

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF GALTU B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM  
IN THE NETHERLANDS**

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**MOTION RECORD  
(Funds held by Aird & Berlis LLP)  
(Returnable March 20, 2020 at 9:30 am)**

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March 12, 2020

**GOLDMAN SLOAN NASH & HABER LLP**  
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Lawyers for MNP Ltd. in its capacity as trustee  
in bankruptcy of Galtu B.V.

**TO: THE SERVICE LIST**

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Tab 1

**Estate File No. 31-248304**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF GALTY B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM  
IN THE NETHERLANDS**

**NOTICE OF MOTION  
(funds held by Aird & Berlis LLP)**

MNP Ltd. (the “**Trustee**”) in its capacity as the trustee in bankruptcy of Galty B.V. (the “**Bankrupt**”) will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on a date and time to be set at a 9:30 chambers appearance on March 20, 2020 at 9:30 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**THE MOTION IS FOR:**

1. An order:
  - (a) Directing Aird & Berlis LLP (“**A&B**”) to release the Net Sale Proceeds (defined below) less the Retained Funds (defined below) to the Trustee;
  - (b) Directing A&B to apply the Retained Funds in full satisfaction of its accounts with the Bankrupt; and
  - (c) Such other relief as this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:****The Net Sale Proceeds**

1. A&B acted for the Bankrupt on the sale of real property owned by the Bankrupt in 2015.
2. After payment of mortgages registered on title and normal closing costs, but before payment of fees claimed by A&B, it held \$591,503 (the “**Net Sale Proceeds**”).
3. Before the payment of the Net Sale Proceeds to the Bankrupt, The Avenue Road Trust (“**ART**”) commenced litigation claiming, among other things, a constructive trust in the Net Sale Proceeds.
4. ART obtained an Order from the Honourable Justice Hood dated August 30, 2018 in that litigation, which directed that A&B not release the Net Sale Proceeds pending further order, which was continued by an endorsement of the Honourable Justice Archibald dated December 7, 2018.

**The ART trust claim in this bankruptcy has been determined to be invalid**

5. ART made a claim pursuant to s. 81 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) that all of the assets of the Bankrupt, including the Net Sale Proceeds, were held in trust for the benefit of ART.
6. The Trustee disallowed that claim by ART.
7. ART appealed the Trustee’s disallowance, but subsequently abandoned its appeal.

8. ART's trust claims to the property of the Bankrupt, including the Net Sale Proceeds, have therefore been determined as not valid for purposes of the administration of the Bankrupt in these proceedings.

**A&B's Position**

9. Given the prior orders and endorsements of Justices Hood and Archibald in the ART litigation that A&B not release the Net Sale Proceeds pending further order, A&B is not prepared to pay the Net Sale Proceeds to the Trustee without a further Order of a judge.

10. A&B claimed a portion of the Net Sale Proceeds for payment of the fees that A&B claims against the Bankrupt, which claim by A&B amounts to \$66,922.01.

11. The Trustee on instructions from the inspectors of the Bankrupt and A&B have reached a settlement of the fee claims such that A&B would retain \$45,805.93 in full settlement of those issues (the "**Retained Funds**").

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The First Report of the Trustee dated February 27, 2020.
- (b) Such further and other materials as counsel may advise and this Court may permit.

March 12, 2020

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trustee in bankruptcy of Galty B.V.

TO: THE SERVICE LIST



Estate File No. 31-248304

IN THE MATTER OF GALTY B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM  
IN THE NETHERLANDS

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**Proceedings commenced at Toronto**

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**NOTICE OF MOTION**  
(funds held by Aird & Berlis LLP)

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bankruptcy of Galty B.V.

Tab 2

Court File No. 31-2484304

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

**IN THE MATTER OF THE BANKRUPTCY OF  
GALTY B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM, NETHERLANDS**

**FIRST REPORT TO THE COURT  
SUBMITTED BY MNP LTD.**

**FEBRUARY 27, 2020**

**I. INTRODUCTION**

1. On March 11, 2019, Galty B.V. (“**Galty**” or the “**Company**”) made an assignment in bankruptcy, which was accepted by the Office of the Superintendent of Bankruptcy the same day. MNP Ltd. (the “**Trustee**”) was appointed to act as Licensed Insolvency Trustee of Galty’s bankruptcy estate, subject to affirmation by the creditors at the First Meeting of Creditors.
2. On March 13, 2019, the Notice of Bankruptcy and First Meeting of Creditors (the “**Notice**”), a list of the creditors and a proof of claim form, along with a proxy were sent to all known creditors of Galty. Pursuant to subsection 102(4) of the *Bankruptcy and Insolvency Act* (“**BIA**”), a Notice of Bankruptcy was published in the Friday, March 15, 2019, edition of the *Toronto Sun* newspaper. A copy of the Notice and Statement of Affairs (“**SOA**”) are attached as **Appendix “A”**.
3. The First Meeting of Creditors (the “**Meeting**”) was held on April 1, 2019 and was presided over by Sheldon Title. At the Meeting, the creditors resolved to affirm the Trustee’s

appointment and to appoint five Inspectors. A copy of the minutes of the Meeting are attached as **Appendix “B”**.

