

**B201-996917**

COURT FILE NUMBER: B201-2996918
B201-2997457
B201-2997541

COURT OF KING'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY C60632

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.

Questioning on Affidavit of **MUHAMMAD ASHRAF**, sworn April 8, 2024,
(VIA VIDEOCONFERENCE), held at 2 p.m., on the 16th day of April, 2024

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For Northern Vision
Development Limited
Partnership

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For ATB Financial

Sophia Dame

Court Reporter

1 (PROCEEDINGS COMMENCED AT 2:00 P.M., APRIL 16, 2024)

2 MUHAMMAD ASHRAF, AFFIRMED, QUESTIONED BY MR. QUINLAN:

3 Q MR. QUINLAN: Good afternoon, sir. Are you
4 the Muhammad Ashraf that swore an Affidavit on
5 April 8th, 2024 in an action that contains three
6 bankruptcy numbers, one of which is B201-2996918?

7 A I would have to confirm the numbers if you don't mind.

8 Q No problem. Take a look.

9 A Sorry, can you repeat the numbers again? I have it
10 now.

11 Q I'll just do the top one. B201-2996918?

12 A That's correct.

13 Q Okay. Now, if today during questioning I just simply
14 refer to your Affidavit, will you understand that I'm
15 referring to the Affidavit that's titled,
16 Supplemental Affidavit of Muhammad Ashraf, sworn
17 April 8, 2024?

18 A Yes.

19 Q And I take it you have that Affidavit before you there
20 today?

21 A That's right.

22 Q And do you also have the Affidavit of Truth that you
23 swore on October 6, 2023 before you today?

24 A Yes, I do.

25 Q And do you have any other notes or documents in front
26 of you today?

27 A Other than the exhibits to the Affidavits, no.

1 Q And I take it you have been or are presented as
2 essentially the corporate representative of
3 ATB Financial in these bankruptcy actions; is that
4 correct?

5 A Yes.

6 Q And you understand that you are being questioned here
7 today on your Affidavit and matters relating to
8 applications filed by the trustee of bankruptcy and
9 Northern Vision Development Limited Partnership in
10 these bankruptcy actions?

11 A Yes.

12 Q Now, if you do not understand a question that I'm
13 asking or there's any technical difficulties, please
14 let me know and I will repeat or rephrase my question.
15 All right?

16 A Thank you.

17 Q Otherwise I will assume you have understood the
18 question I have asked. Is that agreeable?

19 A Yes.

20 Q Now I just want to do a few definitions so I don't have
21 to use full legal names throughout today. If simply
22 today I refer to ATB, will you understand that I'm
23 referring to ATB Financial?

24 A Yes.

25 Q And if today I simply refer to Nomodic, will you
26 understand that I'm referring to Nomodic Modular
27 Structures Inc.?

- 1 A Yes.
- 2 Q And if today I simply refer to NVD, will you understand
3 that I'm referring to Northern Vision Development
4 Limited Partnership?
- 5 A Yeah.
- 6 Q And if today I simply refer to the NVD Hyatt project,
7 will you understand that I'm referring to a project or
8 work that Nomodic was undertaking for NVD for a
9 Hyatt Place hotel in Whitehorse, Yukon?
- 10 A Yes.
- 11 Q And if today I simply refer to Read or Mr. Read, will
12 you understand that I'm referring to Kevin Read?
- 13 A Yes.
- 14 Q And if today I refer to Lambert or Mr. Lambert, will
15 you understand that I'm referring to Byron Lambert?
- 16 A Yes.
- 17 Q And if today I simply refer to Champion, will you
18 understand that I'm referring to Champion Canada
19 International ULC?
- 20 A Yes.
- 21 Q And if today I simply refer to or describe something
22 described as the additional cheque or Champion cheque,
23 will you understand that I'm referring to the cheque
24 that was issued from Champion to Nomodic dated
25 September 28, 2023 in the amount of \$1,639,158.54?
- 26 A Yes.
- 27 Q Thank you. Before we proceed is there anything in your

1 Affidavit you wish to correct or clarify?

2 A Not at this point, no.

3 Q Just by way of a bit of brief personal background,
4 what's your current position with ATB, sir?

5 A I'm director of risk advising and management.

6 Q And how long have you been in that position?

7 A Just over six years. Sorry, that specific position
8 just over four years, but -.

9 Q I take it you have been with ATB for about six years
10 then?

11 A Yeah, that's right.

12 Q When did this account with Nomodic come into your
13 handle?

14 A It would be around November 2022.

15 Q And so prior to that time, Nomodic's account would have
16 been with someone else at ATB, correct?

17 A That's right.

18 Q And have you spoken with that person or if there's
19 multiple, any of those persons about what they knew
20 about the NVD Hyatt project or Nomodic's dealings with
21 NVD or Champion?

22 A No.

23 Q Have you gone back and reviewed any of the emails or
24 other written communications that either of the persons
25 who were in charge of the Nomodic account had with
26 anyone from Nomodic prior to your being assigned to
27 this account?

1 A Is there a specific year you are talking about?

2 Q Well, I guess my question is just simply in the course
3 of you administering the Nomodic account on behalf of
4 ATB, have you gone back and looked through all of the
5 communications since 2019 that Nomodic might have had
6 with the bank?

7 A I would not have looked at all the communications. I
8 would have looked at all the documents that would have
9 been saved and the credit submissions that would have
10 been made but not the emails in that person's inbox.

11 Q And what sort of documents would have been saved?

12 A It would be more, like, standard applications for
13 credit, financial statements, managing reports and if
14 there's any other thing that would be required for the
15 file, and KYC materials.

16 Q Now, this isn't a trick question, but you can look at
17 paragraphs 8 and 9 of your Affidavit if you wish. I'm
18 just trying to confirm. It is ATB's understanding that
19 the Champion cheque was deposited with it at
20 approximately 10:15 a.m. on October 6 of 2023; is that
21 correct?

22 A Just to confirm, you are talking about the
23 Supplemental Affidavit?

24 Q I am, yes.

25 A Sorry, if you can repeat the question I was just --
26 sorry.

27 Q Sure. I'm referencing paragraphs 8 and 9 of that

1 Affidavit, more particularly paragraph 9. Is it ATB's
2 understanding that the Champion cheque was deposited
3 with it at approximately 10:15 a.m. on October 6, 2023?

4 A That's correct.

5 Q Now, I'm just trying to get the time line here for a
6 minute. If you could flip to your Affidavit of Truth
7 from last year, October 6th.

8 A Okay.

9 Q And if it's going to assist you, specifically looking
10 at paragraph 37 of that Affidavit.

11 A Sorry, 37?

12 Q Correct, sir.

13 A Yes. I have it in front of me.

14 Q And do you see there there's a paragraph stating that:
15 ATB requested on multiple occasions that those
16 funds be deposited with ATB. Despite ATB's
17 request, to date no such deposit has been
18 made.

19 Do you see that?

20 A Yes.

21 Q So am I correct then that at the time you swore the
22 Affidavit of Truth on October 6, 2023, that the
23 Champion cheque had either not been deposited yet or
24 you were not aware it had been deposited yet?

25 A I was swearing that Affidavit around the same time, and
26 it was my understanding the cheque has been deposited.

27 Q Right. But at the time you swore this Affidavit, you

1 were unaware that the cheque had been deposited. Would
2 that be correct?

3 A I was aware that the cheque has been deposited. But
4 given the time line when we were swearing this
5 Affidavit and it was going to court, it was determined
6 that we will submit the Affidavit because Affidavit was
7 finalized in the morning. I was just making
8 arrangement to make myself available to sign it.

9 Q So I just want to make sure I understand. At the time
10 you swore this Affidavit, it was around the same time
11 this cheque was being deposited. You were aware it was
12 being deposited, but you swore this for the court
13 hearing that afternoon; is that correct?

14 A Yeah. I would have -- I don't recall the exact timing
15 when I would have signed or swore this Affidavit, but
16 it would have been around the same time.

17 Q Now if you could go please, I guess, to your
18 Supplemental Affidavit you swore April 8th.

19 A Okay.

20 Q If you could please turn to Exhibit "C".

21 A I have it.

22 Q And based on your Affidavit, I take it ATB did not
23 create this document; is that correct?

24 A I just want to make sure we are looking at the
25 AP Aging Report dated -- it's a little bit
26 illegible -- September 30, 2023? That's the one you
27 are referring to?

1 Q Well, I'm referring to what you included as Exhibit "C"
2 that you have described in paragraph 16(A) of your
3 Affidavit.

