer (Re),* 2019 ABQB 405; *Juhasz (Trustee of) v. Cordeiro*, 2015 ONSC 1781; and *National Telecommunications Inc. (Re)*, 2017 ONSC 1475.

[35] In *Hofer*, the Court found that a share transfer from a bankrupt to a company controlled by the bankrupt's in-laws was not an arm's length transaction. The court defined an arm's length transaction as follows:

> [22 The approach to defining "arm's length" in the tax context informs how that term is defined in the context of *BIA* proceedings: *Re Piikani Energy Corporation*, 2013 ABCA 293 at para 30. An arm's length transaction is one where there are "no bonds of dependence, control or influence" between the parties: *Piikani* at para 34, citing *Re Galaxy Sports* 2004 BCCA 284 at para 56. The relationship needs to be such that the transaction "will reflect ordinary commercial dealing between parties acting in their separate interests": *R v McLarty* 2008 SCC 26 at para 43, citing *Swiss Bank Corp v MNR*, [1974] SCR 1144 at 1152. Indicia which suggest parties are not at arm's length include the existence of a common mind directing the bargaining for both parties, the two parties acting in concert without separate interests, and one party exercise *de facto* control over the other: *McClarty* at para 62.
>
> [Emphasis added.]

[36] In reaching its conclusion the Court drew an adverse inference from the absence of evidence from the bankrupt or his in-laws regarding their negotiations or how decisions about the share purchase were made.

[37] In *Juhasz*, the court set aside a transfer of property from a bankrupt to his business partner as a transfer undervalue. In finding that the parties were not dealing at arm's length, the court found significant the bankrupt's lack of economic interest in the property:

> [41] Section 96 is directed at transfers by insolvent persons for a consideration that is materially or significantly less than the fair market value of the property. In this context, the concept of a non-arm's length relationship is one in which there is no incentive for the transferor to maximize the consideration for the property being transferred in negotiations with the transferee. It addresses situations in which the economic self-interest of the transferor is, or is likely to be, displaced by other non-economic considerations that result in the consideration for the transfer failing to reflect the fair market value of the transferred property.
>
> [42] While I do not think that the existence of a partnership or joint venture relationship is sufficient on its own to establish a non-arm's length status, I consider that the absence of any economic interest of a transferor at the point of termination or a business relationship, together with evidence of accommodation of the wishes of the transferee, can support a finding that there was a non-arm's length relationship.
>
> [43] In the present circumstances, Juhasz accommodated Cordeiro's wish not to have to deal with third party creditors through a trustee in bankruptcy, i.e. to have a trustee in bankruptcy become his "partner" with respect to the Property. For her part, given the extent of her liabilities, any economic interest in the Property resided, in substance, with Juhasz's creditors. These circumstances appear to fall squarely within the circumstances envisaged in the IT Folio. Juhasz was in a position to accommodate Cordeiro's wishes with

> respect to the Property because she did not have a sufficient separate economic interest in the Transfer to engage in ordinary commercial dealings in the form of a negotiation with Cordeiro in which each party acted in his or her separate economic interest. Rather, the parties appear to have acted in concert to ensure control in Cordeiro's hands without separate economic interests coming into play.
>
> [Emphasis added.]

[38] Similarly, in *National Telecommunications* at para. 48, the Court found that the absence of bargaining, including the "normal commercial imperatives like maximizing one's own value and even preserving one's own going concern" indicated a non-arm's length dealing.

[39] I am satisfied that David and Leah were not dealing with at arm's length for the following reasons:

1) The parties were still legally married at the time they entered into the Separation Agreement. They lived in the same house. They co-parented their young son. Leah was entirely financially dependent on David;

2) There is no evidence of bargaining. In fact, the evidence is to the contrary. According to Leah's evidence, after they separated in February, the parties "rarely interacted' and if they did, it was only regarding co-parenting their child. On August 16, 2019, David handed her a handwritten list of the properties (all of his properties according to the Trustee), the boats and the airplane, and said that he would transfer them to her. She agreed. There was no negotiation;

3) As stated above, I do not accept Leah's evidence that she gave valuable consideration in the form of waiving support in return for the property. The Separation Agreement, which Leah attests she typed up to reflect the terms she and David agreed to, specifically states that child and spousal support were to be determined. In addition to transferring all of the property listed, David took responsibility for all of the debt accrued by either or both of the parties to August 16, 2019, and Leah would continue

to earn her annual salary of just under $146,000 from the Podollan Group of Companies until February 1, 2025.

