



NO. B200284
VANCOUVER REGISTRY

ESTATE NOS. 11-2650763
11-2650762
11-2650761
11-2650764

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCIES OF
CONIAN DEVELOPMENTS INC.,
CONIAN DEVELOPMENTS (LA VODA) INC.
CONIAN DEVELOPMENTS (LA VODA II) INC. AND
FLII CONSTRUCTION LTD.

NOTICE OF APPLICATION

Name of Applicant: BDO Canada Limited, in its capacity as trustee (the "Trustee")

To: The Service List attached as **Schedule "A"**

TAKE NOTICE that an application will be made by the Trustee to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Monday, the 12th day of August, 2024 at 9:45 a.m. for the order set out in Part 1 below.

The Applicant estimates that the application will take 1 day.

- This matter is within the jurisdiction of an Associate Judge.
- This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. An Order, substantially in the form attached hereto as **Schedule "B"**, consolidating, for distribution purposes only, the herein consolidated bankruptcy estates of Conian Developments Inc. ("**Conian**"), Conian Developments (La Voda) Inc. ("**La Voda I**"), and Conian Developments (La Voda II) Inc. ("**La Voda II**") (as consolidated, the "**Joint Debtor Estate**") with the bankruptcy estate of B.C. Currency Exchange Inc. ("**BCCE**", and in respect of the bankruptcy estate, the "**BCCE Estate**").

Part 2: FACTUAL BASIS

Background

2. This proceeding involves the bankruptcies of Conian, La Voda I, La Voda II and FLII Construction Ltd. (“**FLII**”, and together with Conian, La Voda I, and La Voda II, the “**Conian Entities**”).
3. Pursuant to an Order pronounced July 20, 2023 (the “**Consolidation Order**”), the bankruptcy estates of Conian, La Voda I, and La Voda II were substantively and procedurally consolidated as the Joint Debtor Estate for all purposes. The FLII estate (the “**FLII Estate**”) was also consolidated with the Joint Debtor Estate, but only as to procedure.
4. As more particularly described in the Trustee’s reports filed herein, the Conian Entities are affiliates of B.C. Currency Exchange Inc. (“**BCCE**”), through their common director and sole shareholder, Rana Khaliq. Mr. Khaliq ran a Ponzi or Ponzi-like lending scheme (the “**Loan Scheme**”) through the Conian Entities and BCCE.
5. Numerous investors loaned tens of millions of dollars to one or more of Mr. Khaliq’s companies on an unsecured basis (the “**Unsecured Lenders**”), which funds were used by Mr. Khaliq to advance the Loan Scheme, and in many cases were commingled as between the Conian Entities and BCCE without the Unsecured Lenders’ knowledge, and without proper record of those transactions. Some of the Unsecured Lenders advanced funds directly to one or more of the Conian Entities. Most funds were advanced to BCCE, which were diverted without their knowledge to one of the Conian Entities.
6. BCCE is also in bankruptcy, under separate administration by McEown & Associates Ltd., as trustee (the “**BCCE Trustee**”).

Existing Claims Process Order

7. In light of the Loan Scheme, and the fact that neither BCCE nor the Conian Entities kept proper business records, the Trustee and the BCCE Trustee struggled to develop and recommend claims processes for their respective estates that would account for the commingling of funds, and result in a fair and equitable recovery for all impacted creditors.
8. A Claims Process Order was granted herein on July 20, 2023 (the “**CPO**”), the terms of which were informed by that context.
9. The CPO grouped creditors into three primary categories:
 - (a) “**Direct Lender**” means any Person or assignee who participated in the Loan Scheme by advancing funds directly to one or more of the Conian Entities;
 - (b) “**Involuntary Lender**” means any Person or assignee who participated in the Loan Scheme by advancing funds to BCCE;