4 A Yes, that's correct. This was not an ATB created
5 document.

6 Q And on what date was this Exhibit "C" provided to ATB?

7 A This -- I would have to double-check the date. This
8 would have been around or after September 21st.

9 Q Do you know, was this received by email from someone at
10 Nomodic?

11 A That's correct.

12 MR. QUINLAN: Pantelis, can I ask for an
13 undertaking that the witness review ATB's books and
14 records, particularly its emails, and provide me with
15 the date on which Exhibit "C" was provided as well as a
16 copy of the email or other communication in which it
17 was provided to ATB?

18 MR. KYRIAKAKIS: Yes, I think that's fine.
19 We'll use reasonable efforts to track it down if we
20 have it.

21 UNDERTAKING NO. 1

22 USE REASONABLE EFFORTS TO REVIEW ATB'S BOOKS AND
23 RECORDS AND PROVIDE THE DATE EXHIBIT "C" WAS
24 PROVIDED TO ATB AS WELL AS A COPY OF THE EMAIL OR
25 OTHER COMMUNICATION IN WHICH IT WAS PROVIDED TO
26 ATB

27 Q MR. QUINLAN: Now, sir, this document appears

1 to my eye to be a list of accounts payable to Nomodic
2 suppliers. Is that what you understood as well?

3 A It's the accounts payable listing, that's correct.

4 Q Now, I guess more specifically this document appears on
5 its face to list various third parties which were all
6 described as suppliers. Do you see that?

7 A I see there's a column that says supplier.

8 Q Okay.

9 A But that doesn't necessarily mean if this is a
10 supplier. It could be an accounting software --
11 whatever they have used. My understanding is this is
12 an account payable listing for all the payables they
13 have.

14 Q And what is your understanding based on?

15 A Based on my professional experience, the type of
16 reporting we get and what we intend to get from the
17 borrowers.

18 Q Now, did the borrower, in this case Nomodic,
19 specifically tell you that?

20 A Sorry, tell me what?

21 Q That this was a list of all of the accounts payable and
22 not just those for suppliers?

23 A I did not ask them, but my understanding is our credit
24 email specifically asks for accounts payable listing,
25 not just for the suppliers. It's all the payable
26 listings.

27 Q Did ATB understand or believe that NVD was a supplier

1 of Nomodic?

2 A I'm not a hundred percent certain what the arrangement
3 was with the NVD and Nomodic. I understand they could
4 be one of the customer of the Nomodic.

5 Q Well, you understood that NVD was the project owner or
6 developer and that Nomodic was undertaking certain work
7 on the project for NVD, correct?

8 A Nomodic was doing work for NVD, yes.

9 Q Now, on this document I note that there are line items
10 that suggest amounts payable to FTI. Was FTI already
11 involved with Nomodic prior to the bankruptcy order?

12 A Yes. They were engaged by the company, to the best of
13 my recollection, in somewhere early 2023 or late 2022.

14 Q Now, was FTI retained by Nomodic at ATB's request?

15 A No. They had told us they are retaining FTI Capital as
16 a financial advisor.

17 Q Oh, FTI Capital?

18 A That's my recollection. I don't have engagement letter
19 in front of me, but it was FTI.

20 Q Now, was FTI involved on behalf of the bank in any
21 way -- sorry, by bank I mean ATB -- prior to the
22 bankruptcy order?

23 A In specifically to Nomodic?

24 Q Yes.

25 A No. ATB did not retain FTI or did not do any work on
26 Nomodic with FTI.

27 Q Can you please go to Exhibit "D" of this Affidavit.

1 A Yes, I have it.

2 Q And I take it ATB did not create this document either,
3 correct?

4 A That's correct.

5 Q And do you know when this document was provided to ATB?

6 A I don't recall the exact date, but it will be around
7 September 21st or after.

8 Q Now, would this have been received by ATB via email
9 from someone at Nomodic?

10 A That was the standard protocol, so I assume, yes.

11 Q Okay.

12 MR. QUINLAN: Pantelis, can I ask for an
13 undertaking for the witness to review the books and
14 records of ATB to determine the date on which
15 Exhibit "D" was provided to the bank and to provide me
16 with a copy of the email correspondence or other
17 written correspondence on which it was provided to ATB?

18 MR. KYRIAKAKIS: That's acceptable.

19 UNDERTAKING NO. 2

20 REVIEW ATB'S BOOKS AND RECORDS AND PROVIDE THE DATE
21 EXHIBIT "D" WAS PROVIDED TO ATB AS WELL AS A COPY
22 OF THE EMAIL OR OTHER COMMUNICATION IN WHICH IT WAS
23 PROVIDED TO ATB

24 Q MR. QUINLAN: Now, sir, in looking at this
25 document, this appears to have multiple columns across
26 the top. Do you see those?

27 A Yes, I do.

- 1 Q And these all appear to relate to certain ongoing
2 projects that Nomodic had; is that correct?
- 3 A I can say these related to the projects. I can't
4 confirm if they are ongoing or they may have something
5 that has already been concluded.
- 6 Q Okay. Did you make any inquiries with anyone at
7 Nomodic about what this document was showing in terms
8 of whether these were the ongoing projects or what
9 these were meant to display?
- 10 A This document would have been part of the reporting
11 package or the other information request we would have
12 had, so I don't recall specifically asking about this
13 document.
- 14 Q And I take it, sir, you would agree with me this
15 document does not appear on its face to include a
16 column for the NVD Hyatt project, correct?
- 17 A Sorry, if you can repeat that. I missed the first part
18 of your question.
- 19 Q This document does not appear to include a column for
20 the NVD Hyatt project. Do you agree?
- 21 A Based on what I look, yes, I agree.
- 22 Q And you were aware that the NVD Hyatt project had
23 already been terminated by September 2023, correct?
- 24 A I was not aware of that account being terminated in
25 that time. Around September 21st I was not aware.
- 26 Q When did you become aware that the NVD Hyatt project
27 had been terminated?

1 A I would have become aware as per Mr. Lambert's email.
2 I can confirm you the date. Bear with me one second.
3 It would be October 3rd.

4 Q We'll come back to that. All right. So I take it what
5 you are referring to then, sir, is the document at
6 Exhibit "E" to your Affidavit; is that correct?

7 A Sorry, Exhibit "E" of Supplemental or -?

8 Q Yes. Just for ease going forward, unless I say your
9 Affidavit of Truth, I'll mean your Supplement Affidavit
10 that you swore April 8th.

11 A That's correct. That's the Exhibit "E".

12 Q So let's look at that one then. Now, I note the actual
13 accounts receivable listing that was purportedly
14 included in this Affidavit has not been produced; is
15 that correct?

16 A Produced in the exhibits?

17 Q Correct.

18 A I'll double-check. One second. Yes, that's correct.

19 Q Okay. Now, looking in this email, again, we are at
20 Exhibit "E" to your Affidavit, after Mr. Lambert greets
21 you, he says:

22 Attached is the current accounts receivable
23 listing with notes on which amounts can be
24 targeted for collection or that will require
25 negotiations with various parties for the full
26 release (joint signatory account).

27 Do you see that?

- 1 A Yes.
- 2 Q So you understood from this email what he was providing
3 was an accounts receivable listing that could be
4 targeted for collection and once collected, turned over
5 to ATB, correct?
- 6 A That was the context of the email. We were looking at
7 engaging Mr. Lambert.
- 8 Q And in that accounts receivable listing, there are no
9 receivables listed from Champion or NVD, correct?
- 10 A That's correct. We relied on his comments that he will
11 be looking at this \$1.6 million, and we assumed that's
12 going to be ATB's -- towards ATB's debt.
- 13 Q All right. So now let's go to the second paragraph.
14 And I see in there he uses the phrase NVD Hyatt
15 project. I take it ATB had knowledge that Nomodic was
16 involved in the NVD Hyatt project prior to this email,
17 correct?
- 18 A Yes. We had knowledge that there was NVD Hyatt
19 project, yes.
- 20 Q And when Nomodic entered into its contract with NVD,
21 was ATB made aware of that by Nomodic?
- 22 A To the best of my knowledge and the records, we were
23 not specifically talk about NVD project.
- 24 Q When did ATB first become aware of the NVD Hyatt
25 project that Nomodic was undertaking?
- 26 A This will be around February, March of 2023.
- 27 Q And when ATB first learned about it, what information

1 was given to ATB about the NVD project?

