

**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**

**REPLY FACTUM
OF FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS MONITOR OF SHAW-ALMEX INDUSTRIES LIMITED
AND SHAW ALMEX FUSION, LLC
(Re: Determination of Share Purchase Agreement, Transfer at Undervalue)**

December 3, 2025

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IN ITS CAPACITY AS MONITOR**

PART I: OVERVIEW

1. This reply factum replies to the responding factum of Mr. Timothy Shaw dated December 2, 2025 (the “**Responding Factum**”). Capitalized terms used in this reply factum that are not otherwise defined have the meanings given to them in the Monitor’s December 1, 2025, factum, or the Fifth Report of the Monitor dated September 27, 2025.

2. The Responding Factum *criticizes* the Monitor’s evidence, but it presents little to no evidence that *contradicts* the Monitor’s evidence. Many of these criticisms arise as a result of SAIL and Global Holdings (both of which were controlled by Mr. Shaw) having incomplete records, and Mr. Shaw having operated these companies with a disregard for the concept of corporate separateness. He now demonstrates little knowledge or recollection of the relevant events or documents. The criticisms of the Monitor ring hollow given that Global Holdings and/or Mr. Shaw control key information and could have provided (and did not provide) bank records, lender consents, and other evidence to contradict the Monitor’s understanding and description of the Impugned Transaction. The acts or omissions of Mr. Shaw in maintaining proper corporate records cannot be held up as a defence to a transfer at undervalue under s. 96 of the BIA. Allowing

such a defence only encourages debtors to obfuscate their record keeping and intercompany transactions in an effort to thwart future attacks on undervalued transactions.

PART II: REPLY

A. THE IMPUGNED TRANSACTION IS A TRANSFER AT UNDERVALUE

(1) The Value of the Shares is the Value Determined by the Monitor

3. The Monitor has conservatively estimated that the FMV of the Shares to be approximately €2,520,600.65 as of December 31, 2021.¹ Global Holdings has not proposed an alternative value for the Shares. The only valuation of the Shares before this Court is the Monitor's valuation. Absent evidence to the contrary, s. 96(2) of the BIA provides that the value of the Shares is the value stated by the Monitor:

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.**² [*emphasis added*]

4. Global Holdings has tried to poke holes in the Monitor's valuation, but it has not presented evidence that contradicts the Monitor's valuation. For example, the Responding Factum criticizes the Monitor for not putting on the record the liquidation value of SAIL's assets as of December 31, 2021, while simultaneously eschewing any contemporaneous fair valuation analysis of its own.³ Similarly, the Responding Factum argues that:

[...] 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".

¹ Motion Record of the Monitor dated September 27, 2025 (the "Motion Record") at Tab 2: Fifth Report of the Monitor dated September 27, 2025 (the "Fifth Report") at paras. 52-53, 57, 61.

² BIA, s. 96(2).

³ Responding Factum of Timothy Shaw (Returnable December 4, 2025), dated December 2, 2025 (the "Responding Factum") at paras. 56-57.

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. 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.⁴

5. With respect to Real Holdings’ liabilities, these appear to be almost entirely short-term debts with group and associated companies. There is no evidence that these debts were paid or will ever be paid.⁵ They are suspect. But the Monitor does not have Real Holdings’ audited financial statements, which impedes further investigation into these amounts. The Monitor addressed this concern in part during Mr. Shaw’s cross-examination:

Q: The monitor recently received financial statements for [Real Holdings for] 2020, 2021 and 2022. Do audited financials exist for 2023, 2024 and 2025?

A. Of that company?

Q. Yes.

A. I don’t know.⁶

6. With respect to the Spanish Real Property, SAIL and Global Holdings relied on the same “already outdated” 2017 appraisal when they engaged in the Impugned Transaction.⁷ While it is true that there is no appraisal of the Spanish Real Property from December 2021, *this is because the parties controlled by Mr. Shaw failed to obtain such an appraisal at the time*. To now suggest that such a failure means that the value of the Shares cannot be estimated would defeat the entire purpose of the BIA’s TUV provisions. If the Monitor were to obtain an appraisal today, it would

⁴ *Ibid* at para. 49.

⁵ Fifth Report, *supra* note 1 at para. 60.

