CITATION: In the Matter of the Bankruptcy of Douglas Grozelle, 2026 ONSC 758
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ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE BANKRUPTCY OF DOUGLAS GROZELLE, of the City of Hamilton, in the Province of Ontario

)	*David Ward, Mryam Sarkis, and Armando Ranjbar*, for Grant Thornton Limited, trustee in bankruptcy of Douglas Grozelle
)	*Justin Necpal*, for John McMullan and Krista McMullan
)	*Jeffrey Kaufman and Bradley Adams*, for QQ21 Fund Inc ., 13176100 Canada Ltd ., Force One Marketing Corporation, and Chris Chetty Financial Inc.
)	*Jamie Gibson*, for Robyn Lee and 13877035 Canada Inc.
)	*Brian Fromstein,* for Ganesh Singh
)	*John N. Birch* for Chelsea Prince and Mercy Roldan
)	*Jack Lloyd,* for Sadaf Younge
)	*Karen Morimoto* for Crystal Diane Masterson, Jonathan Williams, Williams Venture Capital Inc., and Michael Foley
)	Antonio Martin, Vincent Lucyk, Drew Davenport, Gordon Fyfe, and Mark Budic, each speaking for themselves

HEARD: January 13 and 14, 2026

FL MYERS J

REASONS FOR DECISION

Overview

[1] Business bankruptcy is usually a tragedy. In each case a business has failed and left unpaid creditors and equity investors to suffer losses. No one wins.

[2] The principal goal of the bankruptcy process under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 is the fair sharing of the bankrupt's assets among its creditors. This can include efforts to increase the value of the bankrupt debtor's assets to provide the highest and fairest recovery to creditors. The bankruptcy process is also concerned with the need to protect the public interest in appropriate cases. See: *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32 (CanLII), at para. 79.

[3] In this case, the bankrupt, Douglas Grozelle, ran a fraudulent Ponzi scheme. He borrowed money from investors ostensibly to fund his business making short term bridge loans on real estate. But there were no bridge loans. It was a lie, a scam, a fraud. Like most fraudulent Ponzi schemes, Mr. Grozelle promised super-market, often incredibly high returns to attract investors. Then he used funds raised from later investors to repay earlier investors.

[4] Investors were induced to loan money to Mr. Grozelle because his returns paid to the "winners" were so high. Even some creditors who told me that they were suspicious that promised returns were "too good to be true" fell victim to the images of easy money dangled before them by apparently credible people.

[5] But, like all other fraudulent Ponzi schemes, eventually Mr. Grozelle could not raise enough new money to keep paying "interest" on all his existing loans. The scheme came to a screeching halt. Mr. Grozelle was put into receivership and then bankruptcy. He and others who allegedly helped him perpetrate his fraudulent Ponzi scheme now face criminal charges.

[6] But when the music stopped, some creditors were left with unpaid loans owing to them by Mr. Grozelle. Others, who were involved at earlier times, had already been repaid their loans plus profit from the massive "interest" payments that typified a fraudulent Ponzi scheme. These people are referred to in this motion as "winners."

[7] The Trustee asks the court to order that the winners repay to the bankrupt estate the "interest" or profits they received. This will help fund payments to those to whom Mr. Grozelle still owes money. The Trustee does not ask for the winners to repay everything they received from Mr. Grozelle. The Trustee is content that they were entitled to their money back i.e. to keep the principal repayments made to them by Mr. Grozelle. If the Trustee succeeds on this motion, the winners will still do better than creditors who have not received their capital back. But the Trustee submits that it is unfair, unjust, and contrary to the public interest for the lucky winners to keep their Ponzi "interest" when others are unpaid even their principal.

[8] I use quotations around "interest" because, as discussed below, while payments were formally denoted as interest payments, often pursuant to forms of promissory notes, the reality is that whatever they were called, they were just Ponzi scheme payments of later investors' money designed to perpetrate the fraudulent scheme.

[9] For the reasons that follow, I am satisfied that the payments made by Mr. Grozelle to the winners identified by the Trustee over-and-above the return of their principal are void as against the Trustee under the *Fraudulent Conveyances Act*, RSO 1990 c F.33.

[10] It may strike some "winners" as unfair that they have to repay their "profits" to fund others who lost out in the scheme. Some might not have known it was a fraudulent Ponzi scheme. Some might not have even had the sophistication to realize that when something seems too good to be true, it usually is. But all are just fortuitous. They participated in a fraudulent scheme, often contracting for illegal interest rates, and all received payments that were intended by Mr. Grozelle to defraud, delay, and hinder his other creditors. That is the very definition of unlawful fraudulent conveyances.

[11] Two very similar cases of fraudulent Ponzi schemes have been adjudicated recently. In *Golden Oaks,* the Supreme Court of Canada had no difficulty accepting that a scheme in which investments were made by way of debt (promissory notes) rather than equity (shares) still amounted to a Ponzi scheme.[1]

[12] In *My Mortgage Auction Corp. (Re)*, 2025 BSCS 1520, bankruptcy expert Fitzpatrick J. made the same orders the trustee asks me to make today. I refer readers to Justice Fitzpatrick's decision in full. I agree with it and adopt her reasons as my own.

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[1] Mr. Fromstein submits that the fact the investors loaned money to Mr. Grozelle is a key difference from a scheme in which people make equity investments into a Ponzi scheme. Loans are legal obligations that must be repaid in fixed amounts (including interest as agreed). A Ponzi scheme occurs, he submits, when people invest in equity. They are making a bet about the future profits of a business. He submits that people who invest in equity, based on unrealistic promises of return, are not in the same position as people who enter into legal obligations for loaning money with unrealistic interest rate promises. The latter are entitled to receive what they have bargained for. Lenders are not betting on the success of the business to yield super-market profits. I disagree. In each case a fraudster makes claims that he can achieve super-market returns to induce people to put their money into the fraudulent scheme. They are then paid by funds that the fraudster obtains from later investors. Nothing of relevancy turns on the accounting designation of fraudulently obtained investments as equity or debt. To pay super-market returns on equity or on debt requires the company to have a magic business model that the fraudster claims can support such payments. In this case, Mr. Grozelle pretended that he made enough money on short term real estate bridge loans to support payments of enormous interest. There is no difference in kind between the two forms of investment in a Ponzi scheme. To accede to this argument would put form over substance. The SCC accepted debt as a Ponzi scheme in *Golden Oaks* and so do I.

[13] Two paragraphs of Justice Fitzpatrick's decision, in particular, bring home the justice and justness of the relief sought by the Trustee:

> [9] I emphasize at the outset that there is no allegation that any of the [Ponzi Scheme] investors were participants in the Scheme or even had knowledge that Mr. Martel was perpetrating this fraud. No investor here is a "winner" in the true sense - each is a victim. Yet, there is a substantial disparity in terms of the outcomes faced by the investors - with some investors reaping "profits" from the Scheme, often only by blind luck in terms of the timing of the Scheme's collapse, and only by reason of Mr. Martel raising that money by perpetrated the fraud on later investors.
>
> …
>
> [224] The Net Winner can hardly say they had a reasonable expectation of profiting through an illegal and fraudulent scheme that was perpetrated at the expense of other less fortunate investors…

See also: *Kriegman v. Dill*, 2018 BCCA 86 (CanLII) at paras. 14 and 75.

The Facts around the Scheme

[14] Starting with the First Report of the Trustee dated November 29, 2024, the Trustee has disclosed its very comprehensive efforts to unravel the fraudulent Ponzi scheme perpetrated by Mr. Grozelle.