2 A There was no specific discussion about each project.
3 They had multiple large projects, specifically they had
4 a lot of work with BC Housing. So as a normal
5 practice, they will give their project report, backlog,
6 work log, forecast. And this would have been part of
7 those projects or their reports, but I don't recall any
8 specific discussions about this NVD project.

9 Q Now, anywhere in ATB's files is there an email or other
10 written request for a copy of the contract Nomadic had
11 with NVD?

12 A We didn't have a copy of -- we didn't ask for a copy of
13 the contracts. We did ask about -- there was comments
14 made by the management about certain obligations or
15 agreement or trust agreements, and we had asked for the
16 copy of that specific trust agreement or the supporting
17 documents.

18 Q Now, when you had these conversations about these
19 potential trust claims or comments, what was told to
20 ATB?

21 A ATB was told by the VP finance at the time that they
22 had arrangement with NVD. Specifically for tax
23 purposes, they wanted to send money to Nomadic to hold
24 in a savings account and to earn the interest on those
25 funds so they can remit that interest back as a flat
26 fee to NVD.

27 Q Now, do you recall when that conversation was?

1 A It would be around March of 2023.

2 Q And I take it the VP finance, was that Mr. Lambert?

3 A No. It was Chuma. Sorry, I don't remember his last
4 name, but his first name was Chuma. So I'm almost
5 certain he was VP finance. Mr. Lambert would have
6 joined a little bit late the company.

7 Q Okay. At any time is there any email or written
8 request by ATB to Nomodic for a copy of his contract
9 with NVD?

10 A There's no specific -- I don't recall a specific
11 contract, but there was email communication asking for
12 the trust agreements or any other supporting documents
13 they may have with NVD.

14 MR. QUINLAN: Now, I don't see any of those
15 produced. So, Pantelis, can I ask for an undertaking
16 for the witness to review the books and records of ATB
17 to determine if there are any emails or written
18 requests for copies of any trust documents or any
19 contracts with NVD and if so, to provide me copies of
20 all those emails or written correspondence?

21 MR. KYRIAKAKIS: Yes, that's fine. I'll note
22 that that will be in addition to what's already
23 attached as exhibits because there are some references
24 in the exhibits already. So anything we haven't
25 already produced, we'll produce.

26 MR. QUINLAN: Yes, I'm not interested in you
27 doubling up on stuff that's already in evidence, yes.

1 UNDERTAKING NO. 3
2 REVIEW ATB'S BOOKS AND RECORDS TO DETERMINE IF
3 THERE ARE ANY EMAILS OR WRITTEN REQUESTS FOR COPIES
4 OF ANY TRUST DOCUMENTS OR ANY CONTRACTS WITH NVD
5 NOT ALREADY PRODUCED AND IF SO, PRODUCE COPIES OF
6 SAME

7 Q MR. QUINLAN: Now, I want to very careful
8 about asking this and I want you to be careful in
9 answering. There is a part of this email that is
10 redacted. What is redacted? Is it correspondence
11 between the bank and its own legal counsel?

12 A That would be my best -- my recollection, yes.

13 MR. QUINLAN: Just off the record for a
14 second.

15 (DISCUSSION OFF THE RECORD)

16 Q MR. QUINLAN: Now, sir, in anything exhibited
17 to your Affidavit, I don't see any response to this
18 email from Mr. Lambert by you or Mr. Govett who's also
19 copied on it. Am I correct that there is no response
20 from ATB to this email?

21 A I would have to double-check my records, but there was
22 also verbal conversations happening on October 3rd.

23 MR. QUINLAN: Pantelis, can I ask for an
24 undertaking for the witness to review the books and
25 records of ATB to determine if there was any further
26 response emails in respect of this string that is shown
27 in Exhibit "E" and if so, to provide me copies of all

1 other emails in respect of this email string?

2 MR. KYRIAKAKIS: Subject to privilege and
3 relevance, that's fine.

4 UNDERTAKING NO. 4

5 REVIEW ATB'S BOOKS AND RECORDS TO DETERMINE IF
6 THERE WAS ANY FURTHER RESPONSE EMAILS IN RESPECT OF
7 EMAIL STRING SHOWN IN EXHIBIT "E" AND IF SO,
8 PRODUCE COPIES OF SAME (SUBJECT TO PRIVILEGE AND
9 RELEVANCE)

10 Q MR. QUINLAN: Sir, do you remember any
11 specific phone conversation on October 3rd following up
12 on this email?

13 A In and around that time, yes, I had conversation with
14 Mr. Lambert.

15 Q What do you recall about those conversations with
16 Mr. Lambert?

17 A Those conversations included a potential arrangement of
18 engaging Mr. Lambert, how would that look like, if that
19 would be in his capacity as an employee of Nomodic or
20 would it be as an independent contractor. There was
21 conversation about the potential compensation that we
22 could look at in terms of his efforts to collect the
23 receivables and pay down ATB debt. There was also
24 conversations related to October 1st funding request
25 where the counsel for Nomodic at the time had requested
26 certain payment to be made. Mr. Lambert also mentioned
27 there are certain CRA payments that need to be made and

1 they would need to utilize ATB's systems for that.
2 Mr. Lambert confirmed that he will be transferring the
3 funds from RBC on October 3rd to ATB accounts.

4 Q Now, let me break that up a bit. Did you have any
5 conversation with Mr. Lambert on the phone about this
6 \$1.6 million cheque that is referenced in your
7 October 3rd email correspondence here?

8 A I don't recall specifically talking about each
9 receivable he was targeting. We were talking about
10 overall collections, which included 1.6 million.

11 Q So with that, I take it that you didn't specifically
12 inquire with Mr. Lambert about what he meant by the
13 phrase, will require some leg work, in this email,
14 correct?

15 A I didn't specifically ask. It was Mr. Lambert's
16 comment. My understanding was with any other things he
17 put on the AR listing, targeted AR collection, there
18 were comments about negotiations, understanding the
19 project status, providing the information. So that
20 would be the same process here.

21 Q I think you told me you don't recall specifically
22 discussing with him this NVD project, correct?

23 A I said I did not specifically talk about this cheque.
24 We were talking about overall collection of all the ARs
25 we are talking about.

26 Q Do you recall any conversations with him specific to
27 NVD or the NVD Hyatt project?

1 A Don't specifically about the project, no. It was
2 focused on the AR collections and the overall pay
3 downs.

4 Q And do you recall having a specific telephone
5 conversation with Mr. Lambert about Champion and the
6 cheque?

7 A I don't recall, no.

8 Q So I take it then that you don't recall having any
9 specific phone conversations with Mr. Lambert about the
10 nature of the refund owing to NVD that's referenced in
11 this email, correct?

12 A Not with Mr. Lambert, no.

13 Q Is there any written communication from you or anyone
14 on behalf of ATB to anyone at Nomodic or on behalf of
15 Nomodic requesting a copy of any agreement that Nomodic
16 had with Champion related to the NVD Hyatt project?

17 A To the best of my knowledge, no. I don't recall.

18 Q Are there any other details or information you can
19 recall from your telephone conversations with
20 Mr. Lambert that you haven't already told me about here
21 today relating to NVD, the NVD Hyatt project, Champion
22 or the Champion cheque?

23 A Not with Mr. Lambert, no.

24 Q Now, coming back to the other point you made about
25 potentially entering into some sort of arrangement with
26 Mr. Lambert, that's referenced again in this
27 October 3rd email, which is Exhibit "E", where he says:

1 My preference for an arrangement would be for
2 me to work as an independent contractor for
3 ATB as a self-employed individual.

4 Do you see that?

5 A Yes, I do.

6 Q So I take it around this time there's a discussion
7 about Mr. Lambert becoming some sort of independent
8 contractor where he's going to work to try and see
9 certain accounts receivable Nomodic get paid over to
10 ATB in exchange for some sort of financial
11 compensation; is that correct?

12 A There were conversations prior to that where counsel to
13 Nomodic had their input as well like how Mr. Lambert
14 could be engaged or utilized by ATB in trying to
15 collect those AR and other monies, yes.

16 Q And first of all, did any final arrangement with
17 Mr. Lambert get entered into with ATB?

18 A No formal agreements, no.

19 Q Now, what was the proposed compensation to Mr. Lambert
20 for the accounts receivable to be collected and paid
21 over to ATB?

22 A There was no -- there was different classifications,
23 how we look at each AR he was going to collect.
24 Depending on the nature of the project, complexity,
25 negotiations required, we were working on certain
26 percent for those amounts.