⁶ Transcript from the cross-examination of Timothy Shaw conducted November 26, 2025 (the “**Shaw Examination**”) at p. 50 l. 4 to l.10.

⁷ Fifth Report, *supra* note 1 at paras. 55-57.

have limited utility given that the Impugned Transaction occurred in 2021. Further, Mr. Shaw’s claim that the value of the Spanish Real Property declined between 2017 and 2021 is not supported by any evidence on the record.⁸ The article that is cited in the Responding Factum provides no insight into (a) actual prices (b) for industrial real properties (c) in the City of Jaén (d) for the period 2017 to 2021.⁹

7. If Global Holdings wanted to contest the Monitor’s valuation, it could have adduced valuation evidence. It did not. As a result, the Court only has before it the Monitor’s valuation.

(2) The Net Present Value is the Real Consideration of the Purchase Price

8. The Responding Factum states that 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.¹⁰

9. This argument is wholly inconsistent with Canadian law and standard commercial practice. The Supreme Court of Canada has recognized that “[t]he time value of money is universally accepted in ordinary commercial practice”.¹¹ In *Bank of America Canada v Mutual Trust Co.*, Major J. wrote as follows for the Court:

The value of money decreases with the passage of time. A dollar today is worth more than the same dollar tomorrow. Three factors account for the depreciation of the value of money: (i) opportunity cost, (ii) risk, and (iii) inflation.

The first factor, opportunity cost, reflects the uses of the dollar which are foregone while waiting for it. The value of the dollar is reduced because the opportunity to use it is absent. The second

⁸ Responding Factum, *supra* note 3 at para. 49.

⁹ Responding Motion Record of Timothy Shaw dated November 20, 2025 at Tab 1: Affidavit of Mr. Timothy Shaw affirmed November 20, 2025 (the “**Shaw Affidavit**”), Exhibit “B” at p. 5-6.

¹⁰ Responding Factum, *supra* note 3 at para. 39.

¹¹ *Re Canada 3000 Inc.*, [2006 SCC 24](#) at para. 94.

factor, risk, reflects the uncertainty inherent in delaying possession. Possession of a dollar today is certain but the expectation of the same dollar in the future involves uncertainty. Perhaps the future dollar will never be paid. The third factor, inflation, reflects the fluctuation in price levels. With inflation, a dollar will not buy as much goods or services tomorrow as it does today [...]. The time-value of money is common knowledge and is one of the cornerstones of all banking and financial systems.¹²

10. To suggest that calculating the present value of a series of payments is an effort to “manufacture a difference in value” ignores the reality recognized by the Supreme Court. Discounting instalment payments to their present value is not unduly complex: it is the basic mechanism by which the law measures a deferred, unsecured promise to pay. This is a common approach in insolvency cases. In *Henfrey Samson Belair Ltd. v Wedgewood Village Estates Ltd*, for example, Taylor J. calculated the net present value of future payments when determining the FMV of an asset subject to the (now repealed) reviewable transaction provisions under the BIA. Justice Taylor was clear that future payments must be converted to a present value:

The Bankruptcy Act requires the court to determine the “fair market value” of the property transferred. It is for this purpose that the present and future costs and benefits provided for in the Hii agreement for sale must in this case be converted to a present value.¹³

11. Accordingly, the net present value should be used when valuing the Purchase Price.

(3) The Assumption of Mortgage Debt Does Not Impact the Monitor’s Valuation

12. The Responding Factum suggests that the assumption of the Spanish Real Property mortgage should be treated as immediate value to SAIL.¹⁴ The reasoning underlying this argument is not clearly articulated in the Responding Factum.

¹² *Bank of America Canada v. Mutual Trust Co.*, [2002 SCC 43](#) at para 21-22.

¹³ *Henfrey Samson Belair Ltd. v Wedgewood Village Estates*, [1986 CanLII 1122](#) (BC SC) at para. 77; rev’d [1987 CanLII 2794](#) (BCCA); leave to appeal ref’d [1987] SCCA No 378 (the application of the time value of money, i.e. the basic premise of applying a discount rate to determine net present value, was not the subject matter on appeal).

¹⁴ Responding Factum, *supra* note 3 at paras. 33 and 42.

13. The Monitor did account for the value of the mortgage loan when valuing the Shares: an outstanding balance of €981,957.22 was subtracted from the value of the assets underlying the Shares to arrive at a net value of €2,520,600.65 as of December 31, 2021.¹⁵ This is the value against which the Purchase Price is compared.