- (c) **“Ordinary Creditor”** means any Person other than a Lender who has a Claim against any of the Debtors;
10. For clarity, the Involuntary Lender class encompasses all persons whose funds were initially advanced into BCCE, and subsequently transferred to or used by one or more of the Conian Entities, including:
 - a) investors who advanced funds into BCCE with the expectation that those funds would be used by the Conian Entities for real estate development purposes; and
 - b) customers and lenders who advanced funds to BCCE in the ordinary course of BCCE’s business, with the expectation of recovering interest or other benefits, and with no expectation that those funds would be transferred to or used by the Conian Entities.
 11. The CPO establishes distinct claims processes for claims by Direct Lenders and Involuntary Lenders, and provides that Involuntary Lender claims in the Joint Debtor Estate and the FLII Estate will be disallowed by the Trustee, and dealt with instead in the BCCE Estate. The CPO further provides that Involuntary Lenders will have no right to appeal disallowances of their claims by the Trustee.
 12. To ensure recovery by Involuntary Lenders and other creditors impacted by the Loan Scheme, the CPO contemplated that the BCCE Trustee would advance a claim in the Joint Debtor Estate (the **“BCCE Claim”**), to recover funds transferred from BCCE to the Conian Entities (then estimated to be approximately \$15,000,000), which funds would then be distributed to the Involuntary Lenders with proven claims in the BCCE Estate.
 13. The Trustee prepared and sought the CPO based on the information available to it at the time, including from preliminary information summaries (the **“Lender Information Summaries”**) collected from creditors of the Joint Debtor Estate and the FLII Estate and a preliminary forensic review of the limited accounting records maintained in respect of Mr. Khaliq’s companies, conducted by Ernst & Young, and in consultation with the BCCE Trustee.
 14. The Trustee anticipated, when it applied for the CPO, that the CPO would result in substantially equivalent recovery on a pro rata basis for Direct Lenders, Involuntary Lenders, and Ordinary Creditors alike, regardless of whether their claims were made in the Joint Debtor Estate or the BCCE Estate. In other words, the Trustee sought approval of the CPO on the basis that it would result in the most fair and equitable recovery for all those affected by the Loan Scheme.

Claims Adjudication Results

15. Following its adjudication of claims received in the Joint Debtor Estate, and contrary to what the Trustee anticipated based on the Lender Information Summaries and its initial discussions with the BCCE Trustee, the Trustee has determined that:
 - a) the majority of claims made in the Joint Debtor Estate were Involuntary Lender claims; and

- b) the net amount advanced by BCCE to the Conian Entities—and therefore the value of the BCCE Claim—is closer to \$10,000,000 (rather than the original estimate of \$15,000,000).
16. In light of these determinations, if funds are distributed strictly in accordance with the CPO, the Trustee estimates that Involuntary Lenders and other creditors in the BCCE Estate, including those who did and who did not intend that their funds be transferred to or used by the Conian Entities, will recover significantly less (proportionately) than Direct Lenders and Ordinary Creditors of the Joint Debtor Estate. In the Trustee's view, that would be an unfair and inequitable result, having regard to the nature of the Loan Scheme, and its impact on those groups. Specifically, the Trustee is concerned that distribution in accordance with the CPO will result in undue prejudice to Involuntary Lenders and other creditors in the BCCE Estate, as compared to Direct Lenders and Ordinary Creditors, based on the arbitrary and largely undocumented commingling of funds amongst BCCE and the Conian Entities, through no fault of any creditor.

Involuntary Lender Claims and Inspector Concerns

17. As required under the CPO, the Trustee disallowed all Involuntary Lender claims it received in the Joint Debtor Estate and the FLII Estate, and directed that those be dealt with instead in the BCCE Estate, by the BCCE Trustee (and, if allowed, paid from funds in the BCCE Estate, including any amount recovered by way of the BCCE Claim).
18. Since the Trustee's disallowance of all Involuntary Lender claims, the inspectors of the Joint Debtor and FLII Estates (the "**Conian Inspectors**") have told the Trustee that they consider the CPO to be unfair, insofar as it concerns the treatment of Involuntary Lender claims. The Conian Inspectors further allege that the Trustee and its legal counsel misled them as to how Involuntary Lender claims would be handled under the CPO. The Trustee and its legal counsel wholly deny those allegations.
19. Each of the Conian Inspectors is, or is a representative of, an Involuntary Lender.
20. The Trustee and the Conian Inspectors agree that the CPO should be amended to better achieve fairness for creditors impacted by the Loan Scheme, but disagree about how.
21. During a series of inspector meetings, the Trustee presented the Conian Inspectors with proposed amendments to the CPO, and ultimately recommended, and sought inspector approval of, amendments in accordance with those sought on this application (the "**Proposed Consolidation**"). The Conian Inspectors, however, do not support the Proposed Consolidation, and have indicated an intention to oppose this application. The Conian Inspectors have proposed alternative amendments to the CPO, and intend to seek court orders implementing those, instead of the Proposed Consolidation.
22. The Trustee's view is that, as presented, the Conian Inspectors' proposed amendments would result in an unlawful preference for certain Direct Lenders and Involuntary Lenders over other unsecured creditors, contrary to the *BIA*'s priority scheme.
23. The Trustee recommends that the CPO be amended in accordance with the Proposed Consolidation because, among other things, it:

- a) treats all unsecured creditors affected by the Loan Scheme equally, without undue preference, in accordance with the *BIA* priority scheme;
 - b) addresses the principal concerns of the Trustee and the Conian Inspectors, regarding exclusion of Involuntary Lenders from the claims process under the CPO; and
 - c) provides for a cost-effective and efficient process that ensures fair and equal treatment of claims advanced in the BCCE Estate and the Joint Debtor Estate.
24. The BCCE Trustee and its inspectors support the Proposed Consolidation, as it would result in substantially equivalent recovery for creditors of the BCCE Estate as for those of the Joint Debtor Estate.