27 Q Okay. Now I'm going to flip ahead. Can you go to

1 Exhibit "K" of your Affidavit. This is, again, the
2 Supplemental Affidavit.

3 A Okay.

4 Q Now, my understanding is this actually is an ATB
5 created document; is that correct?

6 A That's correct.

7 Q And did you create this document or someone else?

8 A I did.

9 Q And do you recall when it was created?

10 A October 3rd.

11 Q Now, would this document have been created and saved
12 and what I'm looking at is the final original version
13 or would it have been amended over a period of time or
14 days?

15 A This would have been very close to the final version on
16 October 3rd. That was the day we were working on it.

17 Q Okay. And then I see here there is the NVD Hyatt
18 project listed. And then I'm looking back to the
19 conversation we just had about the arrangement with
20 Mr. Lambert. There's a percentage of commission
21 column, and it says 2 percent to be shared between
22 Byron and Kevin. Do you see that?

23 A Yes.

24 Q So was what was being discussed on or about October 3rd
25 that if the \$1.6 million was paid over to ATB, there
26 would be a 2 percent commission that would be split
27 between Mr. Lambert and Mr. Read? Is that what was

1 being discussed in or around October 3rd, 2023?

2 A Sorry, discussed with?

3 Q Mr. Lambert and Mr. Read?

4 A No. This was ATB's internal document, our internal
5 working copy that I shared internally. This was not
6 shared with Mr. Lambert or anybody at Nomodic.

7 Q Sure. Let me clarify my question. This references
8 2 percent to be shared between Byron and Kevin which I
9 understand to be Mr. Lambert and Mr. Read, correct?

10 A That's right.

11 Q So I'm just asking was that the nature of the
12 conversation, that if this 1.6 million was paid to ATB,
13 that there would be a 2 percent commission they would
14 split? Is that what was roughly being discussed in
15 respect of this money?

16 A That's what we were considering as ATB internally, but
17 this was not discussed with Nomodic.

18 Q All right. In your Supplemental Affidavit, can we go
19 to Exhibit "F", please.

20 A Yes, I have it here.

21 Q Now, I'm not asking you a question of law. I'm just
22 simply asking do you know if Nomodic waived privilege
23 attached to this without-prejudice communication?

24 MR. KYRIAKAKIS: Sorry, that's kind of somewhat
25 a question of law. Do you want to rephrase it a little
26 bit? Like, it's a waiver question, and you are
27 implying that he understands what waiver of privilege

1 means.

2 MR. QUINLAN: Sure. That's a fair point,
3 Pantelis.

4 Q MR. QUINLAN: Are you aware of any
5 communication from Nomodic or by the trustee in
6 bankruptcy on behalf of Nomodic whereby they indicated
7 they were agreeable or consented to this communication
8 being produced in your Affidavit?

9 A No direct communication with me, no.

10 Q Now, sir, this isn't a trick question, but there seems
11 to be several emails that are all sort of in the same
12 string in your Exhibits "F", "G", "H" and "I". They
13 all seem to be responses or to build off each other.
14 My question is is there any other email correspondence
15 that exists in respect of this string of emails which
16 has not been exhibited in your Affidavit?

17 A Are we talking specifically this email chain?

18 Q Right now that's what I'm talking about, yes.

19 A I don't recall. I would have to see.

20 Q Okay.

21 MR. QUINLAN: Pantelis, can I ask for an
22 undertaking that the witness review the books and
23 records of ATB to determine if there are any other
24 emails involved in this specific string of emails which
25 have not already been produced in the Affidavit and if
26 so, to provide me copies with all of those emails?

27 MR. KYRIAKAKIS: That's for Exhibit "G"? Just

1 to get this straight. Or I guess it goes Exhibit "F",
2 "G" and "H"? Just to get a proper understanding of
3 which strings you are looking for here.

4 MR. QUINLAN: Yes. I believe it also
5 includes "I". They all seem to be building off each
6 other.

7 MR. KYRIAKAKIS: Subject to privilege and
8 relevance, that's fine.

9 UNDERTAKING NO. 5

10 REVIEW ATB'S BOOKS AND RECORDS TO DETERMINE IF
11 THERE ARE ANY OTHER EMAILS INVOLVED IN STRING OF
12 EMAILS SHOWN IN EXHIBITS "F", "G", "H" AND "I"
13 WHICH HAVE NOT ALREADY BEEN PRODUCED AND IF SO,
14 PRODUCE SAME (SUBJECT TO PRIVILEGE AND RELEVANCE)

15 Q MR. QUINLAN: Now, going back to Exhibit "H",
16 this email from Mr. Barr references -- well, it says:

17 I can advise that Nomodic has a small amount
18 of accessible cash in another bank account.

19 Do you see that?

20 A Sorry, is it Exhibit "H"?

21 Q Yes, that's correct. It's the second last paragraph
22 from the bottom.

23 A Sorry, I'm just looking. Do you see which question
24 that's under it?

25 Q Oh, sorry, my apologies, sir, I misspoke. Can you turn
26 to Exhibit "F" of your Affidavit. This would make more
27 sense if I had pointed you to the right exhibit. My

1 apologies.

2 A Okay. I have the Exhibit "F", yes.

3 Q In the second last paragraph from the bottom, it says:

4 I can advise that Nomodic has a small amount
5 of accessible cash in another bank account and
6 could use the funds in that account to pay for
7 the above amounts.

8 Do you see that?

9 A Yes, I do.

10 Q Do you recall if there was any conversation with
11 Nomodic or behalf of Nomodic about what the phrase
12 accessible cash meant in this email?

13 A My understanding is they had already made payments from
14 this account in terms of unsecured creditors and other
15 critical payments or other payments, but we did not
16 have any direct conversation with Nomodic on this
17 accessible cash. We did reach out to Mr. Barr asking
18 for all the details of what these funds are and the
19 backup for all those materials, yes.

20 Q Let me ask a more specific question. Do you recall
21 having any conversation with anyone at Nomodic or on
22 behalf of Nomodic about what the phrase accessible cash
23 meant in this email?

24 A I don't recall exact conversation with accessible, but
25 there were conversations where Nomodic or their counsel
26 had suggested they could move the funds in the RBC
27 accounts to ATB accounts. That would imply those funds

1 were accessible.

2 Q And who did you have those conversations with?

3 A Primarily it was through Nomodic's counsel.

4 Q And were you involved in those conversations directly?

5 A Not directly but they were in communication that was
6 being passed on by the counsel on the funding request.

7 Q And feel free to take a look. Is what you are
8 referring to in terms of the information request and
9 the information you are getting what we see in your
10 Exhibits "G", "H" and "I"?

11 A This would cover part of it, but I do recall there were
12 also information requests specifically around Mr. Barr
13 suggesting there might be some claims against funds at
14 RBC, and we had asked for specific agreements,
15 supporting documents, what those claims could look
16 like.

17 MR. QUINLAN: Pantelis, I'm going to ask for
18 an undertaking what the witness review the books and
19 records of ATB and to provide me with copies of any of
20 the email correspondences that contained a request that
21 the witness has described.

22 MR. KYRIAKAKIS: Sorry, what request was that?

23 MR. QUINLAN: The witness has told me there
24 were requests to advise of certain claims being made to
25 the RBC funds that he has just described, and I would
26 like copies of those emails.

27 MR. KYRIAKAKIS: Subject to privilege and

1 relevance, yes, that's fine, to the extent they are not
2 already included.

3 MR. QUINLAN: And I guess just for clarity,
4 are you talking solicitor-client privilege?

5 MR. KYRIAKAKIS: Correct.

6 UNDERTAKING NO. 6

7 REVIEW ATB'S BOOKS AND RECORDS AND PRODUCE COPIES
8 OF ANY EMAIL CORRESPONDENCES THAT CONTAIN REQUESTS
9 TO ADVISE OF CERTAIN CLAIMS BEING MADE TO THE RBC
10 FUNDS AND ANY RESPONSES RECEIVED BY THE BANK TO
11 THOSE REQUESTS (SUBJECT TO PRIVILEGE AND RELEVANCE)

12 Q MR. QUINLAN: Now if you could go to
13 Exhibit "I", please, sir, of your Supplemental
14 Affidavit.

15 A I have it in front of me.

16 Q This is an email from Mr. Lambert to a host of people,
17 and I'm looking at the answer to the second question.
18 It says:

19 GIC held with RBC in respect of NVD Hyatt
20 project was withdrawn on September 29 - see
21 attached file "GIC-redemption-Nomodoc Modular
22 Structures Inc."