(4) “Conspicuous” is Not a Mathematical Formula

14. The Responding Factum cites *Peoples Department Stores Inc. (Trustee of) v Wise*¹⁶ for the proposition that the Supreme Court of Canada has been “clear” a discrepancy of less than 6% between the consideration received and value given “is not ‘conspicuously’ under value for the purposes of the BIA.”¹⁷ This is a misstatement of *Peoples*, which does not make such a definitive determination. *Peoples* stands for the proposition that the percentage differential is one factor to consider on a transfer at undervalue application, and it must be considered in light of the broader circumstances of the case:

We are not satisfied that, **with regard to all the circumstances of this case**, a disparity of slightly more than 6 percent between fair market value and the consideration received constitutes a “conspicuous” difference within the meaning of s. 100(2) of the BIA. Accordingly, we hold that the trustee’s claim under the BIA also fails.¹⁸ [*emphasis added*]

15. Other cases when citing to *Peoples* have been clear that there are no hard cut-offs for a transfer at undervalue. This aligns with the Ontario Court of Appeal’s decision in *Montor Business Corp. (Trustee of) v Goldfinger*, where Pepall J.A. recognized “weighing the adequacy of consideration is not an exercise in precision but one of judgment”.¹⁹ There is no mathematical formula that can be applied to determine whether consideration is conspicuously less than FMV.

¹⁵ Fifth Report, *supra* note 1 at para. 61.

¹⁶ [2004 SCC 68](#) [*Peoples*].

¹⁷ Responding Factum, *supra* note 3 at para. 50.

¹⁸ *Peoples*, *supra* note 16 at para. 88.

¹⁹ *Montor Business Corp. (Trustee of) v Goldfinger*, [2016 ONCA 406](#) at para 53.

16. In any event, the discrepancy between the consideration paid for the Shares (€1,021,883 to €1,376,735, depending on the discount rate used) is much more than 6% less than the FMV of the Shares (approximately €2,520,600.65).

(5) Set-Off Has Not Been Proven

17. The Responding Factum argues that Global Holdings paid the Purchase Price via set-off.²⁰ At no point does the Responding Factum make the argument that the conditions for either legal or equitable set-off are satisfied in the present case.

18. The Responding Factum cites *Re Option Industries Inc.* for the proposition that the Purchase Price is not required to be paid by cash and that Global Holdings can set-off Purchase Price.²¹ *Option Industries*, however, is a distinct case that is not applicable to the present situation. In *Option Industries*, the transferor and the transferee were subsidiaries of the same parent company. The transferor transferred various assets to the transferee, and in turn the transferor's accounts payable to the parent company were reduced by the amount of the transferred assets. The Court found that a reduction in the amount of a debt can constitute adequate consideration in appropriate circumstances.²² In reaching this conclusion, the Court cited to *Merchant v The Queen*:

Although no money was exchanged at the time of the sale in 1993, the accounting by the parties between themselves for the amounts owing that arose from the transaction are consistent with description of the transaction given by the Appellant and corroborated by the loan records kept by him, and by the sale agreement between Merchant U.S and Merchant 2000. **Parties may agree to set off amounts due rather than pay money back and forth, and the set off will constitute payment and receipt of the amounts, respectively.**²³

²⁰ Responding Factum, *supra* note 3 at paras. 22 and 43.

²¹ *Ibid* at para. 46; *Re Option Industries Inc.*, [2020 ABQB 535](#) [*Option Industries*].

²² *Ibid* at paras. [1-2](#), [14](#), [25-26](#).

²³ *Ibid* at paras. [25-26](#) citing *Merchant v The Queen*, [2010 TCC 467](#) at para [41](#).

19. The Court was satisfied that there was an agreement in Option Industries to pay with set-off. In the case of SAIL and Global Holdings, there is no agreement on record that provides for Global Holdings to set-off amounts owing to SAIL.