[15] The Trustee reviewed every movement of money into and out of Mr. Grozelle's bank accounts over the relevant period.[2]

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[2] Some of the winners submit that the Trustee commenced its review at too late a date and may have missed illicit payments to some of the people who participated in the Ponzi scheme with Mr. Grozelle. The Trustee's Third Report confirms that only about 1% of transactions occurred before February, 2021. Yet it included in it accounting some 90 transactions from 2020. In the Trustee's judgment there was no cost

[16] In April and May, 2025, the Trustee gave access to the creditors and their counsel to a data room containing its accounting. After some back-and-forth, the Trustee also gave creditors access to its working papers associated with its accounting review.

[17] The Trustee provided its assessment of each movement of funds and provided the back-up information that exists for each. This included financial documents and also relevant emails pulled from the thousands of emails among Mr. Grozelle and others that shed light on particular movements of cash.

[18] The Trustee has produced a spreadsheet detailing the monthly flow of funds. It discloses a total churn of $103 million from February, 2021 until the scheme collapsed in November, 2023.

[19] The Trustee created and provided investor-specific ledgers to each of the 236 investors. It has combined or netted some transactions among related parties to capture the real economic outcomes.

[20] The Trustee has been able to conclude that 116 of the 236 investors suffered losses and are *prima facie* creditors of the bankrupt estate. They were not repaid the full amount of their investments. Their total loss is $24,555,704.

[21] By contrast, the Trustee has identified 120 net winners. They contributed $28,361,446 and received back $49,937,951. They received their full investments plus an additional profit of $21,576,505. Profits ranged from 5% to 6,700% on investors' principal contributions. Some 70 people (including Mr. Grozelle) received about $4.8 million in the aggregate without contributing any capital to the scheme.

[22] The winners' profits amount to about 85% of the creditors' losses. I suppose this is not a fluke as the creditors' money was used to pay the profits to the winners.

[23] Mr. Grozelle told investors that he was adept at dealing with short term bridge loans for real estate. In seeking to borrow funds to finance his bridge loan business, he promised a prompt return of capital and above-market returns.

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benefit to looking at earlier dates. I am satisfied that this is a reasonable determination by the Trustee.

[24] Mr. Grozelle purported to document many loans from investors using short term unsecured promissory notes from himself personally (in most cases). The Trustee reviewed more than 900 notes obtained from Mr. Grozelle and from investors themselves.

[25] The terms of the notes issued by Mr. Grozelle did not correspond with payments made by him to investors. In addition, more than 87% of the notes are defective in that there were not completed or properly signed.

[26] The Trustee advises that 96% of the promissory notes issued by Mr. Grozelle to his inventors purported to promise usurious (i.e. criminal) interest rates of more than 60% per year (as set by the *Criminal Code of Canada* at the time). On their faces, the notes promised interest rates of less than 60%. But the terms of the loans were less than a year. None of the notes disclosed an annualized interest rate. The Trustee has calculated that annualized interest rates contained in the promissory notes ranged from 0% to 18,250%.

[27] Many of the notes contained language that either contradicted other terms of the notes or just made no sense in English. The Trustee provides numerous examples in the First Report. The promissory notes obviously were not prepared by lawyers or anyone who cared about the import or the efficacy of their terms.

[28] I accept the Trustee's view that the promissory notes are not a useful resource in understanding the movement of funds by Mr. Grozelle. They are more properly characterized as marketing tools doled out by Mr. Grozelle to make his fraudulent Ponzi scheme look like something that it wasn't.

[29] The Trustee reported on bank transactions rather than on a note-by-note basis. The Trustee traced approximately 8,500 bank transactions as funds were moved around by Mr. Grozelle.

[30] The Trustee says that it could not follow the promissory notes because:

(a) Grozelle did not maintain a note ledger or any means of systematically and reliably recording note obligations incurred, note obligations outstanding, or note obligations retired.

(b) Grozelle did not create or maintain records of the amounts advanced, owing and/or repaid such as general ledgers, trial balances, or any reliable accounting method at all;

(c) the payments that Grozelle made to Investors bear little if any resemblance to the principal "advanced" or "interest" owed on a given promissory note or the due date reflected on the note;

(d) it appears that the amount of funds transferred by Grozelle to an Investor was dictated by how much money Grozelle had available to transfer at the time the Investor demanded repayment, and how many Investors were making competing demands, rather than the due date or amount owed under any given promissory note, particularly in the second half of 2022; and

(e) Grozelle appears to have made lump sum transfers to Investors without regard to the maturity dates of the promissory note (to the extent such requirements can be determined at all).

[31] The Trustee received some information from Mr. Grozelle. It was of limited use in the absence of ledgers or even bank deposit books. The Trustee had to piece each transaction together from source documents. Its assessment is both comprehensive and transparent.

[32] I am satisfied that the Trustee did a massive amount of work to unravel complex accounting data. The Trustee has identified a small percentage of transactions for which it cannot yet provide certain accounting. But otherwise, the movements of funds to and from Mr. Grozelle funds are all accounted for. The record is complete and full.

[33] On page 3 of his endorsement dated October 25, 2024, Valente J. required that any investor who wishes to challenge the Trustee's accounting "do so by delivering the party's responding accounting in the same form as that of the Trustee." None of the winners who oppose the relief sought by the Trustee complied with this direction. They have evidence about the Trustee's conclusions and inferences to be drawn from the accounting. But there is no particularized challenge to the correctness of the Trustee's accounting of each banking transaction.

[34] Mr. Grozelle did not operate a business or have a business strategy to deal with funds received apart from using them to pay out prior investors. There were no short-term bridge loans being made or bought or sold for a profit.

[35] At some point, Mr. Grozelle advanced as much as $4.4 million of the funds on hand to K&M Investments, a holding company operated by Mr. and Mrs. McMullan. K&M invested approximately $1.4 million in high-risk start-ups. Most of the funds provided by Mr. Grozelle (about $2.8 million) were transferred to Mr. and Mrs. McMullan and their businesses. Of the $1.4 million invested in start-ups, only $103,000 was recovered. In no sense was this deflection of a small portion of the funds received from investors an operating or profitable business.

[36] The McMullans have not produced financial statements for K&M. It stopped filing tax returns after 2021. K&M deposited its cash in a bank account at BMO. The McMullans used that account as well for five other corporations they owned or controlled. Mr. McMullan testifies that some funds received from Mr. Grozelle were paid to investors whom the McMullans brought into the Ponzi scheme. Some funds were returned to Mr. Grozelle. The Trustee concludes that K&M was the McMullans' vehicle to mix and move funds as they pleased.

[37] As detailed by the Trustee in its First Report, Mr. Grozelle generated no business income on the funds lend by investors. Rather, repayments with "interest" were made from funds loaned by subsequent investors. Investors were induced to invest by offering improbable high returns. Loans were said to be short term and therefore of minimal risk.

[38] In addition, some of the early investors with Mr. Grozelle were members of the Halton Regional Police Force. Mr. Grozelle focused on their close connection to induce others to invest. Some of the police officers and other large investors took on roles bringing new investors into the scheme. They used the inherent authority of their positions to add credibility to the fraudulent scheme. Some 20 current and former members of the HRPF are investors in the Ponzi scheme. At least six of the 12 witnesses whose testimony was adduced by the winners represented on these motions are police officers or people brought into the fraudulent Ponzi scheme by police officers.