Even without Leah's evidence, the terms of the separation agreement are so extreme that it would be impossible to find that any negotiation took place.

4) As in *Juhasz*, David had no economic interest in the properties/assets at the time of entering into the Separation Agreement; it resided with his creditors. There was no negotiation because David had no interest in the conclusion. He knew that it was all going to his creditors.

[40] I put no weight on the admission of fact made by David through his failure to respond to a Notice to Admit. I further decline to draw an adverse inference from the fact that David has failed to provide evidence as to the dealings that led to the Separation Agreement being reached. It is clear from the evidence that David has chosen not to participate in the fallout from his bankruptcy in any way.

[41] Having regard to all of the evidence and being satisfied that there are no indicia of ordinary commercial dealing, I find that the parties were not dealing at arm's length.

[42] Accordingly, s. 96(1)(b) applies. Pursuant to s. 96(1)(b)(i), any transfer at undervalue within the year prior to the initial bankruptcy event is void as against the Trustee. The initial bankruptcy event occurred on December 22, 2019. Therefore, any transfer that happened on or after December 23, 2018, is subject to review. Accordingly, the separation in February 2019, the entering into of the Separation Agreement in August 2019, and the transfers of property in October 2019, all fall within the scope of s. 96(1)(b)(i).

[43] I now turn to consider whether the transfers made pursuant to the Separation Agreement were for undervalue.

ISSUE 2: WHETHER THE SEPARATION AGREEMENT AND ENSUING TRANSFERS OF PROPERTY CONSTITUTE A TRANSFER UNDERVALUE

[44] The term “transfer at undervalue” is defined in s. 2 of the *BIA* as “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”. [Emphasis added.]

[45] Leah argues that the transfers were not undervalue as she gave valuable consideration by waiving her right to child and spousal support and any other assets David owns. She further argues that this Court cannot determine whether the transfer is undervalue as the extent of David’s holdings is unknown.

[46] I reject these arguments for several reasons. First, as stated above, I find that Leah did not waive child and spousal support. The Separation Agreement that she typed up makes clear that support was still to be determined once the parties moved out of the family home. Plus a parent cannot waive child support. Although child support is paid to a parent, it is the legal right of a child.

[47] Regarding the contention that David’s holdings are unknown, Leah gives the example that she knows that David had a large subdivision project in Grand Prairie that he said would be worth tens of millions of dollars. That is the property that was sold via court order by the Trustee in Alberta.

[48] I accept the evidence of the Trustee that the assets transferred by David to Leah constitute all of his assets save for his RRSPs. Other than the suggestion of Leah that there might be more, there is no evidence to the contrary.

[49] I am not the first judge of this Court to question the validity of the Separation Agreement. In finding that the transfers of property from Podollan’s Construction Ltd. to Leah were fraudulent and should be set aside, Madam Justice Sharma stated:

> [4] Addressing the Order sought as against Podollan’s Construction Ltd. and David Paul Podollan, I am satisfied that the evidence put before me establishes the legal requirements that a fraudulent conveyance under the

> applicable legislation took place. In particular, I find that badges of fraud have been established in evidence based on the narration of facts in the receiver's report. In particular, I find that the alleged separation agreement is itself a demonstration of an attempt to hinder or delay the creditors …: *Stellar One Holdings Ltd. v. Podollan's Construction Ltd*., unreported, Vancouver Registry S1914333 (August 16, 2021).

[50] Additionally, Mr. Justice Wilson in his oral reasons for judgment dated October 12, 2022, (unreported, Vernon Registry B56267, October 12, 2022) adjudging David bankrupt stated as follows:

> [25] What flows from my review of the various transactions and consistent with Justice Sharma's findings was that the separation agreement itself would appear to be nothing more than a clumsy attempt to hastily dissipate assets before the petitioner and the receiver/manager could take steps to secure those assets. While the *Family Law Act* allows the parties to enter into agreements, I am satisfied that s. 82 of the *Family Law Act* means that the parties cannot affect the interest of creditors."

[51] There is no question that this was a transfer undervalue. David transferred millions of dollars of property to Leah, took responsibility for all of the debt and agreed to continue paying her a salary until 2025 in exchange for no consideration.

