

COURT FILE NO. B201-996918, B201-997457, B201-997541  
COURT COURT OF KING'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY  
JUDICIAL CENTRE CALGARY  
MATTER IN THE MATTER OF THE BANKRUPTCY OF  
NOMODIC MODULAR STRUCTURES INC.,  
AITHRA PROJECTS INC. AND NOMODIC  
MODULAR STRUCTURES (ONTARIO) LTD.  
APPLICANT NORTHERN VISION DEVELOPMENT LIMITED PARTNERSHIP  
RESPONDENTS FTI CONSULTING CANADA INC., in its capacity as Trustee in Bankruptcy of  
NOMODIC MODULAR STRUCTURES INC., AITHRA PROJECTS INC. and  
NOMODIC MODULAR STRUCTURES (ONTARIO) LTD.; and ATB  
FINANCIAL  
DOCUMENT **BRIEF OF LAW OF NORTHERN VISION DEVELOPMENT LIMITED  
PARTNERSHIP RE: TRUST CLAIM**



C61021  
Jun 27, 2024  
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## **I. INTRODUCTION**

1. At the time of its bankruptcy, Nomodic Modular Structures Inc. ("**Nomodic**") held a Pre-Payment for work which it had yet to complete in respect of a First Nations led building project in the Yukon Territory. This Pre-Payment, provided by Northern Vision Development Limited Partnership ("**NVD**") and was governed by the terms of a contract. Among other terms and conditions, the contract required unused portion of the Pre-Payment to be returned to NVD if the contract was terminated.
2. The Pre-Payment was held in trust for NVD, and its provision, use, and return were governed by the terms of that trust.
3. The applications of NVD and the Trustee of Nomodic before this Honourable Court collectively deal with two parts of that Pre-Payment: a portion which remains in a dedicated RBC bank account set up to hold the Pre-Payment, and a portion that was forwarded to a subcontractor. In the latter case, the subcontractor intended to make a required refund to NVD through Nomodic. However, Nomodic, at the request of ATB Financial ("**ATB**"), deposited the refund into an overdrawn ATB operating account. ATB used the funds to reduce the overdraft.
4. In doing so, ATB had notice that there was a competing trust claim being asserted over the Pre-Payment funds. ATB received the funds, at least in part, on the assurance to Nomodic that it would carry out the trust if one was established. In doing so, ATB voluntarily accepted the title of trustee, and became a trustee *de son tort*. In the alternative, and at minimum, if ATB did not become a trustee *de son tort*, it accepted the funds knowing of the trust claim, and is in knowing receipt of the funds. In either case, ATB is liable to return the funds to NVD.
5. NVD claims an express trust over the whole of the Pre-Payment, and seeks an Order allowing it to trace the Pre-Payment, thereby recovering from the dedicated RBC bank account and from ATB as may be appropriate and applicable.

## **II. FACTS**

### ***i. The Project and use of the RBC Dedicated Account***

6. NVD develops hospitality, commercial, independent living, and residential assets located in the Yukon Territory. It is a majority First Nation beneficially owned entity, and over 70% of those with beneficial ownership in NVD reside in the Yukon Territory.<sup>1</sup>
7. On December 7, 2022, NVD entered into a Limited Notice to Proceed agreement ("**NVD LNTP**") with Nomodic. Under and pursuant to the NVD LNTP, Nomodic was to produce and install 117 modular hotel rooms for a project in Whitehorse that was being undertaken by NVD. Throughout the materials this project is generally referred to as the "NVD Hyatt Project."
8. The NVD LNTP included the following express terms, without limitation:<sup>2</sup>

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<sup>1</sup> Affidavit of Michael Hale, sworn December 1, 2023 at para 3 ["**First Hale Affidavit**"].

- a. NVD would provide a pre-payment of \$3,572,149.52, plus GST, for a total of \$3,750,774.00 to Nomodic (the “**Pre-Payment**”) pursuant to the terms of the NVD LNTP;<sup>3</sup>
  - b. any payments made under the NVD LNTP would be credited to NVD under a forthcoming definitive agreement (though the parties never entered into a second agreement and simply operated under the NVD LNTP);<sup>4</sup>
  - c. a Pre-Payment and Deposit Schedule within the NVD LNTP set out what the Pre-Payment could be used for, and what portion of it was assigned to pay for each aspect of the project:
    - i. \$208,657.66 for a Show Suite;
    - ii. \$730,301.80 for Windows;
    - iii. \$1,391,051.04 for HVAC; and
    - iv. \$1,242,139.03 for an initial deposit on fabrication of the modular hotel rooms;<sup>5</sup>
  - d. neither party could assign or transfer rights under the NVD LNTP without the prior written consent of the other party;<sup>6</sup>
  - e. either party would be entitled to terminate the NVD LNTP by providing seven days written notice;<sup>7</sup> and
  - f. upon termination of the NVD LNTP, mutually agreeable termination charges (including expenses incurred by Nomodic for time, labour, materials, costs, and disbursements) would be subtracted from the Pre-Payment and retained by Nomodic; and the remaining unused amount of the Pre-Payment would be returned to NVD within 30 days.<sup>8</sup>
9. NVD requested that Nomodic keep the Pre-Payment in a separate, dedicated bank account (the “**Bank Account Request**”), such that NVD would collect interest on the Pre-Payment so NVD would be in a similar financial position as if it had held the Pre-Payment itself.<sup>9</sup>
  10. Nomodic accepted and agreed to this Bank Account Request, and opened up an account with RBC for the specific purpose of holding the Pre-Payment funds.<sup>10</sup> On December 14, 2022, and pursuant to the NVD LNTP, NVD wired the full Pre-Payment into Nomodic’s Royal Bank of

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<sup>2</sup> First Hale Affidavit at para 8, Exhibit “A”.

<sup>3</sup> First Hale Affidavit at Exhibit “A”, clause 3.

<sup>4</sup> First Hale Affidavit at Exhibit “A”, clause 3.

<sup>5</sup> First Hale Affidavit at Exhibit “A”, clause 15.

<sup>6</sup> First Hale Affidavit at Exhibit “A”, clause 13.

<sup>7</sup> First Hale Affidavit at Exhibit “A”, clause 7(a).

<sup>8</sup> First Hale Affidavit at Exhibit “A”, clause 7(a).

<sup>9</sup> First Report of the Trustee at para 20.

<sup>10</sup> First Report of the Trustee at para 20.

Canada account (being institution 003, transit 00009, account 1348432) (the “**RBC Dedicated Account**”).<sup>11</sup>

11. The terms of the NVD LNTP, along with the Bank Account Request, created a trust in respect of the Pre-Payment funds (the “**Trust**”).

***ii. Involvement of Champion***

12. On or about December 7, 2022, Nomodic and Champion Canada International ULC (“**Champion**”) entered into a Limited Notice to Proceed (“**Champion LNTP**”). Under and pursuant to the Champion LNTP, Champion was to manufacture the show suit and modular units needed for the NVD Hyatt Project. The express terms of the Champion LNTP included, without limitation:

- a. the Champion LNTP could be terminated on 7 days notice; and
- b. upon termination of the Champion LNTP by the Owner (which was defined therein as NVD), Champion had to “refund all pre-payments to Nomodic for return to Owner, less any reasonable expenses...”<sup>12</sup>

13. On January 16, 2023, pursuant to the terms of the Champion LNTP – but unbeknownst to NVD and in breach of the terms of the Trust – Nomodic transferred \$2,143,080.00 of the Pre-Payment from the RBC Dedicated Account to Champion.<sup>13</sup>

***iii. Progress of the NVD Hyatt Project and Termination***

14. Nomodic drew down against the Pre-Payment as it completed work, making ‘progress claims.’ This was based on industry-standard practice, in which the sub-contractor will periodically submit a progress claim for work that has been completed. The general contractor will confirm the work is completed, then approve the progress claim.<sup>14</sup> In this case, since Nomodic was already in possession of the Pre-Payment, it would withdraw the amount of the progress claim from the Pre-Payment:

- a. On December 21, 2022, Nomodic made a progress claim to NVD, showing 80% payment for the Design Assist Support for the Show Suite, resulting in a draw of \$34,340.00 (plus GST) from the Pre-Payment.<sup>15</sup>
- b. On June 15, 2023, Nomodic made a progress claim to NVD, showing 100% payment for the Show Suite, 48% payment for the Windows, and 64% payment for the HVAC, resulting in a further draw of \$1,449,475.19 (plus GST) from the Pre-Payment.<sup>16</sup>

<sup>11</sup> First Hale Affidavit at para 9, Exhibit “B”. See also Affidavit of Muhammad Ashraf, sworn October 6, 2023 [“**First Ashraf Affidavit**”] at para 17(a)(i).

<sup>12</sup> Affidavit of Ken Volk, sworn December 4, 2023 [“**Volk Affidavit**”] at para 4, Exhibit “A”.

<sup>13</sup> Volk Affidavit at Exhibit “A”; First Report of the Trustee at para 34(c).

<sup>14</sup> First Hale Affidavit at para 12.

<sup>15</sup> First Hale Affidavit at para 14, Exhibit “C”.

<sup>16</sup> First Hale Affidavit at paras 14-15, Exhibits “D” and “E”.

15. As Champion was holding a large portion of the Pre-Payment, these draws do not show in the RBC Dedicated Account History provided in the Trustee's First Report.
16. On July 17, 2023, NVD terminated the NVD LNTP because Nomodic was over budget and behind schedule. Termination Notice was sent to the CEO of Nomodic, Kevin Read ("**Read**").<sup>17</sup> Pursuant to the terms of the NVD LNTP, NVD and Nomodic began discussions about the termination charges to be retained by Nomodic.<sup>18</sup>
17. On August 28, 2023, during these discussions, Read indicted that Champion was in possession of some or all of the Pre-Payment. This was the first time that NVD learned that the Pre-Payment had been disbursed without a progress claim.<sup>19</sup>
18. On September 3, 2023, NVD requested an accounting from Nomodic. It also demanded the return of \$2,209,670.71 which was, at that time, estimated to be the amount of the refund owing to NVD.<sup>20</sup>
19. Under the terms of the NVD LNTP and the Champion LNTP, Champion was entitled to be paid for their work up to termination, and as such, Champion was brought into the negotiations with NVD and Nomodic. Ken Volk ("**Volk**"), a director at Champion, was the primary representative who participated in the negotiations on behalf of Champion.
20. An accounting produced by Champion was provided to NVD on September 18, 2023. It showed that \$1,639,158.54 of the Pre-Payment was still unused and remained in the custody of Champion.<sup>21</sup> On September 19, Nomodic provided an accounting to NVD, showing a total refund of \$2,418,076.14 owing to NVD.<sup>22</sup>
21. The parties ultimately agreed that \$471,341.46 in Champion's costs related to the project were to be paid to it from the Pre-Payment funds it was still holding, and the balance of \$1,639,158.54 would be returned to NVD as part of a broader resolution to the termination of the NVD LNTP.<sup>23</sup>
22. On September 28, 2023, NVD, Nomodic, and Champion signed a Mutual Release and Settlement Agreement (the "**Settlement Agreement**"). Its terms included that Nomodic would return \$2,405,490.71 (the "**Settlement Amount**") of the Pre-Payment to NVD on or before October 6, 2023. Since \$1,639,158.54 of the Pre-Payment was being held by Champion, the parties made the Settlement Agreement on the clear understanding that Champion would return the \$1,639,158.54 to Nomodic, which would then, without deduction or other use, forward the \$1,639,158.54 along with the balance of the Settlement Amount to NVD.<sup>24</sup>

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<sup>17</sup> First Hale Affidavit at para 16.

<sup>18</sup> First Hale Affidavit at Exhibit "G".

<sup>19</sup> First Hale Affidavit at para 18.

<sup>20</sup> First Hale Affidavit at para 19, Exhibit "G".

<sup>21</sup> First Hale Affidavit at Exhibit "G", final page of that exhibit.

<sup>22</sup> First Hale Affidavit at Exhibit "H".

<sup>23</sup> Volk Affidavit at Exhibit "C".

<sup>24</sup> First Hale Affidavit at para 24, Exhibit "I"; Volk Affidavit at para 11, Exhibit "D".

23. On September 28, 2023, Champion issued a cheque (the “**Champion Cheque**”) to Nomodic in the amount of \$1,639,158.54 (the “**Champion Cheque Funds**”).<sup>25</sup> The Champion Cheque was not immediately deposited.

*iv. Involvement of ATB and Nomodic’s bankruptcy*

24. Concurrently with at least the latter part of the NVD Hyatt project, negotiations, and formation of the Settlement Agreement, Nomodic was having cash-flow issues, and was overdrawn on its ATB Operating Account.<sup>26</sup>
25. In early 2023, ATB started receiving detailed financial information from Nomodic in relation to an Amended and Restates Commitment Letter, dated March 17, 2023 (the “**Original Commitment Letter**”).<sup>27</sup> In the many communications between ATB and Nomodic from this time, ATB repeatedly recognized that the RBC Dedicated Account contained trust funds, as discussed in more detail below.<sup>28</sup>
26. Starting on June 14, 2023, ATB informed Nomodic that it had defaulted under the Original Commitment Letter. Further correspondence was sent in July and September 2023.<sup>29</sup>
27. By at least September 27, 2023, Nomodic made multiple requests for additional funding from ATB. It asserted to ATB that it was not liquid and could not fund upcoming payroll obligations.<sup>30</sup> On September 28 through 29, 2023, ATB offered to fund half of Nomodic’s payroll obligations on certain terms and conditions.<sup>31</sup>
28. As of September 29, 2023, Nomodic’s holdings included a Joint RBC Account (referred to in the materials, but otherwise not directly relevant to this application), with \$1,103,284.82,<sup>32</sup> and the RBC Dedicated Account which contained \$1,216,153.98.<sup>33</sup> On October 2, 2023, ATB “became aware” of the funds in Nomodic’s RBC accounts<sup>34</sup> (perhaps more accurately, ATB realized that the funds in the RBC accounts were still there, since ATB had been aware of the accounts in early 2023).<sup>35</sup>
29. On October 3, 2023, the CFO of Nomodic, Byron Lambert (“**Lambert**”), advised ATB that the RBC funds could be subject to various claims by third parties, including trust claims.<sup>36</sup> Further

<sup>25</sup> Volk Affidavit at para 12.

<sup>26</sup> First Ashraf Affidavit at paras 21-29 .

<sup>27</sup> First Ashraf Affidavit at paras 7-8.

<sup>28</sup> Responses to Undertakings given by Muhammad Ashraf at Questioning Held on April 16, 2024 [“**UT Responses**”, with pages numbers in parenthesis indicating the page within the whole Undertaking Responses document] at Schedule 3, email dated February 28, 2023 6:24pm (p. 104); at Schedule 9, email dated March 6, 2023 11:19am (p. 282); at Schedule 9, email dated March 7, 2023 11:35pm (p. 287) **attached hereto in a compendium of key materials at [TAB A].**

<sup>29</sup> First Ashraf Affidavit at paras 21-26.

<sup>30</sup> First Ashraf Affidavit at para 28.

<sup>31</sup> First Ashraf Affidavit at para 29.

<sup>32</sup> First Ashraf Affidavit at para 17(a)(ii).

<sup>33</sup> First Ashraf Affidavit at para 17(a)(i); First Report of the Trustee at Exhibit “D”.

<sup>34</sup> First Ashraf Affidavit at para 32.

<sup>35</sup> UT Responses at Schedule 6, email dated February 28, 2023 6:24pm (p. 250) **[TAB B].**

<sup>36</sup> First Ashraf Affidavit at para 34.

on or about October 3, ATB became aware of the existence of the uncashed Champion Cheque. The existence of the Champion Cheque had not been previously disclosed to ATB; had not been included when Nomodic had listed its assets, bank accounts, negotiable instruments; and further had not been disclosed when Nomodic requested additional funding from ATB on October 1, 2023.<sup>37</sup>

30. On October 4, 2023, ATB was made aware that the Champion Cheque was in the possession of Nomodic.<sup>38</sup>

31. On October 5, 2023, counsel for Nomodic sent an email to counsel for ATB. It included a proposed bargain: that Nomodic would deposit the Champion Cheque into Nomodic's ATB account in exchange for ATB issuing certified bank drafts to pay certain amounts owing to Canada Revenue Agency, employees, and others. That email also included the following:

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

a. The [Champion] Cheque was provided to Nomodic pursuant to an agreement that it would remit those funds to a customer in connection with an agreed upon rebate. On that basis, there may be a competing claim for those funds in the bankruptcy process.<sup>39</sup>

32. On October 6, 2023, Muhammad Ashraf ("**Ashraf**"), Director, Risk Advisory & Management, with ATB, emailed Read, which included the following:

On October 5, 2023, you advised that you had the intention of depositing the [Champion] cheque if ATB agreed to facilitate certain payments. ATB refused to do this because Nomodic advised ATB that the cheque may be subject to a priority or trust claim. ATB requested that the funds be deposited into the account and that Nomodic assign itself into bankruptcy, advising that if it was determined that these were trust funds in priority to ATB's claim, ATB would distribute the same in accordance with priority. In the alternative, ATB requested that you assign Nomodic into bankruptcy forthwith and provide the cheque to the trustee. Despite ATB's requests, to date, no such deposit has been made [emphasis added].<sup>40</sup>

33. On October 6, 2023, Nomodic deposited the Champion Cheque into the ATB Operating Account, and ATB immediately applied it to Nomodic's outstanding indebtedness.<sup>41</sup> Further, on the same day, Bankruptcy Orders were issued with respect to several companies, including Nomodic.<sup>42</sup>

<sup>37</sup> First Ashraf Affidavit at para 36.

<sup>38</sup> Supplemental Affidavit of Muhammad Ashraf, sworn April 8, 2024 at para 27 [**"Second Ashraf Affidavit"**].

<sup>39</sup> Second Ashraf Affidavit at Exhibit "J".

<sup>40</sup> First Ashraf Affidavit at para 39, Exhibit "S".

<sup>41</sup> Volk Affidavit at para 12, Exhibit "E"; First Report of the Trustee at para 28; Second Ashraf Affidavit at paras 12-13.

<sup>42</sup> First Hale Affidavit at Exhibit "K", L. See Bankruptcy Order [**TAB C**].



34. On October 13, 2023, after learning of Nomodic's bankruptcy, NVD retained counsel. On October 18, NVD's counsel wrote to counsel for the Trustee and counsel for ATB, informing them of NVD's property/trust claim in the Champion Cheque.<sup>43</sup>
35. On December 5, 2023, counsel for NVD submitted a Proof of Claim to the Trustee. It made a nominal unsecured claim in the amount of \$1,000.00, which was explicitly meant to ensure that NVD had standing as a creditor of the Estate. The Proof of Claim also included a claim for approximately \$2,405,409.71, pursuant to the Trust.<sup>44</sup> Counsel for NVD made clear that this Proof of Claim was being submitted under section 81 of the *Bankruptcy and Insolvency Act* ("**BIA**").<sup>45</sup>
36. The Trustee did not provide a specific property Proof of Claim form, and did not request that NVD amend its claim into a particular form.<sup>46</sup>
37. The Trustee did not reject NVD's property Proof of Claim pursuant to section 81(2) of the *BIA*, and has filed an application for advice and direction.<sup>47</sup>
38. The Champion Cheque Funds remain in the possession of ATB. The RBC Dedicated Account remains in control of the Trustee.

