Court File No. CV-25-00743136-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SHAW-ALMEX INDUSTRIES LIMITED AND SHAW ALMEX FUSION, LLC

RESPONDING FACTUM OF TIMOTHY SHAW
(Returnable December 4, 2025)

December 2, 2025

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PART I - OVERVIEW

1. On this motion, the Monitor seeks an order declaring that the transfer of 2,400,600 shares of Real Holdings from SAIL to Global Holdings on December 31, 2021, was a transfer at undervalue for the purposes of section 96 of the BIA and is void against the Monitor. Alternatively, the Monitor seeks a declaration that Global Holdings breached the 2021 SPA (defined below) and/or that SAIL is the legal owner of the Shares such that the 2021 SPA cannot be enforced against the Monitor.

2. The Monitor's motion should be dismissed in its entirety.

3. The Monitor has failed to satisfy its burden to prove its case under section 96 of the BIA. The 2021 SPA was not *conspicuously* under value. Global Holdings agreed to pay SAIL consideration worth just 4.7% less than the Monitor's own assessment of the fair market value of the Shares. The terms of the SPA do not "erode" the value of the consideration because Global Holdings in fact paid the entire Purchase Price (or most of it) in just 3.5 years, not 20. The Monitor has failed to produce any evidence that SAIL was insolvent or rendered insolvent by the 2021 SPA transaction and instead relies on baseless assumptions and allegations about SAIL's financial health at the time the 2021 SPA was executed. Similarly, the Monitor has failed to satisfy its burden to prove that SAIL intended to defraud, defeat, or delay any of its creditors when it executed the 2021 SPA. Rather, Mr. Shaw's unchallenged evidence is that SAIL executed the 2021 SPA in anticipation of a future sale of the SAIL business.

4. Global Holdings did not breach the 2021 SPA because it paid the entire Purchase Price by 2025. Even if Global Holdings has not yet paid the entire Purchase Price, it has paid more to SAIL than it currently owes under the terms of the 2021 SPA.

5. Finally, Canadian courts do not have jurisdiction under Spanish law to make declarations that the 2021 SPA is unenforceable against the Monitor, third parties, or otherwise.

6. Accordingly, the Monitor's motion must be dismissed.

PART II - FACTS

A. Background to the Monitor's Transfer Under Value Motion

i. SAIL's Corporate Organization

7. Shaw-Almex Industries Limited ("**SAIL**") was a family business. In 1957, James Conwell Shaw and Doris Evelyn Shaw founded Shaw Sales and Services in Parry Sound, Ontario, as a small automobile repair company.[1]

8. In the 1960s, Shaw Sales and Services obtained the right to use patents from Alm Experimental (hence the "Shaw Almex" name) and shifted its focus to developing equipment to support the growing conveyor belt industry.[2] SAIL since became a global leader in the manufacturing of conveyor belt vulcanizing equipment and technology and related products and services, which are essential to many companies operating in the mining, food, package handling and power industries.[3]

9. SAIL was the parent company of a group of companies operating across the globe, with offices in North and South America, Australia, Europe, and South Africa.[4]

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[1] Affidavit of Timothy Glen Shaw affirmed November 20, 2025 ("**Shaw Affidavit**") at para 3, Responding Motion Record of Timothy Shaw dated November 20, 2025 ("**RMR**"), tab 1.
[2] Shaw Affidavit at para 3.
[3] Shaw Affidavit at paras 3-5.
[4] Shaw Affidavit at para 8.

10. One of those companies was Fonmar Group S.L. ("**Fonmar OpCo**").[5] SAIL purchased Fonmar OpCo and its related companies in or about 2012.[6]

11. Fonmar OpCo operates out of a manufacturing facility located at Parque Empresarial Nuevo Jaén, C/ Mariana de Montoya, Spain (the "**Spanish Property**").[7]

12. Fonmar OpCo does not own the Spanish Property. Rather, the Spanish Property is owned by a Spanish real estate holding company called Fonmar S.A. ("**Fonmar RealCo**") and leased to Fonmar OpCo pursuant to a lease agreement dated February 1, 2021, for a 10-year term.[8]

13. Fonmar S.A. is directly owned by Shaw Almex Real Holdings S.L. ("**Real Holdings**").[9] As described below, on December 31, 2021, SAIL transferred the shares in Real Holdings to Global Holdings (defined below).[10]

ii. Timothy Shaw

14. Timothy Shaw ("**Mr. Shaw**") is the son of the founders of SAIL. At all relevant times, Mr. Shaw was the sole common shareholder of SAIL and the sole shareholder of Shaw Almex Global Holdings Limited ("**Global Holdings**"), as well as an administrator (akin to a director under Ontario law) of Fonmar OpCo, Fonmar RealCo and Real Holdings.[11]

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[5] Shaw Affidavit at para 11.
[6] Shaw Affidavit at para 10.
[7] Shaw Affidavit at para 12.
[8] Shaw Affidavit at para 13; Fifth Report of FTI Consulting Canada Inc. ("**Fifth Report**") at para 33, Motion Record of the Monitor dated September 27, 2025 ("**MR**") at tab 2; See also: Fonmar RealCo Land Registry Report at Appendix M to the Fifth Report, MR tab 2, p 245; Lease Agreement dated February 1, 2021 at Appendix N to the Fifth Report, MR tab 2, p 259.
[9] Shaw Affidavit at para 16; Fifth Report at para 32.
[10] Shaw Affidavit at para 17.
[11] Shaw Affidavit at paras 1, 6-7, 16; Fifth Report at para 35.

15. In early 2008, Mr. Shaw purchased the balance of the common shares in SAIL from his parents and siblings and became the Chief Executive Officer ("**CEO**") of SAIL.[12] Mr. Shaw was SAIL's CEO until his termination by the Monitor on May 13, 2025.

iii. The Share Purchase Agreement

16. In 2017, SAIL entered into discussions with Semperit, an Austrian-based company, to buy SAIL. Semperit made it clear to Mr. Shaw and SAIL management that it only wanted to buy the operating company, including its brand and intellectual property, and not any of the real estate owned by SAIL or its subsidiaries.[13]

17. While that deal did not go through, Mr. Shaw and SAIL's former Chief Financial Officer ("**CFO**"), Ryan Neufeld, learned that in order to ready the business for a sale, the real estate had to be separated from the company's operations.[14] By 2019, SAIL mostly operated from premises owned by Global Holdings.[15] Other than SAIL's flagship facility located in Parry Sound, Ontario, the only property that SAIL indirectly owned was the Spanish Property.[16]