20. Similarly, *Options Industries* also cited to *Pitbaldo LLP v Houde* for the proposition that the reduction of a debt can (and did in that case) constitute adequate consideration, provided that there is evidence to support such consideration:

Whether there was such an agreement and whether the forgiveness of the alleged debts and other payments constitute adequate consideration for the transfer such that it is not a transfer at undervalue, is a question that must be determined on the evidence, based on an assessment of the credibility of the defendant and Laurence. If their evidence is accepted, and the court finds that the forgiveness of the debts and other payments amount to consideration for the transfer of the property, the plaintiff's claim fails.²⁴
[emphasis removed]

21. Here, the evidence and the respondent are not credible. Mr. Shaw has not pointed to any agreement that contemplates debt forgiveness, reductions, or set-off. For example, on cross-examination he denied that there was a document showing a right to set-off the Purchase Price:

Q. The question was whether Mr. Shaw is aware of any documents which show the specific amounts of Global Holdings' debt that had been paid when they transferred -- when money was transferred from Global Holdings to SAIL?

A. I am not aware of any particular documents.

J. WADDEN: Sorry, counsel. And just so I understand what you're looking for there, you're asking about at the time payments were made by or were directed by Global Holdings to SAIL, were there documents at that time indicating how much would go to repayment of the debt versus for some other reason?

L. MERCER: I'm looking for if there's any documentation that shows what specific line items of debt were paid --

²⁴ *Option Industries*, *ibid* at para. 26, citing *Pitbaldo LLP v Houde*, [2016 MBQB 177](#) at para 28.

[...] Q. And sorry, Mr. Shaw, you're not aware of any documentation existing. Is that the answer you just provided me?

A. Yes. If you're referring to a balance sheet or something or a ledger, whatever, no, I'm not aware of any one document that identifies that.

22. The present case is distinct from *Option Industries*. There was no agreement between SAIL and Global Holdings to set-off amounts and the evidence presented to support that forgiveness of the alleged debts and other payments constitute adequate consideration is not credible.

23. In the present case, there is a real dispute about the existence or quantum of the amounts owing between SAIL and Global Holdings. So far, Global Holdings has alleged without support that the Purchase Price was set-off, but it has not, amongst other things, (a) addressed the reliability of the general ledger, which purports to set out the amounts owing between SAIL and Global Holdings;²⁵ and (b) argued that the particulars of set-off (e.g., mutuality) are satisfied on the facts of this case. Even if the general ledger is assumed to be reliable, it does not show reductions in the amounts owing by SAIL to Global Holdings that are equal to the amounts owing by Global Holdings to SAIL.²⁶ In *Option Industries*, the transfers in could be easily compared to the transfers out. Here, the Purchase Price was to be paid in annual installments of €120,030, but the ledger does not show any transfers in that amount.

24. Finally, the Responding Factum argues that the Impugned Transaction “alleviated the need for SAIL to make rent payments on the Glover Road Property, thereby freeing up its cash flow.”²⁷ The fact that there may be beneficial side effects to a TUV does not cure a TUV. In any event, Global Holdings’ argument ignores the cash outflows that occurred post-Impugned Transaction.

²⁵ Reply Motion Record of the Monitor dated November 25, 2025 (the “**Reply Motion Record**”) at Tab 2: Second Supplement to the Fifth Report of the Monitor dated November 25, 2025 (the “**Second Supplemental Report**”) at para. 28.

²⁶ Fifth Report, *supra* note 1 at paras. 94-97.

²⁷ Responding Factum, *supra* note 3 at para. 65.

Fonmar OpCo still had to make rent payments to Fonmar RealtyCo, but post-Impugned Transaction Fonmar RealtyCo was outside of SAIL's corporate group. There was therefore a monthly outflow of €9,500 per month in rent.²⁸

(6) Intent Can be Proven by Badges of Fraud

25. The Responding Factum argues that:

The Monitor cannot prove that SAIL's subjective intention was to defraud, defeat or delay any of its 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. 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".

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

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. Further, the transaction alleviated the need for SAIL to make rent payments on the Glover Road Property, thereby freeing up its cash flow.²⁹

26. Global Holdings includes in the aforementioned passage a citation to *Urbancorp Toronto Management Inc. (Re)*.³⁰ *Urbancorp Toronto Management Inc. (Re)* was considered by the Supreme Court of Canada in *Aquino v Bondfield Construction Co.*,³¹ the leading case on determining a debtor's intent to defraud, defeat or delay a creditor (which Global Holdings fails to address). In *Aquino SCC*, the Court wrote that "[b]ecause it is often difficult to adduce evidence of a debtor's subjective intent, the intent requirement is often proved through the evidentiary

²⁸ Fifth Report, *supra* note 1 at paras. 33 and 88.

