

CANADA / JUDGMENT

Conian Developments Inc. (Re)

2025 BCSC 831

COURT

Supreme Court of British Columbia

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2025 BCSC 831 Conian Developments Inc. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Conian Developments Inc. (Re),

2025 BCSC 831

Date: 20250502

Docket: B200284

Registry: Vancouver

In the Matter of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

In the Matter of the Bankruptcies of Conian Developments Inc., Conian Developments (La Voda) Inc., and Conian Developments (La Voda II) Inc.,

FLII Construction Ltd.

Before: The Honourable Justice Warren

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.

August 12 and

December 16, 2024

Place and Date of Judgment:

Vancouver, B.C.

May 2, 2025

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Introduction

- [1] This is a bankruptcy proceeding involving four companies: Conian Developments Inc., Conian Developments (La Voda) Inc., Conian Developments (La Voda II) Inc., and FLII Construction Ltd. I will refer to the first three of those companies as the "Conian Entities" or, collectively, as "Conian", and the fourth as "FLII". BDO Canada Ltd. is the trustee in bankruptcy of the Conian Entities and FLII (the "Conian Trustee").
- [2] The Conian Entities are affiliates of B.C. Currency Exchange Inc. ("BCCE") through their common director, Rana Khaliq. BCCE is also in bankruptcy, under separate administration by McEown and Associates Ltd. as trustee (the "BCCE Trustee"). I will refer to the bankruptcy estate of BCCE as the "BCCE Estate".
- [3] On July 20, 2023, two orders were granted on the application of the Conian Trustee:
- The bankruptcy estates of the Conian Entities were consolidated for all purposes (the "Consolidation Order"). This created what I will refer to as the "Conian Consolidated Estate". The estate of FLII was also consolidated with the other three but only as to procedure, and I need say nothing more about FLII in these reasons.
 - A claims process order was granted which established distinct claims processes for different categories of Conian creditors (the "CPO"). The CPO contemplated, among other things, the BCCE Trustee advancing a claim in the Conian Consolidated Estate.
- [4] The Conian Trustee has now applied to have the Conian Consolidated Estate further consolidated, for distribution purposes, with the BCCE Estate, and for consequential amendments to the CPO. The inspectors of the Conian Consolidated Estate (the "Conian Inspectors") oppose that application and have applied to vary the CPO in a different manner.
- [5] Each application seeks to address complications that have arisen in administering the Conian Consolidated Estate under the CPO, which stem from the close relationship between the Conian Entities and BCCE and, in particular, Mr. Khaliq's intermingling of funds among the Conian Entities and BCCE.
- [6] The Conian Trustee's application is supported by the BCCE Trustee. It is also supported by the inspectors of the BCCE Estate and four unsecured creditors of BCCE: Brar Natural Flour Milling BC Inc., House of Sher 2018 Ltd., Kuzco Lighting Inc., and Exchange Bank of Canada.
- [7] The Conian Inspectors include Moncef Dif, Sarjinder Dhaliwal, Salman Ghumann, and Parmjeet Parhar. Their position was advanced at the hearing by Ms. Dhaliwal, whose mother, Malkiat Gill, is an unsecured creditor who says she loaned funds to Conian indirectly through BCCE.

- [8] The Conian Inspectors' application is supported by four unsecured creditors of the Conian Entities: Done Rite Bookkeeping, Pro-Mor Investment Services, 1172092 B.C. Ltd., and Ronnie Gill, whose claim in the Conian Consolidated Estate was disallowed by the Conian Trustee, and who is appealing that decision. It is also supported by Malkiat Gill, Wendy Langfield, and Hardip Chattha, each of whom is an unsecured creditor who says they loaned funds to Conian indirectly through BCCE.