ISSUE 3: WHETHER THE TRUSTEE TAKES ITS FUNDS SUBJECT TO LEAH'S ENTITLEMENT UNDER THE *FAMILY LAW ACT*

[52] Leah submits that, regardless of the transfers, the Trustee takes the funds subject to her entitlement and that she is entitled to half of the value of the family property. Under s. 81 of the *FLA*, subject to an agreement that says otherwise, on separation each spouse has a right to an undivided half interest in all family property and is equally responsible for family debt. Leah maintains that her entitlement crystallized on February 16, 2019 when the parties separated. Regarding the debt, Leah argues that reapportionment of debt is justified when one party accrues debt and enters into a personal guarantee that affects the other party's property rights without their knowledge. For this position Leah relies on *L.W. v. F.W*., 2018 BCSC 1924 at paras. 93-102.

[53] The Trustee counters that this issue is for another day. The only issue is the validity of the transfers made pursuant to the Separation Agreement.

[54] In *C.K.M. v. H.R.M.,* 2021 BCSC 1297*,* Jackson J. held that the respondent's claim for the unequal division of family property was not a claim provable in bankruptcy under s. 81. In coming to this conclusion, the court considered the intersection between the *BIA* and *FLA* and opined at parav. 117 that Parliament could not have intended that the Trustee would make decisions regarding the division of family property and debt, as follows:

> …British Columbia's *FLA* is much broader and governs many family issues, including parenting arrangements, child support, and spousal support. Division of family property may be connected, directly or indirectly, to those broader issues and spouses may seek to determine those questions in the same proceeding, and under the rubric of the same statute, namely the *FLA*: *M.W.B. v. A.R.B.*, 2014 BCSC 2309 at para. 118. As a result, it may be that this Court would be of the view that Parliament did not intend s. 81 of the *BIA* to result in the bifurcation of a family law case, with one aspect of it proceeding under the *BIA*, nor the delegation of the exercise of this Court's discretion under s. 95 of the *FLA* to a trustee in bankruptcy…

[55] The basic propositions remain: only the bankrupt's property vests in the Trustee; the trustee takes the bankrupt's property subject to the same equities as affected the property when it was owned or possessed by the bankrupt, and the property vests in the trustee in the same condition it existed at the date of bankruptcy. A non-bankrupt spouse's interest in family property does not pass and vest in the trustee in bankruptcy: *C.K.M. at para. 118.*

[56] It follows that distribution of the David's estate to the Trustee must be deferred until Leah's interest in the family property is determined.

ISSUE 4: WHETHER THE MATTER IS SUITABLE FOR SUMMARY TRIAL

[57] Leah argues that this application is unsuitable for summary trial for a number of reasons: there are numerous factual disputes that will hinge on the credibility of the parties, there is a substantial amount of money at stake, the proceeding is only at the document disclosure stage and there is no urgency.

[58] I reject this argument and find that this matter is suitable for summary trial for the following reasons:

1) All the evidence required to decide the questions of whether the parties were dealing at arm's length and whether the value of the assets dealt with in the Separation Agreement is conspicuously less than the fair market value of the consideration given by Leah is before the court;

2) Neither Leah's credibility nor her intention is in issue;

3) There is urgency. Leah sold the Mexican properties and is living off the proceeds. There is a danger that the proceeds will be spent if the matter is not dealt with expeditiously. No trial date has been set; and

4) The summary trial will resolve all of the matters in issue in the action.

CONCLUSION

[59] I declare that the Separation Agreements between David Podollan and Leah Podollan signed October 17, 2019, and August 16, 2019 (collectively the Agreements) and the transfers of property pursuant to those Agreements (the Transfers) are void and of no force and effect.

[60] I make the following orders:

1) The Notice of Civil Claim be and is hereby amended in the form attached hereto as Appendix "A".

2) The Agreements and Transfers be and are hereby set aside.

3) All of the property so transferred, or the net sale proceeds arising therefrom, be held in trust by the Trustee and not distributed until Leah's interest in the family property is determined.

4) Within 14 days of delivery of this Order by email to David Podollan at oksummer19@gmail.com, David Podollan will deliver up to the Plaintiff the 2002 Boston Whaler 255 Conquest, having a hull identification number of BWCE2003A202, together with all its engine(s), equipment, accessions, accessories and trailer.