²⁹ Responding Factum, *supra* note 3 at paras. 63-65.

³⁰ *Urbancorp Toronto Management Inc. (Re)*, [2019 ONCA 757](#).

³¹ [2024 SCC 31](#) [*Aquino SCC*].

shortcut of badges of fraud.”³² There were several badges of fraud in *Aquino SCC*, like there are in the present case.³³

27. The Responding Factum latches on to the idea that because Mr. Shaw alleged (without any supporting evidence) that the Impugned Transaction had the purported purpose of consolidating SAIL’s real property in Global Holdings in preparation for a sale, there cannot be an intent to defraud, defeat or delay creditors.³⁴ This argument effectively introduces into s. 96 of the BIA a purposive requirement. It cannot be the case that so long as the debtor and recipient of an undervalued transfer allege a purpose for a transfer that the transfer cannot be a TUV. This argument potentially gives a determinative role to one factor (that can be easily fabricated after the fact) even though there can be, as in this case, multiple badges of fraud that all suggest an intent to defraud, defeat, or delay a creditor.

28. In any event, the suggestion that the Impugned Transaction was driven by a desire to prepare the business for a sale does not withstand scrutiny. As set out in the Monitor’s initial factum at paragraphs 56 to 59, the Impugned Transaction took place years after discussions with a prospective purchaser (Semperit) concluded, and the record does not show that there were other prospective purchasers—let alone prospective purchasers demanding that real estate be split from the operating business. In addition, the Spanish Real Property was already held by a non-operating entity; no further transfer was needed.

29. Mr. Shaw’s evidence on cross-examination is that, in practice, the decision to strip the Spanish Real Property out of SAIL’s corporate group while leaving the Parry Sound real property in SAIL’s corporate group was essentially arbitrary:

³² *Ibid* at para. 44.

³³ *Ibid* at para. 47.

³⁴ Responding Factum, *supra* note 3 at paras. 65-68.

Q. And so, I understand you to be saying here that you wanted to transfer the Spanish property to Global Holdings because it was the only property that SAIL operated out of that was not held by Global Holdings?

A. That was one of the considerations.

Q. Okay. And so, why at that same time did you not sell or transfer the property at 17 Shaw Almex Drive?

A. Because it had been for 40 years part of the operating company.

Q. No reason other than that?

A. Just the way it had been for 40 years.³⁵

30. If prospective purchasers truly required that real estate be removed from SAIL's corporate structure, then presumably this logic would have also applied to SAIL's factory in Parry Sound.

(7) Intercompany Transfers Were Not First Allocated to the Purchase Price

31. The Responding Factum provides that:

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". 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.³⁶

32. Even if Mr. Shaw, when he was the directing mind, had the right to determine how debt payments were applied to the Purchase Price, he did not make such a decision. When Mr. Shaw was asked on cross-examination about whether SAIL allocated payments to the Purchase Price ahead of other debts in SAIL's general ledger, he gave the following answer:

I think you're trying to portray Global Holdings as a real estate investment company that was operating a portfolio of companies with return on investment and return on equity or whatever

³⁵ Shaw Examination, *supra* note 6 at p. 109 l. 20 to p. 110 l. 10.

³⁶ Responding Factum, *supra* note 3 at para. 45.

management structure you want or valuation you want to do. These were non-arm's length transactions with all of our properties that were owned globally around the world in a separate entity, and there would be cases where we would make -- we would recognize revenue or transactions based upon the various properties.³⁷

33. When asked whether there were documents, agreements or addendums that showed an intention for the Purchase Price to be paid first in SAIL's general ledger, Mr. Shaw simply replied: "Not that I'm aware of."³⁸ Finally, when Mr. Shaw was asked whether he was aware of any documents specifically addressing prepayment or the manner in which he in which he contemplated paying the Purchase Price, Mr. Shaw stated: "No, I do not believe there is a document specifically addressing that issue. And conversely, there was no document that expressed you couldn't do it either."³⁹

34. It is clear, based on this evidence, that Global Holdings and SAIL did not intend the order in which debts owing by Global Holdings were set-off against the Purchase Price.