Background

- [9] There is about \$6 million available in the Conian Consolidated Estate. There is about \$1 million available in the BCCE Estate.
- [10] As mentioned, Mr. Khaliq is the common director of the Conian Entities and BCCE. Mr. Khaliq is also the sole shareholder of the Conian Entities, directly or indirectly. Mr. Khaliq's wife is the sole shareholder of BCCE.
- [11] Conian was in the real estate development business. BCCE was in the currency exchange business, including foreign exchange trading and the purchase and sale of forward exchange contracts. It is alleged that, in addition to those businesses, Mr. Khaliq ran a Ponzi-like lending scheme through Conian and BCCE (the "Loan Scheme"). While the Conian Inspectors object to the characterization of the Loan Scheme as "Ponzi-like", it is not disputed that numerous investors loaned substantial amounts of money to Conian and BCCE, and that Mr. Khaliq co-mingled funds as between Conian and BCCE.
- [12] According to the Conian Trustee, Mr. Khaliq solicited investments in BCCE from persons who remitted funds to BCCE as unsecured loans or other forms of investment. The funds were deposited into BCCE's main operating account without segregation and used in BCCE's currency exchange business, to pay interest on earlier loans, to pay creditors, and to fund Conian projects. Mr. Khaliq routinely caused funds to be transferred to Conian from BCCE, and vice versa.
- [13] Some BCCE investors intended from the outset for their money to be diverted to one or more of the Conian Entities. Some BCCE investors subsequently agreed that their BCCE investments would be transferred to one or more of the Conian Entities. Other participants in BCCE's business did not intend for their money to be diverted to Conian.
- [14] According to the Conian Trustee, the purpose of the funds injected into BCCE was often not documented, there is incomplete documentation concerning the movement of funds between Conian and BCCE, and the movement of those funds was not always contemporaneous with the injection of funds into BCCE, making it impracticable, if not impossible, to discern which BCCE investors' money was actually transferred to Conian.

- [15] On April 30, 2020, BCCE filed a Notice of Intention to Make a Proposal pursuant to s. 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA]. The Conian Entities did the same on June 9, 2020. As mentioned, the Consolidation Order and the CPO were granted on July 20, 2023.
- [16] The CPO was based on a proposal that the Conian Trustee developed using information available to it at the time. This included lender information summaries and a preliminary forensic review of the accounting records conducted by Ernst & Young, in consultation with the BCCE Trustee. The Conian Trustee considered commissioning a full forensic accounting to provide greater clarity, but because of the large volume of transactions, the limited record keeping, the intermingling of funds, and the absence of formal loan documentation for most of the unsecured loans, the Conian Trustee concluded that the benefit of a full forensic analysis would be minimal and would result in significant and disproportionate additional expense.
- [17] Based on the lender information summaries and the preliminary forensic review, the Conian Trustee and the BCCE Trustee expected that the CPO would result in substantially equivalent recovery on a pro rata basis for all those affected by the Loan Scheme, regardless of whether their claims were made in the Conian Consolidated Estate or the BCCE Estate. To be clear, counsel for both the Conian Trustee and the BCCE Trustee advised me that the CPO was designed to result in substantially equivalent recovery for all unsecured creditors of the Conian Entities and BCCE.
- [18] In general terms, the CPO establishes the following process:
- a) Persons who believe they are an unsecured creditor of Conian can submit a claim to the Conian Trustee.
 - b) The Conian Trustee will sort the claims into the following three categories:
 - i. "Direct Lenders" are persons who participated in the Loan Scheme by advancing funds directly to one or more of the Conian Entities;
 - ii. "Involuntary Lenders" are persons who participated in the Loan Scheme by advancing funds to BCCE; and
 - iii. "Ordinary Creditors" are persons who are neither Direct Lenders nor Involuntary Lenders, and who have a claim against any of the Conian Entities.
 - c) Claims of Direct Lenders and Ordinary Creditors will be processed through the Conian Consolidated Estate. If the claim is proven, the creditor will recover from the Conian Consolidated Estate.
 - d) Claims of Involuntary Lenders that are submitted to the Conian Trustee will be disallowed by the Conian Trustee, and dealt with instead in the BCCE Estate together with claims of Involuntary Lenders submitted directly to the BCCE Trustee.