18. Mr. Shaw and the CFO thus began to develop a plan to sell the Spanish Property to Global Holdings. Mr. Shaw was advised that the easiest and most tax efficient way to sell the Spanish Property to Global Holdings was for Global Holdings to purchase the shares of Real Holdings from SAIL.[17]

19. As a result, on December 31, 2021, SAIL and Global Holdings executed a Share Purchase Agreement (the "**2021 SPA**") whereby Global Holdings purchased 2,400,600

[12] Shaw Affidavit at para 6.
[13] Shaw Affidavit at para 18.
[14] Shaw Affidavit at para 18.
[15] Shaw Affidavit at para 19.
[16] Shaw Affidavit at para 20.
[17] Shaw Affidavit at para 22.

shares (the "**Shares**") in Real Holdings for a total purchase price of €2,400,600 (the "**Purchase Price**").[18] The Purchase Price was determined by subtracting the balance of the mortgage loan owing on the Spanish Property (€981,957.22) from the 2017 appraisal value of the Spanish Property (€3,382,557.87).[19]

20. Under the terms of the 2021 SPA, Global Holdings agreed to pay the Purchase Price over a period of 20 years, in annual instalments of €120,030.[20] However, as described immediately below, Global Holdings was not prohibited from paying the Purchase Price earlier than contemplated in the 2021 SPA. In fact, this is exactly what happened – Global Holdings paid all or most of the Purchase Price in just 3.5 years.

iv. Global Holdings Pays the Purchase Price (or Most) in 3.5 Years

21. Despite the terms of the 2021 SPA, as related entities, and with Mr. Shaw as the directing mind of both SAIL and Global Holdings, it was never the parties' intention that the Purchase Price would be paid over 20 years. Global Holdings wanted to ensure that it paid the Purchase Price as soon as possible so that SAIL would have cash on hand sooner to use for its operations.[21]

22. Because Global Holdings did not have its own bank account, it never transferred any money directly to SAIL to satisfy the Purchase Price. Instead, Global Holdings paid the Purchase Price to SAIL as follows:[22]

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[18] Shaw Affidavit at para 24; Share Purchase Agreement dated December 31, 2021, Exhibit A to the Shaw Affidavit, RMR, tab 1, p 20-21.
[19] Email from SAIL's counsel dated October 25, 2021, Appendix V to the Fifth Report, MR, tab 2, p 493.
[20] Share Purchase Agreement dated December 31, 2021, Exhibit A to the Shaw Affidavit, RMR, tab 1, p 21.
[21] Shaw Affidavit at para 33.
[22] Shaw Affidavit at para 26 and 30; Fifth Report at paras 87-90; SAIL General Ledger, Appendix CC to the Fifth Report, MR, tab 2, pp 643-644.

(a) by off-setting approximately $740,000 in rent payable from SAIL to Global Holdings for SAIL's head office in Stoney Creek, Ontario (the "**Glover Road Property**") from December 2021 to January 2025; and

(b) directing the following cash payments to SAIL as a result of mortgaging and selling real property owned by Global Holdings:

i. $1.9 million in January 2022 as mortgage proceeds secured against the Glover Road Property;

ii. $2.68 million in September 2024 from the sale of the Glover Road Property; and

iii. $824,000 in September 2024 from the sale of real property owned by Global Holdings in Townsville, Australia.

23. As the Monitor notes, before the 2021 SPA transaction, Global Holdings owed SAIL approximately $3.02 million. Following the 2021 SPA transaction on December 31, 2021, SAIL added the total amount of the Purchase Price to the amount owing from Global Holdings to SAIL, bringing the total to approximately $6.47 million.[23] After accounting for the payments to SAIL made by Global Holdings (including the payments described above) by May 2025, Global Holdings only owed SAIL approximately $1.01 million on account of all prior loans.[24]

v. The Initial Order and the SAIL Bankruptcy Proceedings

24. On March 29, 2025, SAIL filed a notice of intention to make a proposal (the "**NOI**") pursuant to the provisions of the *Bankruptcy and Insolvency Act* (the "**BIA**").[25] On

[23] Fifth Report at para 86; SAIL General Ledger, Appendix CC to the Fifth Report, MR, tab 2, pp 643-644.
[24] SAIL General Ledger, Appendix CC to the Fifth Report., MR, tab 2, pp 643-644.
[25] RSC 1985, c B-3; Fifth Report at para 1.

May 13, 2025, the Ontario Superior Court of Justice granted an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**") with respect to SAIL and Shaw Almex Fusion, LLC. The Initial Order continued the NOI proceeding commenced by SAIL under the CCAA and appointed FTI Consulting Canada Inc. ("**FTI**") as the Court-appointed monitor of SAIL and Fusion (the "**Monitor**").[26]

vi. The Monitor Brings a Transfer Under Value Motion

25. On September 27, 2025, the Monitor brought the within motion for, among other things, a declaration that the transfer of the Shares from SAIL to Global Holdings under the 2021 SPA is a transaction undervalue pursuant to section 96 of the BIA.[27] Alternatively, the Monitor requests a declaration that Global Holdings has breached the 2021 SPA.[28]

26. On November 25, 2025, in a late-breaking amendment the night before cross examinations took place, the Monitor now also seeks a declaration that SAIL, and not Global Holdings, is the legal owner of the Shares and that the 2021 SPA cannot be enforced against third parties, including the Monitor.[29]

PART III - LAW AND ARGUMENT

A. The Monitor Cannot Meet the Test for a Transfer Under Value

27. As the applicant, the Monitor has the onus of proving the factors in subsection 96(1)(b)(ii), including the threshold issue that the transfer was "undervalue".[30]

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[26] RSC 1985, c C-36; Fifth Report at para 3.
[27] Amended Notice of Motion dated November 25, 2025 ("**Amended Notice of Motion**") at para 1(b).
[28] Amended Notice of Motion at para 1(d) and paras 47-48.
[29] Amended Notice of Motion at para 1(d)(ii).
[30] *Mercado Capital Corporation v Qureshi*, 2018 ONCA 711 at para 36 ["***Mercado 2***"].

28. The Monitor claims that section 96(1)(b)(ii) applies to the 2021 SPA such that the Court should declare the transfer of the Shares from SAIL to Global Holdings void against the Monitor. In particular, the Monitor argues that (i) the transaction was under value; (ii) the transaction was non-arm's length; (iii) the debtor was insolvent at the time of the transfer or was rendered insolvent by it; and/or (iv) the debtor intended to defraud, defeat or delay a creditor.[31]

29. Mr. Shaw does not dispute that the 2021 SPA was not an arm's length transaction or that the transaction occurred within five years of the initial bankruptcy date.