[39] Some investors, like the McMullans, facilitated others to invest. Some of the investors received promissory notes from Mr. Grozelle. Others relied on their facilitator as their principal borrower or guarantor. Guarantee terms seem to have been informal and differed by facilitator and perhaps even by loan.

[40] The facilitators submit that the Trustee greatly exaggerated the profits they are alleged to have received because the bulk of the funds they received from Mr. Grozelle went to repay their investors on Mr. Grozelle's behalf.

[41] The trustee submits that (a) issues between facilitators and their own investors are beyond the reach of the bankruptcy. The facilitators and their investors can work out their arrangements between them; and (b) to the extent that repayment of their investors by facilitators affects the calculation of the facilitator's own profit, if any, or the equities of the trustee's claims against the facilitators, individual accounting will be reviewed in the next phase of the proceeding.

[42] Over time, investors were ignored, misled, and preferred. Apparently, for example, Mr. Grozelle would give less returns to investors who retained counsel to look into their investments. He chose whom to pay, how much, and when.

Mr. Grozelle Operated a Fraudulent Ponzi Scheme

[43] In *My Mortgage Auction Corp.*, Justice Fitzpatrick discussed the elements or hallmarks of a Ponzi scheme as follows:

> [57] This Court in *Boale, Wood & Company Ltd. v. Whitmore*, 2017 BCSC 1917 [*Whitmore*] at para. 45—as adopted in [*LLS America LLC (Trustee of) v. Dill*, 2018 BCCA 86] at para. 11—referred to the following definition from the United States Securities and Exchange Commission as to what constitutes a Ponzi scheme:
>
> > … an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the fraudsters focus on

> attracting new money to make promised payments to earlier-stage investors and to use for personal expenses, instead of engaging in any legitimate investment activity. …

[44] As discussed by Fitzpatrick J., the hallmarks of a fraudulent Ponzi scheme recognized in the case law include:

i. Payment of purported returns to investors from funds contributed by new investors;

ii. The lack of a legitimate business or investment activity by the Ponzi scheme operator;

iii. Promises to investors of high returns with little risk;

iv. The operator's focus on attracting new investments especially through close personal connections; and

v. A significant flow or churn of funds in and out of the operator's accounts.

[45] Based on the facts set out above and in the Trustee's reports, I am satisfied that Mr. Grozelle operated a fraudulent Ponzi scheme.

[46] One counsel argued that there was no Ponzi scheme because the Trustee has not proven that Mr. Grozelle committed civil fraud. He submitted that to prove a fraudulent Ponzi scheme, the Trustee was required to prove that Mr. Grozelle made misrepresentations of facts knowing them to be untrue which investors relied upon to their detriment.

[47] This argument is nothing more than semantics. A fraudulent Ponzi scheme is a title denoting a legal conclusion from a series of hallmarks that I have found to be present.

[48] The word "fraudulent," when used here, means "dishonest." There is no basis for the use of the word "fraudulent" in the nomenclature identifying a Ponzi scheme to mean that the definition of a Ponzi scheme must include proof of all elements of civil fraud.

[49] In fact, the proper name of a civil claim for fraud is the "tort of deceit." *Derry v. Peek* (1889), 14 App. Cas. 337 as cited in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at para. As cases such as *R. v.*

Riesberry, 2015 SCC 65 and *R. v. Olan* et al., 1978 CanLII 9 (SCC) make clear, fraudulent conduct is that which may be stigmatized as dishonest whether deceitful or not. In other words, a "fraudulent Ponzi scheme" is a dishonest scheme that meets the hallmarks of a Ponzi scheme. The tort of deceit or proof of civil fraud is not required or relevant.

Grozelle was Insolvent throughout.

[50] Fraudulent Ponzi schemes are deemed insolvent as a matter of law from the moment of their inception. They never have sufficient assets to repay their promised returns. See: *Haag Capital, LLC v. Correia*, 2010 ONSC 5339 (CanLII), at paras 9, 19, and 36; and *My Mortgage Auction Corp*. at para. 167.

[51] As a result, in impugning a transaction, as a matter of law, the Trustee need not prove insolvency at any particular point in time. It is inferred by operation of law. In any event, I accept the Trustee's financial analysis at paras. 123 to 127 of its First Report to the effect that Mr. Grozelle could never meet his liabilities undertaken in his fraudulent Ponzi scheme.

Three Causes of Action claimed by the Trustee.

[52] In this case, the Trustee relies on three causes of action to claw back the winners' profits: fraudulent conveyance; unjust preference; and unjust enrichment.

[53] I deal specifically only with the Trustee's claim under the *Fraudulent Conveyances Act,* RSO 1990, c F.29. I deal very briefly with the other two causes of action first.

(i) The *Assignments and Preferences Act* exempts Payments of Money

[54] The Trustee's claim under the *Assignments and Preferences Act*, RSO 1990, c A.33 is defeated by s. 5 of the statute. That section exempts from invalidation, among other things, any preferential payments made in money. All the payments that the Trustee seeks to claw back were payments of money.

[55] I would not be the first to question the efficacy of the statute given the breadth of this exemption. However, that is an issue for the Legislature of Ontario. *Kisluk v. B.L. Armstrong Co. Ltd.*, 1982 CanLII 1931 (ON SC).

(ii) Unjust Enrichment cannot be Established on this Record.

[56] I do not accept that the promissory notes provide a juristic reason for the alleged enrichment. As noted above, they were provided by or for Mr. Grozelle for show. Virtually all contained promises of illegal interest. Most were unsigned. Many were incomprehensible as written. The payments made by Mr. Grozelle bore no relationship to the terms of the promissory notes. Giving the promissory notes preclusive effect now is contrary to the goals of fairness and equity.

[57] Similarly, in this circumstance a court may conclude that the usual equitable defence that a recipient of funds has "changed his or her position" making it inequitable to compel them to return funds, may not apply. To the extent this defence is discretionary however, as discussed briefly by Pepall J. (as she then was) in *Haag* at para. 70, in my view the court ought to consider the discretion in connection with individual facts and circumstances.

[58] In addition, some winners, particularly alleged facilitators, submit that since they passed on to other investors funds they received from Mr. Grozelle, it is not just and equitable to hold them liable for the full amount of the funds they received from Mr. Grozelle. This may just be a form of the "change of position" defence that Pepall J. declined to allow in *Haag*. In my view however, absent an understanding of an individual's overall position, the court is not in a position to assess the equities of their situations. I cannot assess unjust enrichment claims against or in favour of individuals on this record.

[59] This finding has no practical impact however in light of the finding that next follows under the *Fraudulent Conveyances Act*.

(iii) Payments of Profits to Winners are Fraudulent Conveyances and are therefore Void as against Creditors

[60] Sections 2 and 3 of the *Fraudulent Conveyances Act* provide:

> **Where conveyances void as against creditors**
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> 2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.
>
> **Where s. 2 does not apply**
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> 3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

[61] The statute looks only at the intention of the person who made the impugned transfers. A creditor or trustee who seeks to invalidate fraudulent conveyances needs to prove that the payments were made with the intent to defeat, hinder, delay, or defraud creditors. The knowledge or intention of the recipient of a fraudulent conveyance is irrelevant to proof of the necessary facts to impugn payments under s.2 of the statute. Knowledge of the recipient may be relevant however to save an impugned transaction under s. 3 above.

[62] There is also no requirement in this statute to prove that a debtor who makes an impugned conveyance was insolvent when he did so. Insolvency may be a factor that is relevant to the finding of intent that the statute does require.