**v. RBC Dedicated Account transaction history**

39. The major transactions in and out of the RBC Dedicated Account which impacted trust funds are as follows. Nomodic would regularly use the funds in the account to purchase a cashable GICs, then cash the GICs when it was going to access funds. Transactions which simply invest the funds into a GIC, or redeem a GIC, have not been included.<sup>48</sup>

Date	Deposits (\$)	Withdrawals (\$)	Notes
December 14, 2022	3,750,757.00		Pre-Payment from NVD <sup>49</sup>
January 16, 2023		2,110,500.00	Transfer to Champion <sup>50</sup>
January 23, 2023		497,000.00	Transfer to Nomodic for general corporate purposes <sup>51</sup>
January 30, 2023	497,000.00		Transfer from Nomodic as a "true-up" transaction <sup>52</sup>
March 22, 2023	36,057.00		Deposit from NVD <sup>53</sup>
March 31, 2023	9,014.25		Deposit from NVD <sup>54</sup>
April 28, 2023		45,071.25	Payment to Nomodic pursuant to Progress Claims <sup>55</sup>

<sup>43</sup> First Hale Affidavit at para 30, Exhibit "M".

<sup>44</sup> Affidavit of Michael Hale, sworn March 28, 2024, at Exhibit "A" [**Second Hale Affidavit**].

<sup>45</sup> RSC 1985, c B-3 [**not reproduced**].

<sup>46</sup> Second Hale Affidavit at para 5.

<sup>47</sup> Second Hale Affidavit at para 6.

<sup>48</sup> First Report of the Trustee at para 34, Appendix D.

<sup>49</sup> First Hale Affidavit at Exhibit "B".

<sup>50</sup> First Report of the Trustee at para 34(c), Appendix D.

<sup>51</sup> First Report of the Trustee at para 34(d).

<sup>52</sup> First Report of the Trustee at para 34(e).

<sup>53</sup> First Report of the Trustee at para 34(g).

<sup>54</sup> First Report of the Trustee at para 34(g).

<sup>55</sup> See Hale, Exhibits "C" and "D"; First Report of the Trustee at para 34(g).

Date	Deposits (\$)	Withdrawals (\$)	Notes
June 26, 2023		202,905.45	Transfer to Nomodic for general corporate purposes <sup>56</sup>
September 29, 2023		289,194.60	Transfer to Nomodic for general corporate purposes <sup>57</sup>
October 3, 2023		13,565.27	Transfer to Nomodic for general corporate purposes <sup>58</sup>

40. With the injection of interest coming from the various GICs which were purchased, the final balance on October 6, 2023 was \$1,202,477.96.<sup>59</sup> Since the \$497,000.00 repayment on January 30, 2023 was restitution to the Trust, \$1,202,477.96 is also the lowest intermediate balance (accounting for the combined value of the GIC and the RBC Dedicated Account.<sup>60</sup> This 'lowest intermediate balance' is relevant to the issue of tracing the trust funds through the RBC Dedicated Account.

### **III. ISSUES**

41. The issues are:
- a. Is the Pre-Payment subject to a trust in favour of NVD?
  - b. Did ATB become a trustee *de son tort* of the Champion Cheque Funds?
  - c. Is ATB in knowing receipt of the Champion Cheque Funds?
  - d. Are the trust funds still identifiable and traceable?
  - e. What is the appropriate remedy?

### **IV. LAW AND ARGUMENT**

#### **A. THE PRE-PAYMENT IS SUBJECT TO A TRUST**

##### ***i. Requirements to show a trust***

42. Express trusts all have the same basic elements, the "three certainties":
- a. certainty of intention: that the terms of the trust are sufficiently clear to impress the trust property with the trust;
  - b. certainty of subject: the trust property is sufficiently ascertainable; and

<sup>56</sup> First Report of the Trustee at para 34(i).

<sup>57</sup> First Report of the Trustee at para 34(j).

<sup>58</sup> First Report of the Trustee at para 34(j).

<sup>59</sup> First Report of the Trustee at Appendix D.

<sup>60</sup> First Report of the Trustee at Appendix D. Discounting the \$497,000.00 withdrawal and repayment, the lowest balance of the account was reached on at the end of the day on January 23, 2023, where the GIC had a remaining balance of \$1,149,665.00 and the RBC Dedicated Account contained \$4,310.90, for a total holding of \$1,153,975.90.

c. certainty of object: the purpose for which the trust was created is sufficiently clear.<sup>61</sup>

43. A *Quistclose* Trust will arise where the settlor provides funds for a very specific purpose and does not intend to make those funds part of trustee's assets.<sup>62</sup> This is the species of express trust asserted by NVD.

**ii. The Pre-Payment is impressed with a trust**

44. A trust, in favour of NVD, attaches to entirety of the Pre-Payment. Regardless of what was done with the Pre-Payment after it was given to Nomodic, including any breaches of the trust by Nomodic, the Pre-Payment was provided pursuant to an express trust, and the entirety of the unused Pre-Payment remains impressed with that trust.
45. The second and third requirements, being certainty of subject and certainty of object, are easy to identify in this case. Regarding the subject, the Pre-Payment is a lump sum and is solely tied to the existence of the NVD LNTP. The Pre-Payment was provided pursuant to that agreement, and the agreed upon Bank Account Request, and was provided for no other purpose.
46. Certainty of object is clear from the terms of the NVD LNTP. The NVD LNTP sets out the precise work which was to be completed on behalf of NVD using the Pre-Payment.
47. In *Carevest Capital Inc v 1262459 Alberta Ltd.*, the settlor said the funds were to be used to "pay the balance of the Leduc County off site levy to the Leduc County."<sup>63</sup> Applications Judge Smart held that this language made the purpose of the payment clear, namely that it "was to be used for no other purpose than for payment of the off site levy."<sup>64</sup>
48. The terms of the NVD LNTP are similarly clear. Clause 1 of the NVD LNTP states that NVD "hereby confirms that contractor [being Nomodic] may proceed with the Scope of Services as described in Schedule A hereto."<sup>65</sup> The NVD LNTP goes on to outline four specific items for which the Pre-Payment is going to be used, being a show suite, windows, HVAC, and a first deposit on fabrication. Each of these items has a specific cost which is expected to be paid to Champion as the sub-contractor, an amount for Nomodic's expenses, and an amount for Nomodic's fee. This language makes the purpose of the Pre-Payment unequivocally clear.
49. Certainty of intention is also equally satisfied in this case. Certainty of intention is judged on an objective basis.<sup>66</sup> More specifically, the intention to create a trust will be shown if there was an intention for the Pre-Payment to remain the property of NVD until Nomodic had earned it.<sup>67</sup> An alternative way to phrase this inquiry regarding intention is whether the funds could be used

<sup>61</sup> See e.g. *Citizens Bank of Rhode Island v. Paramount Holdings Canada Company*, 2008 CanLII 12706 (ONSC), aff'd 2008 ONCA 891 [*Citizens Bank*, BOA TAB 10]; *Citadel General Assurance Co v Lloyds Bank Canada*, [1997] 3 SCR 805 [*Citadel v Lloyds*, BOA TAB 9] at para 15.

<sup>62</sup> See generally *Barclays Bank v Quistclose Investments Ltd*, [1968] UKHL 4 [BOA TAB 3].

<sup>63</sup> *Carevest Capital Inc v 1262459 Alberta Ltd*, 2011 ABQB 148 [*Carevest*, BOA TAB 8] at para 22.

<sup>64</sup> *Carevest* at para 22.

<sup>65</sup> First Hale Affidavit at Exhibit "A", clause 1.

<sup>66</sup> *Ontario (Training, Colleges and Universities) v Two Feathers Forest Products LP*, 2013 ONCA 598 [*Two Feathers*, BOA TAB 14] at para 24.

<sup>67</sup> *Citizens Bank* at para 27.

for the Trustee's "own general business purposes."<sup>68</sup> If the funds were not meant to be used for Nomodic's general business purposes, then Nomodic did not have property in the funds, and there was intention to create a trust.

50. The Court in *Citizens Bank of Rhode Island v. Paramount Holdings Canada Company* summarizes the factors a Court should consider when deciding whether there is certainty of intention:

[20] In the absence of formal trust documentation, the Court must consider the circumstances and evidence as to what the parties intended, what was actually agreed to and how the parties conducted themselves to determine if the requisite clear intention to create a trust is present.

[21] Factors the Court will consider include the content of any agreements between the parties, whether the alleged trust property is held in a separate account, whether the alleged trustee is permitted to commingle the alleged trust funds with his or her own funds or use the funds for his or her own general business purposes and, past events and conduct that may suggest that the parties treated the funds as trust funds.<sup>69</sup>

51. The NVD LNTP contains very specific language about what Nomodic was permitted to do with the Pre-Payment. The Pre-Payment was not to be used for Nomodic's general business purposes: every dollar of the Pre-Payment was earmarked for a particular purpose related to the completion of the NVD Hyatt Project.
52. Further, and importantly, upon termination of the NVD LNTP, the balance of the unused Pre-Payment was to be returned to NVD, as the NVD LNTP stated: "...mutually agreeable Termination Charges will be subtracted from the total amount remaining and the remaining amount will be refunded" within 30 days.<sup>70</sup>
53. There are other aspects of the parties' conduct that establish the intention to form a trust:
- a. The terms of the Champion LNTP are indicative of how Nomodic wished to deal with the Pre-Payment. The Champion LNTP says:

If Owner [NVD] abandons the Project prior to Nomodic and Champion executing a manufacturing agreement by February 28<sup>th</sup>, 2022; Champion shall refund all pre-payments to Nomodic for return to Owner [NVD], less any reasonable expenses and monies spent on procurement of long leads within seven (7) [days] Notice.<sup>71</sup>

These words are a clear indication that Nomodic was treating the Pre-Payment as a separate fund, to which NVD was ultimately entitled – not part of Nomodic's own assets.

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<sup>68</sup> *Citizens Bank* at para 21.

<sup>69</sup> *Citizens Bank* at paras 20-21.

<sup>70</sup> First Hale Affidavit at Exhibit "A", clause 7(a).

<sup>71</sup> Volk Affidavit at Exhibit "A".

- b. The Pre-Payment was only (supposed to be) accessed by Nomodic through the progress claim procedure. Before withdrawing money from the RBC Dedicated Account, Nomodic had to complete work, invoice the work, and wait for NVD to approve the draw. The analogy to other trust accounting procedures, such as lawyer's trust accounts, is undeniable. In both situations, the trustee does not obtain rights in the funds until the work or a portion of the work is completed. Both NVD and Nomodic participated in the progress claim procedure at least twice, with no indication that either party was surprised by or objected to this method of payment.
- c. Despite the request for Nomodic to hold a separate account, and the use of the progress claim procedure, there were times when Nomodic used the RBC Dedicated Account as a slush fund to cover short term cash shortages.<sup>72</sup> It is notable, however, that the first of these unauthorized Nomodic withdrawals, on January 23, 2023, was replaced a week later, on January 30.<sup>73</sup> If Nomodic was entitled to use the funds in the RBC Dedicated Account for general business purposes, there would have been no need to return the funds and "true-up" the account on January 30, 2023. This true-up transaction is another indication that Nomodic was not dealing with the Pre-Payment as an acquired asset.
- d. On or about September 21, 2023, Nomodic provided ATB with some accounts payables documents for the period ending of August 31, 2023, none of which showed NVD as being owed funds. The documents pre-dated the Settlement Agreement. The various documents appear on their faces to be listings of "suppliers" (a description which would not apply to NVD) and payables that are lienable by third parties for materials and services provided to Nomodic (again, which would not apply to NVD).<sup>74</sup>
- e. On or about September 29, 2023, Nomodic provided ATB with project cash schedule between September 21 and October 30, 2023, which forecasted payments in and out based for ongoing projects. The NVD Hyatt project is not included at all, as the NVD Hyatt project had already been terminated by NVD. The Settlement Agreement was agreed to on the same day as this document was provided to ATB. Champion had already been paid in full by Nomodic as set out in full, as set out herein. The project cash schedule contains a "net cash on hand" line and the amounts included clearly do not include the amounts that were contained in the RBC Dedicated Amount since the largest "net cash on hand" entry is \$640,373.01" on October 13, 2023.<sup>75</sup> This strongly suggests that Nomodic was purposely not including the funds in the RBC Dedicated Account as being available to it.
- f. Throughout late September and early October, Nomodic requested additional funds from ATB in order to operate or wind down operations, even though there was over \$1.2 million in the RBC Dedicated Account between September 27-29, 2023,<sup>76</sup> and even though the Champion Cheque was available to Nomodic on or about September

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<sup>72</sup> First Report of the Trustee at para 31.

<sup>73</sup> First Report of the Trustee at para 34(d).

<sup>74</sup> Second Ashraf Affidavit at para 16, Exhibit "C"; Transcript of the Cross-Examination of Muhammad Ashraf, conducted April 16, 2024, at p. 11, line 27 to p. 14, line 3 [**Ashraf Transcript**] [**TAB D**].

<sup>75</sup> Second Ashraf Affidavit at para 16, Exhibit "D"; Ashraf Transcript at p. 11, line 27 to p. 14, line 3 [**TAB D**].

<sup>76</sup> First Ashraf Affidavit at paras 17(a)(i), 29.

28, 2023. Again, this suggests that Nomodic did not consider funds in the RBC Dedicated Account available for general use.<sup>77</sup>

- g. Finally, a representative of Nomodic, likely Read, told ATB that the funds in the RBC accounts may be subject to a trust claim<sup>78</sup> and more specifically that the Champion Cheque may be subject to a trust claim.<sup>79</sup>

The above conduct establishes that neither NVD nor Nomodic were treating the Pre-Payment, including the Champion Cheque, as Nomodic's property. The parties conducted themselves in a manner consistent with the view that the Pre-Payment was subject to a trust in favour of NVD.

54. Another factor to be considered is whether there was a requirement to keep trust funds separate from the general funds of the trustee. Although the "presence or absence of a prohibition on the comingling of funds is not necessarily determinative,"<sup>80</sup> the presence of such a requirement is a factor which points towards the intention to create a trust.<sup>81</sup> Here, NVD asked Nomodic to use a dedicated account, and Nomodic agreed.<sup>82</sup>
55. Here, the RBC Dedicated Account was set up for the sole purpose of administering the Pre-Payment as part of the NVD Hyatt project.<sup>83</sup> NVD made a request for the Pre-Payment to be kept in a separate, interest bearing account and Nomodic did so, including investing portions of the Pre-Payment in cashable GICs.<sup>84</sup> The first deposit, other than a nominal deposit to open the account, was the Pre-Payment.<sup>85</sup>
56. It is notable that use of the word "trust" is not a legal requirement to show sufficient intention to create a trust.<sup>86</sup>
57. The cases discussing *Quistclose* trusts draw clear distinctions between situations in which a trust is created, and situations where a debtor-creditor relationship is created. Where a debtor-creditor relationship is specified in the contract<sup>87</sup> or implied by the conduct of the parties,<sup>88</sup> that will weigh heavily against (or perhaps be dispositive of) the existence of a trust.
58. Here, there is no indication of a debtor-creditor relationship. The NVD LNTP does not contain repayment terms that would be found in traditional loan agreements, such as specific payment dates or an interest rate. Further, there are no provisions dealing with default. Similarly, the

<sup>77</sup> First Ashraf Affidavit at para 36; Volk Affidavit at para 12.

<sup>78</sup> First Ashraf Affidavit at para 34.

<sup>79</sup> First Ashraf Affidavit at para 38, Exhibit "S".

<sup>80</sup> **Citizens Bank** at para 22, citing **Commercial Union Life Assurance Co of Canada v John Ingle Insurance Group Inc**, [2000] OJ No 3289.

<sup>81</sup> **Citadel v Lloyds** at para 16; **Citizens Bank** at para 21.

<sup>82</sup> First Report of the Trustee at para 20.

<sup>83</sup> First Report of the Trustee at para 35.

<sup>84</sup> First Report of the Trustee at paras 20, 34.

<sup>85</sup> First Report of the Trustee at para 33, Appendix D.

<sup>86</sup> **Two Feathers** at para 28. See also **Carevest** at paras 1-2, 22, where the word 'trust' was used in relation to all three disputed advances, but only one was subject to a trust.

<sup>87</sup> **Two Feathers** at para 28.

<sup>88</sup> **Citizens Bank** at para 27: "The payments in 2006 are not sufficient to imply a trust. Mr. Desjardin's own evidence is that they were arbitrary in amount, and designed to reduce the amounts owing to Transcorp ... to eliminate the indebtedness over a certain time."

progress claim process followed by NVD and Nomodic does not resemble Nomodic repaying a loan given by NVD.

59. The NVD LNTP uses the word “refunded” to denote what should happen to the Pre-Payment if the agreement was terminated.<sup>89</sup> *Black’s Law Dictionary* defines “refund” as “1. The return of money to a person who overpaid...”<sup>90</sup> The concept of returning an overpayment indicates entitlement to the amount, and calls to mind the basic principle of unjust enrichment. This word stands in contrast to other words which were *not* used in that section of the NVD LNTP, which might have indicated a different intention, such as ‘debt’<sup>91</sup> or even ‘pay to.’<sup>92</sup>
60. In sum, the arrangement between NVD and Nomodic created a trust. The subject of the trust was the Pre-Payment. The object of the trust was the work to be completed on the NVD Hyatt Project by Nomadic. The intention to form that trust is made clear by the terms of the NVD LNTP, the Bank Account Request, and the parties’ conduct towards the Pre-Payment. All of these factors show a clear intention for the Pre-Payment to be held in and pursuant to a trust in favour of NVD.

### ***iii. Additional Trust over the Payment arising from the Champion Cheque***

61. The Champion Cheque was derived from the Pre-Payment. As a result, the trust claim and NVD’s entitlement to the Pre-Payment generally, discussed above, applies equally to the Champion Cheque Funds.
62. However, regardless of that initial trust, the Champion Cheque Funds are subject to a second, similar trust.
63. The same requirements to show a trust discussed above apply to the second trust which arose in relation to the Champion Cheque: certainty of intention; certainty of subject; and certainty of object.<sup>93</sup> This trust is also in the nature of a *Quistclose* trust.
64. Again, certainty of subject and certainty of object are clear from the agreements in place. The relevant agreements here are the NVD LNTP, Champion LNTP and the Settlement Agreement between NVD, Nomodic, and Champion.
65. The Nomodic LNTP required that if NVD terminated the project, Champion was required to “refund all Pre-Payments to Nomodic for return to [NVD], less any reasonable expenses and monies spent on procurement ... within seven (7) [days] notice.”<sup>94</sup>
66. When all three parties were settling matters between them, they agreed that Nomodic would provide a refund \$2,405,490.71 to NVD on or before October 6, 2023.<sup>95</sup> By that time, the RBC

<sup>89</sup> First Hale Affidavit at Exhibit “A”, clause 7(a).

<sup>90</sup> *Black’s Law Dictionary*, 10th ed., ed by Bryan A Garner et al (St. Paul, MN: Thompson Reuters, 2014) [BOA TAB 4, **Black’s Law Dictionary**] *sub verbo* “refund.”

<sup>91</sup> *Black’s Law Dictionary*, *sub verbo* “debt”: “1. Liability on a claim; a specific sum of money due by agreement or otherwise.”

<sup>92</sup> *Black’s Law Dictionary*, *sub verbo* “payment”: “1. Give money for a good or service that one buys; to make satisfaction.”

<sup>93</sup> See e.g. *Citizens Bank* at para 19; *Citadel Lloyds* at para 15.

<sup>94</sup> Volk Affidavit at Exhibit “A”.

<sup>95</sup> First Hale Affidavit at Exhibit “I”.