30. However, for the reasons that follow, the Monitor has failed to discharge its burden to prove that the transaction was a transfer undervalue, that SAIL was insolvent at the time of the 2021 SPA transaction, and that the intention of the 2021 SPA transaction was to defraud, defeat, or delay any of SAIL's creditor.

i. The Transfer of the Shares Was Not Undervalue

31. The threshold issue on the Monitor's transfer undervalue motion is whether the transfer was, in fact, undervalue.

32. To fall within the ambit of section 96 of the BIA, it is not enough that a transfer is for less than the fair market value of an asset. Instead, the transfer must have been for either no consideration or for consideration that is *conspicuously less than* the fair market value of the consideration given by the debtor.[32]

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[31] Amended Notice of Motion at paras 39, 42, 43; Fifth Report at para 77.
[32] BIA, s 2, defining "transaction at undervalue".

33. As described above, the Shares were sold by SAIL to Global Holdings on December 31, 2021, for a total purchase price of €2,400,600 plus the assumption of the existing mortgage on the Spanish Property. At the time of the transfer, the only tangible assets held by Real Holdings were the shares in Fonmar RealCo (which in turn only held the Spanish Property) and a home in Jaén, Spain valued at €120,000 (the "**Jaén Home**"). The Monitor does not dispute this. As a result, the value of the Shares is equal to the value of the Spanish Property and the Jaén Home, less any debt owing by Fonmar RealCo and Real Holdings.[33] As of December 2021, Fonmar RealCo owed approximately €981,957.22 on a mortgage loan associated with the Spanish Property, which mortgage was assumed by Global Holdings following the 2021 SPA transaction.[34]

34. At paragraph 60 of its Fifth Report, the Monitor acknowledges that as of year end 2021, Real Holdings held €219,182.29 in total current liabilities. However, when considering the value of the Shares, the Monitor "assume[s] that Real Holdings has no liabilities" as "the Monitor has not had the opportunity to fully evaluate the validity of Real Holdings' short-term debts with group and associated companies".[35]

35. Based on a 2017 appraisal, the Monitor "conservatively" assumes that the Spanish Property was worth €3,382,557.87 as of the 2021 SPA transaction.[36]

36. As a result, in accordance with its obligation under section 96(2) of the BIA, the Monitor states that the fair market value of the Shares as of December 31, 2021 was approximately €2,520,600.65, or just ***4.7% more*** than the Purchase Price.[37]

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[33] Fifth Report at paras 50-53 and 58.
[34] Fifth Report at para 59.
[35] Fifth Report at para 60.
[36] Fifth Report at paras 55 and 61.
[37] BIA, s 96(2); Fifth Report at para 61. The difference is just 3.4% if the assumption of the mortgage on the Spanish Property is included.

37. In *People's Department Stores*, the Supreme Court of Canada explained that when determining whether the difference in consideration is "conspicuously" less than fair market value, "the percentage difference is a factor", among others.[38] In that case, the Supreme Court specifically held that a "disparity of slightly more than six percent between fair market value and the consideration received [did not constitute] a 'conspicuous' difference within the meaning of s. 100(2) of the BIA" and the Trustee's claim failed accordingly.[39]

38. More recently, Canadian courts have observed that "[t]he caselaw suggests that 17% below market value may be conspicuously less, while 6% may not be".[40]

39. The fact that a difference of just 4.7% between the fair market value of the consideration (€2,520,600.65) and the value of the consideration received (€2,400,600.00) is not enough to qualify as a "transfer at undervalue" was not lost on the Monitor. This is why the Monitor undertakes a complex analysis relying on the time value of money, inflation, and credit and collection risk – all of which would not have been undertaken by the parties or other parties in their position acting reasonably – to manufacture a difference in value. The fact the Monitor had to engage in such a complex analysis shows that the consideration received by SAIL is not "conspicuously" less than the fair market value of the Shares.[41]

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[38] *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344, at para 113, citing *People's Department Stores Ltd. (1992) Inc., Re*, 2004 SCC 68 at paras 85-86: "The test for determining whether a difference in consideration is 'conspicuously less than fair market value" under the BIA requires the court to have regard to all relevant factors, including the margin of error in valuing the assets in question, any appraisals made of the assets and the parties honestly held beliefs regarding the value of the assets".
[39] *People's Department Stores Ltd. (1992) Inc., Re*, 2004 SCC 68 at paras 85-88; section 100(2) was a predecessor to the current section 96(1) of the BIA: *Mercado 2* at para 18.
[40] *Nguyen (Re)*, 2024 ABKB 647 at para 27.
[41] Fifth Report at paras 62-63.

40. To be clear, the Monitor's own expert confirmed that there is nothing unlawful under Spanish law about the terms of the 2021 SPA.[42]

41. Instead, the Monitor argues that the 2021 SPA contemplates an interest free 20-year payment term that "erodes the Purchase Price's real value".[43]

42. This argument should not be accepted because SAIL received the entire Purchase Price from Global Holdings within just 3.5 years, not 20. The Monitor's analysis also fails to account for the immediate "payment" that was effected by the assumption of the mortgage. Alternatively, if the entire Purchase Price was not repaid in that period, most or a substantial portion was repaid.

43. As the Monitor explains, immediately prior to the 2021 SPA transaction, Global Holdings owed SAIL approximately $3.02 million. After December 31, 2021, SAIL added the Purchase Price to the amount owing by Global Holdings, increasing the total to $6.47 million.[44] From December 2021 to May 2025 (the date of the Initial Order), SAIL set off $6,144,000 owing from Global Holdings as a result of rent payable by SAIL to Global Holdings and other amounts received by SAIL on behalf of Global Holdings, as described above at paragraph 22. During this same period, SAIL made payments totalling approximately $817,000 on behalf of Global Holdings. As such, based on the Monitor's own calculations, SAIL received a net amount of $5,327,000 from Global Holdings between December 2021 and May 2025, reducing the total amount owing to

[42] Transcript from the cross-examination of Victor de Cambra conducted November 26, 2025 ("**de Cambra Examination**") at p 23, qq 78-79.
[43] Fifth Report at para 65.
[44] Fifth Report at paras 86-87.

SAIL from Global Holdings to approximately $1.01 million, without regard to the assumption of the mortgage.[45]

44. As the directing mind of both SAIL and Global Holdings at the time of the 2021 SPA transaction and the corresponding Purchase Price payments, it is Mr. Shaw's unchallenged evidence on this Motion that "it was always Global Holdings' and SAIL's intention that the rent set-off and other amounts received by SAIL in connection with the sale of Global Holdings' real property … would be put towards the Purchase Price first in SAIL's general ledger".[46]

45. Unless a debtor specifies which debt will be paid first amongst a number of debts it has with a creditor, "the right to appropriate the payments devolves upon the creditor" and "a creditor may appropriate payments made by a debtor who owes multiple debts to whatever accounts he or she chooses, is not required to give notice of the decision, and can wait till the last minute to do it, even during trial".[47] As the directing mind of both SAIL and Global Holdings at the time the payments were made, Mr. Shaw was entitled to allocate the payments to the Purchase Price first in SAIL's general ledger.