(8) The Time for Assessing the Value of the Purchase Price is the Date of the Impugned Transaction

35. The Responding Factum invites this Court to look forward and credit later set-off when valuing the Purchase Price.⁴⁰ The Court should decline this invitation. As set out in the Monitor's original factum, in a transfer at undervalue proceeding the time for determining the amount paid as consideration is the date of the transfer.⁴¹ Post-transfer conduct cannot cure an undervalue that existed on the day of transfer. Section 96 is designed to prevent retroactive justification where value was extracted from the estate on soft terms and only later dressed up as fair.

³⁷ Shaw Examination, *supra* note 6 at p. 85 l.1-12.

³⁸ *Ibid* at p.86 l.8.

³⁹ *Ibid* at p. 86 l.23 to p. 87 l.1.

⁴⁰ See e.g. Responding Factum, *supra* note 3 at para. 47.

⁴¹ *Jovkovic v Da Silva*, [2022 ONSC 2691](#) at para. 16, aff'd [2023 ONCA 137](#).

B. THE SPA IS UNENFORCEABLE AND/OR WAS BREACHED BY GLOBAL HOLDINGS

(1) The Terms of the SPA Are Unusual if not Unlawful

36. The Responding Factum argues that “the Monitor’s own expert confirmed that there is nothing unlawful under Spanish law about the terms of the 2021 SPA.”⁴² Mr. de Cambra may not have stated that the SPA was *unlawful*, but he provided evidence including the following:

- (a) that “in the circumstances of this case and the documentation provided, no guarantees or interest associated with the deferred payment in the SPA appear to have been established, which is **unusual**”;⁴³
- (b) when asked if a contract that does not refer to prepayments precludes or excludes the parties from making prepayments, he answered: “No, it does not, but that’s quite **unusual**”;⁴⁴
- (c) when asked about whether Spanish law permits pre-payments, he stated that “prepayments should be included in the Share Purchase Agreement and the payment method recorded, the payment terms recorded [...]”;⁴⁵ and
- (d) it would not be particularly difficult to demonstrate that a payment with a long deferral, “coupled with the absence of interest, could constitute a fraudulent arrangement.”⁴⁶

⁴² Responding Factum, *supra* note 3 at para. 40.

⁴³ Supplemental Motion Record, *supra* note 25 at Tab 1: Affidavit of Spanish Foreign Law Expert affirmed October 2, 2025 at Exhibit “A”: Legal Report on Spanish Law dated October 2, 2025 (“**Spanish Law Expert Report**”) at p. 14 (emphasis added).

⁴⁴ Shaw Examination, *supra* note 6 at .p 22 l. 12-16.

⁴⁵ Transcript from the cross-examination of Víctor de Cambra Antón conducted November 26, 2025 at p. 22 l. 6-11.

⁴⁶ Spanish Law Expert Report, *supra* note 43 at p.7.

(2) SAIL’s Creditors are the Beneficiaries of a Successful TUV Motion

37. The Responding Factum refers to SAIL receiving a “windfall” if the SPA is determined to not be enforceable.⁴⁷ SAIL is not the ultimate beneficiary of a successful outcome on this motion. If the Spanish Real Property is returned to SAIL, then its value will be allocated to SAIL’s creditors, not SAIL itself. Those creditors are unlikely to receive anything amounting to a “windfall” because the expectation is that secured creditors will experience a shortfall, even if the Shares are recovered. The Monitor does not anticipate a claims process for unsecured claims.

(3) The Monitor is Seeking the Return of the Shares

38. The Monitor is seeking the relief set out in the Amended Notice of Motion, which includes a declaration that Shares were not transferred to Global Holdings and SAIL remains the legal owner of the Share. Specific performance is only one of the remedies available if this Court determines that the SPA does not have legal effect.

(4) The Law of Equity Does Not Assist Global Holdings

39. Global Holdings invokes the law of equity to cleanse the Impugned Transaction: “[E]quity regards as done that which ought to be done”.⁴⁸ Given the badges of fraud present in this case, it cannot be said that Global Holdings is coming before this Court with clean hands.