Dedicated Account had a balance of \$1,202,477.96.<sup>96</sup> It was clear that the Champion Cheque Funds would be needed to supplement the remaining balance in the RBC Dedicated Account.<sup>97</sup>

67. Certainty of intention is judged objectively, and the crucial question is whether Champion intended Nomodic to obtain a beneficial interest in the Champion Cheque Funds.<sup>98</sup>
68. In order to refund approximately \$2.4 million, Nomodic first needed to obtain the approximately \$1.6 million from Champion. Ken Volk with Champion was aware of this when he entered into the Settlement Agreement. As a result, Champion issued the Champion Cheque for the sole and exclusive purpose of being forwarded to NVD, along with the rest of the refund which would come from Nomodic.<sup>99</sup> Volk and Read spoke over the phone and came to this mutual understanding what amount Champion refund and the purpose for the same.<sup>100</sup> The evidence of Ken Volk, set out in his Affidavit, as to the nature of the Champion Cheque is unequivocal and unchallenged.
69. The jurisprudence provides useful analogies which discuss the intention to create a trust. Situations in which a trust was *not* found to exist include where the relationship between the parties was that of debtor and creditor, discussed above. A relationship which *is* indicative of the existence of a trust, is an agency relationship. The jurisprudence recognizes that where money is collected or disbursed by an agent, the parties will not have intended to give the agent property in the funds, and thus will have intended to create a trust with the agent acting as trustee:
  - a. In *Bonnie Cummings v Peopledge HR Services Inc*, Peopledge provided payroll processing and human resources services to client companies. To do this, it would collect money for payroll, as well as its own fees, and deposit all funds into a consolidated bank account. The Court recognized that this arrangement treated Peopledge as a “flow-through”, and that payroll funds were given to Peopledge for the specific purpose of paying out employee wages and making required remittances.<sup>101</sup> The Court held that it would be inequitable to allow creditors to collect the payroll funds when Peopledge’s clients had never intended Peopledge to have a beneficial interest in those funds.<sup>102</sup>
  - b. In *J-V Import Co Ltd v Deloitte & Touche Inc*, Jay-V was a supplier to Shoppers Drug Mart. Wing Wah Company, the bankrupt, had an arrangement whereby it acted as an intermediary between Shoppers and J-V. J-V would deliver goods to Shoppers, then invoice Wing Wah. Wing Wah would then invoice Shoppers. Wing Wah would collect accounts receivables from Shoppers, take a 5% fee, and remit the remainder to J-V as payment for J-V’s invoice. The Court recognized that there was “never any transfer of property in the goods to Wing Wah ... Wing Wah Company was simply an agent to

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<sup>96</sup> First Report of the Trustee at Appendix D.

<sup>97</sup> The total combined balance of the RBC Dedicated Account (\$1,202,477.96) and Champion Cheque Funds (\$1,639,158.54) is \$2,841,636.50. The amount of the NVD refund is \$2,405,490.71. The difference is the result of interest coming from the GICs which were purchased with funds in the RBC Dedicated Account.

<sup>98</sup> *Two Feathers* at para 24; *Citizens Bank* at paras 27.

<sup>99</sup> Volk Affidavit at para 13.

<sup>100</sup> Volk Affidavit at para 11.

<sup>101</sup> *Bonnie Cummings v Peopledge HR Services Inc*, 2013 ONSC 2781 at para 12 [*Peopledge*, BOA TAB 5].

<sup>102</sup> *Peopledge* at para 14.



collect these accounts.”<sup>103</sup> J-V was entitled to the funds Wing Wah had collected on its behalf.

A trust was created in each of these situations.

70. In the instant case, Nomodic was similarly an agent or “flow through” for collection of NVD’s refund, and was not obtaining a property interest in the Champion Cheque:
- a. Champion was not indebted to Nomodic, and had no other purpose for providing the Champion Cheque than as a refund to be sent to NVD.<sup>104</sup> This understanding was confirmed between Read and Volk over the phone.<sup>105</sup>
  - b. There was no dispute between any of the parties that NVD was entitled to the Champion Cheque Funds as part of its refund, both under the Champion LNTP and the Settlement Agreement. This is clear from the agreements in place, and from the content of the negotiations. In his emails, Read did not raise the idea that NVD was not entitled to a refund. In fact, he affirmed that entitlement more than once. For example:
    - i. on August 28, 2023, Read wrote: “we have prepared some estimated numbers regarding the amount to be returned to NVD... Subject to receiving the funds currently held by Champion, and from NVD a mutual release in a form satisfactory to Nomodic, we propose to return the remainder (\$2,209670.71)” which was an estimate of the refund;<sup>106</sup> and
    - ii. on September 6, 2023, Read confirmed that “the remaining funds will be refunded to NVD within 30 days.”<sup>107</sup>
71. Just as in the examples above, all parties were in agreement that Nomodic was simply acting as an intermediary to consolidate and provide the refund to NVD. Neither Champion nor Nomodic indicated an intent that Nomodic would be entitled to the Champion Cheque Funds.
72. Even if the Pre-Payment was not subject to a trust, the Champion Cheque Funds were subject to a trust with Champion as the settlor, and NVD as the beneficiary.

## **B. ATB IS A TRUSTEE *DE SON TORT***

73. ATB is liable to NVD for the Champion Cheque Funds on two alternative bases: (a) as a trustee *de son tort*, or (b) being in knowing receipt of trust funds. The determination of which turns on ATB’s role when it accepted the Champion Cheque. If ATB received the Champion Cheque as a voluntary trustee, their liability arises as a trustee *de son tort*. If ATB received the Champion Cheque in its personal capacity or for its personal use, its liability arises from the doctrine of ‘knowing receipt.’

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<sup>103</sup> *J-V Import Co Ltd v Deloitte & Touche Inc*, 1992 CanLII 1978 (BCSC) [*J-V Import, BOA TAB 13*] at 4.

<sup>104</sup> Volk Affidavit at para 14.

<sup>105</sup> Volk Affidavit at para 11, see also para 9.

<sup>106</sup> First Hale Affidavit at Exhibit “G”.

<sup>107</sup> First Hale Affidavit at Exhibit “G”.

74. A trustee *de son tort* is not appointed as the trustee by the settlor, but is a trustee nonetheless because they “take on themselves to act as such and to possess and to administer trust property.”<sup>108</sup> *Oosterhoff on Trusts* adopts the following explanation from the English case of *Mara v Browne*:
- [I]f one, not being a trustee and not having authority from a trustee, takes upon himself to intermeddle with trust matters or to do acts characteristic of the office of trustee, he may thereby make himself what is called in law a trustee of his own wrong – i.e., a trustee *de son tort*, or, as also termed, a constructive trustee.<sup>109</sup>
75. *Oosterhoff* further explains that a person will not always become a trustee *de son tort* by simply dealing with trust property. The person must additionally purport to act as a trustee.<sup>110</sup> Where a party is a trustee *de son tort*, they are liable as a constructive trustee.
76. Regarding the Champion Cheque Funds, ATB assumed the mantle of trustee and became a trustee *de son tort*. Specifically, Ashraf on behalf of ATB “requested, on multiple occasions, that those funds be deposited with ATB.”<sup>111</sup>
77. Further, on October 6, 2023, Ashraf sent an email to Read reassuring him that ATB “would distribute the same in accordance with priority” if there was a trust claim in those funds.<sup>112</sup> In doing so, ATB invited Nomodic to deposit the Champion Cheque into an ATB account, and represented to Nomodic that ATB would carry out the terms of any trust that existed with respect to those funds.
78. By repeatedly requesting that Nomodic deposit the Champion Cheque into the ATB account, despite being aware that the Champion Cheque could be subject to a trust,<sup>113</sup> and by assuring Nomodic that ATB would administer the funds in accordance with the possible trust claim, ATB expressly asked for the trust property and asserted that they would carry out the trust.
79. This is sufficient to classify ATB as a trustee *de son tort*.
80. A trustee *de son tort* does not become personally liable simply because they have assumed the duties of a trustee, but will be liable if they commit a breach of trust.<sup>114</sup> Here, if ATB continues to withhold the Champion Cheque Funds from NVD, that would be in breach of the first trust (which is impressed upon the whole Pre-Payment) and/or the second trust (which arose from Champion’s payment to NVD, with Nomodic acting as an agent for collection).

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<sup>108</sup> *Air Canada v M & L Travel Ltd*, [1993] 3 SCR 787, [1993] SCJ No 118 [*Air Canada*, BOA TAB 2] at para 32, quoting *Selangor United Rubber Estates, Ltd v Cradock (No. 3)*, [1968] 2 All ER 1073 at 1095.

<sup>109</sup> AH *Oosterhoff*, Robert Chambers & Mitchell McInnis, *Oosterhoff on Trusts*, 8<sup>th</sup> ed, (Toronto: Thompson Reuters Limited, 2014) [*Oosterhoff*, BOA TAB 1] at 1182, quoting [1896] 1 Ch. 199 (CA).

<sup>110</sup> *Oosterhoff* 1183.

<sup>111</sup> First Ashraf Affidavit at paras 37-38.

<sup>112</sup> First Ashraf Affidavit at Exhibit “S”.

<sup>113</sup> First Ashraf Affidavit at paras 34-39, Exhibit “S”.

<sup>114</sup> *Air Canada* at para 32.

### C. ATB IS IN KNOWING RECEIPT

81. Knowing receipt is not, strictly speaking, a separate basis to hold ATB liable for the return of the Champion Cheque to NVD. Rather, once the Pre-Payment, and more specifically the Champion Cheque, are impressed with a trust, NVD may continue to trace the Champion Cheque Funds until that tracing is defeated by a *bona fide* purchaser for value.
82. Importantly, where a party has actual or constructive knowledge of the trust, they do not qualify as a *bona fide* purchaser for value.<sup>115</sup>
83. That said, “knowing receipt” is often treated as a cause of action in practice, and has established elements:
  - a. the Defendant received trust property, meaning “at a minimum, to take the trust property into one's possession... physical control”;<sup>116</sup>
  - b. the trust property was received for the Defendant’s own benefit or in their personal capacity; and
  - c. the Defendants had actual or constructive knowledge that the trust property was being misapplied.<sup>117</sup>
84. The knowledge requirement can either be met by actual knowledge of the trust, or constructive knowledge, which is “knowledge of facts which would put a reasonable person on inquiry.”<sup>118</sup>
85. If such a reasonable inquiry is required, the question will then be whether a reasonable person would have been satisfied with the answers they received.<sup>119</sup> In such a circumstance, the Defendant should “determine the exact nature of these funds before dealing further with them.”<sup>120</sup>
86. Where the Defendant has received trust property in these circumstances, they will be liable as a constructive trustee. This is true “even though he [may have] acted in good faith.”<sup>121</sup>
87. The first two requirements for knowing receipt – (a) receiving property (b) for its own benefit – are uncontroversial in this case. ATB did indeed receive trust property. If ATB is not a trustee *de son tort* (having received the Champion Cheque in the capacity of trustee), then it received the Champion Cheque Funds for its own benefit and in its personal capacity.

<sup>115</sup> See generally *Caja Paraguaya de Jubilaciones y Pensiones del Personal de Itaipu Binacional v Garcia*, 2020 ONCA 412 at paras 55-56, leave to appeal to SCC denied, 39374 (25 February 2021) and 40273 (8 December 2022) [**Caja, BOA TAB 7**].

<sup>116</sup> *Gold v Rosenberg*, [1997] 3 SCR 767 [**BOA TAB 11**] at para 71, Sopinka J, writing for McLachlin and Major JJ, with Gonthier J. concurring in result.

<sup>117</sup> *Caja* at para 57. See generally *Citadel v Lloyds*.

<sup>118</sup> *Citadel v Lloyds* at para 49.

<sup>119</sup> *Gold v Rosenberg* at para 44, Dissent, quoting *Nelson v Larholt*, [1948] 1 KB 33. See also para 74, Majority.

<sup>120</sup> *Gold v Rosenberg* at para 44, Iacobucci J, writing in dissent, quoting *Potter (Carl B) Ltd v Mercantile Bank of Canada*, [1980] 2 SCR 343 at 347. Sopinka J, writing for the Majority, does not appear to disagree with the law as stated by Iacobucci J, just with his assessment of whether Mercantile Bank acted reasonably: see paras 69, 73-76.

<sup>121</sup> *Gold v Rosenberg* at para 44, Dissent, quoting Harpum, Charles, “The Stranger as Constructive Trustee” (1986), 102 LQR 114 and 267, at 273.

***i. ATB had direct knowledge of the competing trust claim***

88. Turning to the question of knowledge, at the very minimum, ATB was given clear information that a competing priority trust claim existed in relation to the Champion Cheque. It does not appear ATB took reasonable or sufficient steps to determine what trust claims may exist either before or after deposit and application to the amounts owed to it.<sup>122</sup> At minimum, the responses ATB received from their limited inquiries would not have satisfied a reasonable person that there was no trust claim in and to the Champion Cheque.
89. At the pivotal moments, being when the Champion Cheque was deposited at approximately 10:15 am on October 6, 2023 and then ATB applied the funds from the Champion Cheque to various Nomodic balances/debts by no later than 11:46 am on October 6, 2023,<sup>123</sup> ATB knew there was a trust claim or potential trust claim in the Champion Cheque. There can be little doubt of this based on the following:
- a. Mr. Ashraf emailed Mr. Read at 9:11 am on October 6, 2023, which email included the following:
- (i) Nomodic has been in possession of the \$1.639 million cheque since October 2, 2023, if not earlier, but has refused to deposit the same....
- (vii) On October 5, 2023, you advised that you had the intention of depositing the cheque if ATB agreed to facilitate certain payments. **ATB refused to do this because Nomodic advised ATB that the cheque may be subject to a priority or trust claim. ATB requested that the funds be deposited into the account and that Nomodic assign itself into bankruptcy, advising that if it was determined that these were trust funds in priority to ATB's claim, ATB would distribute the same in accordance with priority.** In the alternative, ATB requested that you assign Nomodic into bankruptcy forthwith and provide the cheque to the trustee. Despite ATB's requests, to date, no such deposit has been made. [emphasis added]<sup>124</sup>
- b. Mr. Ashraf confirmed during Questioning on his Affidavits that one of the reasons that ATB did not agree to facilitate the payments to third parties with the funds from the Champion Cheque being requested by Nomodic in the days prior to October 6, 2023 was that ATB did not want to be in a position if there is a trust claim, and if it ranked ahead of ATB, ATB did not want to be making payments to third parties from those trust funds and take a bigger loss;<sup>125</sup>

<sup>122</sup> First Ashraf Affidavit at para 34: “[D]espite ATB’s request, Nomodic is unable or has otherwise failed to advise as to the exact nature of the claims affecting the RBC funds or provide any supporting documents with respect to the potential claims...potentially, trust claims.”

<sup>123</sup> Second Ashraf Affidavit at paras 9-12.

<sup>124</sup> First Ashraf Affidavit at para 39, Exhibit “S”.

<sup>125</sup> Ashraf Transcript at p. 43, line 16 to p. 44, line 3 [TAB D].

90. It is respectfully submitted that the ATB was unquestionably concerned on October 6, 2023 that it could be liable for dispersing trust funds to third parties in breach of the trust.<sup>126</sup> That, in NVD's submission, is highly telling of ATB's level of knowledge of the competing trust claim.
91. Further, Ashraf sworn in the First Ashraf Affidavit, used to obtain the Bankruptcy Order, which was sworn prior to Nomodic's assignment into bankruptcy, that:
- a. Nomodic advised ATB that the Champion Cheque may be subject to other claims but Nomodic had not provided any specific or supporting documents;<sup>127</sup>
  - b. Nomodic advised ATB that the funds in the RBC Dedicated Account may be subject to potential trust claims, but Nomodic had not provided any specific or supporting documents of such potential trust claims;<sup>128</sup> and
  - c. the appointment of a trustee in bankruptcy was the only realistic means by which accounts receivable, and "potentially the [Champion] Cheque" may be recovered [emphasis added].<sup>129</sup>
92. ATB did not learn or receive further information or documents regarding the competing trust claim to the Champion Cheque in the time between (a) Ashraf's October 6, 2023 email at 9:11am, (b) ATB's receipt of the Champion Cheque at 10:15am, (c) ATB's application of the funds from the Champion Cheque to Nomodic's indebtedness by 11:46am, and (d) the Bankruptcy Order being granted later on October 6, 2023.
93. Based on that timeline, and given the content and context of Ashraf's email at 9:11am on October 6, 2023, there is no merit to any suggestion that ATB reasonably confirmed or had been satisfied that there was no trust claim in the Champion Cheque prior to its application to the Nomodic indebtedness.

***ii. ATB was aware of other context which indicated a trust claim***

94. Beyond the above, there were significant additional comments, indications, circumstances, and context that made ATB aware – or ought to have made ATB aware – of the competing trust claim or potential trust claim over the Champion Cheque, as well as the funds in RBC Dedicated Account.
95. Information about the Champion Cheque and ATB Dedicated Account cannot be simply separated or considered distinct: ATB was aware of the link to NVD and NVD Hyatt Project in respect of both the Champion Cheque and funds in the RBC Dedicated Account. Thus, the available information regarding the RBC Dedicated Account is relevant for the purpose of assessing ATB's knowledge or constructive knowledge.
96. The October 6, 2023 email from Ashraf, quoted above, was the result of a stream of information that ATB was receiving, which was enough to "put them on inquiry", regardless of

<sup>126</sup> First Ashraf Affidavit at para 39, Exhibit "S"; Ashraf Transcript at p. 43, line 16 to p. 44, line 3 [TAB D].

<sup>127</sup> First Ashraf Affidavit at para 17(b): "ATB has been advised that this amount may be subject to other claims..."

<sup>128</sup> First Ashraf Affidavit at para 34: "ATB was advised that the RBC Funds may or may not be subject to various claims, including potential trust claims."

<sup>129</sup> First Ashraf Affidavit at para 40.

whether they had specific information as to the nature of the trust claim. The following is a summary of that information:

- a. On February 27, 2023, FTI Consulting prepared a “Recapitalization Plan” on behalf of Nomodic, and it appears to have provided and discussed it with ATB. In that document, it stated that “[t]he Company is facing immediate near-term liquidity issues” and noted that “since February 6, 2023, the Company has had zero access to its Revolving Line of Credit... No funds have been available for any ongoing/active projects or overhead operations.” Additionally, the 13 week cashflow in the document on its face included no sources of cash for some weeks.<sup>130</sup> Nomodic clearly did not include the funds in the RBC Dedicated Account despite having the applicable amount of Pre-Payment funds in the RBC Dedicated Account at that time, suggesting that Nomodic was aware that they could not use those funds for general operations and other projects.
- b. Thereafter, on February 28, 2023, ATB asked Nomodic by email to provide the RBC account statements from August 22, 2022 to February “...along with trust agreements requiring GIC for the NVD Hyatt Place deposit.”<sup>131</sup>
- c. On March 2, 2023, Chuma Metuh (“**Metuh**”) of Nomodic responded by noting that RBC Dedicated Account had a GIC associated with it, which he referred to as the “Hyatt Trust Funds”. Metuh also provided a short history of the transactions related to GIC for the Hyatt trust funds, and advised ATB that Nomodic had arrangement with NVD whereby NVD sent the Pre-Payment to Nomodic to hold in a savings account and to earn the interest on those funds so Nomodic could remit the interest back to NVD as a flat fee. More specifically, ATB was also told that the money was a “deposit”, and that Nomodic had used money for a GIC to earn interest. Metuh also described the progress claim procedure which was being followed.<sup>132</sup>
- d. No trust documents requested by ATB on February 28, 2023 were provided;<sup>133</sup>
- e. In the morning March 6, 2023, an ATB representative (Ms. Walby Parchomam) and Metuh exchange emails about whether the cashable GIC would count toward the minimum liquidity requirement under the new arrangement being negotiated by ATB and Nomodic. At 11:19am, Ms. Walby Parchomam advised that the GIC related to the Hyatt project would be excluded from the calculation since it was “...encumbered by Hyatt trust conditions”.<sup>134</sup>
- f. On March 6, 2023, Ms. Walby Parchomam and Metuh had further email correspondence at 7:02pm and 10:29pm, wherein Metuh advised ATB that \$497,000.00 was transferred from the RBC Dedicated Account to an ATB Account on January 23, 2023 and then the same funds were returned to the RBC Dedicated Account on January 30, 2023. He advised that the funds in the RBC Dedicated Account were used to make a critical payment through the ATB account due to not

<sup>130</sup> UT Response at Schedule 3 (p. 190, 206) **[TAB E]**.