- e) The BCCE Trustee will determine the total amount of funds transferred from BCCE to the Conian Entities, and then make a claim in the Conian Consolidated Estate to recover that amount (the "BCCE Claim").
- [19] The Involuntary Lender category includes investors who advanced funds to BCCE with the expectation that those funds would be used by Conian or subsequently agreed to the transfer of their funds to Conian, as well as customers and investors who advanced funds to BCCE in the ordinary course of BCCE's business with no expectation that those funds would be transferred to or used by Conian. In other words, the Involuntary Lender category makes no distinction based on whether the creditor intended for their funds to be transferred from BCCE to Conian.
- [20] The deadline for submitting a proof of claim in the Conian Consolidated Estate was October 2, 2023.
- [21] After adjudicating the claims received, it became apparent to the Conian Trustee that the foundation for the CPO was flawed in two respects. First, the total value of Involuntary Lender claims made up a much greater proportion of the total claims than anticipated. Second, the BCCE Estate's claim in the Conian Consolidated Estate was significantly smaller than expected (closer to \$10 million, rather than the \$15 million anticipated). As a result, compared to what the Conian Trustee anticipated when it proposed the CPO in July 2023, the number and value of claims in the BCCE Estate was larger and the funds available for distribution to BCCE creditors was smaller.
- [22] If the CPO is not amended, it will result in roughly 49 percent recovery of proven losses for Conian creditors and 16 percent recovery of proven losses for BCCE creditors. It is the view of the Conian Trustee and the BCCE Trustee that this would be an unfair and inequitable result in the circumstances.
- [23] By April 2024, the Conian Trustee had formed the view that the Conian Consolidated Estate should be consolidated with the BCCE Estate in order to achieve the original objective of substantially equivalent recovery on a pro rata basis for all creditors, regardless of whether their claims were made in the Conian Consolidated Estate or the BCCE Estate. The Conian Trustee then filed its application seeking consolidation. If its position is sustained, all creditors will receive about 20 percent recovery of proven losses.
- [24] The Conian Inspectors filed a response to the application, opposing consolidation and proposing different amendments to the CPO. Subsequently, at my direction, they filed a Notice of Application seeking those amendments.
- [25] The Conian Inspectors assert that when the CPO was before the Court for approval in July 2023, they did not understand that the "Involuntary Lenders" category included individuals who advanced funds to BCCE with the intention that the funds be transferred to one or more of the Conian Entities and individuals who advanced funds to BCCE and subsequently agreed to the funds being transferred to one or more of the Conian Entities. In their Notice

of Application, they refer to this subset of Involuntary Lenders as "Conian Lenders". The Conian Inspectors allege they were misled by the Conian Trustee and/or by the term "Involuntary Lenders" to believe that it did not include these Conian Lenders.

- [26] The Conian Inspectors take the position (described in more detail below) that the CPO unfairly disadvantages the subset of Involuntary Lenders that they refer to as Conian Lenders. They say some of these Conian Lenders should be able to recover from the assets of the Conian Consolidated Estate to the exclusion of the other Involuntary Lenders and creditors of BCCE. They say this position is justified by the fact that this subset of Involuntary Lenders directly contributed to the creation or acquisition of Conian's assets.
- [27] The Conian Trustee denies that it misled the Conian Inspectors. The Conian Trustee says that it provided the Conian Inspectors with a draft of the CPO and "fully and completely" explained it to the Conian Inspectors before the CPO was granted. In any event, the Conian Trustee says the Conian Inspectors' proposal is fundamentally flawed. They say it is not possible to trace funds transferred from BCCE to Conian back to any individual BCCE investor. In other words, despite the asserted intentions of the so-called "Conian Lenders", the Conian Trustee says that, as a result of the co-mingling of funds, it is not possible to conclude that funds of the Conian Lenders did in fact contribute to the creation or acquisition of Conian assets or that funds of the other Involuntary Lenders and BCCE creditors did not. They also say that the proposal of the Conian Inspectors would result in an unlawful preference of select unsecured creditor claims over others.