40. Global Holdings argues that because SAIL and Global Holdings *acted* as if they would not insist on the enforcement of their strict legal rights, then it would be an injustice to hold that the SPA is unenforceable as against the Monitor or third parties.⁴⁹ This argument is an effort to push aside the fact that SAIL and Global Holdings *did not comply* with the basic legal requirements for a share transfer, such as executing a public deed or updating Real Holdings’ share register.⁵⁰ It is

⁴⁷ Responding Factum, *supra* note 3 at paras. 111-112.

⁴⁸ Responding Factum, *supra* note 3 at para. 111.

⁴⁹ *Ibid* at paras. 110-111.

⁵⁰ Spanish Law Expert Report, *supra* note 43 at p. 3.

not appropriate to ask this Court to apply its equitable jurisdiction to fix the parties' failure to comply with the legal requirements of a share transfer.

41. Global Holdings further invokes this Court's equitable jurisdiction by raising *Ex Parte James*. In *Ex Parte James*, money was voluntarily paid to a trustee in bankruptcy by an execution creditor under mistake of law. While, at law, money paid under mistake of law could not be recovered, the court held that a trustee of bankruptcy, as an officer of the court, ought to set an example. It ordered the trustee in bankruptcy to pay the money to the person really entitled to it.⁵¹

42. *Ex Parte James* evolved into a rule of general application described as a "prerogative of mercy reposing in the court to alleviate cases of unusual hardship in which a regard to the strict legal or equitable rights only would work a manifest injustice".⁵² Three key conditions that must be satisfied for the rule in *Ex Parte James* to apply are as follows:

- (a) the bankrupt estate must be enriched or could be enriched at the expense of the person making the claim;
- (b) in most cases, the claimant must not be in a position to file a proof of claim in the bankruptcy; and
- (c) to allow the trustee to retain the enrichment would be unfair and unjust.⁵³

43. Global Holdings has not pleaded these conditions. In any event, the rule in *Ex Parte James* does not countenance allowing Global Holdings to retain a valuable asset on soft payment terms while SAIL's creditors are left deprived of valuable assets.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3RD DAY OF DECEMBER, 2025.

⁵¹ *Bank of Montreal v Grafikom Limited Partnership*, [2009 CanLII 55117](#) (ONSC) [*Grafikom*] at para. [53](#), citing *Ex Parte James, Re Condon* (1874), LR 9 Ch App.

⁵² *Grafikom, ibid*, at para. [55](#), citing *Re Tyler, Ex p. Official Receiver*, [1907] 1 KB 865.

⁵³ *Grafikom, ibid* at para. [59](#).

n. avis

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SCHEDULE “A”

List of Authorities

1. *Aquino v Bondfield Construction Co.*, [2024 SCC 31](#)
2. *Bank of America Canada v. Mutual Trust Co.*, [2002 SCC 43](#)
3. *Bank of Montreal v Grafikom Limited Partnership*, [2009 CanLII 55117](#) (ONSC)
4. *Henfrey Samson Belair Ltd. v Wedgewood Village Estates*, [1986 CanLII 1122](#) (BC SC)
5. *Henfrey Samson Belair Ltd. v Wedgewood Village Estates*, [1987 CanLII 2794](#) (BCCA)
6. *Henfrey Samson Belair Ltd. v Wedgewood Village Estates*, SCCA No 378
7. *Jovkovic v Da Silva*, [2022 ONSC 2691](#)
8. *Jovkovic v Da Silva*, [2023 ONCA 137](#).
9. *Merchant v The Queen*, [2010 TCC 467](#)
10. *Montor Business Corp. (Trustee of) v Goldfinger*, [2016 ONCA 406](#) at para [53](#).
11. *Peoples Department Stores Inc. (Trustee of) v Wise*, [2004 SCC 68](#)
12. *Pitbaldo LLP v Houde*, [2016 MBQB 177](#)
13. *Re Canada 3000 Inc.*, [2006 SCC 24](#)
14. *Re Option Industries Inc.*, [2020 ABQB 535](#)
15. *Urbancorp Toronto Management Inc. (Re)*, [2019 ONCA 757](#).

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.



Nicholas Avis LSO#: 76781Q

SCHEDULE “B”

Statutory Authorities

Bankruptcy and Insolvency Act, RSC 1985, c B-3 _____

Definitions

2 In this Act, [...]

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)

[...]

Transfer at undervalue

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.

**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

**REPLY FACTUM OF THE
MONITOR**
(Returnable December 4, 2025)

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