46. Contrary to the Monitor's position, direct cash payments from Global Holdings to SAIL were not required for Global Holdings to satisfy the Purchase Price. In *Re Option Industries Inc.*, the Alberta Court of Queen's Bench held that "credits to the transferor's account payable to the parent company represented legitimate and sufficient consideration" such that the impugned transfers in that case were "at value".[48]

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[45] Fifth Report at paras 86, 89-93, and 98; Shaw Affidavit at para 34.
[46] Shaw Affidavit at para 32.
[47] *Continental Steel Ltd v CTL Steel Ltd*, 2018 BCCA 82 at paras 28-29.
[48] *Option Industries Inc (Re)*, 2020 ABQB 535 at para 5.

47. Because the entire Purchase Price (or a substantial portion) was paid within 3.5 years, rather than 20 as contemplated by the 2021 SPA, the Monitor cannot claim that the value of the Purchase Price is "eroded" by a 20-year term.

48. In any event, the Monitor's calculation of the fair market value of the Shares as of December 31, 2021 must be regarded as being at the high end, due to a significant margin of error given the number of assumptions inherent in the Monitor's calculation.[49]

49. For example, the has Monitor entirely ignores Real Holdings' €219,182.29 total current liabilities as of year-end 2021 on the basis that it "has not had the opportunity to fully evaluate the validity of Real Holdings' short term debts with group and associated companies".[50] The Monitor failed to obtain an appraisal of the Shares as of December 31, 2021, and instead relies on an already outdated 2017 appraisal of the Spanish Property as the basis for its position that the Spanish Property was worth €3,382,557.87 as of December 31, 2021.[51] This, in turn, requires the Court to assume that the value of commercial real estate in Jaén, Spain *did not go down* over four years during a global Pandemic that had a particularly negative impact on the value of commercial real estate in Spain.[52] The Monitor obtained authorization from the Court to bring this motion on September 10, 2025, after commencing the motion months before.[53] It has had *months* to evaluate the validity of Real Holdings liabilities as of December 31, 2021 and to obtain an up-to-date appraisal of the Spanish Property, but it failed to do so.

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[49] *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344 at para 114.
[50] Fifth Report at para 60.
[51] Fifth Report at para 55.
[52] Shaw Affidavit at paras 44-48; Impact of the COVID-19 Pandemic on the Spanish Commercial Real Estate Market dated July 2021, Exhibit B to the Shaw Affidavit, RMR at tab 1, pp 25-35.
[53] TUV Authorization Order dated September 10, 2025, Appendix A to the Fifth Report, MR, tab 2, pp 46-48.

50. In summary, the Monitor has failed to prove that the 2021 SPA was a transaction at undervalue under section 96 of the BIA. Even accepting the Monitor's assumptions (which should not be accepted), the difference between the fair market value of the Shares and the consideration received by SAIL from Global Holdings was just 4.7% (or just 3.4% if the assumption of the mortgage is considered). The Supreme Court of Canada has been clear that this is not "conspicuously" under value for the purposes of the BIA. The entire Purchase Price (or most of it) was paid by Global Holdings to SAIL in just 3.5 years and as a result, the Court should not give any effect to the Monitor's argument that the 20-year payment term "eroded" the value of the consideration. The Monitor's transfer undervalue motion must be dismissed because they have failed to establish that the 2021 SPA transaction was undervalue.

ii. SAIL was not Insolvent at the Time of the Transfer or Rendered Insolvent by the Transfer

51. Under section 96(1)(b)(ii)(A) of the BIA, the Court may void a transaction if "when the transfer was made the bankrupt was or was rendered insolvent".[54]

52. A company is insolvent for the purposes of the BIA if they meet any one of the following tests:[55] (i) for any reason is unable to meet its obligations as they generally become due; (ii) has ceased paying its current obligations in the ordinary course of business as they generally become due; or (iii) the aggregate of its property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing.

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[54] *Re: National Telecommunications Inc., a bankrupt*, 2017 ONSC 3142 at para 3, citing BIA, s 96(1)(b)(ii)(A).
[55] *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para 25; *In Re Synaptive Medical Inc.*, 2025 ONSC 1750 at para 13; BIA, s 2, defining "insolvent person".

53. In its Fifth Report, the Monitor alleges that SAIL was insolvent *at the time of the transfer* or rendered insolvent by it. However, the Monitor does not claim that at the time of transfer SAIL was unable to meet its obligations as they generally became due or that it ceased paying its current obligations in the ordinary course of business. The Monitor also does not even attempt to prove that the *realizable value* of SAIL's assets was less than its liabilities on December 31, 2021, nor could it prove these requirements.

54. In fact, according to SAIL's December 31, 2021 balance sheet, SAIL was solvent following the 2021 SPA transaction: as of that date, it had approximately $31.7 million total assets and $27.7 million total liabilities.[56] As the Monitor points out, the December 31, 2021 balance sheet already took into account the effect of the SPA transaction as it includes "the removal of the Shares from SAIL's assets".[57]

55. Instead of presenting any evidence that SAIL was insolvent at the time of the transfer or rendered insolvent by it, the Monitor asks that the Court make a series of assumptions.

56. As the Monitor explains in its Fifth Report, despite SAIL's apparent balance sheet solvency as of December 31, 2021, "the Monitor has not adjusted assets to reflect their fair market value as at December 31, 2021" and "the Monitor <u>expects</u> that if it undertook the exercise of evaluating the fair market value of SAIL's December 31, 2021, assets on a liquidation basis, <u>it would find</u> that fair market value of SAIL's total assets in 2021 is materially less than the balance showed in the 2021 financial statement."[58] [emphasis added]

[56] Fifth Report at para 73.
[57] Fifth Report at para 73.
[58] Fifth Report at para 75.

57. The Monitor's *should have, could have, would have* arguments amount to nothing more than baseless allegations that fall well short of satisfying its evidentiary burden on this motion. If the Monitor believes that the fair market value of SAIL's assets as of December 31, 2021 were "materially less than the balance showed in the 2021 financial statement" it needed to adduce evidence to support its claim. But it did not.