5) There be all such accounts, directions and enquiries to enable the Plaintiff to trace, follow and recover the properties described in the Separation Agreement dated August 16, 2019 between David Podollan and Leah Podollan as follows:

    203 Bayview Grand, Blvd. Kukulkan km 9.5, Lote 12, Cancun, QR, Mexico

    403 Bayview Grand, Blvd. Kukulkan km 9.5, Lote 12, Cancun, QR, Mexico

    (the “Mexican Properties”).

6) The Plaintiff has leave to apply for such further orders or directions arising from paragraph 5 hereof. Without limiting the generality of the foregoing:

    a) David Podollan and Leah Podollan will each produce copies of all documents pertaining to the acquisition, transfer and any further transfer or sale of the Mexican Properties.

    b) David Podollan and Leah Podollan will provide all of the documents pertaining to any trust in respect of the Mexican Properties (the “Trust”) and the name and contact information of the trustee(s) of the Trust.

    c) Any such trustee so identified is hereby directed to disclose to the Plaintiff, upon receiving this entered Order and a written request from counsel for the Plaintiff, the following:

        (i) The names of all beneficiaries of the Trust in August of 2018;

        (ii) Any changes to the beneficiaries of the Trust on or after August of 2018;

(iii) Copies of any transfer documents pertaining to the Trust, or beneficial interests therein, on or after August of 2018;

(iv) Copies of any documents pertaining to the payment of monies arising from the transfer of a beneficial interest in the Trust on or after August of 2018;

(v) Copies of all documents pertaining to any payment made to the beneficiaries of the Trust.

d) The Plaintiff is at liberty to deliver an appointment to examine Leah Podollan, David Podollan or their agents or representatives, for the purpose of the accounting and tracing ordered in paragraph 5 of this Order.

7) This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Plaintiff and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Plaintiff as may be necessary or desirable to give effect to this Order or to assist the Plaintiff and its agents in carrying out the terms of this Order.

8) Unless counsel wish to make submissions regarding costs, Leah Podollan and David Podollan will jointly and severally pay the Trustee's costs of this action and this application on a solicitor and own client scale.

"The Honourable Madam Justice Murray"

Appendix

Appendix "A" to Order

NO. S-2020923 VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRUSTEE OF THE ESTATE OF DAVID PODOLLAN,
a Bankrupt

PLAINTIFF

AND:

DAVID PODOLLAN
LEAH PODOLLAN

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and

b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above noted registry of this court within the time for Response to Civil Claim described below, and

b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

(a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or

(d) if the time for Response to Civil Claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

1. The Bowra Group Inc. ("**TBG**") is the licensed insolvency trustee of the Defendant David Podollan (the "**Bankrupt**"). TBG brings this proceeding solely in its capacity as the licensed insolvency trustee of the Bankrupt and not in its personal capacity.

2. The Bankrupt is a businessman who resides at 8312 Kalavista Drive in Coldstream British Columbia. The Bankrupt had various business interests that were held through a number of corporations.

3. The Defendant Leah Podollan is the spouse of the Bankrupt. She resides with the Bankrupt at 8312 Kalavista Drive in Coldstream British Columbia.

4. The Bankrupt had guaranteed the borrowings of 1905395 Alberta Ltd from Servus Credit Union Ltd. ("**Servus**"). On May 16, 2018, Servus made demand on the Bankrupt for payment of the sum of $23,873,849.99 pursuant to that guarantee. On March 27, 2019, Servus commenced legal proceedings against the Bankrupt seeking judgment pursuant to the guarantee. On July 22, 2019, Servus' application for summary judgment was set for hearing, but the hearing was adjourned at the Bankrupt's request.

5. On October 8, 2019, Servus filed an application to have the court appoint a receiver of Stellar One Holdings Ltd., which was the main holding company by which the Bankrupt's business ventures were held and controlled.

6. On October 17, 2019, the Bankrupt and Leah Podollan signed a document entitled "Separation Agreement – No Children" (the "**Agreement**"). The Agreement purports to transfer all of the Bankrupt's assets to his spouse Leah Podollan, but has the Bankrupt alone retain all of the "family debt".

7. On or about October 18, 2019, the Bankrupt transferred his interest in 28 separate parcels of land, more particularly described in the attached **Schedule "A"** (the "**Properties**"), to his spouse Leah Podollan (the "**Transfer**s").

8. On February 18, 2020, an order was made in British Columbia Supreme Court Action No. VER-S-B-56267 (Vernon Registry) adjudging the Bankrupt bankrupt and appointing TBG as the licensed insolvency trustee (the "**Trustee**") of the Bankrupt.