23 Do you see that?

24 A I do.

25 MR. QUINLAN: Pantelis, can I ask for an
26 undertaking that the witness produce to me a copy of
27 that file that is apparently marked

1 GIC redemption - Nomodic Modular Structures Inc.?

2 MR. KYRIAKAKIS: That should be fine.

3 MR. QUINLAN: Okay. Thank you.

4 MR. KYRIAKAKIS: If we have it.

5 UNDERTAKING NO. 7

6 PRODUCE COPY OF FILE TITLED GIC REDEMPTION -
7 NOMODIC MODULAR STRUCTURES INC. REFERRED TO IN
8 EXHIBIT "I"

9 Q MR. QUINLAN: Are there any other email
10 correspondences where the GIC held with RBC in respect
11 of the NVD Hyatt project are discussed or referenced
12 that have not been produced today in this Affidavit?

13 A Are we talking about this September 29th communication
14 referring to the GIC redemption?

15 Q Well, it's an October 2nd communication. But what I'm
16 asking is is there any other email correspondence that
17 the bank has that discusses the GIC held with RBC in
18 respect of NVD Hyatt project which have not been
19 included in your Affidavit?

20 A Sorry, I'm just trying to understand. Is this specific
21 to this GIC that's your question?

22 Q Yes.

23 A I don't recall if there were any other communication.

24 Q Okay.

25 MR. QUINLAN: Can I ask the witness to review
26 ATB's books and records to determine if there are any
27 other written or email correspondences in which the GIC

1 held with RBC in respect of the NVD Hyatt project are
2 referenced or discussed and if so, to produce copies of
3 those emails to me?

4 MR. KYRIAKAKIS: I think we need to take a
5 minute here because, A, I don't fully understand the
6 relevance, but, B, there's no time periods in this. So
7 are we supposed to go back to the beginning of the
8 file? Like, the undertaking isn't quite clear here.
9 So can we try to figure out, A, what the relevance is
10 of the GIC and, B, if there's a specific time
11 limitation that we can limit it to? Because otherwise
12 we are kind of going on a fishing expedition.

13 MR. QUINLAN: Okay. Then I will limit it to
14 from and after September 29, 2023.

15 MR. KYRIAKAKIS: And, sorry, what's the
16 relevance of the GIC?

17 MR. QUINLAN: Well, it talks about it's being
18 held specific to the NVD Hyatt project, so I want to
19 know about what the bank knew about why that was
20 specific to the NVD Hyatt project.

21 MR. KYRIAKAKIS: But you are asking for any
22 records concerning the GIC. You are not asking for any
23 records concerning about what the relationship to the
24 GIC was to the Hyatt project.

25 MR. QUINLAN: Let me just back up.

26 Q MR. QUINLAN: Mr. Ashraf, to the best of your
27 knowledge, did you or anyone else on behalf of ATB make

1 any inquiries into what was meant in respect of the
2 information being provided that this GIC was being held
3 with RBC in specific respect to the NVD Hyatt project?

4 A Is that in the context of September 29 specifically?

5 Q On or about October 2nd, ATB learns that there was a
6 GIC held with RBC in specific respect of the NVD Hyatt
7 project, correct? That's what this email is saying,
8 correct?

9 A That's what it appears, yes.

10 Q So in response to this email, did ATB or anyone on
11 behalf of ATB make any specific information requests as
12 to why this GIC was being held in specific respect to
13 the NVD Hyatt project?

14 A I don't recall if there was communication after
15 October 2nd or not.

16 Q Do you recall any specific phone calls where the GIC
17 held with RBC in respect of the NVD Hyatt project was
18 discussed?

19 A No, I don't recall.

20 Q Can you please turn to Exhibit "J" of your
21 Supplemental Affidavit.

22 A I have it in front of me.

23 Q Now, this email starts:

24 Further to our telephone conversations over
25 the course of the last few days.

26 And I appreciate that this is from Mr. Barr to
27 your legal counsel, but were you a part directly of any

1 of those conversations that might be referenced in this
2 email?

3 A No telephone conversation, no, I'm not aware of.

4 Q Are you aware of the contents or the details of those
5 telephone conversations that occurred that might be
6 referenced in this email?

7 A I'm not entirely sure. I wasn't part of that
8 conversation.

9 Q Now, this email then goes on to talk under points 1 and
10 2 about Mr. Barr saying that he's received the Champion
11 cheque. Prepared to deposit it into ATB upon the
12 conditions that once the cheque clears, ATB will make
13 certain amounts available for certain payments that are
14 listed there and then within 48 hours it will petition
15 Nomodic into bankruptcy. Do you see that?

16 A I do.

17 Q Sorry, was that a yes?

18 A Yes.

19 Q Now, was that basically the agreement that was trying
20 to be worked out with Nomodic in or around this time,
21 being October 3, 4, 5, 2023?

22 A Nomodic and, on their behalf, their counsel had
23 requested certain funding starting October 1st for
24 certain payments which we deemed were -- to ATB's
25 security position. They were unsecured payments. They
26 had requested those payments to be made. So there were
27 conversation that they had asked for those payments,

1 yes.

2 Q Okay.

3 A And they had offered to use the proceeds from the
4 cheque. In this specific instance, in the example of
5 what I have in front of me, the Exhibit "J", they were
6 going to use the fund proceeds from \$1.6 million
7 cheque.

8 Q And then Nomodic was going to get petitioned into
9 bankruptcy. That was being discussed by consent,
10 right?

11 A I wasn't part of the conversation. Based on the email,
12 yes, that's what it appears to be.

13 Q Okay. Other than, I guess, allowing these requested
14 expenses be paid, was Nomodic getting anything else in
15 return or requesting anything else in return from ATB?

16 A Those were the main payments they were trying to -- my
17 understanding is mostly clear up their director and
18 officer's liability piece that was brought up, and they
19 were looking to petition to bankruptcy to avoid any
20 litigations, any claims against the D and O of the
21 company. That's my understanding.

22 Q I don't see any reference to it, but did Mr. Read or
23 Mr. Lambert have any personal guarantees to ATB in
24 respect of the Nomodic debt?

25 A Mr. Lambert for sure did not. I would have to
26 double-check on Mr. Read.

27 MR. QUINLAN: Just off the record for a

1 second.

2 (DISCUSSION OFF THE RECORD)

3 Q MR. QUINLAN: And then obviously, sir, this
4 email that we are looking at here goes on to say:

5 In an effort to be fully transparent, Nomodic
6 has asked us to make sure that ATB is aware
7 that:

8 a. The cheque was provided to Nomodic
9 pursuant to an agreement that it would
10 remit those funds to a customer in
11 connection with the agreed upon rebate.
12 On that basis, there may be a competing
13 claim for those funds in the bankruptcy
14 process.

15 Do you see that?

16 A Yes, I do.

17 Q So would you agree with me, sir, at this point ATB is
18 made aware that the Champion cheque was provided to
19 Nomodic pursuant to a specific agreement that Nomodic
20 would then remit those funds to a customer, correct?

21 A We had not seen any such agreement. We had requested
22 any supporting documents that they may have to confirm
23 what those claims could look like.

24 Q So you were aware there might be claims to those funds
25 by the time of this email already, October 5; is that
26 correct?

27 A The management has made those claims that there might

1 be some claims against it, but that being said, their
2 actions weren't consistent. We had asked for the
3 copies of any supporting documents that may
4 substantiate such claims. There was nothing provided.
5 Management was using -- they're proposing to use the
6 funds from these cheque to make certain payments which
7 were deposited into ATB. There was no conversation, no
8 comment about this request that the remaining funds
9 needs to be made to a certain party. And then Mr. Read
10 deposited that cheque to ATB account even though he had
11 an option to give it to trustee.

12 Q Okay. And we'll come to all that. But my question is
13 by the time this email arrives, would you agree with me
14 that ATB was aware that this cheque was provided to
15 Nomodic for a specific intended purpose by Champion?

16 A Like I said, I did not see any document -- anything to
17 substantiate that. Only thing we heard from
18 management and the counsel was there could be some
19 claims. And we had asked for the information and
20 supporting documents to substantiate this. We did not
21 receive them.

22 Q Okay.

23 MR. QUINLAN: Just off the record for a
24 second.

25 (DISCUSSION OFF THE RECORD)

26 MR. QUINLAN: I'm going to ask for an
27 undertaking that the witness review the books and

1 records of ATB and provide me with any and all email or
2 other written requests to Nomodic or those on behalf of
3 Nomodic seeking information about any competing claims
4 to the Champion cheque or the funds in the RBC account.