Positions of the Parties

- [28] The parties agree that fairness dictates that the CPO should be amended, but they disagree about how that should be done.

Proposal of the Conian Trustee

- [29] Under the Conian Trustee's proposal, the amended CPO would adopt the following process:
- a) The assets of the Conian Consolidated Estate and the BCCE Estate will be treated as common assets for the purposes of distributing property to any creditor with a proven claim in either estate, on a pro rata basis.
 - b) The BCCE Estate will abandon its claim in the Conian Consolidated Estate for \$10 million, since there will no longer be any need to redistribute funds between the two estates.
 - c) The Conian Trustee and the BCCE Trustee will each remain responsible for adjudication of claims filed in their respective estates.
 - d) Involuntary Lender claims that were disallowed under the current CPO will be adjudicated by the Conian Trustee on their merits, rather than categorically disallowed.
 - e) The Conian Trustee and the BCCE Trustee will review and provide each other with non-binding feedback in respect of their adjudication of claims.

- f) The Conian Trustee will administer the consolidated fund and facilitate distributions to all creditors with proven claims, regardless of whether their claims were made in the Conian Consolidated Estate or the BCCE Estate.

[30] As mentioned, the Conian Trustee estimates that under its proposal, all creditors of both estates will recover roughly 20 percent of proven losses.

Proposal of the Conian Inspectors

[31] The concerns of the Conian Inspectors exist even under the current CPO. Accordingly, they too seek amendments to the CPO. Their proposal evolved during the course of the hearing. By the end of the hearing, I understood them to have settled on the following:

- a) The Conian Consolidated Estate and the BCCE Estate will remain separate.
- b) Claims from Direct Lenders and Ordinary Creditors will be recovered through the Conian Consolidated Estate.
- c) Involuntary Lenders who submitted claims in the Conian Consolidated Estate will also be able to recover through the Conian Consolidated Estate, so long as they can produce documentation to show they intended their funds to be transferred to Conian or subsequently agreed to their funds having been transferred to Conian. I will refer to this subset of Involuntary Lenders as "Documented Involuntary Lenders". In other words, this group will capture those "Conian Creditors" who have documentary evidence of their intention. The Conian Inspectors acknowledge that some Conian Creditors will not have the required documentation to recover as part of the Documented Involuntary Lenders group.
- d) Involuntary Lenders who are not Documented Involuntary Lenders and all other creditors of BCCE would recover from the BCCE Estate. The Conian Inspectors acknowledge that this will include BCCE investors whose funds were transferred from BCCE to Conian without their knowledge or consent, and those who intended their funds to be diverted to Conian but do not have documentary evidence of that intention. To account for this, the Conian Inspectors propose that BCCE advance a claim in the Conian Consolidated Estate in the amount of the difference between \$10 million (the total amount identified to date as having been transferred from BCCE to Conian) and the total value of proven claims from Documented Involuntary Lenders.

[32] As I understood it, the proposal to permit Documented Involuntary Lenders to recover through the Conian Consolidated Estate to the exclusion of Involuntary Lenders who intended their funds to be diverted to Conian but do not have documentary evidence of that intention, reflected an acknowledgment on the part of the Conian Inspectors of the complexities caused by the absence of objective, verifiable evidence that would allow the Conian Trustee to assess the veracity of assertions by Involuntary Lenders who claimed to have intended their funds to be diverted to Conian but do not have documentary evidence of that intention.

[33] Under the Conian Inspectors' proposal, the proportional recovery of BCCE creditors will depend on the value of the proven claims by Documented Involuntary Lenders. According to the Conian Trustee, the total value of claims from Involuntary Lenders who say they intended or subsequently agreed that their funds would be transferred to Conian is \$9.246 million. If it is assumed that all of those claimants are able to produce the required documentation, then the value of BCCE's claim in the Conian Consolidated Estate will be approximately \$750,000 (i.e., \$10 million - \$9.246 million). This would result in roughly 48 percent recovery of proven losses for Conian creditors, and roughly 5 percent recovery of proven losses for BCCE creditors.