[A] Grozelle's Fraudulent Intention can be Inferred.

[63] The case law provides that the necessary fraudulent intention of the payor may be inferred from the fact that the payor was running a fraudulent Ponzi scheme. His whole goal is to pay out money to keep other investors from reclaiming their funds too soon. It is a fraudulent process designed to defraud and delay creditors by making payments to some to impress others.

[64] In *Haag Capital*, Pepall J. described US law that she was asked to enforce in Ontario:

> [35]…With respect to the former, fraudulent intent must be proven and the investor's knowledge and/or intent is irrelevant to establishment of the fraudulent transfer claim on a *prima facie* basis. In cases involving a Ponzi scheme, proof of actual intent is simplified because fraudulent intent may be inferred from the mere existence of the Ponzi scheme itself. The transfers made by Den Haag in furtherance of the Ponzi scheme were therefore necessarily made with actual intent to hinder, delay and defraud Den Haag's creditors.

[65] In *My Mortgage Auction Corp*., Fitzpatrick J. held:

> [196] As stated in [*Abakhan & Associates Inc. v. Braydon Investments Ltd*., 2009 BCCA 521] at para. 73, the only intent necessary to avoid a transaction under the *FCA* is the intent to put one's assets out of reach of one's creditors. No further dishonest or moral blameworthy intent is required, although the circumstances here clearly give rise to a finding that Mr. Martel was acting dishonestly in respect of the operation of the Scheme.

[66] Fitzpatrick J, also relied on the decision and reasoning in *Boale, Wood & Company Ltd. v Whitmore*, 2017 BCSC 1917 (CanLII), in which Weatherill held as follows:

> [50] An intention to defraud creditors may be inferred from that fact that a debtor is operating a Ponzi scheme, as no other reasonable inference is possible: *Merrill v. Abbott (In Re Independent Clearing House Co.),* 77 B.R.

843, 871 (D. Utah 1987). In that case, the United States District Court for the District of Utah stated, at p. 860–861:

> One can infer an intent to defraud future [investors] from the mere fact that a debtor was running a Ponzi scheme. Indeed, no other reasonable inference is possible. A Ponzi scheme cannot work forever. The investor pool is a limited resource and will eventually run dry. The perpetrator must know that the scheme will eventually collapse as a result of the inability to attract new investors. The perpetrator nevertheless makes payment to present investors, which, by definition, are meant to attract new investors. [The perpetrator] must know all along, from the very nature of his activities, that investors at the end of the line will lose their money…
>
> … the question of intent to defraud is not debatable given the fact that the debtor was carrying on a Ponzi scheme …

[51] Even apart from a Ponzi scheme, fraudulent intent to defeat creditors may be inferred from the circumstances surrounding the transaction where "badges" of fraud exist: *Ocean Construction Supplies Ltd. v. Creative Prosperity Capital Corp*., 1995 CanLII 740 (BC SC), [1995] B.C.J. No. 1814 (S.C.) at paras. 25–28; *Firstar Investment & Financial Co. v. Xu*, 2017 BCSC 271 at para. 39; *Botham Holdings Ltd. (Trustee of) v. Braydon Investments Ltd*., 2009 BCCA 521 at para. 75.

[52] The following badges of fraud in this case support the inference that Samji intended to defraud her creditors (the Investors):

> a) the Scheme, by its very nature, was insolvent from the outset;

> b) the Excess payments made to the defendant were sourced entirely from funds invested by others with the clear objective of defeating their respective investments; and
>
> c) the inference is overwhelming and uncontroverted that Samji knew, or at the very least ought to have known, that each transfer to the defendant had the effect of further defrauding the Investors.
>
> [53] Plainly, the Excess constitutes a "disposition of property". I find that it was paid by Samji with the intent to delay, hinder, or defraud her creditors.

[67] In a similar vein, in discussing the trustee's claim for relief for fraudulent preferences in *My Mortgage Fraud Corp*., Fitzpatrick J. reasoned:

> [180]…Although the specific reasons of Mr. Martel are not known, the very fact that Mr. Martel was operating a Ponzi scheme gives rise to the inference that he made those payments in an attempt to "keep the balls in the air" as long as he could by satisfying the demands of certain investors (the Preference Recipients) who, for some reason, demanded his attention (and funds) more than other investors.
>
> [181] As the Trustee notes, the very nature of a Ponzi scheme is that certain creditors (earlier investors) are preferred by using the funds of later investors to pay those initial investors. As the Court in *Whitmore* put it at para. 50, an intention to defraud creditors may be inferred from the fact that a debtor is operating a Ponzi scheme and no other reasonable inference is possible.

[68] The facts are the same here. Mr. Grozelle paid whomever he chose to pay based on his assessment of available funds. He punished creditors who retained counsel. This is an obvious effort to dissuade investors from taking steps that would bring the fraudulent Ponzi scheme to light.

[69] I accept the foregoing statements of the law as applicable and appropriate here. I can and do infer that in operating a fraudulent Ponzi scheme, Mr. Grozelle made profit payments to winners to defraud, hinder, and delay creditors at least. The whole point of the endeavour is to keep people from exposing the scheme and enforcing their rights for as long as possible.

[70] Some of the winners submit that under s. 2 of the *FCA* Mr. Grozelle's fraudulent intention cannot be inferred globally. Rather, they submit that each and every payment should be subject to individualized review. They submit that the Trustee must prove for each impugned payment of money that Mr. Grozelle had the necessary fraudulent intention. To that end, they rely on cases like *Incondo Building Corp. v. Sloan*, 2014 ONSC 4018, to support the need for an assessment of the traditional badges of fraud to infer fraudulent intent.

[71] Fitzpatrick J. rejected the submission that each transaction requires individualized review under s. 2 of the *FCA* in *My Mortgage Auction Corp.* on the basis of the reasoning in para. 50 of *Whitmore*, citing *Merrill*, above. I agree. Each payment in a fraudulent Ponzi scheme is necessarily made with the intention to defraud, hinder, or delay creditors. The badges of fraud are a red herring. They are used as signposts when the intention of the payor is otherwise difficult to infer. That is not the case here.

[72] In any event, as discussed in para 52 of *Whitmore* above and paras. 202–206 of *My Mortgage Auction Corp.*, a review of badges of fraud supports the global inference that all payments of profit to winners made by Mr. Grozelle were made with the necessary fraudulent intent.

[73] I find that the Trustee has made out the elements in s. 2 of the *FCA* in respect of Mr. Grozelle's payments of profit to winners.

[B] Payments of Profit to Winners are not made in Good Faith or for Good Consideration

[74] The potential defence in s. 3 of the *FCA* is readily dealt with as well. Payments made under a fraudulent Ponzi scheme are not payments made for "good consideration" or in "good faith" as required by that section.

[75] Once again in *Haag Capital*, Pepall J. described the applicable US law that she enforced in Ontario:

> [36]…Generally the courts have held that a debtor does not receive reasonably equivalent value for payments made to its investors which represent distributions in excess of the principal investment. The "good faith and for value" defence, the onus of which is upon the Defendants here, is not available to shield an investor in a Ponzi scheme from having to return sums received in excess of his or her investment, because as a matter of law, one does not provide "value" in exchange for "profit" in a Ponzi scheme.