9. On the dates that the Agreement was entered, the Transfers were executed and registered in the land title office(s), the Bankrupt was:

    a) insolvent, or

    b) alternatively, was unable to pay his debts in full, or

    c) in the further alternative, was on the eve of insolvency.

10. In the alternative, the Transfers as contemplated by the Agreement, rendered the Bankrupt insolvent, or in the alternative, unable to pay his debts in full.

11. Each of the Bankrupt and Leah Podollan entered into the Agreement and the Transfers contemplated thereby, with the intent to delay, hinder or defraud the Bankrupt's creditors and to prefer any claim or interest of Leah Podollan over such creditors.

12. Leah Podollan had notice and knowledge of the fraudulent intention of the Bankrupt and colluded with the Bankrupt in regard to the Transfers. In the alternative, Leah Podollan was reckless or willfully blind to the Bankrupt's fraudulent intention.

13. At the time, the Agreement was entered and when the Transfers were registered, the Bankrupt did not deal at arm's length with Leah Podollan, who was and remains, his wife.

14. Leah Podollan provided no consideration for the Transfers. In the alternative, the consideration provided was less than the market value of the property so transferred.

Part 2: RELIEF SOUGHT

1. A certificate of pending litigation in respect of the Properties.

2. A declaration that the Agreement, including any earlier drafts or agreements pertaining thereto including but not limited to the Agreement dated August 16, 2019 referred to in paragraph 7 of the Response to Civil Claim of Leah Podollan, and the Transfers are void and of no effect as against the Trustee.

3. An order setting aside the Transfers and the Agreement, as more broadly defined in paragraph 2 above.

4. An order that upon registration of a certified copy of the Order in the applicable Title Office together with a letter from the Trustee's lawyers authorizing its registration, the right, title, interest and equity of redemption in and to the Properties of the Bankrupt in the Properties that was wrongly transferred to Leah Podollan shall be conveyed and will vest in fee simple in the Trustee, without further instrument of transfer.

    4.1 An accounting of all revenue, proceeds, payments, income, funds or any other benefit derived from the Properties, or any of them.

    4.2 A declaration that the Defendant Leah Podollan holds the Properties and all revenue, proceeds, payments, income, funds or any other benefit derived from the Properties, or any of them, in trust for the Plaintiff.

    4.21 An order that David Podollan and Leah Podollan deliver up the Property, or its proceeds, to the Plaintiff.

    4.3 An order that the Defendant Leah Podollan deliver up and pay to the Plaintiff all revenue, proceeds, payments, income, funds or any other benefit derived from the Properties, or any of them.

4.4 An order for all accounts, directions and enquiries to enable the Plaintiff to trace or follow the Properties and all revenue, proceeds, payments, income, funds or any other benefit derived from the Properties, or any of them.

4.5 Judgment against the Defendants on a joint and several basis for the amounts identified in paragraph 4.1 herein.

5. An order that the Defendant Leah Podollan pay the Plaintiff costs on a solicitor and own client basis, or alternatively on a party and party scale.

6. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The Trustee pleads and relies upon:

(a) section 95 of the *Bankruptcy and Insolvency Act*

(b) section 96 of the *Bankruptcy and Insolvency Act*;

(c) the *Fraudulent Conveyance Act;*

(d) the *Fraudulent Preference Act; and*

(e) divisions 3-4 of the *Family Law Act*.

2. The Trustee pleads and relies upon the law of constructive trust.

3. Any rental revenue, proceeds, payments, income, funds or any other benefit derived from the Properties, or any of them, are held by the Defendant Leah Podollan in trust for the Plaintiff.

Plaintiff's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for delivery is Suite 403 - 460 Doyle Avenue, Kelowna, B.C. V1Y 0C2 (Attention: Scott R. Andersen).

Fax number address for service is: N/A

E-mail address for service is: scott.andersen@lawsonlundell.com

Place of Trial: Vancouver, B.C.

The address of the Registry is: 800 Smithe Street
Vancouver, B.C., V6Z 2E1

Dated at the City of Kelowna, in the Province of British Columbia, this ___th day of July, 2023.

"Scott R. Andersen"

Lawson Lundell LLP
Solicitors for the Plaintiff

This Notice of Civil Claim is filed by Scott R. Andersen, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is Suite 403 - 460 Doyle Avenue, Kelowna, B.C. V1Y 0C2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.