Part 3: LEGAL BASIS

25. The purpose of a claims process is to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost efficient manner.¹
26. The *BIA* does not contain provisions governing approval of claims process or amendments thereto. This Court has the power to make an order pursuant to its statutory and inherent jurisdiction to control its own process and make an order it deems fit in the circumstances. The court's discretion should be guided by the timely and inexpensive resolution of all claims, as well as the need to ensure a process that is fair and reasonable to all stakeholders.²
27. Claims process orders should provide for an efficient, affordable, and certain process, to achieve the remedial objectives of the *BIA* and ensure stakeholders are treated fairly and reasonably in the circumstances of the case.³
28. The proposed amendments to the CPO, if granted, will better achieve these objectives; they will streamline the herein claims and distribution process, making it more cost-effective and efficient, and enhance the fairness of the process for all creditors affected by the Loan Scheme, regardless of whether their claims were made in the Joint Debtor Estate or the BCCE Estate.
29. Given the foregoing factors, the Trustee is of the view that the Proposed Consolidation should be approved.
30. The Conian Trustee will rely on the provisions of the *BIA*, and in particular ss. 34 and 183, among others.

¹ *Re Canwest Global Communications Corp.*, 2011 ONSC 2215 at para 40.

² *Steels Industrial Products Ltd. (Re)*, 2012 BCSC 1501 at para 38.

³ *Laurentian University of Sudbury (Re)*, 2021 ONSC 3885 at para 32.

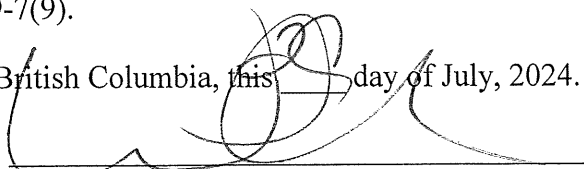
Part 4: MATERIAL TO BE RELIED ON

1. Claims Process Order pronounced herein on July 20, 2023.
2. Consolidation Order pronounced herein on July 20, 2023.
3. First Report of the Trustee, dated December 22, 2022.
4. Second Report of the Trustee, dated July 5, 2023.
5. Third Report of the Trustee, dated July 29, 2024.
6. Affidavit of the BCCE Trustee, to be affirmed.
7. Such further and other material as counsel may advise and this Honourable Court may consider.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 30 day of July, 2024.


 Lawson Lundell LLP
 Solicitors for the Applicant,
 BDO Canada Limited

This Notice of Application is filed by William Roberts and Baylee Hunt, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: wroberts@lawsonlundell.com and bhunt@lawsonlundell.com; telephone number: 604-685-3456.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____
of Part 1 of this Notice of Application

with the following variations and additional terms:

Date:

Signature of Judge Associate Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

Service List

Updated July 18, 2024

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SCHEDULE "B"

Action No. B200284
Vancouver Registry

Estate Nos. 11-2650763
11-2650762
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11-2650764

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCIES OF
CONIAN DEVELOPMENTS INC.,
CONIAN DEVELOPMENTS (LA VODA) INC.
CONIAN DEVELOPMENTS (LA VODA II) INC. AND
FLII CONSTRUCTION LTD.

ORDER MADE AFTER APPLICATION

ORDER CONSOLIDATING DISTRIBUTION PROCESSES

BEFORE THE HONOURABLE)
JUSTICE _____)
)
)
)

MONDAY, THE 12TH DAY
OF AUGUST, 2024.

ON THE APPLICATION of BDO Canada Ltd., in its capacity as trustee in bankruptcy (in such capacity, the "**Conian Trustee**") of Conian Developments Inc. ("**Conian**"), Conian Developments (La Voda) Inc. ("**La Voda I**"), Conian Developments (La Voda II) Inc. ("**La Voda II**"), and FLII Construction Ltd. ("**FLII**"), coming on for hearing at Vancouver, British Columbia on this day; AND ON HEARING William L. Roberts, counsel for the Conian Trustee, Christopher Ramsay, counsel for McEown and Associates Ltd. (the "**BCCE Trustee**"), and no one else appearing although served on those parties listed on Schedule "A" of the Notice of Application filed July 29, 2024; AND UPON READING the material filed, including the Third Report of the Trustee dated July 29, 2024;

THIS COURT ORDERS AND DECLARES THAT:

Definitions

1. For the purposes of this Order, capitalized terms will have the same meanings given to them in the Claims Process Order (the "**CPO**"), and the Substantive and Procedural Consolidation of Estates Order (the "**Consolidation Order**") pronounced herein on July 20, 2023, except as otherwise defined.