58. In a recent case, the Ontario Superior Court of Justice held that to reach a "definitive conclusion" on whether a debtor was or was not balance sheet insolvent, the Court requires, among other things, "a determination of the realizable value of [the debtor's] accounts receivable and WIP at the time of the [transaction]".[59]

59. The Monitor claims that SAIL's "financial statements for 2022 and 2023 show that it is balance sheet insolvent".[60] That may be, but it is plainly irrelevant to the question before the Court, which is whether SAIL was insolvent or rendered insolvent by the 2021 SPA transaction when the transfer was made on December 31, 2021. The Monitor cannot rely on the financial position of the company one or two years after the transaction took place to prove that SAIL was insolvent on December 31, 2021.[61]

60. The Monitor has therefore failed to discharge its burden to prove that SAIL was insolvent or rendered insolvent by the 2021 SPA transaction.

iii. SAIL Did Not Intend to Defraud, Defeat, or Delay a Creditor

61. Section 96(1)(b)(ii)(B) requires the Monitor to prove that SAIL intended to defraud, defeat or delay a creditor when it executed the 2021 SPA.

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[59] *Cerson v McCarney Group LLP*, 2023 ONSC 2550 at para 78.
[60] Fifth Report at para 76.
[61] See e.g.: *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344 at para 116.

62. The Court must not conflate the effect of the transfer and the intention of the transferor. Even if the effect of the transfer was to put the Shares beyond the reach of creditors (which is denied), the Court's focus is on whether SAIL *intended to* defraud, defeat or delay a creditor.[62]

63. The Monitor cannot prove that SAIL's subjective intention was to defraud, defeat, or delay any of its's creditors. Instead, the Monitor points to various "badges of fraud" and asks the Court to infer that SAIL's intention was to defraud, defeat or delay its creditors.[63] However, the Court of Appeal for Ontario has been clear that the presence of one or more badges of fraud does not mandate that an inference of fraud be drawn by the Court, and "alleged badges of fraud must be considered in the context of the entire record".[64]

64. Here, the Monitor claims that it is "not aware of and cannot ascertain any commercial reason or justification for the Impugned Transaction".[65]

65. However, the unchallenged evidence of Mr. Shaw on this motion is that the purpose of the 2021 SPA was to consolidate SAIL's real property in Global Holdings to prepare SAIL for an eventual sale of the business to a third party.[66] Further, the transaction alleviated the need for SAIL to make rent payments on the Glover Road Property, thereby freeing up its cash flow.

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[62] *Juhasz (Trustee of) v Cordeiro*, 2015 ONSC 1781 at para 46.
[63] Factum of FTI Consulting Canada Inc. in its capacity as Monitor of Shaw-Almex Industries Limited and Shaw Almex Fusion, LLC dated December 1, 2025 ("**Factum of the Monitor**") at paras 49-50.
[64] *Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757 at paras 53-54.
[65] Fifth Report at para 77.
[66] Shaw Affidavit at para 18.

66. In its Fifth Report, the Monitor attempts to cast Mr. Shaw as a villain, seeking to "strip" assets from SAIL and put them "out of the reach of SAIL's creditors" as the business began to stumble in 2021.[67]

67. The Monitor's narrative ignores three key facts (among others). First, the 2021 SPA transaction did not "strip" any assets from SAIL. As described above, Global Holdings paid the entire Purchase Price (or most of it) by 2025 and reduced the overall amount it owed to SAIL from $6.47 million to $1.01 million. The Purchase Price was just 4.7% less than the Monitor's own assessment of the fair market value of the Shares. Second, in December 2024, Mr. Shaw mortgaged his principal residence in Stoney Creek and his house in Atlanta, Georgia in order to provide funding to SAIL to keep the business afloat – hardly the act of someone trying to move assets away from creditors.[68] Third, despite incurring net losses in 2021, SAIL was balance sheet solvent following the 2021 SPA transaction.

68. Considering these additional key facts leads to the conclusion that Mr. Shaw was committed to SAIL, a longstanding family business founded by his parents in the 1950s. The 2021 SPA was executed for a valid commercial purpose during a legitimate corporate reorganization and there is simply no evidence of asset stripping or any intention to defraud, defeat or delay any creditors.[69]

69. Further, the Monitor states that it has "been advised by counsel to Royal Bank of Canada and BDC Capital Inc. that the Impugned Transaction occurred without their

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[67] Fifth Report at para 78.
[68] Shaw Affidavit at para 38.
[69] Canadian courts have held that where a transfer was made for a *bona fide* business purpose during a corporate restructuring, the intent to defraud, defeat or delay creditors was not established: *Westcorp Inc. v H & H Stucco & Siding Ltd*, 2016 ABQB 650 at paras 29-31.

knowledge or consent" as required under their respective credit agreements with SAIL.[70]

70. However, as Mr. Shaw explained, this is "simply not the case".[71] In fact, before the SPA was executed on December 31, 2021, Mr. Shaw was present in conversations where Mr. Neufeld, the former CFO of SAIL, informed John Borch at RBC (at the time HSBC) and Marvin Junop and Roger Wilson of BDC of the transaction and provided them with draft financial statements and updated corporate charts showing that the Shares in Real Holdings were going to be transferred from SAIL to Global Holdings.[72]

71. Mr. Shaw's evidence is not contradicted by any direct evidence. While in the Monitor's Reply Brief it states, without details, that RBC and BDC deny that they consented to the 2021 SPA transaction and that they are not aware of "any records showing" that RBC or BDC were made aware of the SPA transaction at the end of 2021, the Monitor has not spoken to or otherwise contacted Mr. Borch, Mr. Junop, or Mr. Wilson to request their evidence on the matter.[73] The Monitor cannot stand behind a Monitor's report to provide hearsay evidence on this key substantive issue in contested litigation. The Monitor could have put forward proper evidence but failed to do so. The Monitor's untestable statements cannot be used to contradict otherwise uncontradicted evidence.

72. The Monitor has therefore failed to discharge its burden to establish that SAIL intended to defraud, defeat or delay its creditors when it executed the 2021 SPA.

