

Court File No.: 32-2783327  
Estate File Nos.: 32-2783327

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY OF  
IAN ROSS MCSEVNEY, an individual residing in the  
Town of Ancaster in the Province of Ontario

**FACTUM OF THE TRUSTEE, BDO CANADA LLP**

March 21, 2023

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## FACTUM OF THE TRUSTEE

### PART I - OVERVIEW

1. This Motion arises from a transfer of a residential property by Ian Ross McSevney, a bankrupt, to a company controlled by his sister, Elaine McSevney, at a price that was conspicuously below fair market value, thereby depriving his creditors of significant value.
2. Pursuant to the Order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 8, 2021 (the “**Receivership Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver (in such capacity, the “**Receiver**”) over Altmore Mortgage Investment Corporation (“**Altmore**”), Altmore Capital Inc. (“**ACI**”), Independent Mortgage Advisors Inc. (“**IMAI**”) and Ian Ross McSevney (“**McSevney**”) (collectively, the “**Receivership Debtors**”) pursuant to section 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the “**OBCA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”).
3. Pursuant to the Receivership Order, the Receiver was authorized to make bankruptcy assignments in respect of any of the Receivership Debtors.
4. On November 18, 2021 (the “**Bankruptcy Date**”), the Receiver commenced the bankruptcy proceedings (the “**Bankruptcy Proceedings**”) by filing assignments in bankruptcy in respect of Altmore and McSevney (together, the “**Bankrupts**”).
5. On December 7, 2021, the first meeting of creditors (“**FMOC(s)**”) for Altmore and McSevney were held consecutively, and both were chaired by the Official Receiver (the

“**OR**”) of the Office of the Superintendent of Bankruptcy Canada (the “**OSB**”). At the FMOs, BDO was reaffirmed as trustee of the Bankrupts (the “**Trustee**”).

6. This factum is filed in support of a motion for an order, among other things:

(a) Declaring that the sale of the Unit 9 Property (as defined below) on August 4, 2020 by McSevney to 12195585 Canada Inc. (“**ElaineCo**”), a corporation owned and controlled by his sister, Elaine McSevney, was a “transfer at undervalue” as contemplated in section 96 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”);

(b) Declaring that Elaine McSevney was a person privy to the transfer at undervalue; and

(c) Directing ElaineCo and Elaine McSevney to pay to the Trustee an amount equal to the difference between the value of the Unit 9 Property and the amount of the purchase price that was paid by ElaineCo.

## **PART II - THE FACTS**

7. The detailed background of these proceedings is set out in the First Report of the Trustee dated August 12, 2022 (the “**First Report**”) and the Second Report of the Trustee dated February 6, 2023 (the “**Second Report**”). Below is a summary of the key background and facts relevant to the within motion of the Trustee:

(a) Altmore is a corporation incorporated pursuant to the OBCA on July 30, 2012. McSevney is the sole guiding mind behind Altmore and its affiliates. Altmore claimed to operate as a mortgage investment corporation. Altmore solicited several millions of dollars in investment capital from investors ostensibly for the purpose of investing in a portfolio

of mortgages. However, the Trustee is not aware of any significant mortgage investments actually made by Altmore.

(b) On February 7, 2023, pursuant to the Order of the Honourable Justice Steele, the Receiver was discharged in respect of the Receivership Debtors. Notwithstanding the termination of the Receivership proceedings, the Trustee remains in place.

(c) In the course of its appointment the Trustee has not been able to locate any significant asset of Ian McSevney other than his prior interest in a residence located at Unit 17 – 81 Valridge Drive, Ancaster, Ontario (the “**Unit 17 Property**”), registered in the names of Ian McSevney and his spouse, Christie Ward-McSevney.

(d) In mid-December 2021, the Receiver learned that McSevney and his spouse did not reside in the Unit 17 Property and that the Unit 17 Property had a third-party tenant residing in it.