5 MR. KYRIAKAKIS: Sorry, that one's fairly broad.
6 Can we limit it from a certain date or whatever like,
7 say, October 1st, September 29, whatever date you want?
8 Because otherwise --

9 MR. QUINLAN: I mean, it might be that
10 there's nothing until closer to the time frame you are
11 talking about, but I will make the undertaking from --

12 MR. KYRIAKAKIS: Because the Champion cheque you
13 are probably fine because it's closer. Just with
14 respect to the account, if you are asking for any and
15 all records on any correspondence, like, that's --

16 MR. QUINLAN: Okay. I'll amend my
17 undertaking to just make it relating to the Champion
18 cheque. And I'll deal with the RBC account later.

19 MR. KYRIAKAKIS: That's perfect. That's fine.
20 Subject to privilege and relevance as usual.

21 UNDERTAKING NO. 8

22 REVIEW ATB'S BOOKS AND RECORDS AND PRODUCE ANY AND
23 ALL EMAIL OR OTHER WRITTEN REQUESTS TO NOMODIC OR
24 THOSE ON BEHALF OF NOMODIC SEEKING INFORMATION
25 ABOUT ANY COMPETING CLAIMS TO THE CHAMPION CHEQUE
26 (SUBJECT TO PRIVILEGE AND RELEVANCE)

27 Q MR. QUINLAN: Now, sir, in paragraph 33 of

1 your Affidavit, you state in reference to the same
2 email we are looking at right now that the email did
3 not reference NVD specifically, but I take it
4 notwithstanding the lack of a specific mention of NVD
5 here, by the time this email comes in, ATB is already
6 aware that this Champion cheque related to the NVD
7 Hyatt project, correct?

8 A Sorry, I'm looking at my 33. Sorry, can you repeat
9 your question? I've looked at the 33.

10 Q Well, prior to this October 5 email we are looking at,
11 which is Exhibit "J", ATB was already aware that the
12 funds from this \$1.6 million cheque were related to NVD
13 and the NVD project, correct?

14 A Sorry, prior to -- what are we talking about with the
15 prior? Is it October 4th?

16 Q I'm saying prior to this email on October 5, 2023.

17 A Mr. Lambert had mentioned it in his October 3rd email,
18 yes.

19 Q Right. Okay. Yes, thank you. Now, I take it
20 following this email there's some sort of further
21 conversation you have in respect of what these
22 competing claims might be; is that correct?

23 A Sorry, conversations with?

24 Q Nomodic or someone on behalf of Nomodic?

25 A I think we touched upon this before. Like, by my
26 recall, we had asked for the supporting documents for
27 those claims.

1 Q Now, following this email on October 5, my
2 understanding is you have a call with Mr. Read; is that
3 correct?

4 A The evening of October 5th, yes.

5 Q So now can we go to your Affidavit of Truth, please,
6 specifically the last exhibit, which is Exhibit "S".

7 A Yes, I have it.

8 Q Now, in number VII or 7, you say on October 5, 2023 you
9 advised you had the intention of depositing the cheque
10 if ATB agreed to facilitate certain payments. ATB
11 refused to do this because Nomodic advised ATB that the
12 cheque may be subject to a priority or trust claim. Do
13 you see that?

14 A Yes.

15 Q So I take it in the evening of October 5 you had a
16 conversation with Mr. Read and he advises you that the
17 Champion cheque might be subject to a priority or trust
18 claim; is that correct?

19 A Mr. Read did mention that there might be some claims or
20 trusts attached to it. We asked what those claims or
21 trust could look like. We did ask if these are trust
22 funds, then the money have been -- looking at the
23 records, they have been moving the money around and
24 they were proposing to use the funds from the cheque as
25 well. They had no intention to make a payment or did
26 not ask for any funding from the proceeds of this
27 cheque to be forwarded to NVD if that's the claim he

1 was referring to or neither his counsel had asked that
2 those funding should be made available. There was no
3 conversation about -- there's no documents that was
4 provided to support that claim. And, like I mentioned
5 before as well, it was Mr. Read's choice to deposit
6 that in ATB's bank account. If he was aware of a trust
7 claim, he could have deposited it with the trustees as
8 well. So, yes, he may have mentioned about it. But we
9 asked questions. We had no reason to believe it is a
10 trust claim.

11 Q What details did he give you about it?

12 A It was just mention of a comment that there might be
13 trust claims around it. And --

14 Q Okay -- oh, go ahead.

15 A Sorry, go ahead.

16 Q No, no. I cut you off. What else did he say?

17 A It was more conversation about trying to arrange for
18 those payments they had requested in their email before
19 and there's more discussions about how we can arrange
20 for those payments.

21 Q And what questions did you ask him about the nature of
22 these possible trust claims?

23 A We asked, like, just given the history, how they made
24 this comment before, why their actions were
25 contradictory to any trust, moving the funds around,
26 asking disbursement from the same funds, having
27 provided no supporting document to substantiate, having

1 no request from them or their counsel asking that these
2 monies should be forward to NVD. We asked this
3 question. We did not get anything that would
4 substantiate there's a trust claim.

5 Q Did you ask him who has the potential trust claim?

6 A I don't recall asking specifically. But just given the
7 nature of their operations in the construction, there
8 could be claims comes out of woodwork all the time.

9 Q But he was telling you that there's a potential trust
10 claim in this \$1.6 million from Champion, correct?

11 A It was, like, even mentioned before Mr. Barr's email.
12 They did mention there are claims. But, like I said,
13 the actions of the -- what they were doing was
14 contradictory for us to believe there is a trust claim.
15 We did say, like, if there was a trust claim that --
16 again, we don't know, would it rank ahead of ATB, would
17 it be subordinate to ATB. Like I said, those claims
18 trust just come out of the woodwork in this kind of
19 operations.

20 Q What specific questions did you ask him about the
21 potential trust claim?

22 A I don't recall exact questions. We did ask him, like,
23 if he can provide any support for the claim.

24 Q Is that all you recall asking for?

25 A Yes. That's what I remember.

26 Q Okay.

27 A And part of it is because we had been asking those

1 questions prior to the call with Mr. Read. This was
2 not the first time we had asked that question.

3 Q How many times previously do you recall talking to him
4 about potential trust claims in the Champion cheque
5 funds?

6 A With Mr. Read, that was my only conversation about
7 any -- if I recall, I may have had a call with him on
8 October 4, but there was no discussion about the
9 Champion cheque or the claim at this stage.
10 October 5th would be the only conversation I had with
11 him.

12 Q Did you have conversations with anyone else on behalf
13 of Nomodic about potential trust claims in the Champion
14 cheque?

15 A Not on October 5th that I recall.

16 Q What about other dates prior to the bankruptcy?

17 A Again, depends how far prior we are talking about. Are
18 we talking about September 29 to October 5th or 6th?

19 Q Well, tell me the first time you had a conversation
20 with someone about the potential trust claims in the
21 Champion cheque.

22 A I'm assuming your question is more about ATB.

23 Q Yes, you or someone on behalf of ATB.

24 A There were conversations in early 2023 when Nomodic had
25 moved the money from ATB bank account to RBC, and there
26 was a question asked what this money was for and why
27 this money was moved to RBC.

1 Q What was told to you then?

2 A We were told -- like I mention before, I think
3 VP finance at the time told us they had used the money
4 for a GIC they were holding and the intent was or the
5 comment he made was it was a prepayment from a client
6 and they were holding those money to earn interest as
7 they would have earned in their own account and they
8 were doing this for tax purpose.

9 Q And between that conversation and into this late
10 September, early October time line, do you recall if
11 anyone else in ATB had any conversations about a
12 potential trust claim in respect of these funds?

13 A I don't recall any conversation after that. Again, in
14 early 2023 we had asked specifically for any supporting
15 documents.

16 Q And then going back to your email here of October 6th,
17 you say ATB refused to facilitate these payments
18 because of the potential priority or trust claim;
19 that's correct, right?

20 A Well, there were multiple reasons. There were other
21 reasons. All the payments they were asking for were --
22 prejudice ATB's position. They were unsecured or
23 subordinate claims. So we had no reason to make those
24 payments.

25 Q But one of the reasons is the potential trust claims,
26 correct, as you specifically stated here?

27 A We didn't want to be in a position that if there's a

1 trust claim, if and if that claim ranks ahead of ATB,
2 we don't want to be making the payments and take a
3 little bit bigger loss.

4 Q Now, you mentioned the fact that Mr. Read deposited the
5 cheque with ATB instead of giving it to a trustee,
6 correct?

