

COM May 2, 2024

Form 49
Rule 13.19

B201-996918

COURT FILE NO. 25-2996918, 25-2997457, 25-2997541

COURT COURT OF KING'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.
1985, C. B-3, AS AMENDED



AND IN THE MATTER OF THE BANKRUPTCY OF NOMODIC MODULAR
STRUCTURES INC., AITHRA PROJECTS INC. AND NOMODIC MODULAR
STRUCTURES (ONTARIO) LTD.

DOCUMENT **SUPPLEMENTAL AFFIDAVIT OF MICHAEL HALE**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Ryan F.T. Quinlan / Gil Miciak
Barrister & Solicitor
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File #445-215880
DUNCAN CRAIG LLP
LAWYERS MEDIATORS
2800 Rice Howard Place
10060 Jasper Avenue
Edmonton, Alberta Canada T5J 3V9

AFFIDAVIT OF MICHAEL HALE

Sworn on March 28, 2024

I, Michael Hale, of the City of Whitehorse, in the Yukon Territory, SWEAR AND SAY THAT:

1. I am the CEO of Northern Vision Development Limited Partnership ("NVD"). I have personal knowledge of the matters herein deposed to except where stated to be on the basis of information and belief, in which case I do verily believe the same to be true.
2. I make this Affidavit as a supplement to my Affidavit sworn December 1, 2023. All defined terms in that Affidavit are adopted unless otherwise noted.

3. On December 5, 2023, NVD sent its materials to the Trustee setting out its claims in the bankruptcy. That communication specified that NVD was making a property proof of claim pursuant to section 81 of the *Bankruptcy and Insolvency Act*, asked if the Trustee had a specific proof of claim form it wanted filled out for the section 81 property claim, and provided my Affidavit of December 1, 2023, the Affidavit of Ken Volk, and the unsecured proof of claim (to ensure that NVD had creditor status) in support of NVD's claim. My Affidavit of December 1, 2023 and the Affidavit of Ken Volk are exhibited already to the First Report of the Trustee.
4. Attached collectively as **Exhibit "A"** to this my Affidavit are a series of emails between myself, Deryck Helkaa of FTI Consulting, NVD's counsel Ryan Quinlan, and counsel for the Trustee, including Mr. Quinlan's email of December 5, 2023.
5. I am advised by Mr. Quinlan and verily believe that the Trustee never requested that NVD's property claim be put in a tailored or specific Proof of Claim form.
6. I am advised by Mr. Quinlan and verily believe that the Trustee never issued any notice that NVD's property claim pursuant to section 81 of the *Bankruptcy and Insolvency Act* was disputed or disallowed.
7. I have reviewed the information in the First Report of the Trustee. The provision of the information set out in the First Report of the Trustee, and the prior drafts of the same sent to NVD and ATB, was the first that NVD learned of the amount remaining and the specific accounting of the money held in trust by Nomodic in its RBC account (being institution 003, transit 00009, account 1348432) (the "**RBC Dedicated Account**"), amongst other information. As a result of that additional information, including without limitation the amount in the RBC Dedicated Account and the transactions related thereto, I confirm that NVD's claim for a property and/or trust claim is for or relates to:
 - a. the whole of the Pre-Payment made to Nomodic by NVD, including all of the funds remaining in the RBC Dedicated Account, and the funds that were and are the subject of the Champion Cheque, up to the total sum of \$2,405,490.71;
 - b. any substitutions, property obtained with such funds; or other funds or bank accounts commingled with the funds; and/or
 - c. tracing and further or alternative remedies sought by NVD.

SWORN BEFORE ME at Whitehorse)
 Yukon, this 28 day of March, 2024.)
 _____)
 A Notary Public in and for the Territory of Yukon)

GRAHAM E. C. LANG
BARRISTER & SOLICITOR
LAMARCHE, LANG & BARRETT
505 LAMBERT STREET
WHITEHORSE, YUKON Y1A 1Z8
(867) 456-3300

 MICHAEL HALE

This is **Exhibit "A"** referred to in the affidavit of
MICHAEL HALE sworn before me on the
28th day of March, 2024.

A Notary Public in and for the Territory of Yukon

GRAHAM E. C. LANG
BARRISTER & SOLICITOR
LAMARCHE, LANG & BARRETT

Print name ~~505 ADAMSON STREET~~ / Student-at-Law
WHITEHORSE, YUKON Y1A 1Z8
(867) 456-3300

Gil Miciak

From: Ryan Quinlan
Sent: December-05-23 17:01
To: Ryan Zahara
Cc: 'Helkaa, Deryck'; Browning, Cameron; Gil Miciak
Subject: RE: [External] RE: Nomodic and NVD - Bankruptcy of Nomodic Modular Structures Inc.
Attachments: Affidavit of Ken Volk - sworn December 4, 2023 - To be filed - 4151-2243-1565 v1.pdf; Affidavit of Michael Hale - sworn Dec. 1, 2023 - To be filed - 4138-2475-4253 v1.pdf; Proof of Claim and Proxy form - Signed by Michael Hale on Dec. 1, 2023 - Updated - 4131-5307-1693 v1.pdf

Hi Ryan,

Further to our call on Friday, please find the attached documentation.