[76] In *Whitmore*, Weatherill reasoned:

> [70]…I agree with the observations of the United States Court of Appeals in *Donell* and of the Ontario Superior Court of Justice in *Den Haag Capital* that the perpetrator of a Ponzi scheme does not receive "reasonably equivalent value" or "good consideration" for payments made to investors that are in excess of the investors' capital investment. That is because there is no provision of "value" in exchange for "profit" in a Ponzi scheme. Likewise, the recipient of the fictitious profits provides no consideration. While innocent investors in such schemes invest with the expectation of profit as consideration for them having invested in a legitimate business enterprise, what they receive beyond the money they invest, if anything, is not consideration for their investment but rather the principal invested by others in the scheme.
>
> [71] Because the disposition of the Excess was made without good consideration, the only fraudulent intent required to be shown is that of Samji.

[77] In *My Mortgage Auction Corp*. Fitzpatrick came to the same conclusions:

> [208] I adopt this Court's reasoning in *Whitmore* as being equally applicable here to negate any application of the s. 2 defence on the part of the Net Winners with

respect to the Excess Funds. No defences arise with respect to "good consideration", "good faith" or "lawful transfer". Specifically:

> a) A perpetrator of a Ponzi scheme does not receive "good consideration" or "value" for payments made to investors in excess of their principal investment. Such payments are merely used to perpetrate and continue the fraud and are not profits from a legitimate enterprise: *Whitmore* at paras. 59, 70–71; *Haag Capital* at para. 36;
>
> b) Since no "good consideration" was exchanged, the only fraudulent intent required is that of MMAC, which has been established: *Whitmore* at para. 71;
>
> c) I acknowledge that many of the Net Winners argue that their investments were made "in good faith". However, even accepting that as true for the purpose of this application, it is of no relevance, since the only relevant intention is that of the transferor, being MMAC, who was of course not acting "in good faith". In the context of a Ponzi scheme, no issues of "good faith" can arise to shield an investor in a Ponzi scheme from having to return sums received in excess of his or her investment; …

[209] As they did in respect of intent, some investors argue that the Trustee must provide evidence of a lack of good consideration under the *FCA* on a recipient-by-recipient, and transaction-by-transaction, basis. As with the previous argument, this argument is without merit and contrary to the above authorities.

…

[212] Therefore, logically, all payments of Excess Funds by MMAC lacked "good consideration".

> [213] In conclusion, I find that the Trustee has established that the payment of the Excess Funds to the Net Winners are fraudulent conveyances, contrary to the *FCA*. As such, these payments are void and must be repaid by the Net Winners to the Trustee.

[78] It is important to reiterate that the Trustee only seeks to claw back the profits made by winners on pretend interest payments made by Mr. Grozelle.

[79] In my view, winners' profits are not made with good consideration or in good faith. They are payments made through an illegal and fraudulent scheme that was perpetrated at the expense of other less fortunate investors. Therefore, the defence in s. 3 of the *FCA* does not apply.

[80] I therefore find that payments of profit to the winners identified by the Trustee are void as against creditors under s. 2 of the *FCA* and are not saved under s. 3 of the statute.

The *BIA* Summary Process

[81] Mr. Kaufman submits that the court cannot make findings on the current record. He submits that this is a motion for summary judgment or akin to summary judgment under Rule 14.05 (3)(h) as I discussed in *Rubner v. Bistricer*, 2018 ONSC 1934 (CanLII), partly overruled but not on this issue, 2019 ONCA 733 (CanLII).

[82] I disagree. This is a motion in a bankruptcy. See: *Stelco Inc. (Re)*, 2007 ONCA 483 (CanLII), at para. 55. All parties had months to deliver the evidence on which they wished to rely. I am able to make findings of fact on the record and I am aware of the limits of the court's ability to make findings on contested facts on a written record especially if credibility findings are required. But the record here is not at all lacking for the findings that I made above. Rather it is full and complete.

[83] Mr. Kaufman submits that each winner is entitled to a full record with evidence from others - like a bookkeeper whom his clients identified. Nothing stopped his clients from obtaining that evidence if they thought it helpful. They had more than enough time to do so.

[84] The winners before me submit that the Trustee is required to issue a statement of claim against each winner against whom it wishes to recover funds. The defendant(s) should be entitled to documentary and oral discovery in the ordinary course. They should be entitled to issue their own third- and subsequent-party claims to ensure that all proper parties are before the court for each impugned payment.

[85] The winners before me point to *Golden Oaks* in which each transaction was analyzed individually. But nothing in that case says that this is always required. Apparently in that case, the records enabled the parties and the court to piece together note-by-note transactions. As I discussed at the outset, here the comprehensive accounting could only be accomplished by following the movements of money rather than documented individual lending transactions.

[86] In my view, the law ought not and does not preclude review of a fraudulent Ponzi scheme on the basis that the operator kept too few records to allow a transaction-by-transaction review. That would benefit those whose wrongdoing is greater. In addition, there is nothing wrong with the accounting provided by a review of movements of cash as opposed to transactions under largely meaningless promissory notes. While some argue that the Trustee's comprehensive accounting is underinclusive or does not support inferences drawn, no one challenged individual entries in the manner required by the order made by Valente J.

[87] There is no money in the bankrupt estate. Requiring the Trustee to bring 120 individual actions would be cost prohibitive. It would also involve wasteful duplication and engender serious delays.

[88] In *My Mortgage Auction Corp*., Fitzpatrick J. adopted the same two-stage summary process as is proposed by the Trustee here. She held (and I adopt) the following:

> [109] I accept the Trustee's submission that this application stands as the most practical, effective and efficient means of the balancing process in this proceeding, as discussed in *LLS America*. I also readily conclude that the lengthy and involved process suggested by the Net

Winners represented by Aikins is largely intended to delay the inevitable and exhaust what little financial resources remain in the Estate, all in the hope that the Net Winners will escape from any determination of liability.

[110] Turning to the individual action argument, I concede that it was open to the Trustee to commence separate actions against all Net Winners and Preference Recipients. Aikins refers to some examples of such an approach: *Whitmore*; the *Golden Oaks* litigation (citation found later in these reasons) and an Ontario Superior Court Action regarding the bankruptcy of Douglas Grozelle (Court No. 32-3126798).

[111] Yet, as I have stated above, the *BIA* contemplates a summary proceeding, at least in the first instance, while still allowing the Court to consider whether the issues can be fairly decided in that fashion. There is nothing to support that a Trustee must proceed by filing individual actions.

[112] Insolvency proceedings typically involve their own statutory imperatives in terms of achieving a just outcome in the face of loss and chaos in what are usually unique circumstances (as here).

[113] The overarching statutory goals of efficiency and expediency are encapsulated within the "single proceeding model" in Canadian insolvency laws. In this way, a collective process maximizes recovery for creditors and avoids inefficiencies and the inevitable negative results of chaos: *Peace River Hydro Partners v. Petrowest Corp*., 2022 SCC 41 [Peace River] at paras. 54–55, 60–63. As stated by the Court in *Peace River* at para. 55, the single proceeding model is:

> … intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its

> rights. In other words, the single proceeding model protects the clear 'public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse'…

…

[116] The Court in *Peace River* also recognized that procedural flexibility is a hallmark of insolvency law: *Peace River* at para. 64. The Court noted that, consistent with that flexibility, the court and the parties can tailor proceedings to fit a particular case and design a process as is appropriate toward the goals in a particular matter: para. 66.

…

[125] This procedure is an efficient and expedient means to resolve what can only be described as issues that are common issues as between all Net Winners and Preference Recipients. It is undeniable that, if the Trustee is required to undertake separate actions against all 561 investors, the cost of doing so would be exorbitant. The relief sought on this application is intended to provide a mechanism to permit the Trustee to pursue claims in a cost-effective manner.