<sup>131</sup> UT Responses at Schedule 3, email dated March 2, 2023 12:15pm (p. 103) **[TAB F]**.

<sup>132</sup> UT Responses at Schedule 3, email dated March 2, 2023 12:15pm (p. 103) **[TAB F]**. See also Ashraf Transcript at p. 16, line 18 to p. 17, line 1; p. 42, line 19 to p. 43, line 8 **[TAB D]**.

<sup>133</sup> UT Responses at Response #3 (p. 4) **[TAB G]**.

<sup>134</sup> UT Responses at Schedule 9, email dated March 6, 2023 11:19am (p. 282) **[TAB H]**.

receiving an expected receivable payment, and that once the critical payment was received, the funds were returned to RBC. (This transaction is referred to as 'true-up payment' in the materials). Metuh's then expressly writes "[a]s you can guess, I got in shit for proceeding in this direction."<sup>135</sup>

- g. Despite the assertion Ashraf's Response to Undertaking number 6,<sup>136</sup> Ms. Walby Parchomam appears to have understood the ramifications of Nomodic having used the trust funds in the RBC Dedicated Account, as on March 7, 2023 at 11:35pm she wrote to Mr. Govett with ATB stating "FYI- not great response on two transactions I questioned. Nomodic #8432 – transaction \$497k. They used Hyatt trust funds for near term liquidity issues before transferring back to RBC account so they could purchase new GIC for \$1.66MM."<sup>137</sup>
- h. In late September and early October, Nomodic was asking ATB to finance or cover certain modest payments related to employee payables and certain other payables or costs in order to allow Nomodic to wind down its operations. Further, ATB had been sweeping all cash that came into its accounts so Nomodic could not otherwise use the funds in those accounts.<sup>138</sup> Nomodic was making these requests despite having the funds in the RBC Dedicated Account and the Champion Cheque.
- i. On October 2, 2023 at 11:57am, counsel for Nomodic advised ATB that Nomodic owed certain employee amounts and legal fees that it was looking for ATB to assist in covering. In the same email, Nomodic specifically noted "...Nomodic has a small amount of accessible cash in another bank account and could use the funds in that account..." [emphasis added].<sup>139</sup> ATB did not inquire or discuss with Nomodic what the phrase "small amount of accessible cash" meant.<sup>140</sup>
- j. On October 2, 2023 at 12:35pm, counsel for ATB advised that it appeared that Nomodic had sufficient funds from sources external to ATB all along, and inquired as to where the funds from the external RBC account came from, amongst other questions.<sup>141</sup> In this email, ATB is recognizing the inconsistency between Nomodic's request for funding, and its apparent assets.
- k. On October 2, 2023 at 5:36pm, counsel for Nomodic provided additional information regarding the funds in the RBC accounts and made a proposal for use of those funds.<sup>142</sup> This was the first time Nomodic suggested using the funds in the RBC Dedicated Account. Prior to that time, Nomodic had been requesting that ATB cover these expenses so as to avoid using the funds in the RBC Dedicated Account for a purpose not permitted by the trust in respect of those funds.

<sup>135</sup> UT Responses at Schedule 9, email dated March 6, 2023 10:29pm (p. 288) [TAB I].

<sup>136</sup> Therein, Ashraf asserts, in part: "The [March 6 and 7, 2023] reply from NMSI's representative does not refer to any replenishment of trust funds or similar rationale for moving funds back into the RBC account and ATB had no reason to suspect that any transfer back to the RBC account related to any purported trust arrangement."

<sup>137</sup> UT Responses at Schedule 9, email dated March 7, 2023 11:35pm (p. 287) [TAB J].

<sup>138</sup> First Ashraf Affidavit at paras 29-30, Exhibit "R"; Ashraf Transcript at p. 33, lines 22-27 [TAB D].

<sup>139</sup> First Ashraf Affidavit at Exhibit "F".

<sup>140</sup> Ashraf Transcript at p. 27, line 2 to p. 28, line 1 [TAB D].

<sup>141</sup> Second Ashraf Affidavit at Exhibit "G".

<sup>142</sup> Second Ashraf Affidavit at Exhibit "H".

- i. On October 2, 2023 at 5:42pm, Lambert responded to counsel for ATB the funds in the RBC Dedicated Account came from a “GIC held with RBC in respect of the NVD Hyatt Project [which] was withdrawn on September 29...”<sup>143</sup> (September was coincidentally the day after the Settlement Agreement was finalized.) Ashraf, on behalf of ATB, did not recall if there were any communications with Nomodic respecting the GIC following this email.<sup>144</sup>
- m. Around the time of these communications between Nomodic’s legal counsel (Mr. Barr) and ATB’s legal counsel, Mr. Barr suggested that there might be some claims against the funds at RBC, which caused ATB had asked for specific agreements and supporting documents to determine what those claims could look like.<sup>145</sup>
- n. By October 3, 2023, ATB had discussions with Lambert and Read about having them assist with collecting Nomodic’s accounts receivables and having them paid to ATB. In exchange, they would earn commission for any accounts collected paid to ATB.<sup>146</sup> On October 3, 2023 Lambert provided an email to ATB which contained a list of accounts receivable. This spreadsheet did not include any suggestion of amounts being owed to Nomodic by Champion in respect of the NVD Hyatt Project. Lambert noted:

Attached is the current AR listing with notes on which amounts can be targeted for collections or that will require negotiations with various parties for the full release (joint signatory account).

There was also an agreement reached last week with a manufacturer to provide a refund to Nomodic for approximately \$1.6M, there was supposed to be a cheque sent but it will require follow up – these relate to the NVD Hyatt project that has been cancelled. This would have been tied to the GIC held at RBC, Total funds were due back to NVD of \$2.4M, this would have consisted of the manufacturer refund as well as funds from the GIC. I do not know the status of the manufacturer cheque at this time and will require some leg work.<sup>147</sup>

- o. While Ashraf, on behalf of ATB, recalls speaking with Lambert following this October 3, 2023 email, he could not recall speaking with him specifically about the Champion Cheque or the NVD Hyatt Project, and did not specifically ask Lambert about what he meant by the phrase “will require some leg work.”<sup>148</sup> Ashraf did not recall having any verbal discussions with Lambert about the nature of the refund owing to NVD referenced in Lambert’s October 3, 2023 email.<sup>149</sup> Regardless of further discussions, Lambert’s October 3, 2023 email made Ashraf aware that the funds constituting the

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<sup>143</sup> Second Ashraf Affidavit at Exhibit “I”.

<sup>144</sup> Ashraf Transcript at p. 30, lines 9-23; p. 31, line 26 to p. 32, line 19 **[TAB D]**.

<sup>145</sup> Ashraf Transcript at p. 28, lines 11-16. See also Ashraf Transcript at p. 35, line 3, p. 36, line 21; p. 38, lines 10-18 **[TAB D]**.

<sup>146</sup> Second Ashraf Affidavit at paras 18, 38, Exhibit “K”; Ashraf Transcript at p. 19, lines 10-23 **[TAB D]**.

<sup>147</sup> Second Ashraf Affidavit at para 17, Exhibit “E”. See also UT Responses at Schedule 4, email dated October 3, 2023 10:34am (p. 244) **[TAB K]**.

<sup>148</sup> Ashraf Transcript at p. 20, line 4 to p. 21, line 7 **[TAB D]**.

<sup>149</sup> Ashraf Transcript at p. 21, lines 8-23 **[TAB D]**.



Champion Cheque were due back to NVD. The NVD Hyatt Project had previously been known to ATB.<sup>150</sup>

- p. On October 4, 2023, ATB was advised that the Champion Cheque was in the possession of Nomodic.<sup>151</sup>
- q. On October 5, 2023, counsel for Nomodic wrote to ATB. While stating that Nomodic had possession of the Champion Cheque and was willing to deposit the Champion Cheque with ATB (conditional upon ATB allowing certain CRA priority and employee payables to be made from those funds), counsel for Nomodic specifically advised ATB that:

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

- a. The [Champion] Cheque was provided to Nomodic pursuant to an agreement that it would remit those funds to a customer in connection with an agreed upon rebate. On that basis, there may be a competing claim for those funds in the bankruptcy process.<sup>152</sup>
- r. After the October 5, 2023 email noted above, Ashraf and Read spoke that same evening (the "**October 5 Call**"). During that call, Read confirmed to Ashraf that there were likely competing trusts or claims attached to the funds representing the Champion Cheque (although details or supporting documents were not provided to ATB).<sup>153</sup>
- s. The October 5 Call was more about trying to arrange the payments requested in the prior email, and Ashraf's evidence is that he asked why Nomodic's proposed use of the funds from the Champion Cheque was purportedly inconsistent with them being subject to a trust. There is no evidence on the specifics of any answer or explanation. Importantly, Ashraf did not recall asking who the potential trust in the Champion Cheque was in favour of, and did not recall what specific questions he asked Read about the potential trust claim. (Ashraf did ask Read if the potential claim would rank ahead of or behind ATB, and asked for Read to provide the support for the trust claim.)<sup>154</sup>

- 97. The above is the context that led to Ashraf's crucial October 6, 2023 email quoted above.
- 98. From the evidence above, the pattern consistently pointed to the idea that the Champion Cheque was not the property of Nomodic. This is supported further by the following:

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<sup>150</sup> Ashraf Transcript at p. 15, lines 13-26 [TAB D]. See also Second Ashraf Affidavit at para 18.

<sup>151</sup> Second Ashraf Affidavit at para 27.

<sup>152</sup> Second Ashraf Affidavit at Exhibit "J".

<sup>153</sup> First Ashraf Affidavit at para 38; Ashraf Transcript at p. 39, line 1 to p. 40, line 13 [TAB D].

<sup>154</sup> Ashraf Transcript at p. 40, line 21 to p. 41, line 25 [TAB D].

- a. Nomodic “consistently refused to deposit the cheque,”<sup>155</sup> which was congruent with the proposition that the Champion Cheque Funds did not belong to Nomodic.
  - b. Nomodic had the funds in the RBC Dedicated Account and access to the Champion Cheque, but had requested additional funding from ATB for its payroll and legal expenses despite having access to both these sources of funds,<sup>156</sup> which is consistent with the proposition that these funds did not belong to Nomodic.
  - c. the first time that Nomodic suggested using the funds in the RBC Dedicated Account and/or the Champion Cheque to pay operational amounts was after ATB learned about them and suggested that Nomodic had the funds already to pay those amounts. This occurred only days before the Bankruptcy Order and after Nomodic conceded that it was ceasing operations with near immediate effect.
  - d. The payments that Nomodic wanted to make from the Champion Cheque were, to the best of ATB’s knowledge, amounts for which the director and officers were personally liable.<sup>157</sup> Nomodic’s management had direct and personal incentive to disregard the obligations of the trust in favour of NVD.
99. As set out above, along with the explicit indications given to ATB that the Champion Cheque was subject to a trust claim, ATB knew that the Champion Cheque related to the NVD Hyatt project and represented an amount to be returned to NVD. ATB also knew that the money being held in the RBC Dedicated Account may also be subject to a trust claim.<sup>158</sup> It is only logical to think that if Nomodic was holding trust money in an RBC account linked to the NVD Hyatt project, the Champion Cheque also linked to NVD and refund owing to NVD may be subject to a trust. Further, Nomodic’s conduct in requesting additional funding from ATB implies that they must not have viewed the \$1.6 million Champion Cheque as unavailable funding for general business purposes until Nomodic, approaching insolvency, lost the incentive to abide by the terms of the trust.

***iii. ATB made some inquires, but never received a satisfactory response***

100. All of the above information was more than sufficient to put ATB “on inquiry.” Having this information, it was incumbent on ATB to “inquire as to the misapplication of trust property”<sup>159</sup> and obtain reasonable and satisfactory answers. There are several instances in the communications above where ATB asked for additional information, or further documentation. It is undisputed that they did not often receive any substantive information, details or document back from Nomodic, essentially leaving ATB with many unanswered questions.
101. However, ATB *did* have enough information that Ashraf expressly used the words “priority trust claim” on the morning of October 6, 2023 in his email to Read.
102. To claim in hindsight that ATB had “no reason”<sup>160</sup> to think there was a trust claim in respect of the funds in the Champion Cheque (or RBC Dedicated Account for that matter) or that “ATB

<sup>155</sup> First Ashraf Affidavit at Exhibit “S”.

<sup>156</sup> First Ashraf Affidavit at Exhibit “S”.

<sup>157</sup> Ashraf Transcript at p. 34, lines 13-21 [TAB D].

<sup>158</sup> First Ashraf Affidavit at para 34.

<sup>159</sup> *Citadel v Lloyds* at paras 49.

<sup>160</sup> See e.g. Ashraf Transcript at p. 40, line 9; p. 45, line 20; p. 46, line 24 [TAB D].

believed” that it could “retain the remainder of the [Champion Cheque] to be used as a repayment of Indebtedness”<sup>161</sup> is hollow and without merit. ATB had knowledge of the trust claim, but decided to take a gamble by securing and applying the funds to Nomodic’s indebtedness, and to litigate the issue later.

103. Respectfully, it is not reasonable to suggest in all of the circumstances that ATB was unaware of NVD’s trust claim in the Champion Cheque based on what it knew by 9:11am on October 6, 2023 (as documented in Mr. Ashraf’s own email, and the complete lack of additional information or documents it obtained prior to 11:46am when it applied the funds to the indebtedness). *Even if* the employees and agents at ATB were subjectively unaware of the trust, the question is whether a *reasonable person* would have been satisfied with the answers they received.<sup>162</sup>
104. Contrast ATB’s knowledge with the facts of *Gold v Rosenberg*, where the majority of the Court held that the bank was *not* in knowing receipt. In that case, a testator named his son, Rosenberg, and his grandson, Gold, as his executors and beneficiaries, including to two companies. Rosenberg was involved in running the companies before the testator’s death. After death, Gold signed a power of attorney, allowing Rosenberg to continue to operate the companies.<sup>163</sup> Rosenberg used the companies to guarantee a loan given by the bank, and grant a mortgage.<sup>164</sup> A law firm assured the bank that the guarantee was proper,<sup>165</sup> and Gold signed a necessary director’s resolution for the transaction.<sup>166</sup> Gold then revoked the power of attorney and claimed that the guarantees and mortgage were unenforceable. The majority of the Court held that no further inquiries were needed:

Gold argues that the bank had a duty to go behind the resolution and the opinion letter to inquire about the fairness of the transaction. But inquire of whom? Presumably the lawyers and the accountants who acted on the transaction would have affirmed its fairness if asked. And the bank could reasonably assume that Gold would give the guarantee to help his uncle. ...

I am confident that Gold would have found a "chat" with [the bank employee] quite superfluous.<sup>167</sup>

105. Respectfully, it is submitted that the same cannot be said of ATB on the facts of this case.
106. The most that can be said of ATB here is that its evidence is that it asked for additional documents and information from Nomodic regarding the potential other claims, including in respect of the trust claim in the Champion Cheque, and that little information or documentation was provided by Nomodic.
107. Respectfully, making inquiries of Nomodic and receiving no details or documents in response to those inquiries *is not the same* as receiving information and documents that sufficiently or reasonably established that there was no trust claim in the Champion Cheque. This is crucial

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<sup>161</sup> Second Ashraf Affidavit at para 37.

<sup>162</sup> *Gold v Rosenberg* at para 44, Dissent, quoting *Nelson v Larholt*, [1948] 1 KB 33. See also para 74, Majority.

<sup>163</sup> *Gold v Rosenberg* at paras 1-4.

<sup>164</sup> *Gold v Rosenberg* at para 7.

<sup>165</sup> *Gold v Rosenberg* at para 10.

<sup>166</sup> *Gold v Rosenberg* at para 11.

<sup>167</sup> *Gold v Rosenberg* at para 76, quoting the decision below.

difference. Having little or no information was insufficient to put ATB's inquires to rest, especially in the face of the clear information pointing towards a possible trust claim.

108. Neither is ATB's personal assessment of urgency a defence or justification for failing to obtain sufficient information before dealing with the trust funds. Any perceived urgency was born of self-interest, not, for example, a wish to maintain the status quo or to protect all interested parties.
109. It is also important that at no point did ATB reach out to, or even attempt to contact, NVD or Champion to inquire about the Champion Cheque – despite knowing that the Champion Cheque related to a refund on NVD's project and that Champion was the issuer of the cheque. Indeed, Ashraf does not recall if ATB even asked Nomodic to provide contact information for NVD or Champion.<sup>168</sup>
110. A conversation with NVD or Champion as to whether the Champion Cheque Funds could be used to set off against Nomodic's debts would have been anything but superfluous or unnecessary in the circumstances.<sup>169</sup> On the contrary, it would have provided ATB with the information they had been seeking from Nomodic.
111. ATB appears to rely heavily on Nomodic's apparent willingness to use the funds from the Champion Cheque, between October 4-5, 2023, as its explanation for why it did not believe there was a trust claim in the Champion Cheque. In response, NVD submits that:
  - a. such representations by Nomodic were on the eve of insolvency: just days before the Bankruptcy Order, and after ATB had frozen their access to their accounts;
  - b. Read and Lambert would have made a commission from ATB for receipt of the Champion Cheque, giving them a personal interest in ignoring the existence of a trust;
  - c. the amounts Nomodic wanted to pay in part related to payables for which the directors had personal exposure, again giving them a personal interest in the matter;
  - d. willingness by a trustee to breach the trust does not invalidate the trust or amount to proof there was not a trust to begin with; and
  - e. all of the proposed dealings on October 4-5, 2023 pre-date the October 5 Call, which resulted in Ashraf refusing Nomodic's proposal to use the funds and expressly saying "...Nomodic advised ATB that the cheque may be subject to a priority or trust claim."
112. Again, by the time the Champion Cheque is deposited ATB is clearly aware of the potential trust claim. Thus, NVD respectfully submits that the proposed use and dealings by Nomodic in the days preceding the October 6, 2023 email from Mr. Ashraf are a red herring. There might have been some evidence to suggest no trust claim existed, but following the October 5 Call, and Ashraf's October 6, 2023 email, whatever uncertainty may have existed from the proposed dealing had vanished. ATB had been told expressly that there is a potential trust claim in the Champion Cheque and ATB refused to facilitate the payments being requested by Nomodic on October 6, 2023. ATB did not want to be in a position, if there is a trust claim, in

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<sup>168</sup> Ashraf Transcript at p. 45, line 12 to p. 46, line 24 [TAB D].