Legal Principles

- [34] Sections 136 and 141 of the BIA together provide that all unsecured creditors of a bankrupt rank equally and share rateably in the bankrupt's assets.
- [35] Section 183(1) of the BIA invests this Court "with such jurisdiction at law and in equity as will enable [it] to exercise original, auxiliary and ancillary jurisdiction in bankruptcy proceedings ". This provision confers a broad jurisdiction on a bankruptcy court to make orders that further the BIA's purpose of ensuring an efficient, economical, and expeditious process for the winding up of a bankrupt's affairs: *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para. 55. This includes granting orders for consolidation: *Redstone Investment Corporation (Re)*, 2016 ONSC 4453 at para. 8.
- [36] Under substantive consolidation, multiple affiliated bankrupt entities are treated as if they were a single entity, and their assets are pooled to create a common fund out of which claims of creditors of all the debtor entities are jointly satisfied: *Redstone* at para. 7. This has been described as an "extraordinary remedy": *Redstone* at para. 90.
- [37] In *Redstone* at para. 78, Justice Morawetz identified three general questions relevant to determining whether it is appropriate to order substantive consolidation:
- a) Are the elements of consolidation present, such as the intertwining of corporate functions and other commonalities across the group?
 - b) Do the benefits of consolidation outweigh the prejudice to particular creditors?
 - c) Is consolidation fair and reasonable in the circumstances?
- [38] The "elements of consolidation" referenced in the first question include the following, first set out in *Northland Properties Ltd., (Re)* (1988), 29 B.C.L.R. (2d) 257 at para. 37 (S.C.), affirmed *Northland Properties Ltd. v. Excelsior Life Ins. Co. of Can.* (1989), 34 B.C.L.R. (2d) 122 (C.A.):
- a) difficulty in segregating assets;
 - b) presence of consolidated financial statements;

- c) profitability of consolidation at a single location;
- d) co-mingling of assets and business functions;
- e) unity of interests in ownership;
- f) existence of intercorporate loan guarantees; and
- g) transfer of assets without observance of corporate formalities.

(See also Redstone at para. 47; White Oak Commercial Finance, LLC v. Nygård Enterprises Ltd et al, 2023 MBCA 73 at para. 27 [Nygård].)

[39] Nygård affirmed the decision of the Court below (White Oak Commercial Finance, LLC v. Nygård Holdings, 2022 MBQB 48), which summarized the circumstances that tend to favour substantive consolidation:

[25] Cases where the courts have found that substantive consolidation is appropriate are in circumstances where the affairs of the debtor corporations were conducted with a disregard for the "niceties of corporate identity and separate juridical personalities", assets were intermingled, and where, due to the manner in which the corporations were operated and the state of corporate records, the allocation of value and claims between the corporations would be burdensome for the receiver. (See Bacic at para. 100; A. & F. Baillargeon Express Inc. (Trustee of) (Re), [1993] Q.J. No. 884 (Que. Sup. Ct.)(QL), at paras. 5, 12 - 16; PSINet Ltd. (Re) at paras. 2 and 11)

[26] Intermingling of assets, operations and liabilities of related corporations is a factor consistently examined. The facts to support such a finding include:

- a) Holding common bank accounts through which funds are paid and distributed to pay the expenses and obligations of each of the companies regardless of which entity is entitled to the funds and/or is responsible for the expense or obligation;
- b) The presence of intercorporate loans between related companies without the observance of typical corporate formalities;
- c) The comingling of records of the related companies such that it is extremely difficult, if not impossible to identify which records belong to each company;
- d) The use of common head offices shared by related companies;
- e) One entity employing all employees for a group of companies; and
- f) Common ownership and/or control, either directly or indirectly, by one individual in a group of companies and/or each entity having substantially the same officers and directors. (See Bacic at paras. 100 and 116; A. & F. Baillargeon Express Inc., at paras. 12 - 16; PSINet Ltd. (Re), at paras. 2 and 11)