[126] Thirdly, I conclude that the procedure is a fair one. This is so in the sense of allowing the affected investors to raise any legal or factual defences or issues pertaining firstly to liability (i.e., Phase I, this application). If liability is found, the affected investors are also afforded a robust process to determine the amount of any "winnings" or preference received, including by court order if necessary.

[127] As I will discuss below, the Net Winners and Preference Recipients have failed to advance any factual or legal defence to meet this application by the Trustee in Phase I, despite having months to do so.

> [128] Fourthly, I accept the Trustee's submissions that, if it is required to proceed against each Net Winner and Preference Recipient separately, the process is simply unworkable and, given the lack of funds in the Estate, not feasible. Such a scenario, even if it could be undertaken, would inevitably be characterized by delay and costs, all to the detriment of the Estate and the potential distributions to the Net Losers.
>
> [129] To endorse such an approach would result in years, if not decades, of litigation with minimal recovery at the end of it all for the Net Losers. As I commented above, I agree with the Trustee that objections raised to this collective procedure are a litigation strategy by certain Net Winners to delay and frustrate the recovery of funds for the Net Losers and avoid them having to repay any of the profits they received from the Scheme.

[89] As was the case in *My Mortgage Auction Corp*., after obtaining judgment for liability against the winners, the Trustee proposes a robust phase II along the following lines:

> Second, if the Trustee is successful on Phase I, the Trustee proposes a process to determine whether, and in what amount, if any, the Net Winners received Excess Funds. This process involves the following steps:
>
> i. Recipients would be provided with a "Clawback Calculation" by the Trustee ("Clawback Calculation") detailing the Excess Funds received by that Recipient;
>
> ii. each Recipient would have an opportunity to dispute their Clawback Calculation with the Trustee, and failing that, apply to the Court for direction to resolve the issue; and
>
> iii. the Trustee would ultimately be able to obtain, file, and enter a money judgment against each Recipient with the Court, subject to the Recipient disputing their Clawback Calculation and, if so, the resolution of the issues by the court.

[90] In light of the inferences provided by law,[3] once the determination is made that the bankrupt operated a fraudulent Ponzi scheme as described in the case law, liability under the *FCA* flows as a matter of law. Requiring individual trials on liability is a formality that just wastes time and money in this circumstance. Nothing turns on individual circumstances of any recipient of funds. Rather, in phase II the Trustee will focus on individualized proof and negotiation of quantum with each winner having resort to the court as necessary. This approach is sensible, consistent with the flexibility of the bankruptcy and insolvency process and, especially, the single proceeding model approved by the Supreme Court of Canada.

[91] Although the Trustee is not seeking to set aside the impugned payments under its statutory authority to review preferential payments or transactions at undervalue, the *BIA* nevertheless applies. Subsection 98 (1) of the *BIA* authorizes the Trustee to enforce provincial preferences and fraudulent conveyances legislation even after the time limits appliable to relief under ss. 95 and 96 of the *BIA* have expired.

The Trustee's Proceedings are not Barred by the Limitation Period

[92] The Ponzi Scheme collapsed in November, 2022. The Trustee was appointed as Receiver in July, 2023. It became trustee in bankruptcy in September, 2024. It brought its clawback motion three months later.

[93] The winners before me submit that since Mr. Grozelle was an individual, Mr. Grozelle's knowledge will be attributed to the Trustee under s. 12 (1) of the *Limitations Act, 2002*, SO 2002, c 24, Sch B. There is no issue of corporate attribution to delay the limitation period as there was in *Golden Oaks*.

[94] That appears to be correct in law. The Trustee is deemed to have known of the matters in s. 5 (1)(a) of the *Limitations Act, 2002* on the day Mr. Grozelle knew or ought to have known of them. That raises the

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[3] i.e. that the Ponzi scheme was insolvent throughout; that Mr. Grozelle necessarily made payments with the intention to defraud, hinder, or delay creditors; and that his payments of profit to winners were not payments made in good faith or for good consideration.

issue that the Supreme Court of Canada expressly decided to leave to another day in paras.48 and 49 of *Golden Oaks* – whether Mr. Grozelle knew or ought to have known that it was "appropriate" to sue himself before the Receiver was appointed in July, 2023 or the Trustee was appointed in September, 2024.

[95] While neither the Court of Appeal nor the Supreme Court of Canada had to deal with this question, Gomery J (as she then was) dealt with it at first instance in *Golden Oaks*. See: *Doyle Salewski Inc. v. Scott*, 2019 ONSC 5108 (CanLII). In that case, Mr. Lacasse operated a fraudulent Ponzi scheme through his sole control of *Golden Oaks*. Gomery J. held:

> [421] In my view, a proceeding was not a legally appropriate means for Golden Oaks so long as it was controlled solely by Lacasse. Lacasse was the only corporate officer and director. There is no evidence that anyone had the means to challenge his control of the company. There was no legal or practical route, as there was in *Ridel*, for the initiation of legal proceedings in the name of Golden Oaks by anyone other than Lacasse. Lacasse had no motivation to begin lawsuits on the company's behalf. On the contrary, bringing the actions would end the arrangement from which he was profiting personally and would expose the fraudulent Ponzi scheme that he had orchestrated.
>
> [422] Given its "abilities and circumstances" while controlled solely by Lacasse, legal proceedings by Golden Oaks, against individuals to whom Lacasse had caused the company to pay usurious interest and commission amounts, were not just inappropriate but impossible. The claims were therefore not discoverable by Golden Oaks until the receivership on July 9, 2013, at the earliest.
>
> [423] This finding does not create an exception to or undermine the corporate identification doctrine. The doctrine's purpose is to determine when the knowledge of a person directing a company to commit unlawful acts should be imputed to the corporation where that knowledge alone is sufficient to establish the company's shared liability for the acts. The doctrine in this case means that Golden Oaks is imputed with the knowledge

> that it had made payments of usurious interest and potentially unlawful commissions to the defendants to its detriment and to the defendants' enrichment.
>
> [424] But the introduction of the "appropriate means" criterion in the discoverability analysis means that knowledge of potential claims is not always enough, by itself, to begin the running of the limitations period. As the Court of Appeal has repeatedly recognized, the new criterion "can have the effect … of postponing the start date of the two-year limitation period beyond the date when a plaintiff knows it has incurred a loss because of the defendant's actions": *407 ETR*, at para. 33; *Presidential MSH Corporation v. Marr Foster & Co. LLP*, 2017 ONCA 325, 135 O.R. (3d) 321, at para. 17; *Gillham*, at para. 35. Although Golden Oaks may have known, through Lacasse, about its dealings with the defendants, it did not and could not have known that it would be legally appropriate for it to sue them to recover its losses so long as it was directed by Lacasse.

[96] By the same reasoning, Mr. Grozelle was not about to sue himself and his favoured winners on behalf of the creditors whose funds they were all taking. It cannot be said that Mr. Grozelle knew or ought to have known that he should sue himself and his winners on behalf creditors to redress the very wrongs he was deliberately inflicting on them.

[97] The attribution of Mr. Grozelle's knowledge to the Trustee therefore does not satisfy the requirement in s. 5 (1)(a)(iv) of the *Limitations Act, 2002*. That means that the limitation period did not begin to run before the appointment of the Trustee or perhaps the Receiver. The Trustee brought the clawback motion within two years of both appointment dates.