I confirm that we act for Northern Vision Development Limited Partnership ("NVD") in respect of the bankruptcy of and Nomodic Modular Structures Inc. ("Nomodic"). The total amount of its claim is \$2,405,490.71. Attached is a partial Proof of Claim that makes a nominal \$1000.00 unsecured claim in the Nomodic bankruptcy, which frankly is just meant at this time to ensure that NVD has standing as an admitted creditor of the estate for information purposes and alike. As discussed with you, and in my prior emails with the trustee, the balance NVD's claim is property or trust claim being made pursuant to section 81 (and any other applicable sections) of the Bankruptcy and Insolvency Act ("BIA").

The trustee has not provided us with a formal property proof of claim form for this aspect of NVD's claim, and admittedly I am not sure if it even has one to provide. If the trustee is content to accept this cover email and the attached documents as NVD's form of property proof of claim without something more formal, then that is fine with me. If, however, the trustee has, or wishes to draft and provide to me a formal property proof of claim form for NVD to fill out and return please let me know and provide the same to me. I will get that completed and returned as soon as possible.

Attached as proof or support of our property and unsecured claims are two Affidavits. One is from a representative of NVD. The other is from a representative of Champion Canada International ULC ("Champion").

As discussed, and as is more fully set out in the Affidavits, part of the property or trust claim relates to funds that may be in Nomodic's RBC account, and the balance (\$1,639,158.54) relates to funds that were the subject of a cheque issued by Champion, which was cashed in an ATB account after the Bankruptcy Order, and immediately taken and applied by ATB to indebtedness owed to it. As a matter of logistics on the ATB portion of the claim, I am interested in trustee's position as to whether it considers the appropriate process to be it determining (at first instance) the validity of our property proof of claim in the bankruptcy, or whether it is simply now a contested Court hearing between NVD and ATB on the entitlement to those funds, if no consensual resolution is reached. I appreciate the trustee likely has to consider this claim as against any funds still in Nomodic's RBC account.

Finally, we reserve our right to amend our unsecured proof of claim to increase the quantum of that unsecured claim in the event that our property proof of claim is rejected, dismissed or reduced in any final and determinative manner.

Once you and the trustee have had a chance to review, I am happy to clarify any aspects or amounts of NVD's claim or otherwise discuss.

I would be grateful if you could provide to me the analysis or breakdown on the transfers in and out of the RBC account that you indicated the trustee prepared.

Thank you,

Ryan

From: Helkaa, Deryck <Deryck.Helkaa@fticonsulting.com>
Sent: Wednesday, October 18, 2023 10:52 AM
To: Ryan Quinlan <rquinlan@dcllp.com>; Browning, Cameron <Cameron.Browning@fticonsulting.com>
Cc: pkyriakakis@mccarthy.ca
Subject: RE: [External] RE: Nomodic and NVD

Thanks for the email Ryan, we will look into your questions below and get back to shortly.

Deryck Helkaa

Senior Managing Director
Corporate Finance & Restructuring

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From: Ryan Quinlan <rquinlan@dcllp.com>
Sent: Wednesday, October 18, 2023 9:14 AM
To: Browning, Cameron <Cameron.Browning@fticonsulting.com>
Cc: Helkaa, Deryck <Deryck.Helkaa@fticonsulting.com>; pkyriakakis@mccarthy.ca
Subject: [EXTERNAL] RE: [External] RE: Nomodic and NVD

Good morning Deryck and Cameron,

Further to the below, I have been able to get myself somewhat up to speed on this matter since being contacted by Northern Vision Development LP (“NVD”) on Friday. As you know, NVD is listed as one of the creditors in the attached notice to creditors package for Nomodic Modular Structures Inc. (“Nomodic”). I appreciate that the proof of claim process is just getting underway, but I am hoping that you can provide some information on a discrepancy, which goes to how we complete our claim and/or the process going forward that may now be applicable. As was discussed is part below, it is/was our intent to file a property proof of claim pursuant to section 81 of the BIA in respect of certain funds that were being held by Nomodic in trust for NVD; and therefore, not the property of Nomodic, including without limitation the sum of \$1,639,158.54 which was transferred to Nomodic by Champion Canada International ULC (“Champion”) pursuant to the attached draft/ cheque provided to us by Champion.