(e) In the course of its inquiries into the Unit 17 Property, the Trustee also learned that McSevney had in fact been residing in Unit 9 at 81 Valridge Drive (the “**Unit 9 Property**”), but had moved out in or about early December 2021;

(f) The Unit 9 Property was owned by 12195585 Canada Inc. (“**ElaineCo**”), a corporation controlled by Ian McSevney’s sister, Elaine McSevney. The Parcel Register in respect of the Unit 9 Property indicates that McSevney sold the Unit 9 Property to ElaineCo for \$530,000 on August 4, 2020;

(g) In fact, ElaineCo only paid an aggregate amount of approximately \$398,469.10 (the “**ElaineCo Purchase Price**”) for its purchase of the Unit 9 Property (the “**ElaineCo Purchase**”);

(h) At the time of the ElaineCo Purchase, ElaineCo was not dealing with Ian McSevney at arm’s length, and either (i) Ian McSevney was insolvent or was rendered insolvent by the ElaineCo Purchase; or (ii) Ian McSevney intended to defraud, defeat or delay one or more of his creditors;

(i) ElaineCo sold the Unit 9 Property to an unrelated third party on December 20, 2021 (the “**December 2021 Sale**”) for a purchase price of \$700,000 (the “**December 2021 Sale Price**”), a difference of \$301,530.90 (the “**TUV Amount**”) above the ElaineCo Purchase Price.

### **PART III - ISSUE ON MOTION**

8. The issue to be determined on this motion is whether the December 2021 Sale was a “transfer at undervalue” as contemplated by section 96 of the BIA.

### **PART IV - LAW & ARGUMENT**

#### **A. Transfers at Undervalue under the BIA**

9. Section 96 of the *BIA* permits a trustee to attack transactions entered into by a debtor prior to a bankruptcy in which no consideration is received by the debtor or in which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.

10. A “transfer at undervalue” is defined in Section 2 of the BIA as:

“a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.”

11. A transfer at undervalue may be remedied under Section 96 of the BIA, which states, in part:

**96 (1)** On application by the trustee, a court may declare that a transfer at undervalue is void as against [...] the trustee [...] or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

**(b)** the party was not dealing at arm’s length with the debtor and

**(i)** the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

**(ii)** the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

**(A)** the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

**(B)** the debtor intended to defraud, defeat or delay a creditor.

12. Under section 4 of the BIA, related parties are presumed, in the absence of evidence to the contrary, not to be dealing with each other at arm’s length.
13. Under section 96(3) of the BIA, a “person who is privy” means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.
14. The requirements for establishing a transfer at undervalue where the debtor was dealing with a non-arm’s length party are therefore as follows:



- (a) there must have been a disposition of property or provision of services;
  - (b) the debtor must have received no consideration, or the consideration received by the debtor must be conspicuously less than fair market value of the consideration given by the debtor; and
  - (c) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or, the debtor intended to defraud, defeat or delay a creditor.
15. Proof of an intention to defraud, defeat or delay creditors is often satisfied through evidence of certain indicia or “badges” of fraud, such as, among others:<sup>1</sup>
- (i) the conveyance transferred substantially all of the transferor's property;
  - (ii) the transferor continued in possession and used the goods;
  - (iii) the conveyance was secret;
  - (iv) the conveyance was made in the face on ongoing legal proceedings;
  - (v) the deed contained self-serving provisions;
  - (vi) the deed gives the transferor a general power to revoke the conveyance;
  - (vii) the deed contains false statements as to consideration;
  - (viii) the consideration is grossly inadequate;
  - (ix) there is unusual haste to make the conveyance;
  - (x) some benefit is retained under the settlement;
  - (xi) cash is taken in payment instead of a cheque; and
  - (xii) a close relationship exists between the parties to the conveyance.

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<sup>1</sup> [\*EY v Aquino\*](#), 2021 ONSC 527 at para 153.

16. Courts have recognized that the “badges of fraud” serve an evidentiary function and can be viewed as “circumstantial evidence that may cause a court to draw an inference of intent”.<sup>2</sup>
17. The existence of badges of fraud creates a rebuttable presumption of the intention to defraud, defeat or delay creditors. The onus then shifts to those defending the transfer to adduce evidence to show the absence of fraudulent intent.<sup>3</sup>
18. Where a transaction displays one of the badges of fraud, this will usually be enough to establish the debtor’s illegal purpose unless the debtor can provide an innocent explanation.<sup>4</sup>
19. In *Peoples Department Store Inc.*<sup>5</sup> the Supreme Court of Canada considered the purpose of s. 96 [then s. 100] of the BIA in considering the definition of “privy”. The Supreme Court held:

“The primary purpose of [s. 96] of the BIA is to reverse the effects of a transaction that stripped value from the estate of a bankrupt person. It makes sense to adopt a more inclusive understanding of the word “privy” to prevent someone who might receive indirect benefits to the detriment of a bankrupt’s unsatisfied creditors from frustrating the provision’s remedial purpose. The word “privy” should be given a broad reading to include those who benefit directly or indirectly from and have knowledge of a transaction occurring for less than fair market value. In our opinion, this rationale is particularly apt when those who benefit are the controlling minds behind the transaction.”