The Cross-Motion for Directions

[98] The winners before the court brought a motion hoping to pre-empt the hearing of the Trustees' clawback motion. They sought the following relief:

1. An order that this motion be heard and determined on the scheduled date and prior to the hearing of the Trustee's

Clawback Motion, and that all further steps in the Clawback Motion be held in abeyance until these determinations are made;

Form of Clawback Claims

2. An order directing that the relief sought by the Trustee in its Clawback Motion be pursued by way of one or more properly constituted actions, not by summary motion;

3. An order directing that, if the Trustee elects to pursue any such clawback claims, the Trustee must pursue the claims from all recipients of interest payments from Grozelle on a loan-by-loan basis, not based on "estimated" or incomplete aggregates or net amounts by lender or lender groups;

Directions on Creditor Methodology and Creditor Status

4. The advice and directions of this Honourable Court regarding the Trustee's methodology and creation of its own creditor list based on "estimated" "Net Losers" or "Net-Net Losers" and deriving its authority on that basis, which included:

    (a) using an arbitrary start and end date and admittedly incomplete records to estimate "net" amounts for creditors;

    (b) not requiring proper proofs of claim from "Net Loser" creditors in accordance with the BIA;

    (c) excluding "Net Winners" as creditors, who are owed principal and interest under separate, unpaid loans;

    (d) grouping distinct "Net Winner" and "Net Loser" entities for creditor and voting rights;

    (e) including parties as creditors whose claims arise from loans made directly to the appointing creditors, Jonathan Williams (and his companies), Michael Foley, or Crystal Masterson (together,

the "Appointing Creditors"), or directly to other parties who are not Grozelle;

5. An order directing that any lender who has been labelled a "Net Winner" is entitled to be treated as a creditor for amounts owed under any unpaid loans;

6. An order directing that any "Net Winner" or "Net Loser" creditor whose claim arises from loans made directly to the Appointing Creditor or any other borrower aside from Grozelle - in which Grozelle was not the actual debtor/promisor- is not a proper creditor of the Grozelle estate for the purposes of this bankruptcy and must be excluded from creditor voting entitlements;

7. An order directing that all creditor claims, whether or not characterized by the Trustee as "Net Losers," must be proved by proper proofs of claim in accordance with the BIA and not be based on estimates from incomplete records;

Directions on Non-arm's-length Voting and Appointment of Inspectors

8. The advice and directions of the Court regarding the Trustee permitting the Appointing Creditors, who were directly involved with Grozelle and his scheme and subsequently charged with fraud, to control the vote and appoint the inspectors;

9. An order directing that the creditor votes of Williams (and his companies), Michael Foley, and Crystal Masterson, who did not deal at arm's length with Grozelle, should have been excluded pursuant to BIA s. 109(6), with consequential directions;

10. An order directing that the foundation for the first (and only) meeting of creditors - including voting entitlements and inspector appointments - was improper and contrary to the BIA and is set aside;

11. An order directing that Chelsea Prince, who loaned money directly to Michael Foley is not a proper creditor of

Grozelle, and was improperly labelled a creditor/Net Loser and improperly appointed inspector in that basis;

12. An order directing that the Trustee did not have authority to commence the Clawback Motion under the BIA;

New First Meeting of Creditors

13. An order directing a new first meeting of creditors based on (i) a corrected creditor list; (ii) removal of voting rights of parties charged with fraud in connection with the Grozelle fraud (pending determination of their creditor status and arm's-length issues); and (iii) proper disclosure to actual creditors and any new inspectors of the conflicts and classification issues determined by the Court;

Disclosure from Trustee

14. An order compelling the Trustee to deliver the documents and information previously requested by the Moving Creditors, including:

    (a) Copies of all communications between the Trustee (or its counsel), including in its previous capacity as receiver, on the one hand, and Jonathan Williams, Crystal Masterson, Michael Foley, and Ms. Garlow on the other, including written communications, meeting notes, memos, and any other records;

    (b) Copies of the minutes of all inspectors' and creditors' meetings to date, and recordings of those meetings if they exist;

    (c) Copies of all creditor communications in the bankruptcy;

    (d) Confirmation as to who authorized the clawback litigation, and whether any individual now facing criminal charges had a role in those instructions;

(e) A description of the steps taken by the Trustee, including in its previous capacity as receiver, to investigate the concerns raised regarding the Appointing Creditors/Inspectors in the Moving Creditors' letter of October 21, 2024, and their involvement or potential involvement in the underlying fraud more generally, together with all related documents; and

(f) Any communications between Trustee, including in its previous capacity as receiver, and police regarding the involvement or potential involvement of the Appointing Creditors/Inspectors in the underlying fraud;

15. An order compelling the Trustee to deliver a detailed accounting of all fees and disbursements of the Trustee and counsel (1) since the inception of the receivership, and (2) since the inception of the bankruptcy, in a form suitable for court approval; and

16. Such further and other relief as this Honourable Court may deem just.

[99] To give credit where credit is due, the requested directions amount to a very fulsome kitchen sink.

[100] Request #1 that the motion for directions to be heard before the Trustee's clawback motion was denied previously in scheduling orders.

[101] Requests #2, #3 and #4(a) have been rejected in the outcome of the Trustee's clawback motion above.

[102] Requests #4(b), (c), (d), #5, and #7 all turn on the outcome of Phase II. Creditors who wish to receive dividends will be required to deliver Proofs of Claim to the Trustee in due course. Whether any of the winners may ultimately show that he, she, or it is a net creditor will be determined in Phase II.

[103] Jonathan Williams, Michael Foley, and Crystal Masterson were the plaintiffs/applicants who applied to the court for the appointment of the Receiver. They were then elected as the initial Inspectors of the bankrupt estate at the First Meeting of Creditors.

[104] The three have resigned in face of allegations that they were part of Mr. Grozelle's fraudulent Ponzi scheme. Criminal charges have now been brought against Ms. Masterson and Mr. Williams in addition to Mr. Grozelle.

[105] The winners before the court make numerous allegations of wrongdoing against the Trustee based on the involvement of the three tainted individuals as the "appointing creditors" and Inspectors.

[106] The allegations reflect a fundamental misunderstanding of how receiverships and bankruptcy processes work.

[107] In a private receivership, the receiver is the agent of the creditor that appointed it. A private receiver takes instructions from its appointing creditor. There was no private appointment of a receiver and manager under a security instrument in this case.

[108] In a court-appointed receivership, such as this case, the moving parties who commence the legal proceeding may be referred to as "appointing creditors" for convenience. But the receiver is appointed only by the court. Once appointed, it is an officer of the court and subject to strict statutory and common law duties. Court-appointed receivers do not carry a brief for the plaintiffs who sought their appointment.

[109] Often the party that asks the court to appoint a receiver will be the senior secured creditor of the debtor. In that position it will have a very important role in the proceeding no doubt. If there is no recovery expected for any creditor beneath the first secured creditor on the priority ladder, then the will of the first secured creditor may be the only input received by a receiver. But here, where the moving parties were not priority creditors, in conducting its court-ordered mandate, a court-appointed receiver will exercise its business judgment as to whether or how much to engage with them as with all other interested parties.

[110] Similarly, in bankruptcy, the Inspectors role is supervisory and often very narrow. Inspectors are appointed first by the limited class of creditors who are recognized for voting purposes at the First Meeting of Creditors chaired by the Official Receiver. The Trustee may need approval of Inspectors for some steps. But it can always go to court if it is unhappy with the Inspectors' decisions.