7 A That's what happened.

8 Q I'm still looking at your email here, VII, going onto
9 the next sentence:

10 ATB requested the funds be deposited into the
11 account and Nomodic assign itself into
12 bankruptcy advising that if it was determined
13 these funds were in priority to ATB's claim,
14 ATB would distribute the same in accordance
15 with the priority.

16 So you are here giving Mr. Read an option to
17 deposit the funds with ATB saying that if there is a
18 priority claim or trust claim, ATB will pay it out,
19 correct?

20 A I mean, it's the right thing to do. If the court
21 decides or there is a court judgement that says that
22 the trust claims are ahead of ATB, we would pay those.

23 Q But you are giving him the option to pay the money into
24 ATB and then ATB will distribute if there's a trust
25 claim, correct?

26 A I mean, if the trust -- I'm not suggesting that there's
27 a trust claim. Those have to be proven and they have

1 rank ahead of ATB. If that's what determines.

2 Q And do you recall telling Mr. Read on or about
3 October 5 that that was an option?

4 A Option -- sorry?

5 Q To deposit the funds with ATB and that if there is a
6 later priority or trust claim, that ATB will pay out to
7 the trust or priority claimant?

8 A I don't recall if I had specifically mentioned that.

9 Q Okay.

10 MR. QUINLAN: Just off the record a second.

11 (DISCUSSION OFF THE RECORD)

12 Q MR. QUINLAN: Sir, did you or anyone on
13 behalf of ATB ask anyone at Nomodic for the contact
14 information of someone at NVD so that ATB could speak
15 to NVD about this refund or the payment that was coming
16 to it?

17 A I don't recall asking that information. And we also --
18 like I said before as well, there was no request from
19 Nomodic or on their behalf asking ATB to forward those
20 funds to in this case NVD, so we had no reason to
21 believe that that's what needs to be done.

22 Q But you don't recall asking for the information from
23 someone from NVD so that you or someone on behalf of
24 ATB could reach out and speak to NVD; is that correct?

25 A I don't recall.

26 Q Prior to or after this email, did you or anyone on
27 behalf of ATB in writing ask for a copy of the

1 agreement between Champion and Nomodic?

2 A I don't recall.

3 Q And, sorry, this might be already clear from the answer
4 you have given me. But I take it prior to the
5 bankruptcy order, no one from ATB contacted or
6 attempted to contact NVD to discuss the Hyatt project
7 or the refund it was to receive; is that correct?

8 A It's our normal practice. And we were not party to
9 NVD, so I don't know why we would have reached out to
10 NVD when we had no other reason to believe that we
11 needed to.

12 Q So that's a no, it did not happen, correct?

13 A You can say that it did not happen. I'm just saying,
14 like, why this did not happen.

15 Q At any point prior to the bankruptcy order, did you or
16 anyone on behalf of ATB ask for the contact information
17 of the person to speak to at Champion about their
18 cheque?

19 A Again, I don't think we had any reason to talk to
20 Champion. We were not aware of the relationship there.

21 Q So I take it you are not aware of you or anyone on
22 behalf of ATB reaching out to Champion prior to the
23 bankruptcy order to discuss that cheque, correct?

24 A No. Like I said, we had no reason to.

25 Q All right. Sir, if you could just flip to paragraph 25
26 of your Affidavit and this is the Supplemental one.

27 A Yes, I have it.

1 Q Okay. You can read it, and I'll just sort of pick a
2 part that I want to ask you about. You say:

3 Based on the aforementioned correspondence and
4 payment requests, ATB understood that the
5 funds in the RBC account: (ii) had been
6 utilized by the bankrupts to make various
7 unsecured or subordinate payments.

8 Do you see that?

9 A Yes.

10 Q And by subordinate are you intending to mean
11 essentially to others which have a lesser priority or
12 entitlement to those funds?

13 A Which are, yeah, behind ATB security, yes.

14 Q And is it ATB's understanding or view that such funds
15 should not have been paid over to those third parties
16 but should have been paid to ATB?

17 A Sorry, when you say such funds?

18 Q Sorry, the funds that you say were utilized by the
19 bankrupts to make various unsecured and subordinate
20 payments?

21 A That was part of our security, yes.

22 Q And I take it ATB did not and does not consider its
23 security to somehow be invalid due to Nomodic paying
24 funds to others that ATB is of the view should have
25 been paid to it, correct?

26 A Well, ATB doesn't control what management is making the
27 payments. It's management's decision if they were

1 making those payments.

2 Q Right. And if management decided to make payments that
3 ATB did not consider proper, ATB doesn't consider its
4 security or priority position to be prejudice, does it?

5 A They are two different things. ATB security is based
6 on the law at the time, whatever we have. The conduct
7 of the company is a different thing, how they manage
8 and what payments they made.

9 Q Because ATB has no control over management of the
10 company potentially improperly using or proposing to
11 use funds, correct?

12 A ATB doesn't interfere in the day-to-day business of the
13 companies. We have our -- we may have our
14 reservations. We may have our position. But we are
15 not the one dictating or telling them.

16 Q And ATB wouldn't consider, for example, its general
17 security agreement position to be somehow invalidated
18 by management paying out funds improperly, does it?

19 A Like I said, they are two different things. Like,
20 security -- like, if they are making a day-to-day
21 business decision. But if I have issued demands and
22 payment and they start moving those money to unsecured
23 and prejudice ATB's position, it will not invalidate
24 ATB's security but it's the conduct.

25 Q I understand. Thank you, sir. Now, can you go to your
26 Affidavit of Truth, please, and specifically if you can
27 go to paragraph 34.

1 A Yes, I have it.

2 Q You say there:

3 ATB was advised that the RBC funds may or may
4 not be subject to various claims, including
5 potential trust claims.

6 Do you see that?

7 A Yes.

8 Q And so I take it by the time you swear this Affidavit,
9 someone at Nomadic has advised ATB of potential trust
10 claims in respect of the RBC funds, correct?

11 A Management has raised -- like I said before as well,
12 they had made a comment, but their actions were not
13 consistent, what they were suggesting. If this was a
14 trust, the funds we're talking about, there should not
15 be free movement from that bank account. They should
16 have requested those money to be restricted and used
17 for certain purpose. They should have provided the
18 information requested.

19 Q Do you know or recall what was specifically told to ATB
20 or someone on behalf of ATB about the potential trust
21 claims to the RBC funds?

22 A Yeah. Like I mentioned, the management did mention
23 about the trust. And when we inquired, there was
24 nothing given to substantiate or, again, the actions
25 were contradictory. I would also say if Nomadic was a
26 sophisticated company -- they had \$70 million in
27 revenue -- so if they had made a claim and it was in

1 trust, they would have something in writing that they
2 could provide to us.

3 Q Are there any emails or other written correspondence
4 not already included in your exhibits in which possible
5 trust claims to the RBC funds are discussed or
6 referenced?

7 A Are we talking about any specific time period?

8 Q Well, I guess given the rest of the evidence, I would
9 say from and after December 7th, 2022, which would be
10 the date of the agreement between NVD and Nomadic?

11 A I don't recall. I would have to check.

12 MR. QUINLAN: Can I ask for an undertaking
13 that the witness review the books and records of ATB to
14 determine if from and after December 7, 2022 there are
15 any emails or written correspondence that discuss or
16 reference possible trust claims to the funds in the RBC
17 bank account that are the subject of this application?

18 MR. KYRIAKAKIS: Subject to relevance and
19 privilege, yes, that's fine. Maybe we can go off
20 record for a second here.

21 MR. QUINLAN: Yes, we can go ahead off
22 record.

23 (DISCUSSION OFF THE RECORD)

24 MR. QUINLAN: So just pursuant to an
25 off-the-record conversation, my understanding is
26 counsel for ATB has advised that they will accept that
27 undertaking request subject to privilege, relevance and

1 any further discussions or agreements between the
2 parties in respect of the time frame or date range in
3 respect of that undertaking response. Pantelis, does
4 that work for you?

5 MR. KYRIAKAKIS: Yes, that works for me. And to
6 be clear, that's the undertaking with respect to any
7 correspondence regarding specifically trust claims
8 relating to the RBC account?

9 MR. QUINLAN: Yes, priority or trust claims.
10 However you want to --

11 MR. KYRIAKAKIS: Well, priority claims goes far
12 beyond NVD. So, sorry, I thought it was limited to
13 trust claims. I'm fine with that undertaking.