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[70] Fifth Report at para 79.
[71] Shaw Affidavit at para 40.
[72] Shaw Affidavit at para 42.
[73] Second Supplement to the Fifth Report of the Monitor dated November 25, 2025 at paras 50-53, Reply Motion Record of the Monitor ("**Reply MR**") dated November 25, 2025 tab 1, p 18.

iv. In the alternative - The Court Should Exercise its Discretion Not to Void the Share Transfer

73. The Court has residual discretion not to void the 2021 SPA transaction even if the Court determines that the Monitor has established that the 2021 SPA transaction was a transfer at undervalue under section 96 of the BIA and that it either was made at a time when SAIL was insolvent or was rendered insolvent by the transfer, or that SAIL intended to defraud, defeat or delay a creditor.[74] Equity guides the Court's exercise of discretion.[75]

74. In this case, the Court should decline to void the 2021 SPA because: (i) SAIL and Global Holdings executed the agreement in good faith, for a *bona fide* business purpose; (ii) Global Holdings paid the entire Purchase Price within just 3.5 years and the Purchase Price was just 4.7% less than the Monitor's own calculation of the fair market value of the Shares; and (iii) alternatively, if Global Holdings did not pay the entire Purchase Price (which is denied), it paid most or a substantial portion of the Purchase Price (as discussed further below) to SAIL and the remaining amount is not yet due.

v. The Monitor is Only Entitled to the Difference Between the Fair Market Value of the Consideration and the Consideration Received

75. If the Court finds that the 2021 SPA transaction is a transfer at undervalue under section 96 of the BIA and is inclined to exercise its discretion to void the 2021 SPA as against the Monitor, the most the Monitor can recover is the "difference between the fair market value of the property disposed of by the debtor and the consideration received by the debtor at the time of the transfer".[76]

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[74] *Mercado Capital Corporation v Qureshi*, 2017 ONSC 5572 at paras 22-25 ["***Mercado 1***"], aff'd 2018 ONCA 711.
[75] *Mercado 1* at para 26, citing *People's Department Stores Ltd (1992) Inc., Re*, 2004 SCC 68.
[76] *Estate of Gavin v Gavin*, 2023 PECA 8 at para 146.

76. Section 96(1) of the BIA authorizes a court to grant either a declaration "that a transfer at undervalue is void as against … the [Monitor] – **or** order that a party to the transfer or any other person who is privy to the transfer … 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 …"[77] [emphasis added].

77. The Prince Edward Island Court of Appeal recently held that "[b]oth remedies should be interpreted such that they operate harmoniously" and that "the value of the debt sought to be recovered for the estate should be the same regardless of the remedy applied: the difference between the fair market value of the property disposed of by the debtor and the consideration received at the time of the transfer".[78]

78. Here, as set out in detail above, Global Holdings paid the entire (or a substantial part of the) Purchase Price to SAIL within just 3.5 years. By the Monitor's own calculation, the Purchase Price is just 4.7% less than the fair market value of the Shares. As a result, the Monitor is only entitled to the difference between the Purchase Price (€2,400,600.00) and the fair market value (€2,520,600.65) of the Shares, being **€120,000.65**.

79. Alternatively, if Global Holdings did not pay the entire Purchase Price (which is denied), the Monitor is only entitled to recover the total amount currently due to SAIL from Global Holdings, which the Monitor has said it doesn't know what that amount is.[79]

B. No Breach of Contract

[77] BIA, s 96(1).
[78] *Estate of Gavin v Gavin*, 2023 PECA 8 at paras 141-145.
[79] Fifth Report at para 98.

80. In its amended Notice of Motion dated November 25, 2025, the Monitor claims that SAIL and Global Holdings failed to comply with the necessary legal formalities under Spanish law to give effect to the 2021 SPA and as such "SAIL … is the legal owner of the Shares and the [SPA] cannot be enforced against third parties, including the Monitor".[80]

81. The Monitor further claims that Global Holdings has breached the 2021 SPA by "failing to pay the Purchase Price" and the Monitor is therefore "entitled to specific performance for this breach …".[81]

82. Both of the Monitor's claims should be rejected.

i. Global Holdings did not Breach the 2021 SPA

83. The 2021 SPA is governed by Spanish law.[82] The Monitor retained a Spanish lawyer, Mr. Victor de Cambra Antón, to opine on Spanish law for the purposes of this motion.[83]

84. In his report, Mr. de Cambra explains that under Spanish law, "[a] buyer's failure to make payment constitutes a serious and fundamental breach of contract" and that "[i]t is for the court, in each specific case, to assess whether the non-payment is of sufficient magnitude to entitle the seller to terminate the contract".[84]

85. However, here there is no breach of contract because Global Holdings in fact

[80] Amended Notice of Motion at para 46.
[81] Amended Notice of Motion at paras 47-48.
[82] Share Purchase Agreement, Exhibit A to the Shaw Affidavit at p 23, RMR tab 1, p 23.
[83] Affidavit of Spanish Foreign Law Expert dated October 2, 2025 ("**de Cambra Affidavit"**), Supplemental Motion Record of the Monitor dated October 7, 2025 ("**Supp MR**").
[84] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at pp 18-19.

paid the entire Purchase Price to SAIL within just 3.5 years, or if it has not paid the entire amount, it has paid more than what is currently owing.

86. On cross examination, Mr. de Cambra confirmed that unless the contract states otherwise, Spanish law does not prohibit a debtor from making early payments under an agreement of purchase and sale and the payments are not required to include interest.[85]

87. In the alternative, if the Court finds that Global Holdings did not pay the entire Purchase Price to SAIL (which is denied), any non-payment is not of a sufficient magnitude to entitle SAIL to terminate the contract under Spanish law. Here, from December 2021 to May 2025, Global Holdings reduced the total amount it owes to SAIL from approximately $6.47 million to just $1.01 million. Even if the Court concludes that Global Holdings owes SAIL the entire $1.01 million balance to SAIL pursuant to the 2021 SPA, Global Holdings has *still not missed any payments*. This is so because the 2021 SPA has a 20-year interest free term, payable in €120,030 annual instalments in the last quarter of each year.[86] The SPA was executed on December 31, 2021. As of the hearing of this motion, only four instalments have come due under the 2021 SPA. In other words, as of December 4, 2025, Global Holdings only owes SAIL €480,120 out of the total €2,400,600 purchase price. Global Holdings has in fact paid far more to SAIL than it owes under the 2021 SPA at this time. The wording of the 2021 SPA does not require Global Holdings to make annual payments if it makes prepayments toward the Purchase Price.

[85] de Cambra Examination, p 23, qq 78-80.
[86] Share Purchase Agreement, Exhibit A to the Shaw Affidavit at p 21, RMR tab 1, p 21.