Analysis

- [40] I start by considering the proposal of the Conian Inspectors. Essentially, the question is whether the CPO should be varied to permit the claims of Documented Involuntary Lenders to be recovered through the Conian Consolidated Estate, and to require the claims of other Involuntary Lenders to be recovered through the BCCE Estate.
- [41] I have concluded that the answer to that question is no.
- [42] First, the Conian Inspectors' proposal would create an arbitrary and unlawful preference for certain unsecured creditors of Conian.
- [43] As I have explained, the proposal of the Conian Inspectors would divide BCCE investors who intended their funds to be diverted to Conian into two categories: those who are able to produce documentary evidence of that intention and those who are not. The effect would be to treat only the former (that is, the Documented Involuntary Lenders) as unsecured creditors of Conian, even though the legal relationship between Conian and the creditors in each such category is the same.
- [44] Despite the broad discretion granted by s. 183 of the BIA, a scheme that defeats the equality of creditors under s. 141 of the BIA is unlawful and cannot be sanctioned by a court: *Swystun (Re)*, 2015 SKQB 168 at para. 20, citing *Keele-Wilson Supermarkets Ltd. (Re)* (S.C. Bkcy.) (1990), 72 O.R. (2d) 771 and *Pranke, Re (Bankrupt)* (1998), 166 Sask. R. 240 (Q.B.).
- [45] Second, the fairness justification offered by the Conian Inspectors in support of their proposal lacks merit. Again, the Conian Inspectors argued the creditors whose funds contributed to the creation or acquisition of the Conian assets should benefit from those assets.
- [46] Under the Conian Inspectors' proposal, much hinges on the ability of Involuntary Lenders who submitted claims in the Conian Consolidated Estate to substantiate, with documentary evidence, an intention to have their investments in BCCE transferred to Conian. The Conian Inspectors say that Mr. Khaliq produced documentation when BCCE investors agreed to have their funds diverted. For example, Malkiat Gill, Wendy Langfield, and Hardip Chattha have attached to their affidavits copies of promissory notes which they say were issued to them by Mr. Khaliq when they agreed that funds they had previously invested in and loaned to BCCE would be transferred to Conian. Moncef Dif attached a copy of a promissory note that he says was issued to him when he agreed to provide funds to BCCE for use by Conian.
- [47] The Conian Trustee disputes that Mr. Khaliq always produced documentation when BCCE investors agreed to have their funds diverted to Conian. In its Second Report, the Conian Trustee says that loans to BCCE "were often not supported by any documentation" and that, in discussions with some lenders, "many believe to be entitled to recovery of their claim via the Conian Estates regardless of documentation as it was their understanding that their funds were to be utilized for [Conian] real estate development purposes". I accept this representation.

- [48] Also, the Conian Trustee says that the promissory notes do not evidence actual transactions between BCCE and Conian, and cannot be relied on as records of funds actually transferred. The money put into BCCE, whether to participate in a currency exchange transaction, to loan money to BCCE for BCCE operations, or to loan money to Conian through BCCE, all went into a single account that Mr. Khaliq used at his pleasure. The Conian Trustee emphasizes that the documentation that does exist does not include documentation recording the original source of the funds transferred from BCCE to Conian. The Conian Trustee argues that although Ms. Gill and others like her may have intended that certain of their funds be transferred from BCCE to Conian, the promissory notes are not evidence that those funds actually were transferred.
- [49] I accept the representations of the Conian Trustee to the effect that it is not possible, given the state of the record-keeping, to trace the individual advances of money to Conian.
- [50] The Conian Inspectors have not tendered reliable evidence to the contrary. In this regard, the Conian Inspectors included in their application record an unsworn affidavit of Ronnie Gill (Tab C13), which claims that certain BCCE investors agreed, on June 5, 2018, that funds they invested in BCCE would be loaned to Conian, and that these funds were then transferred to Conian (the "June 5 Funds"). Attached to this unsworn affidavit is one page of a multi-page bank statement for Conian Developments Inc., which the affidavit claims shows the June 5 Funds being transferred. That page shows transfers from BCCE to Conian Developments Inc. of \$1,332,051.64 on July 10, 2018; \$1,220,950 on July 11, 2018; and \$250,000 on July 26, 2018, for a total of \$2,803,001.64. This amount roughly corresponds to amounts that Malkiat Gill, Wendy Langfield, and Hardip Chattha depose they agreed to transfer from BCCE and Conian on June 5, 2018, and in respect of which they have produced promissory notes.
- [51] However, there is no evidence before me from which to conclude that the June 5 Funds were actually earmarked in any way for Conian, and no evidence from which to determine whether other funds were deposited into BCCE's account between June 5, 2018 and July 10, 2018 (the day of the first transfer from BCCE shown on the single page of the Conian bank statement). Further, the single page of the Conian bank statement shows large transfers from Conian Developments Inc. to BCCE during the same period: \$1,220,950 on July 10, 2018 and \$1,220,000 on July 12, 2018, for a total of \$2,440,950. If the June 5 Funds were transferred to Conian, it appears that to a significant extent they were almost immediately returned to BCCE.
- [52] I turn now to the Conian Trustee's proposal to consolidate the Conian Consolidated Estate and the BCCE Estate for the purposes of distributing property to any creditor with a proven claim in either estate, on a pro rata basis.
- [53] I start with the first of the three general questions posed by Justice Morawetz in Redstone at para 78: whether "elements of consolidation" are present, having regard for the factors or indicia identified in Northland Properties. I find they are.