14 MR. QUINLAN: And that's fine.

15 MR. KYRIAKAKIS: Okay.

16 UNDERTAKING NO. 9

17 REVIEW ATB'S BOOKS AND RECORDS TO DETERMINE IF FROM
18 AND AFTER DECEMBER 7, 2022 THERE ARE ANY EMAILS OR
19 WRITTEN CORRESPONDENCE THAT DISCUSS OR REFERENCE
20 POSSIBLE TRUST CLAIMS TO THE FUNDS IN THE RBC BANK
21 ACCOUNT (SUBJECT TO PRIVILEGE, RELEVANCE AND ANY
22 FURTHER AGREEMENTS BETWEEN THE PARTIES IN RESPECT
23 OF THE TIME FRAME OR DATE RANGE)

24 Q MR. QUINLAN: Sir, do you recall any
25 conversations you had that you haven't already told me
26 about where potential trust claims to the RBC account
27 were discussed?

1 A Sorry, it's the conversation you said? Because you
2 already have undertaking for communication. You're
3 asking if it was a verbal conversation?

4 Q Yes, that's what I'm trying to ask about, correct.

5 A Again, same time frame you are looking at? I have to
6 recall it. If it's from December 2022, there might be
7 multiple people involved.

8 Q Let me try to ask you a blunter question. Would you or
9 others on behalf of ATB have any written notes about
10 verbal conversations you had that might relate to trust
11 claims to the RBC account or the Champion cheque?

12 A I would have to look if others have those notes or not.

13 Q Okay.

14 MR. QUINLAN: Then I will ask for an
15 undertaking for the witness to review the books and
16 records of the company and to make inquiries with any
17 parties he needs to to determine if there are any
18 written notes or logs of telephone calls from and
19 after -- hang on. I'm just going to narrow the date.

20 MR. KYRIAKAKIS: I think, like, we are going on
21 a little bit of a fishing expedition here. Like, you
22 have already asked for email correspondence on the
23 account. If you want to ask for any email
24 correspondence on this, then that's fine. Anything in
25 the records is probably fine. But to go and ask every
26 individual who may or may no longer be with ATB since
27 December of whatever date, it's just not --

- 1 MR. QUINLAN: Yes, I wasn't going to do
2 December, but let me try to narrow it for you then.
- 3 Q MR. QUINLAN: Mr. Ashraf, would you have any
4 written notes or logs describing any conversations you
5 had regarding potential trust claims to the RBC account
6 or the Champion cheque between the dates of July 17,
7 2023 and the date of the bankruptcy order?
- 8 A I mean, I have notes. I would have to see if there's
9 any trust discussion or not. I don't recall that.
10 Again, there were other people involved.
- 11 Q What questions did you ask anyone on behalf of Nomodic
12 about these potential trust claims to the RBC funds?
13 Do you know or do you recall?
- 14 A I do recall asking, again, supporting documents. If
15 they are saying it's a trust claim, what trust is it?
16 What does it involve? Any supporting documents that
17 can substantiate. Again, if the company of that size
18 and that sophistication, we expect that there would be
19 some paperwork, something to document that. So those
20 questions were asked.
- 21 Q Do you recall asking in whose favour any trust might
22 exist?
- 23 A To my recollection, not specifically whose favour. We
24 knew it was about Hyatt project.
- 25 Q You knew it was about the NVD Hyatt project?
- 26 A I don't recall specifically about NVD.
- 27 Q Oh, okay. Just the Hyatt project?

1 A Yes.

2 Q We are talking about the one that's up in Whitehorse,
3 correct?

4 A Well, the one that would be on their project list they
5 would have given us because that's what we would talk
6 about. I would not remember each vendor or each
7 customer they are dealing with.

8 Q Do you recall any other questions you might have asked
9 about the potential trust claims to the RBC funds that
10 you haven't told me about already?

11 A I don't recall that.

12 Q Okay.

13 MR. QUINLAN: Pantelis, maybe just give me
14 five minutes. We might be done. We'll just take a
15 quick adjournment.

16 MR. KYRIAKAKIS: Yes, that's fine.

17 (ADJOURNMENT)

18 MR. QUINLAN: I have one final undertaking
19 request. To the extent they are not already caught by
20 an already existing undertaking request, I would ask
21 for the witness to review the books and records of the
22 company to determine what email or other written
23 correspondence might exist between July 17, 2023 and
24 the date of the bankruptcy order where in the NVD Hyatt
25 project, Champion or the Champion cheque may be
26 referenced or discussed.

27 MR. KYRIAKAKIS: I think that's a bit broad. So

1 it's anything that discusses the Champion cheque, the
2 account or the Hyatt project? Like, that's not even
3 all relevant to this. Like, do you want to limit it to
4 potential trust claims of NVD?

5 MR. QUINLAN: Well, I would like to know --
6 I'll be very clear. The relevance of what I'm looking
7 for is to figure out what information ATB knew about in
8 respect of the Hyatt project and any claims that NVD
9 might have as a result of that project in or to the RBC
10 funds or the Champion cheque.

11 MR. KYRIAKAKIS: So it's any correspondence from
12 July 17, 2023 concerning what claims NVD had in
13 connection with the Hyatt project, the Champion cheque
14 or the RBC account?

15 MR. QUINLAN: Well, sure, except that there
16 might be information that's relevant to that that
17 doesn't specifically mention NVD by name.

18 MR. KYRIAKAKIS: I understand what you are
19 trying to get at. I'm just trying to frame the
20 undertaking so that it's not every single reporting
21 requirement that has happened since July 17 which has
22 no bearing on this thing because it might be an account
23 payable ledger that doesn't list NVD or, you know,
24 references Hyatt at the top but has nothing on it.
25 It's just going to catch a lot of stuff and any
26 filters, so we are going to get thousands of documents
27 potentially that have nothing to do with this. And so

1 that's why I'm asking can we phrase it a little bit
2 narrower to get exactly what you want so that I don't
3 have to disclose stuff that isn't relevant really, to
4 be honest with you. It has no bearing on any of these
5 claims.

6 MR. QUINLAN: Let's go off the record for a
7 second just to chat about this.

8 (DISCUSSION OFF THE RECORD)

9 MR. QUINLAN: Further to our discussion off
10 the record, the revised undertaking that I'm asking for
11 in this respect is for the witness to review the books
12 and records of ATB to determine and to provide me with
13 copies of any emails or other written correspondence
14 from and after July 17, 2023 that discuss or contain
15 information respecting any refund to or claim of NVD
16 respecting the NVD Hyatt project and/or to or in the
17 Champion cheque to the extent that any such
18 correspondence is not already included in prior
19 undertaking responses.

20 MR. KYRIAKAKIS: Subject to relevance and
21 privilege, that should be fine.

22 UNDERTAKING NO. 10
23 REVIEW ATB'S BOOKS AND RECORDS TO DETERMINE AND
24 PRODUCE COPIES OF ANY EMAILS OR OTHER WRITTEN
25 CORRESPONDENCE FROM AND AFTER JULY 17, 2023 THAT
26 DISCUSS OR CONTAIN INFORMATION RESPECTING ANY
27 REFUND TO OR CLAIM OF NVD RESPECTING THE NVD HYATT

1 PROJECT AND/OR TO OR IN THE CHAMPION CHEQUE TO THE
2 EXTENT THAT ANY SUCH CORRESPONDENCE IS NOT ALREADY
3 INCLUDED IN PRIOR UNDERTAKING RESPONSES (SUBJECT TO
4 PRIVILEGE AND RELEVANCE)

5 MR. QUINLAN: And just asking for a quick on
6 the record confirmation or revision to
7 Undertaking Number 6 where I have asked to be produced
8 copies of requests by the bank, but also I guess to the
9 extent that any responses are received by the bank to
10 those requests, I would like copies of those emails as
11 well.

12 MR. KYRIAKAKIS: Yes, that should be fine,
13 subject to relevance and privilege as usual.

14 MR. QUINLAN: Subject to further questions
15 arising from any undertakings, those are my questions.
16 Thank you very much, Mr. Ashraf. I'm sorry I kept you
17 a little bit later than I anticipated.

18

19 PROCEEDINGS ADJOURNED:

20 4:13 P.M.

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Certificate of Transcript

I, the undersigned, hereby certify that the foregoing is a complete and accurate transcription of the proceedings taken down by me in shorthand and transcribed by means of a computer-aided transcription to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 16th day of April, 2024.

Sophia Dame
Court Reporter

INDEX

MUHAMMAD ASHRAF
 April 16, 2024
 Undertakings 1 - 10

For convenience, the undertakings and/or objections have been summarized and indexed into the following list to be used at the discretion of counsel.

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