In practice, there is no basis to believe that the identities of initial Inspectors implies any relationship of cooperation or dependence with the Trustee. To the contrary, all licensed insolvency professionals are familiar with the oft-cited words of Farley J. in *Confederation Treasury Services Ltd., Re,* 1995 CanLII 7386 (ON SC):

> The trustee is an impartial officer of the Court; woe be to it if it does not act impartially towards the creditors of the estate.

[111] As to Requests #4(e) and #6, the winners before the court apparently object to the Trustee recognizing claims by people whose promissory notes were signed by or who provided funds through one of the three appointing creditors/initial Inspectors. That is completely at odds with their position that the three were in a common enterprise and were part and parcel of Grozelle's fraud. It is also inconsistent with their own efforts to have the Trustee recognize the claims of people who invested through the winners as facilitators.

[112] The Trustee has comprehensively followed every movement of money into and out of Mr. Grozelle's accounts. There is no basis to criticize the Trustee for how it accounted for the identities of those who provided funds to, or received funds from, Mr. Grozelle.

[113] The Trustee invites any information held by any interested party that will assist in completing the accounting. Individual quantification is the substance of Phase II. Those who claim that their affairs have been improperly netted or joined with related parties will have their say in Phase II.

[114] Requests #8 through #13 challenge the constitution and outcome of the First Meeting of Creditors seeking then to undermine the authority of the Trustee to bring the clawback motion. As I understand it, the winners before the court are no longer seeking this relief although they continue to assert that the Trustee has committed wrongdoing recognizing the involvement of the three individuals associated with Mr. Grozelle.

[115] This motion was authorized by the court. The initial Inspectors have been replaced. The idea of holding a new First Meeting of Creditors was an impractical non-starter and was rightly discarded by the winners before the court.

[116] Request #14 is a fishing expedition and a make-work project that is divorced from the clawback motion before the court. If the Trustee fails to engage and respond to proper requests for relevant information at an appropriate time, the parties may seek a case conference to deal with the issue.

[117] As to Request #15, the Trustee's fees and disbursements are dealt with in due course by people with standing under the detailed provisions of the *BIA*. The winners before the court are not even recognized as creditors of the estate at this moment. Costs will be dealt with in due course. The fees in the receivership will be dealt with in accordance with the order appointing the Receiver. This is all premature fishing.

[118] The motion for directions is therefore dismissed.

Individuals' Evidence and Submissions

[119] Much evidence was adduced on behalf of individuals who loaned funds to Mr. Grozelle. Those associated with the winners before the court opposed the Trustee's proposed process. I also heard unsworn submissions by several self-represented parties who say they lost money with Mr. Grozelle. They support the Trustee's efforts to claw back profits from the winners. Mr. Birch's clients are in that position as well.

[120] I appreciated hearing from individuals and I understand that people on both sides can readily be heard claiming they have suffered dearly from their involvement with the bankrupt Mr. Grozelle. I do not doubt any of it. But this is sadly the result of there being a bankruptcy as I discussed at the very outset of this decision. There just isn't enough money to pay everyone. There are no real winners. But as I also stated at the outset, this is a process to try to maximize recovery for the creditors of the bankrupt estate in the interests of justice. That is what I have been considering in these Reasons for Decision.

[121] In all, the evidence concerning individual loans, netting of loans, and accounting for facilitated loans, belongs in Phase II.

Criticisms of the Trustee

[122] As was the case in *My Mortgage Auction Corp*., many of the winners before the court were rather free with their allegations of wrongdoing and unsubstantiated conspiracy theories regarding the Trustee. Fitzpatrick J. held:

> [26] I have concluded that the concerns/complaints directed at PwC are ill-conceived and unjustified. By any measure, PwC's investigation has been thorough and, while the information garnered from that process has not been entirely complete or accurate, and the news has not been positive for the investors, that result is not for lack of effort by PwC.

[123] Once again, some lack of familiarity with insolvency proceedings is manifested by the criticisms against the Trustee.

[124] The Trustee is injected into a hornet's nest to try to find an outcome that is just, efficient, affordable, and independent.

[125] The Trustee is not one of the parties. It did not invest with Mr. Grozelle. It did not decide whom Mr. Grozelle would pay or not pay. The Trustee was not in place when people made their loans. It did not create the books and records or promissory notes. It did not counsel anyone on whether to make their investments or how to get their money out.

[126] The Trustee operates outside the parties' fray. It is an officer of the court and reports to the court as appropriate. It is not a proper target for the parties' litigation strategies absent real evidence of material wrongdoing.

[127] There is no basis to equate the Trustee with Mr. Grozelle's fraud. There is no basis in evidence to suggest that the Trustee's accounting was tainted by the involvement of the three people associated with Mr. Grozelle. There is no basis in evidence to accuse the Trustee of withholding information. Its accounting, including production of its working papers, is incredibly thorough and transparent. There is no basis in the evidence to suggest that the Trustee has prioritized its fees over creditors' entitlements.

[128] I echo the words of my colleague Kimmel J. in *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONSC 4233 (CanLII),

> [66] As a general matter, I note that criticisms of a court appointed officer should not be made lightly. They are a serious matter. While the Debtor says it is not attacking the motives of the Receiver, many of its criticisms go beyond attacks on how the Receiver has carried out its duties. These types of attacks should not be made unless they can be substantiated.

[129] The Trustee has answered all the allegations made against it thoroughly in Mr. Ward's letter to counsel opposite dated May 22, 2025.

[130] I agree with Mr. Ward, that anyone with a substantiated claim against the Trustee should seek leave to bring it on. Otherwise, unsubstantiated allegations should not be made. Speculative claims and conspiracy theories asserted against the court and its officers diminish the integrity of the process and impact negatively on the rule of law.

Outcome

[131] I have reviewed the draft order provided by the Trustee. I agree with Mr. Ward that the incorporation of Schedule "A" into para. 2 of the draft is appropriate as it reflects the outcome of the Trustee's robust accounting process. Paragraphs 3 and following establish a summary claims process for phase II. It follows well-trod ground in other proceedings. Resort to the court is always available to parties in any event. The winners' entitlement to challenge their groupings and the outcomes of on-lending or facilitated loans is protected in para. 5 of the draft.

[132] Mr. Ward is requested to remove the watermark, update the date of the order, and forward a clean copy to the Commercial List Office to my attention for signing.

Costs

[133] The Trustee may deliver costs submission by no later than February 20, 2026. Anyone against whom the Trustee seeks costs or who seeks costs in any event, may then deliver costs submissions by no later than March 6, 2026.

[134] Costs submissions shall be no longer than 750 words. They shall be double-spaced and contain normal margins. They shall be typed in a font of no less than 12-points (including footnotes, if any).

[135] All costs submission shall be accompanied by the party's own Costs Outline whether they seek costs or not. Anyone delivering costs submissions may also deliver a copy of any offers to settle on which they rely for costs purposes.

[136] Costs submissions shall be delivered to the Commercial List office to my attention.

FL Myers J

Released: February 9, 2026

Justice FL Myers

Digitally signed by Justice FL Myers
Date: 2026.02.08 19:57:36 -05'00'

CITATION: In the Matter of the Bankruptcy of Douglas Grozelle, 2026 ONSC 758
COURT FILE NO.: 32-3126798
DATE: 20260209

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE BANKRUPTCY OF DOUGLAS GROZELLE, of the City of Hamilton, in the Province of Ontario

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REASONS FOR DECISION

FL Myers J

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