<sup>169</sup> *Gold v Rosenberg* at para 76, quoting the decision below.

which ATB was making payments to third parties from those trust funds, as this would have created a “bigger loss” for ATB.<sup>170</sup>

113. Although ATB was unwilling to pay third parties due to these concerns, it was content to pay itself. Regardless of ATB’s claims as to what it did or did not understand at the time, this inconsistent position is dispositive of any claim that it lacked sufficient knowledge of the trust. ATB claims to have reasonably concluded that there was no competing trust claim when it receipted and applied the Champion Cheque on the morning of October 6. This is inconsistent with its own actions that same morning. ATB did not learn or receive further information or documents regarding the potential trust claim in the time between Ashraf’s email at 9:11am and ATB’s receipt of the Champion Cheque at 10:15am.<sup>171</sup> Rather, it decided to gamble on sweeping and applying the funds upon their receipt.
114. ATB made insufficient attempts to ascertain the nature of the funds before that were deposited with them, and made no reasonable inquiries after their deposit. Rather, ATB appears to have been concerned with obtaining the funds, and dealing with the issue of entitlement later. This is what Sopinka J called “recklessly failing to make such inquiries as an honest and reasonable [person] would make.”<sup>172</sup>
115. The situation before the Court is similar to the one that arose in *Citadel General Assurance Co v Lloyds Bank Canada*. There, the bank was receiving money which it put towards offsetting an overdraft in the account. Two bank employees were aware that the sole source of the income for the company was insurance premiums, which the bank knew were payable to underwriters. The Court confirmed that this information was sufficient to put the bank on inquiry. The thrust of ATB’s position is that it lacked specific information about the trust claim. The Supreme Court’s reasons have dispositively answered this argument:

Notwithstanding the fact that the exact terms of the trust relationship between Citadel and Drive On may have been unknown to the Bank, the Bank should have taken steps, in the form of reasonable inquiries, to determine whether the insurance premiums were being misapplied.<sup>173</sup>

116. Having accepted the trust funds for its own use and benefit, and having failed to make satisfactory and necessary inquiries as to the terms of the trust and/or received a sufficient response, and thereafter utilized the funds for its own use, ATB is a constructive trustee with respect to the Champion Cheque Funds.

#### **D. THE TRUST FUNDS ARE TRACEABLE**

117. The Pre-Payment is traceable to the funds in the RBC Dedicated Account and the Champion Cheque Funds held by ATB. All the funds are still impressed with the trust. Both the funds in the RBC Dedicated Account and the Champion Cheque have been intermingled to some

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<sup>170</sup> Ashraf Transcript at p. 43, line 16 to p. 44, line 3 [TAB D].

<sup>171</sup> First Ashraf Affidavit at Exhibit “S”; Second Ashraf Affidavit at para 9.

<sup>172</sup> *Gold v Rosenberg* at para 74.

<sup>173</sup> *Citadel v Lloyds* at paras 55-56.

degree. However, that intermingling does not defeat the trust claim. Equitable tracing of trust funds is available whether or not the trust funds have been transferred or intermingled.<sup>174</sup>

***i. RBC Dedicated Account***

118. With respect to the funds in the RBC Dedicated Account, the trust monies have been intermingled with subsequent transfers from Nomodic to the RBC Dedicated Account. The funds deposited back into the account by Nomodic are not automatically impressed with the trust.
119. Historically, there were three schemes which a Court could employ to distribute a mixed fund. These were (i) the rule in *Clayton's* case, (ii) proportionate distribution, and (iii) *pro rata* distribution, or what the Court of Appeal refers to as lowest intermediate balance rule, or "LIBR."<sup>175</sup>
120. The lowest intermediate balance rule is now the general rule,<sup>176</sup> and the Court should only employ a different method if another method is "more just, convenient and equitable in the circumstances."<sup>177</sup>
121. The lowest intermediate balance rule is simple to apply if there are only two claimants to the fund. That is the case here: NVD and Nomodic are the only contributors to the RBC Dedicated Account. In this case, distribution will be governed by two leading principles:
- a. Where a trustee withdraws funds from a fund where the trust property and the trustee's property have been mixed, the trustee is presumed to withdraw their own funds first.<sup>178</sup>
  - b. The trust beneficiary's claim is limited to the "lowest intermediate balance" of the mixed fund.<sup>179</sup> Where funds are withdrawn from the mixed fund by the trustee, and the replaced later, the incoming funds are not impressed with a trust in favour of the beneficiary unless the beneficiary "can prove that thereby the trustee intended to make restitution to the trust."<sup>180</sup> "Intermediate" refers to the time between beneficiary's deposit and the time they make the claim.<sup>181</sup>

<sup>174</sup> *Citadel v Lloyds* at para 57, quoting *Agip (Africa) Ltd v. Jackson*, [1990] 1 Ch 265, aff'd [1992] 4 All ER 451 (CA) at 463-64, 466. See *Easy Loan Corporation v Wiseman*, 2017 ABCA 58 at paras 28 and following [**Easy Loan, BOA TAB 12**].

<sup>175</sup> *Easy Loan* at para 28.

<sup>176</sup> *Easy Loan* at para 46, citing *Re Ontario Securities Commission and Greymac Credit Corp*, 1986 CanLII 2693 (ONCA) [**Greymac, BOA TAB 15**] at para 48 (although *Easy Loan* case mistakenly says "para 45").

<sup>177</sup> *Easy Loan* at para 45, quoting *Law Society of Upper Canada v Toronto Dominion Bank*, 1998 CanLII 4774 (ONCA).

<sup>178</sup> See *British Columbia v National Bank of Canada*, 1994 CanLII 2866 (BCCA) [**BOA TAB 6**] at paras 48-49, citing *James Roscoe (Bolton), Ltd v Winder*, [1915] 1 Ch. 62 at 68-69. See also *Greymac* at para 15, quoting the trial reasons which were affirmed: "As between the trustee and the beneficiaries, the beneficiaries ranked ahead of the trustee with respect to their claims to the mingled fund. Hence, losses to that fund must first be allocated against the interest of the trustee in the fund."

<sup>179</sup> See *Easy Loan* at paras 37-38.

<sup>180</sup> *Easy Loan* at para 25, quoting *Brookfield Bridge Lending Fund Inc v Karl Oil and Gas Ltd*, 2009 ABCA 99 at para 15.

<sup>181</sup> *Easy Loan* at para 38.

122. In other words, any funds which remained in the account the whole time will be impressed with a trust. If the assets of the trustee were insufficient to cover the withdrawal at the time it was made, the rest of the withdrawal will have been from trust funds. Once trust funds are withdrawn from the account, they lose their character as trust funds (although assets obtained with those funds may become impressed with a trust through tracing). Where the trustee deposits funds back into the account, those funds will only be impressed with a trust if the beneficiary shows that the trustee intended to make restitution to the trust. Otherwise, deposits into the account remain available to creditors.
123. With respect to the transfer from Nomodic to the RBC Dedicated Account on January 30, 2023, in the amount of \$497,000.00, the First Report of the Trustee has termed a “true-up” of the RBC Dedicated Account “for the funds previously used for general corporate purposes in Nomodic’s ATB operating account.”<sup>182</sup> This is also consistent with Metuh’s explanation of the transaction, for which he “got in shit.”<sup>183</sup> Nomodic’s stated purpose in replacing that amount in the RBC Dedicated Account meets the requirement set out in *Easy Loan*: that the beneficiary show a transfer back into the trust fund was for the purpose of making restitution to the trust. Thus, Nomodic’s withdraw of the \$497,000.00 in January 2023 is not an event which will trigger the “lowest intermediate balance” rule.
124. Applying these principles to the instant case, the lowest intermediate balance of the RBC Dedicated Account is \$1,202,477.96.<sup>184</sup> This amount was never withdrawn from the RBC Dedicated Account and has retained its nature as trust property.<sup>185</sup>
125. ATB’s prior knowledge or understanding of whether NVD had a trust claim to the funds in the RBC Dedicated Account is irrelevant to the existence of the trust, since ATB is not in possession of the funds in that account.
126. However, and in any event, ATB was advised prior to the Bankruptcy Order by management for Nomodic that the funds in the RBC Dedicated Account were trust funds in favour of NVD, as set out above in this brief. Ashraf’s evidence was that:
- a. he could not recall what questions he asked management of Nomodic about the potential trust claim;
  - b. he did not recall asking in whose favour the trust in the funds in the RBC Dedicated Account may be, but ATB knew it was about the NVD Hyatt project; and
  - c. but he did recall asking for documents regarding the trust claim, but Nomodic did not provide the information or documents requested.<sup>186</sup>
127. ATB never took steps to contact NVD about its potential trust claims in the RBC Dedicated Account.

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<sup>182</sup> First Report of the Trustee at para 34(e).

<sup>183</sup> See UT Responses at Schedule 9, email dated March 6, 2023 10:29pm (p. 288) [TAB J]

<sup>184</sup> First Report of the Trustee at Appendix D.

<sup>185</sup> See e.g. *Easy Loan* at paras 37-39.

<sup>186</sup> First Ashraf Affidavit at para 34; Ashraf Transcript at p. 48, line 25 to p. 49, line 25; p. 53, line 11 to p. 54, line 11 [TAB D].

128. Any prior unauthorized and inappropriate use of the trust funds in the RBC Dedicated Account by Nomodic does not defeat NVD's trust claim, or mean that the trust never existed or ceased to exist at any point. Otherwise, every time a trustee breached a trust account there would be no remedy for the wronged beneficiary. That is clearly not the law.
129. Indeed, ATB would not consider its security or priority position defeated simply because of inappropriate dealings by Nomodic where it used funds secured in favour of ATB to pay subordinate debts. This was confirmed by Ashraf in Questioning. Neither ATB nor NVD control Nomodic's management.<sup>187</sup> As such, Nomodic's improper use of the trust funds in the RBC Dedicated Account cannot be used to defeat NVD's trust claim.
130. As noted by the Trustee in its First Report, Nomodic used these trust funds because they had working capital issues.<sup>188</sup> That was in breach of the trust, but does not eliminate the trust.

### **ii. Champion Cheque Funds**

131. The Champion Cheque has been intermingled with other funds in the ATB account, as part of ATB's pool of assets. However, there is no suggestion that those funds were ever appropriated by Nomodic or any other party so as to have lost their character as trust funds.
132. For those funds, basic tracing principles apply. That is, a beneficiary will be permitted to trace their property into the hands of others as long as it retains its identifiable form and is not defeated by a *bona fide* purchaser for value.<sup>189</sup> ATB is not a *bona fide* purchaser for value given its constructive knowledge (at a minimum) of the trust in favour of NVD.
133. The Champion Cheque Funds are easily identifiable throughout the various transactions that took place, first having been given from Nomodic to Champion, then ultimately intercepted by ATB and put into (what one assumes to be) a mixed fund by virtue of ATB's ledger entries of its own assets. There is no suggestion that the Champion Cheque Funds are not the same funds that were part of the Pre-Payment.

## **E. REMEDIES**

134. Funds or property held by a bankrupt in trust for another are not part of bankrupt's estate. The *BIA* excludes property held in trust from distribution to creditors:

The property of a bankrupt divisible among his creditors shall not comprise (a) property held by the bankrupt in trust for any other person;<sup>190</sup>

135. This section equally applies to property impressed with an express trust or a constructive trust:

Property of the bankrupt divisible among creditors does not include property that the bankrupt holds in trust for any other person: *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), s. 67(1)(a). It is well established

<sup>187</sup> Ashraf Transcript at p. 47, line 1 to p. 48, line 24 [TAB D].

<sup>188</sup> First Report of the Trustee at para 36.

<sup>189</sup> *Citadel v Lloyds* at para 57, quoting *Agip (Africa) Ltd v. Jackson*, [1990] 1 Ch 265, aff'd [1992] 4 All ER 451 (CA) at 463-64, 466. See *Easy Loan* at paras 28 and following.

<sup>190</sup> RSC 1985, c B-3, s 67(1) [not reproduced].



that unjust enrichment, arising from certain types of debtor misconduct prior to bankruptcy, may impress funds with a constructive trust in favour of a third party and that the successful assertion of a constructive trust means that the property subject to it does not form part of the property of the bankrupt that vests in the trustee.<sup>191</sup>

136. In respect of *Quistclose* trusts, the *BIA* is a codification of the common law:

On that state of facts, the petitioner relies upon a series of old cases to support its proposition that where an agent is authorized to collect money on behalf of a principle but the agent becomes bankrupt before the money is received, no property in the account passes to the trustee in bankruptcy. That is the law as illustrated by the following cases...<sup>192</sup>

137. In furtherance of the distinction between distributable property of the bankrupt and trust property, section 81 of the *BIA* sets out a separate process for distribution where a property claim is asserted:

(1) Where a person claims any property, or interest therein, in the possession of a bankrupt at the time of the bankruptcy, he shall file with the trustee a proof of claim verified by affidavit giving the grounds on which the claim is based and sufficient particulars to enable the property to be identified.

(2) The trustee with whom a proof of claim is filed under subsection (1) shall within 15 days after the filing of the claim or within 15 days after the first meeting of creditors, whichever is the later, either admit the claim and deliver possession of the property to the claimant or send notice in the prescribed manner to the claimant that the claim is disputed, with the trustee's reasons for disputing it, and, unless the claimant appeals the trustee's decision to the court within 15 days after the sending of the notice of dispute, the claimant is deemed to have abandoned or relinquished all his or her right to or interest in the property to the trustee who may then sell or dispose of the property free of any right, title or interest of the claimant.

...

(4) The trustee may send notice in the prescribed manner to any person to prove his or her claim to or in property under this section, and, unless that person files with the trustee a proof of claim, in the prescribed form, within 15 days after the sending of the notice, the trustee may then, with the leave of the court, sell or dispose of the property free of any right, title or interest of that person.

(5) No proceedings shall be instituted to establish a claim to, or to recover any right or interest in, any property in the possession of a bankrupt at the time of the bankruptcy, except as provided in this section.

<sup>191</sup> *Sirius Concrete Inc (Re)*, 2022 ONCA 524 at paras 14-17 [BOA TAB 16].

<sup>192</sup> *J-V Import* at 4-6, thereafter citing *Giles vs Perkins* (1807), 9 East 12; *Tennant vs Strachan* (1829), 4 CP 31; *Farrow's Bank, in Re Lim* (1922), Ch Div 153; and *Solloway vs Johnson, Trustee in Bankruptcy*, [1934] 2 DLR 241 (PC).

(6) Nothing in this section shall be construed as extending the rights of any person other than the trustee.

138. NVD was diligent in notifying all parties of its claim and asserting a property claim within the bankruptcy. On October 18, 2023, NVD provided explicit notice both to the Trustee and to ATB that it claimed a trust over the Champion Cheque Funds.<sup>193</sup> In accordance with section 81 of the *BIA*, NVD provided a Proof of Claim over the trust property, with supporting affidavits, to the Trustee.<sup>194</sup>
139. The Trustee has not sent notice in the prescribed manner within 15 days to NVD that the claim is disputed, with the Trustee's reasons for disputing it in accordance with the *BIA*.<sup>195</sup>
140. The Trustee in its First Report suggest that they are seeking advice and directions in respect of NVD's section 81 claim due to the circumstances and manner in which Nomodic administered the NVD Hyatt Project and the Pre-Payment funds. No other concerns have been raised by the Trustee in respect of NVD's property Proof of Claim. However, for the reasons set out above, nothing about Nomodic's dealings changes or eliminates the trust.
141. Thus, the only remaining issue is the issue of priority. That is answered by the quoted sections of the *BIA*, and the jurisprudence cited above. If the Pre-payment is held in trust, it was definitionally not an asset of Nomodic, thus, not security under ATB's General Security Agreements.<sup>196</sup>
142. If this Court accepts that the funds in the RBC Dedicated Account and Champion Cheque were held in trust, then they should be excluded from distribution and returned to the rightful and beneficial owner, NVD. In its simplest form, this is what rightfully ought to happen, as NVD has a superior claim. This is a remedy granted in other cases which assert a *Quistclose* trust.
143. The cases dealing specifically with *Quistclose* trusts hold that where the object of the trust is still possible, the Court should direct that the purpose be carried out. It is only where the purpose is no longer viable that the (traced) funds should be returned to the settlor.<sup>197</sup>
144. The purpose of the Pre-Payment as a whole was to fund the specific work set out in the NVD LNTP, or alternatively to be refunded to NVD under that agreement. The primary object of that trust, being construction of certain aspects for NVD's project, is no longer available as the

<sup>193</sup> See First Hale Affidavit at Exhibit "M".

<sup>194</sup> See Second Hale Affidavit at Exhibit "A"; First Report of the Trustee at para 15, Appendix H.

<sup>195</sup> Second Hale Affidavit at para 6; First Report of the Trustee at para 37.

<sup>196</sup> If more support were needed for the proposition that ATB has no claim to the trust funds, ATB's General Security Agreements only extend to "property, assets, and undertaking of the Debtor." See the terms of the agreements in First Ashraf Affidavit at Exhibit "H", clause 2(a)(ii). Further, Nomodic had no authority to offer trust assets as security under the terms of the Trust.

<sup>197</sup> See e.g. *Carevest* at paras 25-31, where the trust funds were meant to pay a county levy, but the project was no longer moving forward. In that circumstances, Applications Judge Smart ordered the funds repaid to the Settlor: "[i]n a *Quistclose* trust the beneficial interest remains with the lender until the purpose of the trust is carried out." In doing this, Applications Judge Smart relied party on *Twinsectra Limited v Yardley and Others*, [2002] UKHL 12 at para 100 [BOA TAB 17], which says:

When the purpose fails, the money is returnable to the lender, not under some new trust in his favour which only comes into being on the failure of the purpose, but because the resulting trust in his favour is no longer subject to any power on the part of the borrower to make use of the money.

Although both these cases use the term "lender", they refer to the transferor, or settlor of the trust.

NVD LNTP has been cancelled. The secondary object is still possible and the funds should be returned to NVD.


145. With respect to the Champion Cheque Funds, the purpose of those funds when Champion produced the cheque, was to have that amount refunded to NVD. The purpose of that trust is still possible and this ought to be carried out.
146. The remedial mechanisms which allow this Court to return these funds to NVD are:
- a. if the Court finds that the Pre-Payment and/or the Champion Cheque Funds is subject to a trust, equitable tracing (discussed above); and
  - b. if the Court finds that ATB is a trustee *de son tort*, or if the Court finds that ATB received the Champion Cheque Funds under the doctrine of knowing receipt, then a declaration that ATB is a constructive trustee with respect to the Champion Cheque Funds, and an Order to return the trust property.
147. The technical distinctions here, or which ought to take precedence are, respectfully, not issues the Court likely needs to address. In either case, the Court should order the return of the funds to NVD.

#### **V. RELIEF SOUGHT**

148. NVD asks this Court for a declaration that the Pre-Payment is impressed with a trust in favour of NVD, and Orders that:
- a. NVD is entitled to receive the sum of \$2,405,490.71 from a combination of ATB in respect of the Champion Cheque, and the Trustee of Nomodic from the balance in the RBC Dedicated Account, in such proportions as this Honourable Court thinks appropriate; and
  - b. NVD is permitted to bring further applications to trace and obtain funds or assets of the trust, if necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17<sup>th</sup> DAY OF JUNE, 2024.