88. Moreover, the Monitor has failed to account for amounts owing by SAIL to Global Holdings pursuant to its various lease agreements for its facilities around the globe, which are owned by Global Holdings.[87] Any such amounts would further reduce the $1.01 million currently owed by Global Holdings to SAIL.

ii. The Monitor has Elected Specific Performance if the Court Finds There is a Breach of Contract

89. In its Amended Notice of Motion, the Monitor seeks an order that "Global Holdings return to SAIL the Shares" as a consequence of the alleged breach of the SPA.[88] In particular, the Monitor claims that "SAIL is entitled to specific performance for this breach due to, among other things, the related-party nature of the Impugned Transaction and the unique nature of the Spanish Real Property and its importance to SAIL's business".[89]

90. The Monitor misunderstands the nature of the remedy of specific performance under Spanish law. If the Court orders specific performance of the 2021 SPA, Global Holdings is simply required to pay any outstanding balance towards the Purchase Price. Specific performance of the 2021 SPA does not entitle SAIL to the return of the Shares. As the Monitor's own expert explained, if a buyer (Global Holdings) breaches a contract by failing to make payment as agreed, the seller (SAIL) "is entitled to exercise its rights under Article 1124 of the Spanish Civil Code …".[90] Article 1124 "grants the creditor the power to choose among various options", including by making a demand for specific

[87] Shaw Affidavit at para 20.
[88] Amended Notice of Motion at para 1(d)(iii)-(iv).
[89] Amended Notice of Motion at para 48.
[90] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at pp 18.

performance *or* to rescind the contract.[91] Here, the Monitor has chosen to demand specific performance of the 2021 SPA. But as Mr. de Cambra opined, under Spanish law, specific performance means that "the creditor can judicially compel the buyer to comply with the payment obligation under the agreed terms".[92]

91. In its factum, the Monitor appears to attempt to re-elect its choice of remedy under Article 1124 at a very late stage.[93] However, having made its choice under Article 1124, the Monitor cannot now re-elect to demand recission of the 2021 SPA, unless specific performance is *impossible*, which it is not.[94]

iii. In the Alternative – Recission is Not an Appropriate Remedy

92. If the Court finds that Global Holdings breached the 2021 SPA (which is denied) and that the Monitor is entitled to re-elect its remedy under Spanish law, Mr. Shaw submits that recission is not appropriate in this case.

93. In his report, Mr. de Cambra explains that recission may be granted in the following circumstances:[95] (i) for serious contractual breach, such as non-payment "of the price already due (whether the total price or any of its deferred installments)"; (ii) for fraud on creditors; (iii) for damage by more than a quarter of the value; and (iv) for insolvency or bankruptcy of the buyer.

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[91] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at pp 18.
[92] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at pp 18.
[93] Factum of the Monitor at para 61.
[94] Annex 7.2.2 Spanish Civil Code, Art. 1124, Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at pp 218.
[95] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at pp 19-20.

94. None of these circumstances are present here. Global Holdings is not bankrupt or insolvent. There is no evidence that the 2021 SPA was executed in fraud of any of SAIL's creditors (and in any event, Mr. de Cambra explains that such a rescissory action must be brought by the creditors themselves).[96] The Monitor has not alleged any "damage by more than a quarter of the value" and Global Holdings has not actually missed any payments toward the Purchase Price, as described above.

95. On cross examination, Mr. de Cambra explained that under Spanish law, rescission puts the parties in the position they were in before the contract was formed.[97]

96. This is consistent with Canadian law. In Canada, recission is an equitable remedy "that is meant to put the contracting parties back in the position they were in before entering into the contract". While perfect restoration is not required, "the parties should be substantially returned to their pre-contractual state".[98]

97. Under Canadian law, the Court may only order recission "so long as it avoids injustice between the parties, for instance by unjustifiably making the respondent worse off".[99]

98. In this case, if the Court orders recission and puts the parties back to their pre-contractual state, Global Holdings would return the Shares to SAIL and SAIL would return all amounts paid towards the Purchase Price by Global Holdings.

99. However, recission would unjustifiably make Global Holdings worse off, because SAIL is protected from creditor claims pursuant to the ongoing CCAA proceedings and

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[96] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at pp 19.
[97] de Cambra Examination, at p 25, qq 87-88.
[98] *1000425140 Ontario Inc v 1000176653 Ontario Inc*, 2023 ONSC 6688 at para 157.
[99] *Urban Mechanical Contracting Ltd v Zurich Insurance Company Ltd*, 2022 ONCA 589 at para 62.

the Initial Order and cannot return to Global Holdings the amounts Global Holdings paid toward the Purchase Price as required if the 2021 SPA is rescinded. The Court of Appeal for Ontario recently held that the common law recission remedy does not provide for a priority claim in receivership proceedings in the context of the Ontario *Securities Act* and that recessionary claimants rank *pari passu* among other creditors.[100] Global Holdings could not effect a rescission of the contract and similarly, this Court should not permit SAIL to do so when it cannot or will not uphold its side of the rescission. Rescission of the 2021 SPA would breach both Spanish and Canadian law because Global Holdings cannot be restored to its pre-contractual state.

iv. The Court has no jurisdiction to order that the 2021 SPA is unenforceable under Spanish law

100. In its Amended Notice of Motion, the Monitor requests a declaration from the Court that "SAIL, and not Global Holdings, is the legal owner of the Shares and that the [SPA] cannot be enforced against third parties, including the Monitor".[101] In support of its claim for relief, the Monitor asserts that "SAIL and Global Holdings failed to comply with the necessary legal formalities under Spanish law to give effect to the [SPA] and the transactions contemplated therein".[102]

101. First, the Court should not consider this further alternative relief because the Monitor only advanced this position on the eve of cross examinations, after Mr. Shaw filed his responding motion record. The Court should not permit the Monitor to raise entirely new relief when the responding party cannot change its record.

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[100] *Ontario Securities Commission v Bridging Finance Inc*, 2023 ONCA 769 at paras 37-39.
[101] Amended Notice of Motion at para 1(d)(ii).
[102] Amended Notice of Motion at paras 45-46.

102. Second, the Court should not grant the relief the Monitor is seeking because Canadian courts simply do not have the jurisdiction under Spanish law to make an order with respect to the enforcement of the 2021 SPA. As the Monitor's Spanish law expert explained:[103]

> This regulatory connection reinforces the relevance of the formal requirements set forth in Articles 104, 105, and 106 of the LSC … for the corporate effectiveness of the transfer of an equity interest, directly linking the validity of the legal transaction with the exclusive jurisdiction of Spanish courts to resolve any dispute arising from its interpretation, compliance, or enforcement. [Emphasis added]

103. In making a determination with respect to the interpretation, compliance or enforcement of the 2021 SPA, the Court must apply Spanish law, for two reasons.