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<sup>2</sup> [EY v Aquino](#), 2021 ONSC 527 at para 154.

<sup>3</sup> [EY v Aquino](#), 2021 ONSC 527 at para 161.

<sup>4</sup> [EY v Aquino](#), 2021 ONSC 527 at para 155.

<sup>5</sup> [Peoples Department Store Inc. \(Trustee of\) v. Wise](#), 2004 SCC 68 at para 91.

20. The courts have interpreted the term “privity” to include those persons who have knowledge of a transaction for less than fair market value and benefit either directly or indirectly from it.<sup>6</sup>

**B. Application of the Law**

21. In the instant case, the sale of the Unit 9 Property on August 4, 2020 by McSevney to ElaineCo is a “transfer at undervalue” within the meaning of section 96 of the BIA, given that:

- (a) the sale of the Unit 9 Property was a disposition of property by McSevney;
- (b) the December 2021 Sale Price (\$700,000) is evidence of the fair market value of the Unit 9 Property, and the consideration received by McSevney from ElaineCo is conspicuously less than that amount;
- (c) a number of “badges of fraud” exist, including the following facts:
  - (i) McSevney continued to reside in the Unit 9 Property after the date of the sale to ElaineCo;
  - (ii) the parcel register in respect of the Unit 9 Property shows \$530,000 as the purchase price, whereas the ElaineCo Purchase Price was the lesser amount of \$398,469.10;
  - (iii) the ElaineCo Purchase Price was grossly inadequate; and

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<sup>6</sup> [\*Bank of Montreal v. EL04 Inc.\*](#), 2012 ONCA 80 at para

(iv) a close relationship (*i.e.* siblings) exists between ElaineCo and McSevney.

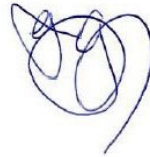
22. In acquiring the Unit 9 Property, ElaineCo accepted a transfer at undervalue in the amount of the TUV Amount and consequently must pay that amount to the Estate.

23. As the directing mind of ElaineCo, Elaine McSevney was privy to the ElaineCo Purchase and consequently must pay the TUV Amount to the Estate.

**PART V - ORDER SOUGHT**

24. In light of the foregoing, it is respectfully requested that this Honourable Court grant an order substantially in the form of the draft order at **Tab “3”** to the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 21<sup>st</sup> day of March, 2023.



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Gregory Azeff & Monica Faheim

MILLER THOMSON LLP  
Lawyers for the Receiver, BDO Canada LLP

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. [EY v Aquino](#), 2021 ONSC 527.
2. [Peoples Department Store Inc. \(Trustee of\) v. Wise](#), 2004 SCC 68.
3. [Bank of Montreal v. EL04 Inc.](#), 2012 ONCA 80.

## SCHEDULE “B” RELEVANT STATUTES

### Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)

#### Definitions

2 In this Act,

**affidavit** includes statutory declaration and solemn affirmation; (*affidavit*)

**application**, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion;

**assignment** means an assignment filed with the official receiver; (*cession*)

**bank** means

- (a) every bank and every authorized foreign bank within the meaning of section 2 of the *Bank Act*,
- (b) every other member of the Canadian Payments Association established by the *Canadian Payments Act*, and
- (c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association; (*banque*)

**bankrupt** means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person; (*failli*)

**bankruptcy** means the state of being bankrupt or the fact of becoming bankrupt; (*faillite*)

**bargaining agent** means any trade union that has entered into a collective agreement on behalf of the employees of a person; (*agent négociateur*)

**claim provable in bankruptcy, provable claim or claim provable** includes any claim or liability provable in proceedings under this Act by a creditor; (*réclamation prouvable en matière de faillite ou réclamation prouvable*)

**collective agreement**, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

**common-law partner**, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

**common-law partnership** means the relationship between two persons who are common-law partners of each other; (*union de fait*)