[54] The Second Report of the Conian Trustee provides, among other things:

- "Other than undertaking currency transactions as part of BCCE's ordinary course of business, Mr. Khaliq solicited investments in BCCE from numerous individuals and corporations, who loaned tens of millions of dollars to BCCE on an unsecured basis for general investment and real estate development purposes, in return for high interest rate payments. These loans were often not documented by any documentation. Most of the unsecured lenders only have a copy of the original bank draft indicating remittance to BCCE without any supporting paperwork. The funds were deposited into BCCE in its main operating account without any segregation into separate trust accounts."
- "The funds advanced by lenders to BCCE were used to fund BCCE's currency exchange business, make interest payments to other lenders, pay creditors, and also fund the purchase and development of the [Conian] projects."
- "The Trustee understands some lenders of BCCE had their funds diverted to Conian without their knowledge, and therefore, involuntarily loaned funds to the [Conian] Projects."
- "some funds were transferred from the operating accounts of Conian to the operating account of BCCE, thus intermingling BCCE and Conian funds."
- "Due to the volume of transactions completed, as well as a general lack of accounting and bookkeeping practices, the books and records of BCCE and Conian do not provide a clear picture of the transactions between the various entities."

[55] The Third Report of the Conian Trustee provides, among other things:

- "Mr. Khaliq raised tens of millions of dollars from various investors and customers of his companies, which advances were supported by very little or no documentation. Generally, there was no objective, verifiable evidence that would allow the Trustee to determine whether creditor advances were intended as loans or equity investments, and no means of determining whether the funds were intended for (or used for) BCCE business or for the Conian Entities' real estate development business."
- "[s]hort of a forensic accounting review of the records that did exist (which would only address some of the Trustee's concerns, if any), the Trustee had no practical way of tracing individual advances of money to address these issues. The Trustee understands that a forensic review would be very expensive and would not provide any clarity on the issue of which funds were advanced by who and to which entity."
- "Because Mr. Khaliq commingled funds paid to and otherwise received by those entities, without proper record or documentation of such transfers, administration of both the herein bankruptcy and the BCCE bankruptcy has been highly complicated. In particular, the Trustee and the BCCE Trustee struggled to develop and recommend claims processes for their respective estates, that would account for the commingling of funds and would result in a fair and equitable recovery for all impacted creditors."