I note in passing that this draft/cheque from Champion is almost certainly the “Additional Cheque” referred to in the Affidavit of Mr. Ashraf on behalf of ATB filed in support of the Bankruptcy Order. The numbers match, as does the circumstances and the fact that ATB was made aware of “completing claims” in respect of the “Additional Cheque”. Mr.

Ashraf's Affidavit suggests that such information came from Nomodic, but we also understand from Champion that it also directly made ATB aware that such funds were provided by Champion to Nomadic for the specific and sole purpose of being transferred immediately to NVD pursuant to an agreement between the three parties (NVD, Champion and Nomodic).

It appears that the Champion draft/cheque was deposited at approximately 3:34 pm on the day that the Bankruptcy Order was granted. The deposit transit/FI numbers on that attached transaction record seems to match those registered to the ATB Calgary Deerfoot Meadows branch, according to an internet search I have completed. Was it the trustee that deposited this draft / cheque? Or was it someone at Nomodic? Or was it given to ATB or some other lender? I would be grateful if you could advise.

However, and in any event, the Statement of Affairs indicates (unless I am missing something) that there is no cash on hand or amounts in any bank accounts. Is my understanding correct? If so, please advise if the trustee is aware of location and status of the \$1,639,158.54.

I note in Mr. Ashraf's Affidavit he swears that ATB is owed \$3,073,408.50 as of October 6, 2023. In the Statement of Affairs, it states that ATB is now owed \$1,428,756.34. That is a difference of \$1,644,652.16. Has ATB taken those funds and applied it to their debt?

I have copied Pantelis, as counsel for ATB in this matter, so that he is at least aware of my involvement and the questions I am asking in case he needs to obtain information and/or instructions directly. I am happy to discuss directly with Pantelis if that is most efficient and appropriate.

If ATB has taken and applied these funds to its indebtedness, which may or may not be the case:

1. I would be grateful Pantelis if you could advise on the bank's position as to purported ability or authority (or abilities or authorities if more than one) to do so in order for us to consider the same;
2. I will have further questions for Deryck and Cameron as to whether they view the appropriate process as NVD submitting a property proof of claim in the bankruptcy, or whether it is simply now a contested Court hearing between NVD and ATB on the entitlement to those funds, if no consensual resolution is reached, without any formal property proof of claim being filed.

I will wait to hear from everyone shortly, but for now I will simply state that NVD, by this email, provides notice of its trust claim in respect of the \$1,639,158.54 (potentially amongst other amounts) that was provided to Nomodic by Champion shortly before bankruptcy and cashed on the day of the Bankruptcy Order so that everyone has prompt notice of the claim and can treat the funds in the interim accordingly. I appreciate that NVD will have to provide evidence to prove its trust claim for the trustee (and potentially ATB), and we are in the process of putting together Affidavits and getting further evidence and information from the other applicable parties related to these funds. As such, we also hereby provide notice that in the interim we do not agree with or consent to any dealing, transfer, application or other use of the funds subject to NVD's trust claim.

Thanks,

Ryan

From: Browning, Cameron Cameron.Browning@fticonsulting.com

Sent: Sunday, October 15, 2023 1:30 PM

To: Ryan Quinlan rquinlan@dcllp.com

Cc: Helkaa, Deryck Deryck.Helkaa@fticonsulting.com

Subject: RE: [External] RE: Nomodic and NVD

EXTERNAL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ryan,

We will update our records to include you in future correspondence. Also, please find attached the notice to creditors package (includes proof of claim form) which was sent by mail to Northern Vision Development LP last week.

Thanks,

Cameron Browning

+1.403.454.6037 T | +1.403.969.3720 M

cameron.browning@fticonsulting.com

From: Ryan Quinlan <rquinlan@dcllp.com>
Sent: Sunday, October 15, 2023 12:04 PM
To: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Cc: Browning, Cameron <Cameron.Browning@fticonsulting.com>
Subject: [EXTERNAL] FW: [External] RE: Nomodic and NVD

Good afternoon Deryck,

Please be advised that we have been retained by Northern Vision Development LP in respect of the bankruptcy of Nomodic Modular Structures Inc. et al. Any future correspondence can be directed to our attention.

I would be grateful if you could provide us when able with a copy of the normal bankruptcy package that would be sent to creditors, as well as a property proof of claim form (if you have one for this matter).