**corporation** means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies or loan companies; (*personne morale*)

**court**, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act; (*tribunal*)

**creditor** means a person having a claim provable as a claim under this Act; (*créancier*)

**current assets** means cash, cash equivalents — including negotiable instruments and demand deposits — inventory or accounts receivable, or the proceeds from any dealing with those assets; (*actif à court terme*)

**date of the bankruptcy**, in respect of a person, means the date of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed; (*date de la faillite*)

**date of the initial bankruptcy event**, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
  - (i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
  - (ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,
- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- (f) proceedings under the *Companies' Creditors Arrangement Act*; (*ouverture de la faillite*)

**debtor** includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt; (*débiteur*)

**director** in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called; (*administrateur*)

**eligible financial contract** means an agreement of a prescribed kind; (*contrat financier admissible*)

**equity claim** means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

**equity interest** means

- (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

**executing officer** includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor; (*huissier- exécutant*)

**financial collateral** means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account; (*garantie financière*)



**General Rules** means the General Rules referred to in section 209; (*Règles générales*)

**income trust** means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the date of the initial bankruptcy event, or
- (b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the date of the initial bankruptcy event; (*fiducie de revenu*)

**insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

**legal counsel** means any person qualified, in accordance with the laws of a province, to give legal advice; (*conseiller juridique*)

**locality of a debtor** means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (*localité*)

**Minister** means the Minister of Industry; (*ministre*)

**net termination value** means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

**official receiver** means an officer appointed under subsection 12(2); (*séquestre officiel*)

**person** includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person; (*personne*)

***prescribed***

- **(a)** in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under paragraph 5(4)(e), and
- **(b)** in any other case, means prescribed by the General Rules; (*prescrit*)

***property*** means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property; (*bien*)

***proposal*** means

- **(a)** in any provision of Division I of Part III, a proposal made under that Division, and
- **(b)** in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement; (*proposition concordataire* ou *proposition*)

***public utility*** includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services; (*entreprise de service public*)

***resolution*** or ***ordinary resolution*** means a resolution carried in the manner provided by section 115; (*résolution* ou *résolution ordinaire*)

***secured creditor*** means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- **(a)** a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- **(b)** any of
  - **(i)** the vendor of any property sold to the debtor under a conditional or instalment sale,
  - **(ii)** the purchaser of any property from the debtor subject to a right of redemption, or

- **(iii)** the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights; (*créancier garanti*)

**settlement**[Repealed, 2005, c. 47, s. 2]

**shareholder** includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

**sheriff**[Repealed, 2004, c. 25, s. 7]

**special resolution** means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution; (*résolution spéciale*)

**Superintendent** means the Superintendent of Bankruptcy appointed under subsection 5(1); (*surintendant*)

**Superintendent of Financial Institutions** means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*; (*surintendant des institutions financières*)

**time of the bankruptcy**, in respect of a person, means the time of

- **(a)** the granting of a bankruptcy order against the person,
- **(b)** the filing of an assignment by or in respect of the person, or
- **(c)** the event that causes an assignment by the person to be deemed; (*moment de la faillite*)

**title transfer credit support agreement** means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

**transfer at undervalue** means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (*opération sous-évaluée*)

**trustee** or **licensed trustee** means a person who is licensed or appointed under this Act. (*syndic* ou *syndic autorisé*)

## Transfer at undervalue

**96 (1)** On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a

party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

- (a) the party was dealing at arm's length with the debtor and
  - (i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,
  - (ii) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and
  - (iii) the debtor intended to defraud, defeat or delay a creditor; or
- (b) the party was not dealing at arm's length with the debtor and
  - (i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or
  - (ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and
    - (A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or
    - (B) the debtor intended to defraud, defeat or delay a creditor.

#### **Establishing values**

(2) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

#### **Meaning of *person who is privy***

(3) In this section, a *person who is privy* means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

IN THE MATTER OF THE BANKRUPTCY OF IAN ROSS MCSEVNEY, AN INDIVIDUAL  
RESIDING IN THE TOWN OF ANCASTER IN THE PROVINCE OF ONTARIO

Court File No.: 32-2783327  
Estate File Nos.: 32-2783327

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY & INSOLVENCY)**

Proceeding commenced at Toronto

**FACTUM**  
**(RETURNABLE MARCH 22, 2023)**

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