DUNCAN CRAIG LLP:

  
 \_\_\_\_\_  
 GIL MICIAK for/  
 RYAN F.T. QUINLAN  
 Counsel for Northern Vision Development  
 Limited Partnership

**TABLE OF KEY MATERIALS**

<b>No.</b>	<b>Description</b>
<b>TAB A</b>	UT Responses at Schedule 3, email dated February 28, 2023 6:24pm (p. 104); at Schedule 9, email dated March 6, 2023 11:19am (p. 282); at Schedule 9, email dated March 7, 2023 11:35pm (p. 287)
<b>TAB B</b>	UT Responses at Schedule 6, email dated February 28, 2023 6:24pm (p. 250)
<b>TAB C</b>	Bankruptcy Order
<b>TAB D</b>	Transcript of the Cross-Examination of Muhammad Ashraf, conducted April 16, 2024
<b>TAB E</b>	UT Response at Schedule 3 (p. 190, 206)
<b>TAB F</b>	UT Responses at Schedule 3, email dated March 2, 2023 12:15pm (p. 103)
<b>TAB G</b>	UT Responses at Response #3 (p. 4)
<b>TAB H</b>	UT Responses at Schedule 9, email dated March 6, 2023 11:19am (p. 282)
<b>TAB I</b>	UT Responses at Schedule 9, email dated March 6, 2023 10:29pm (p. 288)
<b>TAB J</b>	UT Responses at Schedule 9, email dated March 7, 2023 11:35pm (p. 287)
<b>TAB K</b>	UT Responses at Schedule 4, email dated October 3, 2023 10:34am (p. 244)

**TAB A**



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## Meeting Questions

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**Chuma Metuh** <chuma.m@nomodic.com>

Thu, Mar 2, 2023 at 12:15 PM

To: Dawn Walby-Parchoma <dwalby@atb.com>, "Helkaa, Deryck" <Deryck.Helkaa@fticonsulting.com>

Cc: Jeff Govett <jgovett@atb.com>, Kevin Read <kevin.r@nomodic.com>, "Browning, Cameron" <Cameron.Browning@fticonsulting.com>

Hello Dawn & Jeff,

Please refer to my comments below regarding the consolidated list of questions (**BLUE FONT**):

Cheers,

**Chuma Metuh, CPA, CA** | Vice President, Finance

**Office Local:** 403.271.3932 Ext. 3008

**Office Toll-Free:** 1.844.982.3932 ext. 3008

**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)



**Nomodic** | #280, 23 Sunpark Drive SE

Calgary, AB Canada T2X 3V1

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**From:** Dawn Walby-Parchoma <dwalby@atb.com>

**Sent:** February 28, 2023 6:24 PM

**To:** Helkaa, Deryck <Deryck.Helkaa@fticonsulting.com>

**Cc:** Jeff Govett <jgovett@atb.com>; Kevin Read <kevin.r@nomodic.com>; Chuma Metuh <chuma.m@nomodic.com>; Browning, Cameron <Cameron.Browning@fticonsulting.com>

**Subject:** Re: [Ext Sender] RE: [EXTERNAL] Meeting Questions

Hi All,

Here is the consolidated list of questions:

- Forecast appears to include \$403k in principal payments to subordinate creditors (BDC and Aithra). ATB is being asked to provide concessions yet subordinate creditors are being kept whole. Have you had any discussions with these creditors on their payment terms?
  - [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
- I understand that \$250k was invested in a private company called Complete Framing Solutions about a year ago. Have there been any discussions on liquidating this investment to return cash to Nomodic?
  - [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)

3. Please provide current RBC statements from August 2022 to February 2023 along with trust agreements requiring GIC for the NVD Hyatt Place deposit.

- Per our phone discussion today, March 2, 2023, please find attached the Nomadic RBC Bank statements (Acct ending in 8432) and Nomadic Ontario RBC Bank statements (Acct ending in 7884).
- Each account has an associated GIC (Nomadic – Hyatt Trust Funds & Nomadic Ontario – City of Sudbury Bond Letter of Credit Security)
- RBC Nomadic Bank Statements (Sep 2022 to Feb 2023)
  - GIC Summary
    - GIC was created December 15, 2022 (at \$3.55MM).
    - GIC partial redeemed to facilitate Fabrication Payment #1 to Champion of \$1.9MM January 16, 2023
    - GIC redeemed & subsequently reissued February 2, 2023 (at \$1.66MM).
    - GIC will be redeemed to facilitate Fabrication Payment #2 to Champion when Construction Contract fully executed between NM & Client.
    - Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NM - 12-15-2022)
    - Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #2 (NM - 02-02-2023)
- RBC Nomadic Ontario (“NMO”) Bank Statement (Sep 2022 to Feb 2023)
  - The NMO account is used for the purpose of fund controls with Tim Lawton of Flex Modular on the City of Sudbury project.
    - The client pays project progress billed to the RBC Ontario account. Tim Lawton, funds control, provide approval to release the funds upon a review of spend request breakdown. Funds are released & transferred to NM ATB account. Payment to vendor are subsequently processed out of the NM ATB Account (as the contract with client & vendors is in Nomadic’s name, not Nomadic Ontario).
- There is a letter of credit associated with the City of Sudbury bond in a GIC in the RBC Nomadic Ontario account.
  - Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NMO - 09-15-2022)
- Current RBC balances:

Welcome, Chuma Metuh

Message Centre

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Alerts >

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Balance Summary

Go to: Balance Reporting | Print Balance Summary

Account Name	Account Type	Currency	Balance	Date
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-00980217751-0001</a>	BUS GIC	CAD	0.00	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-00980217751-0002</a>	BUS GIC	CAD	1,656,588.19	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-1348432</a>	BUS DEP	CAD	1,293.95	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00010-1477884</a>	BUS DEP	CAD	1,745.44	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-</a>	BUS GIC	CAD	500,000.00	Mar 01, 2023

- Per discussion with Kevin Read, CEO, for tax purposes pertaining to the 2021 sale of a hotel property, Nomadic’s customer accelerated the issuance of deposit funds for it’s Hyatt project in Whitehorse, YK with instruction that Nomadic hold the funds in a manner that protects and returns deposit interest to the customer similar to that of the customer’s own savings account, the proceeds of which (accumulated interest) be returned to the customer by way of a predetermined flat fee. The deposit funds ultimately earmarked for payment to Nomadic’s modular fabricator for the production of a ‘prototype unit’, in two tranches, through a transparent predetermined supply agreement.

4. Page 19 states “Adjusted Borrowing Base is based on prior month’s results” which is confusing. We have assumed that the Adjusted Borrowing Base in each column of the top portion of the table is based on each financial reporting period. (i.e February Adjusted Borrowing Base of \$4,953 is based on February AR listing which needs to be reported by March 30th.) Based on our attached analysis, Nomadic will be out of margin \$789k on April 30th once the March BB is reported. Depending on timing of receipts and disbursements, intra month liquidity should be fine but we would suggest that you refine this analysis for bi-weekly versus monthly to confirm. Based on our analysis, the April equity injection would need to be \$1MM.

- Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”

5. Page 19 states “Lienable payables estimated at \$1MM and to be phased in starting April at \$0.5MM”. If I am reading your table correctly, this statement refers to April Adjusted Borrowing Base which wouldn’t be reported until May 30 and then implemented for the month of June operations. We interpreted this statement as \$0.5MM deduction implemented during the operating month of April so \$0.5MM would be deducted from February BB. ATB would like to see the phased-in deduction occurring earlier than June operating month. Please review your forecast and reconsider.

- Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”

6. March 31st ending line is \$3,817 how does this tie to March’s ending line on page 19 of \$3,553?

- [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
7. Page 21 - Is WFS Complex - Wolf Midstream A/R ineligible given 10% rule?
- [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
8. Page 21 - Please provide additional details by counterparty for Other Accounts Receivable. Are these progress billings or final invoices?
- [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
9. \$3.3MM in recent Chilliwack payments. We understand this relates to work performed in November, December, and January. We are still waiting for details on all the unpaid trades whose work formed part of these progress billings.
- [Please refer to the attached BC Housing Chilliwack Invoice Breakdown for November, December & January.](#)
    - [Attachment: BC Housing Chilliwack Invoice Breakdown \(Inv 20-023-023, 20-023-024 & 20-023-025\) as of Jan 31](#)

[Quoted text hidden]

[Quoted text hidden]

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#### 17 attachments

-  **RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NM - 12-15-2022).pdf**  
75K
-  **RBC Investment - 1 Year Prime-Linked Cashable GIC #2 (NM - 02-02-2023).pdf**  
5844K
-  **RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NMO - 09-15-2022).PDF**  
76K
-  **TransactionReport2023-02-28 (Nomodic).pdf**  
6K
-  **TransactionReport2023-02-28 (Nomodic Ontario).pdf**  
7K
-  **TransactionReport2023-02-15 (Nomodic).pdf**  
64K
-  **TransactionReport2023-02-15 (Nomodic Ontario).pdf**  
64K
-  **Statement2023-01-31 (Nomodic Ontario).pdf**  
70K
-  **Statement2023-01-31 (Nomodic).pdf**  
110K
-  **Statement2022-12-30 (Nomodic).pdf**  
109K
-  **Statement2022-12-19 (Nomodic Ontario).pdf**  
70K
-  **Statement2022-11-30 (Nomodic).pdf**  
770K
-  **Statement2022-11-18 (Nomodic Ontario).pdf**  
404K
-  **Statement2022-10-31 (Nomodic).pdf**  
107K
-  **Statement2022-10-19 (Nomodic Ontario).pdf**  
70K
-  **Statement2022-09-30 (Nomodic).pdf**  
305K
-  **BC Housing Chilliwack Invoice Breakdown (Inv 20-023-023, 20-023-024 & 20-023-025) as of Jan 31.pdf**  
144K





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**From:** Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>  
**Sent:** March 6, 2023 1:25 PM  
**To:** Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)>  
**Subject:** Re: [EXTERNAL] Re: [Ext Sender] Minimum Liquidity Requirement Clarification

Hey Chuma,

Can you provide further details on the purpose of Nomodic Modular Structures (Ontario) Ltd? Are the Ontario projects under this entity (contracts with customers and trades)? I believe you said all invoicing is done through Nomodic Modular Structures Inc. but I am trying to understand why there are transactions flowing through the RBC DP account ending 788-4.

Thanks,

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



On Mon, Mar 6, 2023 at 11:19 AM Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)> wrote:

Definition would be availability under RLOC and all unencumbered cash held by the Borrower. So your RBC \$500,000 GIC which is securing the L/C would be excluded. Same goes for the \$1.66MM GIC which is encumbered by Hyatt trust conditions. Additionally, it appears as though the \$0.5MM GIC is held under a different entity -> Nomodic Modular

Structures (Ontario) Ltd. As part of the Commitment Letter Amendment, ATB will likely require security from this entity but I will leave that to our counsel to decide on what is most appropriate.

Thanks,

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



On Mon, Mar 6, 2023 at 10:52 AM Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)> wrote:

Understood!

To confirm, a cashable GIC would count toward the minimum liquidity requirement?

**Cheers,**

**Chuma Metuh, CPA, CA | Vice President, Finance**  
**Office Local:** 403.271.3932 Ext. 3008

**Office Toll-Free:** 1.844.982.3932 ext. 3008  
**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)



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Dawn Walby-Parchoma &lt;dwalby@atb.com&gt;

**Fwd: [Ext Sender] RE: [EXTERNAL] Meeting Questions**

1 message

**Dawn Walby-Parchoma** <dwalby@atb.com>  
To: Jeff Govett <jgovett@atb.com>

Tue, Mar 7, 2023 at 11:35 PM

FYI - not great responses on the two transactions I questioned. Nomodic #8432 - transaction for \$497k. They used Hyatt trust funds for near term liquidity before transferring back to RBC account so they could purchase new GIC for \$1.66MM. This shows the importance of an ATB GIC to maintain the minimum liquidity and \$1MM equity in April. If one receivable is delayed, their liquidity is compromised...

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



----- Forwarded message -----

From: **Chuma Metuh** <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)>  
Date: Mon, Mar 6, 2023 at 10:29 PM  
Subject: RE: [Ext Sender] RE: [EXTERNAL] Meeting Questions  
To: Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>

Good evening Dawn,

Please refer to my comments below **BLUE FONT**

Cheers,

**Chuma Metuh, CPA, CA | Vice President, Finance**  
**Office Local:** 403.271.3932 Ext. 3008  
**Office Toll-Free:** 1.844.982.3932 ext. 3008  
**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)

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[nomodic.com](http://nomodic.com)

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**From:** Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>  
**Sent:** March 6, 2023 7:02 PM

**TAB B**

- \$497,000 was sent to ATB account on January 23rd and then returned on January 30th. Why was this transaction done? Utilized funds in the RBC account to make critical payment through the ATB account to vendors as we had a BC Housing receivable get pushed into the following week. Once the BC Housing funds were received, the funds were returned into RBC. As you can guess, I got in shit for proceeding in this direction.

**Nomodic (Ontario) #7884:**

- When was this account opened? I think we are missing statements for balance before September 19th. Bank account was open in early September 2022.
- Statement from Dec 20 to Jan 18th is also missing. Apologies. RBC switch our Ontario cut off statement date from the 19<sup>th</sup> to Month-End that month (January 2023). That is why we have two statements for the month of January 2023. Please refer to the attached Bank Statement as of January 19, 2023
  - Attachment: Statement2023-01-19 (Nomodic Ontario)
- What does the \$4,000 e-transfer in and out on Feb 28th relate to? We need to make a critical payment to a consultant that would seriously delay the City of Sudbury project if not made. As we were only allowed to discuss near term project at the time, we had to find another solution to making the payment to the consultant. Our Fabricator provided NM a \$4K pre-payment on Feb 28 (e-transfer in) and the funds were immediately disbursed to the consultant to ensure the project schedule would be maintained. We will be providing a credit to the fabricator in the amount of 4K on their next invoice.

Thanks,

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



On Thu, Mar 2, 2023 at 12:17 PM Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)> wrote:

Hello Dawn & Jeff,

Please refer to my comments below regarding the consolidated list of questions (BLUE FONT):

Cheers,

**Chuma Metuh, CPA, CA| Vice President, Finance**  
**Office Local:** 403.271.3932 Ext. 3008

**Office Toll-Free:** 1.844.982.3932 ext. 3008  
**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)



**Nomodic | #280, 23 Sunpark Drive SE**

Calgary, AB Canada T2X 3V1  
**nomodic.com**



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---

**From:** Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>  
**Sent:** February 28, 2023 6:24 PM  
**To:** Helkaa, Deryck <[Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com)>  
**Cc:** Jeff Govett <[jgovett@atb.com](mailto:jgovett@atb.com)>; Kevin Read <[kevin.r@nomodic.com](mailto:kevin.r@nomodic.com)>; Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)>; Browning, Cameron

<Cameron.Browning@fticonsulting.com>

**Subject:** Re: [Ext Sender] RE: [EXTERNAL] Meeting Questions

Hi All,

Here is the consolidated list of questions:

1. Forecast appears to include \$403k in principal payments to subordinate creditors (BDC and Aithra). ATB is being asked to provide concessions yet subordinate creditors are being kept whole. Have you had any discussions with these creditors on their payment terms?
  - [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
2. I understand that \$250k was invested in a private company called Complete Framing Solutions about a year ago. Have there been any discussions on liquidating this investment to return cash to Nomodic?
  - [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
3. Please provide current RBC statements from August 2022 to February 2023 along with trust agreements requiring GIC for the NVD Hyatt Place deposit.
  - [Per our phone discussion today, March 2, 2023, please find attached the Nomodic RBC Bank statements \(Acct ending in 8432\) and Nomodic Ontario RBC Bank statements \(Acct ending in 7884\).](#)
  - [Each account has an associated GIC \(Nomodic – Hyatt Trust Funds & Nomodic Ontario – City of Sudbury Bond Letter of Credit Security\)](#)
  - [RBC Nomodic Bank Statements \(Sep 2022 to Feb 2023\)](#)
    - [GIC Summary](#)
      - [GIC was created December 15, 2022 \(at \\$3.55MM\).](#)
      - [GIC partial redeemed to facilitate Fabrication Payment #1 to Champion of \\$1.9MM January 16, 2023](#)
      - [GIC redeemed & subsequently reissued February 2, 2023 \(at \\$1.66MM\).](#)
      - [GIC will be redeemed to facilitate Fabrication Payment #2 to Champion when Construction Contract fully executed between NM & Client.](#)
      - [Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #1 \(NM - 12-15-2022\)](#)
      - [Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #2 \(NM - 02-02-2023\)](#)
  - [RBC Nomodic Ontario \(“NMO”\) Bank Statement \(Sep 2022 to Feb 2023\)](#)
    - [The NMO account is used for the purpose of fund controls with Tim Lawton of Flex Modular on the City of Sudbury project.](#)
      - [The client pays project progress billed to the RBC Ontario account. Tim Lawton, funds control, provide approval to release the funds upon a review of spend request breakdown. Funds are released & transferred to NM ATB account. Payment to vendor are subsequently processed out of the NM ATB Account \(as the contract with client & vendors is in Nomodic’s name, not Nomodic Ontario\).](#)
  - [There is a letter of credit associated with the City of Sudbury bond in a GIC in the RBC Nomodic Ontario account.](#)
    - [Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #1 \(NMO - 09-15-2022\)](#)
  - [Current RBC balances:](#)

Welcome, Chuma Metuh

Message Centre

New Messages 0

Alerts >

Go to: Messages

Balance Summary

Go to: [Balance Reporting](#) | [Print Balance Summary](#)

Account Name	Account Type	Currency	Balance	Date
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-00980217751-0001</a>	BUS GIC	CAD	0.00	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-00980217751-0002</a>	BUS GIC	CAD	1,656,588.19	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-1348432</a>	BUS DEP	CAD	1,293.95	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00010-1477884</a>	BUS DEP	CAD	1,745.44	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-</a>	BUS GIC	CAD	500,000.00	Mar 01, 2023

Per discussion with Kevin Read, CEO, for tax purposes pertaining to the 2021 sale of a hotel property, Nomodic's customer accelerated the issuance of deposit funds for it's Hyatt project in Whitehorse, YK with instruction that Nomodic hold the funds in a manner that protects and returns deposit interest to the customer similar to that of the customer's own savings account, the proceeds of which (accumulated interest) be returned to the customer by way of a predetermined flat fee. The deposit funds ultimately earmarked for payment to Nomodic's modular fabricator for the production of a 'prototype unit', in two tranches, through a transparent predetermined supply agreement.

4. Page 19 states "Adjusted Borrowing Base is based on prior month's results" which is confusing. We have assumed that the Adjusted Borrowing Base in each column of the top portion of the table is based on each financial reporting period. (i.e February Adjusted Borrowing Base of \$4,953 is based on February AR listing which needs to be reported by March 30th.) Based on our attached analysis, Nomodic will be out of margin \$789k on April 30th once the March BB is reported. Depending on timing of receipts and disbursements, intra month liquidity should be fine but we would suggest that you refine this analysis for bi-weekly versus monthly to confirm. Based on our analysis, the April equity injection would need to be \$1MM.

- Addressed in the FTI Presentation – "ATB Update Scenario Report & Questions 3 2 23"

5. Page 19 states "Lienable payables estimated at \$1MM and to be phased in starting April at \$0.5MM". If I am reading your table correctly, this statement refers to April Adjusted Borrowing Base which wouldn't be reported until May 30 and then implemented for the month of June operations. We interpreted this statement as \$0.5MM deduction implemented during the operating month of April so \$0.5MM would be deducted from February BB. ATB would like to see the phased-in deduction occurring earlier than June operating month. Please review your forecast and reconsider.