Thank you,

Ryan

Ryan Quinlan

Partner

Duncan Craig LLP

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From: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>

Sent: Thursday, October 12, 2023 3:38 PM

To: Michael Hale <mhale@nvdip.com>
Cc: Browning, Cameron <Cameron.Browning@fticonsulting.com>
Subject: RE: [External] RE: Nomodic and NVD

Deryck Helkaa

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From: Michael Hale <mhale@nvdip.com>
Sent: Thursday, October 12, 2023 4:38 PM
To: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Cc: Browning, Cameron <Cameron.Browning@fticonsulting.com>
Subject: [EXTERNAL] RE: [External] RE: Nomodic and NVD

No attachment



Michael Hale
Chief Executive Officer
Northern Vision Development LP
P: 867-668-7886

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From: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Sent: Thursday, October 12, 2023 3:37 PM
To: Michael Hale <mhale@nvdip.com>
Cc: Browning, Cameron <Cameron.Browning@fticonsulting.com>
Subject: RE: [External] RE: Nomodic and NVD

Sorry I thought we provided the bankruptcy order, but if not here is the copy. We are finalizing the bankruptcy statutory materials and will be mailed out today or tomorrow. We can email a copy for your reference once filed. Cam, can you send Michael a copy when filed.

Thanks

Deryck Helkaa

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From: Michael Hale <mhale@nvdip.com>
Sent: Thursday, October 12, 2023 4:34 PM
To: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Subject: [EXTERNAL] RE: [External] RE: Nomodic and NVD

Has this gone out?



Michael Hale

Chief Executive Officer

Northern Vision Development LP

P: 867-668-7886

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From: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Sent: Thursday, October 12, 2023 6:59 AM
To: Michael Hale <mhale@nvdip.com>
Subject: RE: [External] RE: Nomodic and NVD

Thanks – we will be sending out the bankruptcy notice today and can email you a copy

Deryck Helkaa

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From: Michael Hale <mhale@nvdip.com>
Sent: Wednesday, October 11, 2023 10:40 PM
To: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Subject: [EXTERNAL] Re: [External] RE: Nomodic and NVD

Hi Deryck,

Jerritt will not be able to serve as our counsel, due to a conflict.

We are in the midst of hiring a new representative and expect to have that addressed by Friday.

In interim, please send me the court documents related to the filing.

I also want to reiterate our very clear position - that the NVD funds held on deposit by Nomodic and Champion are not and never were assets to be included in any bankruptcy proceedings for Nomodic.

We intend to vigorously defend that view.

I know we have had this conversation previously, but given our challenges in obtaining counsel who aren't conflicted out, I did need to express our view in writing

If you can send the court documents first thing tomorrow, we will start our review.

Thanks
Michael

Michael Hale
Chief Executive Officer
Northern Vision Development LP

From: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Sent: Saturday, October 7, 2023 8:38:13 AM
To: Michael Hale <mhale@nvdip.com>
Subject: [External] RE: Nomodic and NVD

*** WARNING: This message comes from an external source. Please be careful when opening links and attachments.

Thanks for the email also your call last night. I can confirm that Nomodic was petitioned into bankruptcy late yesterday afternoon. FTI Consulting was appointed the bankruptcy trustee.

I can send you over a copy of the bankruptcy order for your records but have not received the stamped copy back from Court – I should receive it shortly. But I did have confirmation from counsel that the order was granted.

I will be meeting with some former employees of Nomodic early next week and will have more information at that time.

In the meantime, I can confirm that the bank accounts have been frozen so funds will not be moving etc.

It would be helpful if you could send me any supporting information you have (original deposit, agreement etc.) I assume the company will also have this but if you could send it to me in the meantime we can look at it.

Thanks

Deryck Helkaa

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From: Michael Hale <mhale@nvdip.com>
Sent: Saturday, October 7, 2023 8:59 AM
To: Helkaa, Deryck <deryck.helkaa@fticonsulting.com>
Subject: [EXTERNAL] Nomodic and NVD

Mr. Helkaa,

I am reaching out regarding the Nomodic issue I believe you are overseeing. While I completely understand that it is a long weekend and that we are in the early stages of this process, I need to communicate with my Board today and I am hoping for a brief discussion to address our very specific circumstances.

I believe Rick Welch spoke to you, but for a very brief background:

- Nomodic was holding roughly \$2.4M in trust for NVD related to a project that did not proceed
- These funds do NOT constitute a Nomodic asset and should not, in our view, be held as part of the CCAA process
- We have contracts showing that the funds were to be held in trust
- We have an agreement ending the relationship that confirms that Nomodic was to return the \$2.4M held in Trust
- We also have extensive communication (in writing) about the nature of these funds, as well as a third party (Champion Homes Ltd.) who can verify the arrangement

I would appreciate a few minutes of your time to discuss the file, so that I can provide some clarity to our Board about the status of those funds, process timelines, etc.

Recognizing that there are likely to be many companies that are seeking your time, I do believe our situation is unique and I am hoping you can carve out a few minutes to day to connect.

My cell is 867-332-4326 and you now have my email. If you are able, please call or respond to this email as soon as you are able to.

Thanks,
Michael



Michael Hale
Chief Executive Officer
Northern Vision Development LP
P: 867-668-7886

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