Consolidation of Distribution Process

2. The assets of:
 - (a) the herein estates of Conian, La Voda I, and La Voda II, as substantively and procedurally consolidated by the Consolidation Order (as consolidated, the “**Joint Debtor Estate**”); and
 - (b) the BCCE Estate

will be treated as common assets (the “**Consolidated Fund**”) for the purposes of distributing property to any Creditor with a Proven Claim in either the Joint Debtor Estate or the BCCE Estate (the “**Consolidated Creditors**”).
3. The assets of the bankruptcy estate of FLII Construction Ltd. (the “**FLII Estate**”) will remain separate from the Consolidated Fund, and any Creditor with a Proven Claim in the FLII Estate will receive a distribution of property from the FLII Estate, and not from the Consolidated Fund, in respect of such Proven Claim.
4. The BCCE Trustee will abandon the BCCE Claim.

Adjudication and Review of Claims

5. The Conian Trustee and the BCCE Trustee (each a “**Trustee**” and together, the “**Trustees**”) will each remain responsible for adjudication of Proofs of Claim filed in their respective estates. For greater certainty:
 - (a) BCCE Non-Lender Claims will be adjudicated by the BCCE Trustee;
 - (b) BCCE Lender Claims will be adjudicated by the BCCE Trustee;
 - (c) Conian Non-Lender Claims will be adjudicated by the Conian Trustee;
 - (d) Conian Direct Lender Claims will be adjudicated by the Conian Trustee; and
 - (e) Involuntary Lender Claims, to the extent those were filed in the Joint Debtor Estate, will be adjudicated by the Conian Trustee.
6. Each Trustee will remain responsible for responding to and otherwise dealing with any appeal from a Notice of Disallowance (each, a “**Disallowance**”) issued by that Trustee.
7. After each of the Trustees has completed adjudication of all Proofs of Claim submitted in their respective estate, in accordance with their respective claims processes, the Trustees will exchange all Proofs of Claim submitted in their respective estates and, as applicable, all Disallowances issued by each Trustee, for review by the other as follows:
 - (a) Within 14 days of receipt, each Trustee will:

- (i) review the other Trustee's Proofs of Claim and adjudication thereof (including any Disallowance); and
 - (ii) to the extent either Trustee disagrees with or has concerns about how the other Trustee adjudicated a particular claim, provide feedback to the other Trustee in writing.
- (b) On receipt of such feedback from the other, each Trustee will consider that feedback and, where appropriate, will seek clarification from and discuss with the other.
 - (c) Any feedback provided by one Trustee to the other as contemplated herein will be non-binding. To the extent the Trustees disagree about the adjudication of any Proof of Claim, the Trustee who adjudicated that Proof of Claim may, in its discretion, seek direction from the Court.
8. For greater certainty, subject to paragraph 7, nothing in this Order will obligate either Trustee to re-adjudicate Proofs of Claim that they have already adjudicated as at the date of this Order. Further, any Disallowance that has been issued at the date of this Order will remain in effect, subject to any successful appeal thereof.

Distribution Process

9. The BCCE Trustee will, within 10 days of this Order, pay to the Conian Trustee all funds in the BCCE Estate, and the Conian Trustee will hold those funds, together with the rest of the Consolidated Fund, in trust for the Consolidated Creditors, pending distribution in accordance with the CPO, the Consolidation Order, and this Order.
10. The Conian Trustee will be responsible for administering distribution of the Consolidated Fund.
11. Except as contemplated herein, the Conian Trustee will not distribute the Consolidated Fund until all appeals of Disallowances in both estates have been disposed of, or the deadline for such appeals has expired, whichever is later.
12. The Trustees may agree to make interim distributions from the Consolidated Fund on account of Proven Claims in either the Joint Debtor Estate or the BCCE Estate, subject to a holdback for all Disallowances that are or may be subject to appeal, and for the professional fees of both Trustees and their respective legal counsel. For greater certainty, no such interim distribution will be made without the consent of both Trustees.

Restatement of Claims Process Order

13. Except as specifically modified by the terms of this Order, the CPO and the Consolidation Order will remain in force and effect.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

WILLIAM ROBERTS
Counsel for the Applicant, BDO Canada Limited, in its capacity as trustee of the assets and undertakings of Conian Developments Inc., Conian Developments (La Voda) Inc., Conian Developments (La Voda II) Inc., and FLII Construction Ltd.

BY THE COURT

NO. B200284
VANCOUVER REGISTRY

ESTATE NOS. 11-2650763
11-2650762
11-2650761
11-2650764

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCIES OF
CONIAN DEVELOPMENTS INC.,
CONIAN DEVELOPMENTS (LA VODA) INC.
CONIAN DEVELOPMENTS (LA VODA II) INC. AND
FLII CONSTRUCTION LTD.

NOTICE OF APPLICATION



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File No. 28110-163493