- Addressed in the FTI Presentation – "ATB Update Scenario Report & Questions 3 2 23"

6. March 31st ending line is \$3,817 how does this tie to March's ending line on page 19 of \$3,553?

- Addressed in the FTI Presentation – "ATB Update Scenario Report & Questions 3 2 23"

7. Page 21 - Is WFS Complex - Wolf Midstream A/R ineligible given 10% rule?

- Addressed in the FTI Presentation – "ATB Update Scenario Report & Questions 3 2 23"

8. Page 21 - Please provide additional details by counterparty for Other Accounts Receivable. Are these progress billings or final invoices?

- Addressed in the FTI Presentation – "ATB Update Scenario Report & Questions 3 2 23"

9. \$3.3MM in recent Chilliwack payments. We understand this relates to work performed in November, December, and January. We are still waiting for details on all the unpaid trades whose work formed part of these progress billings.

- Please refer to the attached BC Housing Chilliwack Invoice Breakdown for November, December & January.
  - Attachment: BC Housing Chilliwack Invoice Breakdown (Inv 20-023-023, 20-023-024 & 20-023-025) as of Jan 31

Thanks,

**Dawn Walby-Parchoma**, CPA, CA, CIRP she/her  
 Managing Director  
 Risk Advisory and Management

Mobile 403-463-0115  
 Eighth Avenue Place West Tower  
 Suite 600, 585-8th Ave SW  
 Calgary, AB T2P1G1  
[atb.com](http://atb.com)



**TAB C**



B201 996918 /B201 997457/ B201 997541



COURT FILE NUMBER 25-2996918  
25-2997457  
25-2997541  
COURT COURT OF KING'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

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

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

JUDICIAL CENTRE CALGARY

DOCUMENT **BANKRUPTCY ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCarthy Tétrault LLP  
4000, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attention: Pantelis Kyriakakis / Nathan Stewart  
Tel: 403-260-3536 / 3536  
Fax: 403-260-3501  
Email: pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: October 6, 2023

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Registrar Justice D.B. Nixon

**UPON THE APPLICATION FOR BANKRUPTCY ORDER** (the "**Application**") filed by ATB Financial (the "**Applicant**"), creditor of Nomodic Modular Structures Inc. ("**Nomodic**") Aithra Projects Inc. ("**Aithra**"), and Nomodic Modular Structures (Ontario) Ltd. ("**Nomodic Ontario**"), Nomodic Ontario, Aithra and Nomodic are collectively referred to as, the "**Bankrupts**", filed the to be filed 9 day of 9, 2023; **AND UPON HAVING READ** the Application and the Affidavit of Truth of Muhammad Ashraf, sworn on October 6, 2023 (the "**Affidavit**"), filed in support hereof; **AND UPON HAVING READ** the Affidavit of Service of Katie Hynne, sworn on 9, 2023 (the "**Service Affidavit**"), filed; to be sworn **AND UPON NOTING** the consent of FTI Consulting Canada Inc., in its capacity as court-appointed trustee in bankruptcy of the Bankrupts (the "**Trustee**") to the within Order; **AND UPON** noting the consent endorsed hereon of counsel to the Bankrupts, for the Bankrupts; **AND UPON HEARING** the submissions of counsel for the Applicant and any other parties present at the and filed

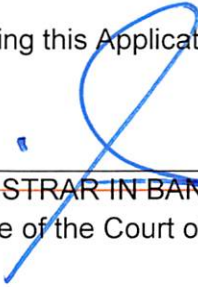
Application; **AND UPON** it appearing that all interested and affected parties have been served with notice of this Application; **AND UPON** it appearing to the Court that the following acts of bankruptcy have been committed by the Bankrupts:

- (a) the debts owing by the Bankrupts exceed \$1,000; and,
- (b) within the 6 months preceding the date of filing of the Application for Bankruptcy Order, the Bankrupts ceased to meet its liabilities generally as they become due.

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The time for service of the Application is abridged, if necessary, the Application is properly returnable today, service of the Application on the service list (the "**Service List**") attached as Exhibit "A" to the Service Affidavit, in the manner described in the Service Affidavit, is good and sufficient, and no other persons other than those listed on the Service List, are entitled to service of the Application.
2. Nomodic, a corporation who carries on business in Alberta, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against Nomodic.
3. Aithra, a corporation who carries on business in Alberta, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against Aithra.
4. Nomodic Ontario, a corporate who carries on business in Ontario, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against Nomodic Ontario.
5. The Trustee be and is hereby appointed as trustee of the estate of the Bankrupts, Nomodic, Aithra, and Nomodic Ontario, without security.
6. The costs of and incidental to this Application and of this Order shall be paid to the Applicant, on a full indemnity, solicitor and his own client basis, out of the assets of the estate of the Bankrupts, Nomodic, Aithra, and Nomodic Ontario.
7. This Order must be served only upon those interested parties attending or represented at the within application and serve may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

8. Service of this Order on any party not attending this Application is hereby dispensed with.

  
\_\_\_\_\_  
~~REGISTRAR IN BANKRUPTCY~~  
Justice of the Court of King's Bench of Alberta

**CONSENTED TO BY:**

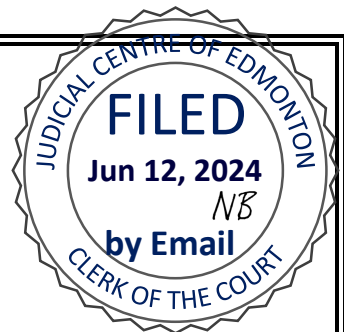
**BORDEN LADNER GERVAIS LLP**

Per: \_\_\_\_\_



Name: Kevin E. Barr  
Counsel to Nomodic Modular Structures  
Inc., Aithra Projects Inc., and Nomodic  
Modular Structures (Ontario) Ltd.

**TAB D**

**B201-997541**

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

COURT OF KING'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY C60635

JUDICIAL CENTRE: CALGARY

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

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

---

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

---

R. Quinlan  
Duncan Craig LLP  
2800, 10060 Jasper Avenue  
Edmonton, Alberta T5J 3V9  
780.428.6036

For Northern Vision  
Development Limited  
Partnership

P. Kyriakakis  
McCarthy Tetrault  
421 - 7 Avenue SW  
Calgary, Alberta T2P 4K9  
403.260.3500

For ATB Financial

Sophia Dame

Court Reporter

1 of Nomodic?

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

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

8 A Nomodic was doing work for NVD, yes.

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

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

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

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

17 Q Oh, FTI Capital?

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

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

23 A In specifically to Nomodic?

24 Q Yes.

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

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

- 1 A Yes, I have it.
- 2 Q And I take it ATB did not create this document either,  
3 correct?
- 4 A That's correct.
- 5 Q And do you know when this document was provided to ATB?
- 6 A I don't recall the exact date, but it will be around  
7 September 21st or after.
- 8 Q Now, would this have been received by ATB via email  
9 from someone at Nomodic?
- 10 A That was the standard protocol, so I assume, yes.
- 11 Q Okay.
- 12 MR. QUINLAN: Pantelis, can I ask for an  
13 undertaking for the witness to review the books and  
14 records of ATB to determine the date on which  
15 Exhibit "D" was provided to the bank and to provide me  
16 with a copy of the email correspondence or other  
17 written correspondence on which it was provided to ATB?
- 18 MR. KYRIAKAKIS: That's acceptable.
- 19 UNDERTAKING NO. 2  
20 REVIEW ATB'S BOOKS AND RECORDS AND PROVIDE THE DATE  
21 EXHIBIT "D" WAS PROVIDED TO ATB AS WELL AS A COPY  
22 OF THE EMAIL OR OTHER COMMUNICATION IN WHICH IT WAS  
23 PROVIDED TO ATB
- 24 Q MR. QUINLAN: Now, sir, in looking at this  
25 document, this appears to have multiple columns across  
26 the top. Do you see those?
- 27 A Yes, I do.

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



1 A I would have become aware as per Mr. Lambert's email.

2 I can confirm you the date. Bear with me one second.

3 It would be October 3rd.

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

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

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

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

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

16 A Produced in the exhibits?

17 Q Correct.

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

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

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

27 Do you see that?

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

1 was given to ATB about the NVD project?

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

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

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

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

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

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

1 A It would be around March of 2023.

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

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

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

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

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

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

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

1 other emails in respect of this email string?

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

4 UNDERTAKING NO. 4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 A I don't recall, no.

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

12 A Not with Mr. Lambert, no.

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

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

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

23 A Not with Mr. Lambert, no.

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

1           apologies.

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

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

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

8                   Do you see that?

9    A       Yes, I do.

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

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

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

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



1           were accessible.

2    Q       And who did you have those conversations with?

3    A       Primarily it was through Nomodic's counsel.

4    Q       And were you involved in those conversations directly?

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

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

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

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

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

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

27   MR. KYRIAKAKIS:                Subject to privilege and

1 GIC redemption - Nomodic Modular Structures Inc.?

2 MR. KYRIAKAKIS: That should be fine.

3 MR. QUINLAN: Okay. Thank you.

4 MR. KYRIAKAKIS: If we have it.

5 UNDERTAKING NO. 7

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

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

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

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

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

22 Q Yes.

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

24 Q Okay.

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

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

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

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

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

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

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

25 MR. QUINLAN: Let me just back up.

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

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

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

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

9 A That's what it appears, yes.

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

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

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

19 A No, I don't recall.

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

22 A I have it in front of me.

23 Q Now, this email starts:

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

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

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

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

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

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

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

16 A I do.

17 Q Sorry, was that a yes?

18 A Yes.

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

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

1 yes.

2 Q Okay.

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

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

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

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

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

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

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

27 MR. QUINLAN: Just off the record for a

1 second.

2 (DISCUSSION OFF THE RECORD)

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

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

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

15 Do you see that?

16 A Yes, I do.

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

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

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

27 A The management has made those claims that there might

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

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

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

22 Q Okay.

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

25 (DISCUSSION OFF THE RECORD)

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



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

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

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

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

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

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

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

23 A Sorry, conversations with?

24 Q Nomodic or someone on behalf of Nomodic?

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

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

4 A The evening of October 5th, yes.

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

7 A Yes, I have it.

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

14 A Yes.

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

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

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

11 Q What details did he give you about it?

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

14 Q Okay -- oh, go ahead.

15 A Sorry, go ahead.

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

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

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

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

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

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

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

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

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

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

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

24 Q Is that all you recall asking for?

25 A Yes. That's what I remember.

26 Q Okay.

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

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

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

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

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

15 A Not on October 5th that I recall.

16 Q What about other dates prior to the bankruptcy?

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

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

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

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

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

1 Q What was told to you then?

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

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

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

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

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

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

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

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

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

7 A That's what happened.

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

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

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

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

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

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

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

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

4 A Option -- sorry?

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

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

9 Q Okay.

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

11 (DISCUSSION OFF THE RECORD)

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

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

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

25 A I don't recall.

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



- 1 agreement between Champion and Nomodic?
- 2 A I don't recall.
- 3 Q And, sorry, this might be already clear from the answer  
4 you have given me. But I take it prior to the  
5 bankruptcy order, no one from ATB contacted or  
6 attempted to contact NVD to discuss the Hyatt project  
7 or the refund it was to receive; is that correct?
- 8 A It's our normal practice. And we were not party to  
9 NVD, so I don't know why we would have reached out to  
10 NVD when we had no other reason to believe that we  
11 needed to.
- 12 Q So that's a no, it did not happen, correct?
- 13 A You can say that it did not happen. I'm just saying,  
14 like, why this did not happen.
- 15 Q At any point prior to the bankruptcy order, did you or  
16 anyone on behalf of ATB ask for the contact information  
17 of the person to speak to at Champion about their  
18 cheque?
- 19 A Again, I don't think we had any reason to talk to  
20 Champion. We were not aware of the relationship there.
- 21 Q So I take it you are not aware of you or anyone on  
22 behalf of ATB reaching out to Champion prior to the  
23 bankruptcy order to discuss that cheque, correct?
- 24 A No. Like I said, we had no reason to.
- 25 Q All right. Sir, if you could just flip to paragraph 25  
26 of your Affidavit and this is the Supplemental one.
- 27 A Yes, I have it.

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

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

8 Do you see that?

9 A Yes.

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

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

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

17 A Sorry, when you say such funds?

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

21 A That was part of our security, yes.

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

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

1 making those payments.

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

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

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

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

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

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

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

1 A Yes, I have it.

2 Q You say there:

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

6 Do you see that?

7 A Yes.

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

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

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

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

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

1 A Yes.

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

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

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

11 A I don't recall that.

12 Q Okay.

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

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

17 (ADJOURNMENT)

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

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

# TAB E

# Executive Summary

## Near-Term Liquidity Issues and Request to ATB

- The Company is facing immediate near-term liquidity issues:
  - Since February 6, 2023, the Company has had no access to its RLC, other than the funds advanced by ATB to fund payroll on Feb 17, 2023, and some critical supplier payments on substantially completed projects. No funds have been available for any ongoing/active projects or overhead operations;
  - Approximately \$3.2MM in receipts from BC Housing Chilliwack has been received in February which have been retained by ATB and has not been available to fund suppliers for this project; and
  - While Nomodic has been slowly progressing its active projects including the BC Housing Chilliwack project, additional funding is required to continue with these projects until the equity raise can be completed and closed which requires a further agreement with ATB. Continuation of the BC Housing Chilliwack project is essential to the equity raise as contemplated in the Recapitalization Plan.
- Without access to the RLC, the Company will not be able to implement its Recapitalization Plan or complete the required negotiations with ATB regarding the New ATB RLC.

### ■ Immediate short-term request to ATB:

- Nomodic expects to complete its equity raise by March 10, 2023.
- During this period, the Company’s disbursements total approximately \$2.0MM to meet on-going disbursements including payroll.
- A \$1.4MM receivable is expected to be received this week (relating to the St. Felix project fabrication) or early next which Nomodic requests ATB to allow to be used to partially fund its ongoing operations including:
  - Corporate payroll and related source deduction;
  - Direct expenses which include field payroll expenses and source deductions;
  - Legal and professional fees to allow the implementation of the Recapitalization Plan; and
  - Other indirect expenses.
- The Company requests that the remaining required funding of \$700k (\$2.0MM cash disbursements less \$1.4MM receivable collection) be available under the RLC or from the cash remaining in the current account.

Short-Term Request			
(C \$000s)	3-Mar-23	17-Mar-23	Total
<b>Sources of Cash</b>			
Collections	1,375	-	1,375
<b>Total Sources of Cash</b>	<b>1,375</b>	<b>-</b>	<b>1,375</b>
<b>Uses of Cash</b>			
Direct Expenses	(1,009)	(400)	(1,409)
Corporate Payroll	(107)	(107)	(215)
Source Deductions	(49)	(49)	(99)
Professional fees	(121)	(122)	(243)
Indirect Costs	(47)	(39)	(87)
<b>Total Uses of Cash</b>	<b>(1,334)</b>	<b>(718)</b>	<b>(2,053)</b>
Change in Cash	41	(718)	(678)
Opening line	(3,419)	(3,378)	(3,419)
<b>Ending line</b>	<b>(3,378)</b>	<b>(4,097)</b>	<b>(4,097)</b>



# FY23 Forecast

## 13-Week Cash Flow (Calculated on Bi-Weekly Basis)

- Summarized below is the 13-week cash flow which assumes the following:
  - Cash expected to be received the week ending March 3, 2023, of \$1.4MM for St. Felix fabrication costs;
  - Cash injection of \$2.0MM expected to be received in March 2023; and
  - Project disbursements of \$7.9MM in second half of March include a large portion of stretched payables.

13-Week Cash Flow								
(C \$000s)	3-Mar-23	17-Mar-23	31-Mar-23	14-Apr-23	28-Apr-23	12-May-23	26-May-23	Total
<b>Sources of Cash</b>								
Collections	1,375	-	6,364	-	3,409	-	5,365	16,512
Cash injection	-	-	2,000	-	-	-	-	2,000
<b>Total Sources of Cash</b>	<b>1,375</b>	<b>-</b>	<b>8,364</b>	<b>-</b>	<b>3,409</b>	<b>-</b>	<b>5,365</b>	<b>18,512</b>
<b>Uses of Cash</b>								
Direct Expenses	(1,009)	(400)	(7,866)	-	(3,272)	-	(3,776)	(16,324)
Corporate Payroll	(107)	(107)	(107)	(107)	(107)	(107)	(107)	(751)
Source Deductions	(49)	(49)	(49)	(49)	(49)	(49)	(49)	(346)
<b>Indirect Costs</b>								
Business Development	(2)	(3)	(3)	(2)	(2)	(7)	(7)	(27)
Marketing and Promotion	(0)	(1)	(1)	(1)	(1)	(0)	(0)	(5)
Dues and Subscriptions	(18)	(9)	(9)	(4)	(4)	(7)	(7)	(57)
Office Expense	(10)	(12)	(12)	(11)	(11)	(10)	(10)	(77)
Telephone & Utilities	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(17)
Professional Fees	(121)	(122)	(22)	(18)	(18)	(12)	(12)	(326)
Rent	(4)	(3)	(3)	(3)	(3)	(3)	(3)	(19)
Travel	(10)	(9)	(9)	(10)	(10)	(9)	(9)	(66)
Bank Charges	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(3)
<b>Total Uses of Cash</b>	<b>(1,334)</b>	<b>(718)</b>	<b>(8,084)</b>	<b>(208)</b>	<b>(3,480)</b>	<b>(208)</b>	<b>(3,984)</b>	<b>(18,017)</b>
Change in Cash	41	(718)	279	(208)	(72)	(208)	1,381	495
Opening line	(3,419)	(3,378)	(4,097)	(3,817)	(4,025)	(4,097)	(4,305)	(3,419)
<b>Ending line</b>	<b>(3,378)</b>	<b>(4,097)</b>	<b>(3,817)</b>	<b>(4,025)</b>	<b>(4,097)</b>	<b>(4,305)</b>	<b>(2,923)</b>	<b>(2,923)</b>

**TAB F**



Jeff Govett &lt;jgovett@atb.com&gt;

## Meeting Questions

**Chuma Metuh** <chuma.m@nomodic.com>

Thu, Mar 2, 2023 at 12:15 PM

To: Dawn Walby-Parchoma <dwalby@atb.com>, "Helkaa, Deryck" <Deryck.Helkaa@fticonsulting.com>

Cc: Jeff Govett <jgovett@atb.com>, Kevin Read <kevin.r@nomodic.com>, "Browning, Cameron" <Cameron.Browning@fticonsulting.com>

Hello Dawn & Jeff,

Please refer to my comments below regarding the consolidated list of questions (**BLUE FONT**):

Cheers,

**Chuma Metuh, CPA, CA** | Vice President, Finance

**Office Local:** 403.271.3932 Ext. 3008

**Office Toll-Free:** 1.844.982.3932 ext. 3008

**Email:** chuma.m@nomodic.com



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**From:** Dawn Walby-Parchoma <dwalby@atb.com>

**Sent:** February 28, 2023 6:24 PM

**To:** Helkaa, Deryck <Deryck.Helkaa@fticonsulting.com>

**Cc:** Jeff Govett <jgovett@atb.com>; Kevin Read <kevin.r@nomodic.com>; Chuma Metuh <chuma.m@nomodic.com>; Browning, Cameron <Cameron.Browning@fticonsulting.com>

**Subject:** Re: [Ext Sender] RE: [EXTERNAL] Meeting Questions

Hi All,

Here is the consolidated list of questions:

1. Forecast appears to include \$403k in principal payments to subordinate creditors (BDC and Aithra). ATB is being asked to provide concessions yet subordinate creditors are being kept whole. Have you had any discussions with these creditors on their payment terms?
  - [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
2. I understand that \$250k was invested in a private company called Complete Framing Solutions about a year ago. Have there been any discussions on liquidating this investment to return cash to Nomodic?
  - [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)

3. Please provide current RBC statements from August 2022 to February 2023 along with trust agreements requiring GIC for the NVD Hyatt Place deposit.