- [56] The Conian Inspectors say the Conian Trustee has exaggerated the deficiencies in the record keeping. Ronnie Gill, who was employed by Conian and BCCE, has deposed that the accounting for the Conian Entities was "always up to date". However, the Conian Trustee emphasizes that as a result of the state of the record-keeping, it is impracticable if not impossible to trace the original source of the funds transferred from BCCE to Conian. As I have already noted, there is no evidence that calls that conclusion into question.
- [57] I accept the representations of the Conian Trustee and find that the affairs of the Conian Entities and BCCE were conducted with disregard for the niceties of corporate identity; funds were routinely intermingled between the Conian Entities and BCCE; due to the state of the record-keeping, it is impracticable if not impossible to trace the original source of the funds transferred from BCCE to Conian; and the allocation of claims between the Conian Entities and BCCE would be overly burdensome for the Conian Trustee and the BCCE Trustee.
- [58] Having concluded that "elements of consolidation" are present, I turn to consider whether the benefits of consolidation outweigh the prejudice to particular creditors. I find they do, again based on the Reports of the Conian Trustee.
- [59] The underlying objective of the CPO was substantially equivalent recovery for all creditors of the Conian Entities and BCCE. It is the view of both the Conian Trustee and the BCCE Trustee that this would result in the most fair and equitable recovery for all those affected by the Loan Scheme. It has now become apparent that the number and value of claims in the BCCE Estate is larger than anticipated and the funds available for distribution to BCCE creditors is smaller than anticipated, such that the underlying objective will not be achieved through the CPO as initially conceived.
- [60] According to the Third Report of the Conian Trustee, "if funds are distributed strictly in accordance with the CPO, the Trustee estimates that Involuntary Lenders and other creditors in the BCCE Estate, including those who did and who did not intend that their funds be transferred to or used by the Conian Entities, will recover significantly less (proportionately) than Direct Lenders and Ordinary Creditors of the [Conian Consolidated Estate]." It is the view of both the Conian Trustee and the BCCE Trustee that this would be an unfair and inequitable result, having regard to the nature of the Loan Scheme, and its impact on those groups. Specifically, the concern is that distribution in accordance with the CPO will result in undue prejudice to creditors in the BCCE Estate, as compared to those in the Conian Consolidated Estate "based on the arbitrary and largely undocumented commingling of funds amongst the entities, through no fault of any creditor".
- [61] While a bankruptcy trustee's report and recommendations do not supplant the court's discretion and independent function, a bankruptcy trustee is an officer of the court and their report is accorded significant weight: *Bankruptcy of Calogheros*, 2008 BCSC 1695. I am satisfied that the Conian Trustee and the BCCE Trustee have made reasonable inquiries and have not received any credible evidence to contradict their conclusions regarding the

fairness of their current proposal. Their findings and recommendations should be given considerable weight in this case.

- [62] I have considered whether the motivations of Involuntary Lenders who intended their funds to be transferred to Conian might provide a basis against the further consolidation now sought, but have concluded it does not. A creditor's motivation for investing is not relevant to any of the considerations set out in the test for substantive consolidation. As explained by Morawetz J. in para. 71 of Redstone, consolidation by its very nature will benefit some creditors and prejudice others and, as a result, it is appropriate to look at the overall general effect.
- [63] I find that, given the nature of the Loan Scheme, and the elements of consolidation noted above, the benefits of consolidation outweigh the prejudice to the Direct Lenders and Ordinary Creditors of Conian, and those creditors who the Conian Inspectors have defined as "Conian Lenders".
- [64] The final question is whether consolidation is fair and reasonable in the circumstances. For the reasons I have already expressed, I am satisfied it is.
- [65] In summary, the objective underlying the CPO, substantially equivalent recovery for all creditors of the Conian Entities and BCCE, was, in the circumstances present here, fair and reasonable at the time the CPO was granted. The material in the record before me does not suggest any change in circumstances that might now call that conclusion into question. The further consolidation of the Conian Consolidated Estate and the BCCE Estate, to achieve that original objective, is fair and reasonable.

Conclusion

- [66] The application of the Conian Inspectors is dismissed.
- [67] The application of the Conian Trustee is granted. Specifically, an order in the form attached as Schedule B to the Conian Trustee's Notice of Application filed July 29, 2024, is granted.

"Warren J."

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