104. First, the 2021 SPA is expressly governed by Spanish law. Second, it is well accepted in Canadian law that a "local court may hear matters concerning ownership of shares in a foreign corporation if it applies the law of the place of incorporation".[104]

105. Paradoxically however, if this Court applies Spanish law to the enforcement of the 2021 SPA as it must do, it inescapably leads to the conclusion that a Canadian court (or any court or tribunal outside Spain) does not have the jurisdiction to resolve a dispute in respect of the enforcement of the 2021 SPA. This is because, as Mr. de Cambra opined, under Spanish law Spanish courts have "exclusive jurisdiction" over such matters.[105]

106. As a result, this Court cannot grant the remedy the Monitor seeks at paragraph 1(d)(ii) of its Amended Notice of Motion.

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[103] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at p 14.
[104] *Zhang v Hua Hai Li Steel Pipe Co Ltd*, 2019 ONSC 7465 at para 28.
[105] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at p 14.

107. Alternatively, if the Court does have jurisdiction to decide on the enforcement of the 2021 SPA, Mr. Shaw submits that the Court cannot made an *in rem* declaration that the 2021 SPA is unenforceable against third parties or the Monitor on the basis that SAIL and Global Holdings did not comply with legal "formalities" in Spain.[106]

108. Mr. de Cambra opined that the 2021 SPA creates binding obligations between SAIL and Global Holdings and that "the agreement is valid between the parties …".[107]

109. Until the Initial Order, SAIL and Global Holdings acted as though Global Holdings was the legal owner of the Shares. For example, as the Monitor acknowledged in its Fifth Report, following the execution of the 2021 SPA, SAIL recorded the Purchase Price in its general ledger, increasing the amount owing from Global Holdings by approximately $3.45 million. Global Holdings subsequently directed a net amount of approximately $5.32 million to SAIL in satisfaction of the Purchase Price.[108] The 2021 SPA itself specifically contemplates that "[a]s a consequence, this sale and purchase of the Shares, will be duly registered on the relevant Shareholders Registry Book".[109]

110. It would be a significant injustice to Global Holdings and Mr. Shaw if this Court held that the 2021 SPA was unenforceable against the Monitor or third parties based on non-compliance with technical legal formalities when Global Holdings has already paid either all or most of the Purchase Price and the parties to the agreement acted as if the transaction was completed.

111. In this case, the equitable maxim that "equity regards as done that which ought to

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[106] Amended Notice of Motion at para 45.
[107] Legal Report on Spanish Law dated October 2, 2025, Exhibit A to the de Cambra Affidavit, Supp MR, at p 17.
[108] Fifth Report at paras 32-34.
[109] Word SPA, Appendix Q to the Fifth Report, MR, tab 2, p 306.

be done" applies. SAIL and Global Holdings acted as though they would not insist on enforcing their strict legal right that the Shares be formally transferred to Global Holdings under Spanish law.[110] It would be inequitable to allow SAIL to receive a windfall under the 2021 SPA by overturning the transaction when the parties acted as though the transaction was completed for years.

112. Further, Mr. de Cambra testified on cross examination that either SAIL or Global Holdings could have executed the formal transfer of the Shares under Spanish law.[111] It would be unjust and contrary to the principles of equity to render the 2021 SPA unenforceable against the Monitor or third parties and grant a windfall to SAIL because SAIL failed to execute the formal share transfer requirements and accepted payment of the Purchase Price in the interim.

113. Alternatively, the rule in *Ex parte James* applies because it would be unjust for the Monitor to take full advantage of their legal right under the 2021 SPA and rely on technical legal "formalities" to retain both the Shares and the amounts already paid by Global Holdings towards the Purchase Price.[112]

114. The Monitor's claim for this alternative relief must be dismissed.

PART IV - RELIEF REQUESTED

115. Mr. Shaw requests that the Monitor's motion be dismissed in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of December, 2025.

Tyr LLP

[110] *Igeacare Systems Inc., Re*, 2009 CanLII 70994 (ON SC) at paras 28-29.
[111] de Cambra Examination at pp 30-31, qq 106-107.
[112] *Treacy, Re*, 32 O.R. (3d) 717 at paras 7-8; *Stormont Chemicals Ltd., Re*, 20 C.B.R. (3d) 188 at paras 15-19; *Goldin, Re*, 65 O.R. (3d) 691 at paras 27 and 32.

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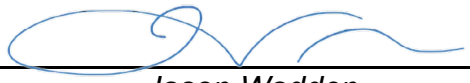
SCHEDULE "A"
LIST OF AUTHORITIES

1. *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344
2. *1000425140 Ontario Inc v 1000176653 Ontario Inc*, 2023 ONSC 6688
3. *Cerson v McCarney Group LLP*, 2023 ONSC 2550
4. *Continental Steel Ltd v CTL Steel Ltd*, 2018 BCCA 82
5. *Juhasz (Trustee of) v Cordeiro*, 2015 ONSC 1781
6. *Estate of Gavin v Gavin*, 2023 PECA 8
7. *Goldin, Re*, 65 O.R. (3d) 691
8. *Igeacare Systems Inc., Re*, 2009 CanLII 70994 (ON SC)
9. *McEwan Enterprises Inc.*, 2021 ONSC 6453
10. *Mercado Capital Corporation v Qureshi*, 2017 ONSC 5572
11. *Mercado Capital Corporation v Qureshi*, 2018 ONCA 711, aff'd 2018 ONCA 711.
12. *Re: National Telecommunications Inc., a bankrupt*, 2017 ONSC 3142
13. *Nguyen (Re)*, 2024 ABKB 647
14. *Ontario Securities Commission v Bridging Finance Inc*, 2023 ONCA 769
15. *Option Industries Inc (Re)*, 2020 ABQB 535
16. *People's Department Stores Ltd. (1992) Inc., Re*, 2004 SCC 68
17. *Re Synaptive Medical Inc.*, 2025 ONSC 1750
18. *Stormont Chemicals Ltd., Re*, 20 C.B.R. (3d) 188
19. *Treacy, Re*, 32 O.R. (3d) 717
20. *Urban Mechanical Contracting Ltd v Zurich Insurance Company Ltd*, 2022 ONCA 589
21. *Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757
22. *Westcorp Inc. v H & H Stucco & Siding Ltd*, 2016 ABQB 650
23. *Zhang v Hua Hai Li Steel Pipe Co Ltd*, 2019 ONSC 7465

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary. (rule 4.06.1(2.2)).

Date: December 2, 2025



Jason Wadden

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act,* RSC 1985, c B-3 s 2, s 96**

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

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*)

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

(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.

Meaning of person who is privy

(3) In this section, a person who is privy means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person. R.S., 1985, c. B-3, s. 961997, c. 12, s. 792004, c. 25, s. 572005, c. 47, s. 732007, c. 36, s. 43

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SHAW-ALMEX INDUSTRIES LIMITED AND SHAW ALMEX FUSION, LLC

Court File No. CV-25-00743136-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

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