- Per our phone discussion today, March 2, 2023, please find attached the Nomadic RBC Bank statements (Acct ending in 8432) and Nomadic Ontario RBC Bank statements (Acct ending in 7884).
- Each account has an associated GIC (Nomadic – Hyatt Trust Funds & Nomadic Ontario – City of Sudbury Bond Letter of Credit Security)
- RBC Nomadic Bank Statements (Sep 2022 to Feb 2023)
  - GIC Summary
    - GIC was created December 15, 2022 (at \$3.55MM).
    - GIC partial redeemed to facilitate Fabrication Payment #1 to Champion of \$1.9MM January 16, 2023
    - GIC redeemed & subsequently reissued February 2, 2023 (at \$1.66MM).
    - GIC will be redeemed to facilitate Fabrication Payment #2 to Champion when Construction Contract fully executed between NM & Client.
    - Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NM - 12-15-2022)
    - Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #2 (NM - 02-02-2023)
- RBC Nomadic Ontario (“NMO”) Bank Statement (Sep 2022 to Feb 2023)
  - The NMO account is used for the purpose of fund controls with Tim Lawton of Flex Modular on the City of Sudbury project.
    - The client pays project progress billed to the RBC Ontario account. Tim Lawton, funds control, provide approval to release the funds upon a review of spend request breakdown. Funds are released & transferred to NM ATB account. Payment to vendor are subsequently processed out of the NM ATB Account (as the contract with client & vendors is in Nomodic’s name, not Nomodic Ontario).
- There is a letter of credit associated with the City of Sudbury bond in a GIC in the RBC Nomadic Ontario account.
  - Attachment: RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NMO - 09-15-2022)
- Current RBC balances:

Welcome, Chuma Metuh

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Balance Summary

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Account Name	Account Type	Currency	Balance	Date
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-00980217751-0001</a>	BUS GIC	CAD	0.00	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-00980217751-0002</a>	BUS GIC	CAD	1,656,588.19	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00009-1348432</a>	BUS DEP	CAD	1,293.95	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-00010-1477884</a>	BUS DEP	CAD	1,745.44	Mar 01, 2023
<a href="#">NOMODIC MODULAR STRU ROYAL BANK OF CANADA-</a>	BUS GIC	CAD	500,000.00	Mar 01, 2023

- Per discussion with Kevin Read, CEO, for tax purposes pertaining to the 2021 sale of a hotel property, Nomodic’s customer accelerated the issuance of deposit funds for it’s Hyatt project in Whitehorse, YK with instruction that Nomodic hold the funds in a manner that protects and returns deposit interest to the customer similar to that of the customer’s own savings account, the proceeds of which (accumulated interest) be returned to the customer by way of a predetermined flat fee. The deposit funds ultimately earmarked for payment to Nomodic’s modular fabricator for the production of a ‘prototype unit’, in two tranches, through a transparent predetermined supply agreement.

4. Page 19 states “Adjusted Borrowing Base is based on prior month’s results” which is confusing. We have assumed that the Adjusted Borrowing Base in each column of the top portion of the table is based on each financial reporting period. (i.e February Adjusted Borrowing Base of \$4,953 is based on February AR listing which needs to be reported by March 30th.) Based on our attached analysis, Nomodic will be out of margin \$789k on April 30th once the March BB is reported. Depending on timing of receipts and disbursements, intra month liquidity should be fine but we would suggest that you refine this analysis for bi-weekly versus monthly to confirm. Based on our analysis, the April equity injection would need to be \$1MM.

- Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”

5. Page 19 states “Lienable payables estimated at \$1MM and to be phased in starting April at \$0.5MM”. If I am reading your table correctly, this statement refers to April Adjusted Borrowing Base which wouldn’t be reported until May 30 and then implemented for the month of June operations. We interpreted this statement as \$0.5MM deduction implemented during the operating month of April so \$0.5MM would be deducted from February BB. ATB would like to see the phased-in deduction occurring earlier than June operating month. Please review your forecast and reconsider.

- Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”

6. March 31st ending line is \$3,817 how does this tie to March’s ending line on page 19 of \$3,553?

- [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
7. Page 21 - Is WFS Complex - Wolf Midstream A/R ineligible given 10% rule?
- [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
8. Page 21 - Please provide additional details by counterparty for Other Accounts Receivable. Are these progress billings or final invoices?
- [Addressed in the FTI Presentation – “ATB Update Scenario Report & Questions 3 2 23”](#)
9. \$3.3MM in recent Chilliwack payments. We understand this relates to work performed in November, December, and January. We are still waiting for details on all the unpaid trades whose work formed part of these progress billings.
- [Please refer to the attached BC Housing Chilliwack Invoice Breakdown for November, December & January.](#)
    - [Attachment: BC Housing Chilliwack Invoice Breakdown \(Inv 20-023-023, 20-023-024 & 20-023-025\) as of Jan 31](#)

[Quoted text hidden]

[Quoted text hidden]

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#### 17 attachments

-  **RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NM - 12-15-2022).pdf**  
75K
-  **RBC Investment - 1 Year Prime-Linked Cashable GIC #2 (NM - 02-02-2023).pdf**  
5844K
-  **RBC Investment - 1 Year Prime-Linked Cashable GIC #1 (NMO - 09-15-2022).PDF**  
76K
-  **TransactionReport2023-02-28 (Nomodic).pdf**  
6K
-  **TransactionReport2023-02-28 (Nomodic Ontario).pdf**  
7K
-  **TransactionReport2023-02-15 (Nomodic).pdf**  
64K
-  **TransactionReport2023-02-15 (Nomodic Ontario).pdf**  
64K
-  **Statement2023-01-31 (Nomodic Ontario).pdf**  
70K
-  **Statement2023-01-31 (Nomodic).pdf**  
110K
-  **Statement2022-12-30 (Nomodic).pdf**  
109K
-  **Statement2022-12-19 (Nomodic Ontario).pdf**  
70K
-  **Statement2022-11-30 (Nomodic).pdf**  
770K
-  **Statement2022-11-18 (Nomodic Ontario).pdf**  
404K
-  **Statement2022-10-31 (Nomodic).pdf**  
107K
-  **Statement2022-10-19 (Nomodic Ontario).pdf**  
70K
-  **Statement2022-09-30 (Nomodic).pdf**  
305K
-  **BC Housing Chilliwack Invoice Breakdown (Inv 20-023-023, 20-023-024 & 20-023-025) as of Jan 31.pdf**  
144K

**TAB G**

<p><b>UNDERTAKING NO. 3</b> <b>PAGE 18</b></p>	<p><b>MR. QUINLAN:</b> Now, I don't see any of those produced. So, Pantelis, can I ask for an undertaking for the witness to review the books and records of ATB to determine if there are any emails or written requests for copies of any trust documents or any contracts with NVD and if so, to provide me copies of all those emails or written correspondence?</p> <p><b>MR. KYRIAKAKIS:</b> Yes, that's fine. I'll note that that will be in addition to what's already attached as exhibits because there are some references in the exhibits already. So anything we haven't already produced, we'll produce.</p> <p><b>MR. QUINLAN:</b> Yes, I'm not interested in you doubling up on stuff that's already in evidence, yes.</p> <p><b>UNDERTAKING: REVIEW ATB'S BOOKS AND RECORDS TO DETERMINE IF THERE ARE ANY EMAILS OR WRITTEN REQUESTS FOR COPIES OF ANY TRUST DOCUMENTS OR ANY CONTRACTS WITH NVD NOT ALREADY PRODUCED AND IF SO, PRODUCE COPIES OF SAME.</b></p>
<p>Response:</p>	<p>Exclusive of the documents previously produced by ATB and attached as exhibits to (a) the Supplemental Affidavit or (b) the Affidavit of Truth of Muhammad Ashraf, sworn on October 6, 2023 (the "<b>Bankruptcy Affidavit</b>"), see Schedule "<b>3</b>" to these undertaking responses, which includes email correspondence dated February 28, 2023 and March 2, 2023, between Dawn Walby-Parchoma of ATB, and Chuma Metuh, then the Vice President, Finance, of NMSI (collectively, the "<b>Undertaking Response 3 Emails</b>" and each an "<b>Undertaking Response 3 Email</b>"), along with the attachments to Mr. Metuh's email and a copy of the March 1 FTI Report (as defined and described below).</p> <p>Pursuant to the Undertaking Response 3 Emails, Ms. Walby-Parchoma requested, among other things, that NMSI "Please provide current RBC statements from August 2022 to February 2023 along with trust agreements requiring GIC for the NVD Hyatt Place deposit."</p> <p>In response, Mr. Metuh advised that such funds were being held by NMSI in relation to a tax purpose of NVD and to protect interest on the deposit. Specifically, Mr. Metuh advised that "Per discussion with Kevin Read, CEO, for tax purposes pertaining to the 2021 sale of a hotel property, Nomodic's customer accelerated the issuance of deposit funds for it's Hyatt project in Whitehorse, YK with instruction that Nomodic hold the funds in a manner that protects and returns deposit interest to the customer similar to that of the</p>

	<p>customer's own savings account, the proceeds of which (accumulated interest) be returned to the customer by way of a predetermined flat fee. The deposit funds ultimately earmarked for payment to Nomodic's modular fabricator for the production of a 'prototype unit', in two tranches, through a transparent predetermined supply agreement."</p> <p>Mr. Metuh's Undertaking Response 3 Email did not enclose any documents relating to or referring to a trust, nor indicate any verbal trust arrangement or agreement existed between NMSI and NVD.</p> <p>In his Undertaking Response 3 Email, Mr. Metuh referred to a "FTI Presentation – "ATB Update Scenario Report &amp; Questions 3 2 23"" in responding to certain questions. This reference is to the electronic file name of the PDF copy of a report, dated March 1, 2023 (the "<b>March 1 FTI Report</b>"), prepared by FTI Consulting Canada, Inc., in its capacity as the financial advisor engaged by NMSI.</p> <p>The March 1 FTI Report refers to and, in part, answers, the same questions posed by Ms. Walby-Parchoma in the Undertaking Response 3 Emails.. At page 4, in a list of questions and answers, the March 1 FTI Report states: "<b>Please provide current RBC statements from August 2022 to February 2023 along with trust agreements requiring GIC for the NVD Hyatt Place deposit.</b> – Company has provided this information under separate cover." [bolding in original]. The capitalized term "Company" refers to NMSI. The reference in the March 1 FTI Report to information provided by NMSI "under separate cover" is a reference to Mr. Metuh's subsequent email of March 2, 2023, which is included in the Undertaking 3 Response Emails. ATB did not receive any other information from NMSI in relation to that question during this time period.</p>
--	---

<p><b>UNDERTAKING NO. 4 PAGE 19</b></p>	<p><b>MR. QUINLAN:</b> Pantelis, can I ask for an undertaking for the witness to review the books and records of ATB to determine if there was any further response emails in respect of this string that is shown in Exhibit "E" and if so, to provide me copies of all other emails in respect of this email string?</p> <p><b>MR. KYRIAKAKIS:</b> Subject to privilege and relevance, that's fine.</p> <p><b>UNDERTAKING:</b> REVIEW ATB'S BOOKS AND RECORDS TO DETERMINE IF THERE WAS ANY FURTHER RESPONSE EMAILS IN RESPECT OF EMAIL STRING</p>
---	--



TAB H



Nomodic | #280, 23 Sunpark Drive SE

Calgary, AB Canada T2X 3V1  
[nomodic.com](http://nomodic.com)



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**From:** Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>  
**Sent:** March 6, 2023 1:25 PM  
**To:** Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)>  
**Subject:** Re: [EXTERNAL] Re: [Ext Sender] Minimum Liquidity Requirement Clarification

Hey Chuma,

Can you provide further details on the purpose of Nomodic Modular Structures (Ontario) Ltd? Are the Ontario projects under this entity (contracts with customers and trades)? I believe you said all invoicing is done through Nomodic Modular Structures Inc. but I am trying to understand why there are transactions flowing through the RBC DP account ending 788-4.

Thanks,

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



On Mon, Mar 6, 2023 at 11:19 AM Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)> wrote:

Definition would be availability under RLOC and all unencumbered cash held by the Borrower. So your RBC \$500,000 GIC which is securing the L/C would be excluded. Same goes for the \$1.66MM GIC which is encumbered by Hyatt trust conditions. Additionally, it appears as though the \$0.5MM GIC is held under a different entity -> Nomodic Modular

Structures (Ontario) Ltd. As part of the Commitment Letter Amendment, ATB will likely require security from this entity but I will leave that to our counsel to decide on what is most appropriate.

Thanks,

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



On Mon, Mar 6, 2023 at 10:52 AM Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)> wrote:

Understood!

To confirm, a cashable GIC would count toward the minimum liquidity requirement?

**Cheers,**

**Chuma Metuh, CPA, CA | Vice President, Finance**  
**Office Local:** 403.271.3932 Ext. 3008

**Office Toll-Free:** 1.844.982.3932 ext. 3008  
**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)



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# TAB I



Dawn Walby-Parchoma &lt;dwalby@atb.com&gt;

**Fwd: [Ext Sender] RE: [EXTERNAL] Meeting Questions**

1 message

**Dawn Walby-Parchoma** <dwalby@atb.com>  
To: Jeff Govett <jgovett@atb.com>

Tue, Mar 7, 2023 at 11:35 PM

FYI - not great responses on the two transactions I questioned. Nomodic #8432 - transaction for \$497k. They used Hyatt trust funds for near term liquidity before transferring back to RBC account so they could purchase new GIC for \$1.66MM. This shows the importance of an ATB GIC to maintain the minimum liquidity and \$1MM equity in April. If one receivable is delayed, their liquidity is compromised...

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



----- Forwarded message -----

From: **Chuma Metuh** <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)>  
Date: Mon, Mar 6, 2023 at 10:29 PM  
Subject: RE: [Ext Sender] RE: [EXTERNAL] Meeting Questions  
To: Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>

Good evening Dawn,

Please refer to my comments below **BLUE FONT**

Cheers,

**Chuma Metuh, CPA, CA | Vice President, Finance**  
**Office Local:** 403.271.3932 Ext. 3008  
**Office Toll-Free:** 1.844.982.3932 ext. 3008  
**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)

**Nomodic** | #280, 23 Sunpark Drive SECalgary, AB Canada T2X 3V1  
[nomodic.com](http://nomodic.com)

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**From:** Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>  
**Sent:** March 6, 2023 7:02 PM

To: Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)>

Subject: Re: [Ext Sender] RE: [EXTERNAL] Meeting Questions

Hey Chuma,

A few questions:

Nomodic #8432:

- Was this account only opened on September 21, 2022? **Yes, both RBC accounts were opened in September 2022.**
- \$497,000 was sent to ATB account on January 23rd and then returned on January 30th. Why was this transaction done? **Utilized funds in the RBC account to make critical payment through the ATB account to vendors as we had a BC Housing receivable get pushed into the following week. Once the BC Housing funds were received, the funds were returned into RBC. As you can guess, I got in shit for proceeding in this direction.**

Nomodic (Ontario) #7884:

- When was this account opened? I think we are missing statements for balance before September 19th. **Bank account was open in early September 2022.**
- Statement from Dec 20 to Jan 18th is also missing. **Apologies. RBC switch our Ontario cut off statement date from the 19<sup>th</sup> to Month-End that month (January 2023). That is why we have two statements for the month of January 2023. Please refer to the attached Bank Statement as of January 19, 2023**
  - **Attachment: Statement2023-01-19 (Nomodic Ontario)**
- What does the \$4,000 e-transfer in and out on Feb 28th relate to? **We need to make a critical payment to a consultant that would seriously delay the City of Sudbury project if not made. As we were only allowed to discuss near term project at the time, we had to find another solution to making the payment to the consultant. Our Fabricator provided NM a \$4K pre-payment on Feb 28 (e-transfer in) and the funds were immediately disbursed to the consultant to ensure the project schedule would be maintained. We will be providing a credit to the fabricator in the amount of 4K on their next invoice.**

Thanks,

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

**Mobile** 403-463-0115  
Eighth Avenue Place West Tower  
Suite 600, 585-8th Ave SW  
Calgary, AB T2P1G1  
[atb.com](http://atb.com)



On Thu, Mar 2, 2023 at 12:17 PM Chuma Metuh <[chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)> wrote:

Hello Dawn & Jeff,

Please refer to my comments below regarding the consolidated list of questions (**BLUE FONT**):

**Cheers,**

**Chuma Metuh, CPA, CA | Vice President, Finance**  
**Office Local:** 403.271.3932 Ext. 3008

**Office Toll-Free:** 1.844.982.3932 ext. 3008  
**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)



**Nomodic | #280, 23 Sunpark Drive SE**

**TAB J**



Dawn Walby-Parchoma &lt;dwalby@atb.com&gt;

**Fwd: [Ext Sender] RE: [EXTERNAL] Meeting Questions**

1 message

**Dawn Walby-Parchoma** <dwalby@atb.com>  
To: Jeff Govett <jgovett@atb.com>

Tue, Mar 7, 2023 at 11:35 PM

FYI - not great responses on the two transactions I questioned. Nomodic #8432 - transaction for \$497k. They used Hyatt trust funds for near term liquidity before transferring back to RBC account so they could purchase new GIC for \$1.66MM. This shows the importance of an ATB GIC to maintain the minimum liquidity and \$1MM equity in April. If one receivable is delayed, their liquidity is compromised...

**Dawn Walby-Parchoma, CPA, CA, CIRP she/her**  
**Managing Director**  
**Risk Advisory and Management**

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Date: Mon, Mar 6, 2023 at 10:29 PM  
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To: Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>

Good evening Dawn,

Please refer to my comments below **BLUE FONT**

Cheers,

**Chuma Metuh, CPA, CA | Vice President, Finance**  
**Office Local:** 403.271.3932 Ext. 3008  
**Office Toll-Free:** 1.844.982.3932 ext. 3008  
**Email:** [chuma.m@nomodic.com](mailto:chuma.m@nomodic.com)

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**From:** Dawn Walby-Parchoma <[dwalby@atb.com](mailto:dwalby@atb.com)>  
**Sent:** March 6, 2023 7:02 PM



**TAB K**

**From:** Byron Lambert  
**Sent:** Tuesday, October 3, 2023 10:34 AM  
**To:** Muhammad Ashraf <[mashraf@atb.com](mailto:mashraf@atb.com)>; Jeff Govett <[jgovett@atb.com](mailto:jgovett@atb.com)>  
**Subject:** AR listing

Hi Muhammad,

Attached is the current AR listing with notes on which amounts can be targeted for collections or that will require negotiations with various parties for the full release (joint signatory account).

There was also an agreement reached last week with a manufacturer to provide a refund to Nomodic for approximately \$1.6M, there was supposed to be a cheque sent but it will require follow up – these relate to the NVD Hyatt project that has been cancelled. This would have been tied to the GIC held at RBC, Total funds were due back to NVD of \$2.4M, this would have consisted of the manufacturer refund as well as funds from the GIC. I do not know the status of the manufacturer cheque at this time and will require some leg work.

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

**Byron Lambert, CPA, CA | Chief Financial Officer**

**Cell:** 587.777.7997

**Email:** [byron.lambert@nomodic.com](mailto:byron.lambert@nomodic.com)

 A picture containing text, clipart Description automatically generated

**Nomodic | #280, 23 Sunpark Drive SE**

**Calgary, AB Canada T2X 3V1**  
**[nomodic.com](http://nomodic.com)**

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