## **II. RESTRICTIONS**

4. In preparing this Report and making the comments herein, the Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Company’s books and records, discussions with employees and management of the Company and information from other third-party sources (collectively, the **“Information”**). Except as described in this Report, the Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

## **III. PURPOSE OF THIS REPORT**

5. The purpose of this Report is to provide the Court with:
  - (i) information related to Galty, its assets and liabilities; and
  - (ii) the Trustee’s recommendations that the Court issue an order, *inter alia*, directing Aird & Berlis LLP (**“A&B”**) release to the Trustee the balance of the Sale Proceeds (defined below) after deducting the Retained Amount (defined below), such funds hereafter referred to as the **“Remaining Sale Proceeds”**.

## **IV. BACKGROUND INFORMATION**

6. Galty was incorporated on July 31, 1979 as a limited liability company under the laws of the Netherlands and previously operated as a property investment, property rental and holding company. As detailed in the OTHER MATTERS section, at the date of bankruptcy, the Company was involved in litigation (the **“Litigation”**).
7. The Trustee has been advised by Galty’s designated officer, Harold Pothoven, that the Company’s bankruptcy was as a result of the ongoing legal costs associated with defending the Litigation.

## Assets

8. The Company's assets, their estimated realizable value according to its SOA and the recoveries to date, are as follows:

<b>Description</b>	<b>Estimated Realizable Value (\$)</b>	<b>Amount Recovered (\$)</b>
Cash in Bank	1,539	1,464
Funds Held in Trust by A&B (the " <b>Sale Proceeds</b> ") -see below	591,503	0
Costs Award – Victor M. Seabrook & Timothy Seabrook, trustees	8,000	0
Cause of Action	6,752,100	0

## Sale Proceeds

9. Galty owned a property with a municipal address of 88 Elm Avenue, Toronto (the "**Property**"). The Property was sold in April 2015. Portions of the proceeds of sale were applied to satisfy payment of the mortgage, real estate commissions, utilities and remittance to CRA of taxes withheld by a non-resident on the sale of the Property and other miscellaneous disbursements.
10. A&B is holding the Sale Proceeds, being the balance of the proceeds of sale less the payments noted above, in its trust account. As part of the Litigation, Victor M. Seabrook ("**Victor**") and Timothy Seabrook ("**Timothy**"), trustees of the Avenue Road Trust ("**ART**") and Isobel R. Seabrook ("**Isobel**" and together with Victor and Timothy hereinafter collectively referred to as the "**Plaintiffs**"), by her litigation guardian Timothy, asserted a trust claim over the Sale Proceeds.
11. Upon its appointment, the Trustee served A&B with its notice of its appointment and its interest in the Sale Proceeds. A&B responded by noting that the Court has previously ordered that the Sale Proceeds remain in A&B's trust account pending further Court order.

Goldman Sloan Nash & Haber (“**GSNH**”), the Trustee’s counsel, requested that no steps be taken by A&B in respect of the Sale Proceeds without consent of the Trustee or further order on notice to the Trustee. On March 29, 2019, A&B responded to the Trustee and GSNH to advise that, *inter alia*:

- (i) Not all of the Sale Proceeds are being held by A&B in trust on behalf of Galty;
- (ii) Pursuant to a written direction from Galty to A&B (the “**Direction**”), which written direction specifically authorizes and directs A&B to apply a portion of the funds in A&B’s possession on account of A&B’s outstanding legal fees and disbursements for professional fees rendered by A&B to Galty (“**A&B’s Professional Fees and Disbursements**”), the portion of the funds in the possession of A&B equal to the amount of A&B’s Professional Fees and Disbursements is the property of A&B, not the property of Galty, the Trustee or any other person; and
- (iii) Certain parties alleged an interest in certain amounts of the above-mentioned funds and commenced certain legal proceedings in respect of this allegation. A&B subsequently made an undertaking to not release certain amounts of these funds in certain circumstances, which undertaking was subsequently recognized and confirmed by Orders of the Ontario Superior Court of Justice.

12. In respect of the A&B Professional Fees and Disbursements, A&B provided four invoices, dated July 27, 2017 in the amount of \$44,903.93 (the “**July, 2017 Invoice**”); November 20, 2018; December 31, 2018; and April 10, 2019, respectively, which reflect an aggregate balance of \$66,922.01. The Trustee has not determined the extent to which the A&B Professional Fees and Disbursements are subject to a valid Solicitor’s Lien and/or subject to the Direction, or the extent to which the amounts claimed are properly owing by the Company.

#### **Property Claim filed by Avenue Road Trust**

13. On March 29, 2019, after issuing ART a Notice by Trustee to Prove Claim pursuant to s.81(4) of the BIA, the Trustee received a Reclamation of Property form from ART asserting a trust claim over all of Galty’s assets, including the Sale Proceeds. In support

of its claim, the claimant provided the Amended Amended Amended Statement of Claim filed by the Plaintiffs, by her litigation guardian Timothy, as Plaintiffs and Galty, et al, as Defendants. A copy of this claim is attached as **Appendix “C”**.

### **Trustee’s Response to ART’s Property Claim**

14. Section 81(2) of the BIA requires the Trustee to determine the claim within 15 days of the Meeting, which in this case was on April 1, 2019. That determination was therefore required by April 16, 2019.

15. After reviewing the materials submitted with the claim, on April 15, 2019, the Trustee served, via registered mail, ART with Notice of Dispute. In issuing the Notice of Dispute, the Trustee advised ART’s counsel that it would be prepared to review any further additional particulars and supporting evidence that ART wishes to also provide. In addition to any further documentation in support of ART’s claim that it may wish to provide, the Trustee requested it consider submitting:

- (i) The evidence on which the allegation is made in the Amended Amended Amended Statement of Claim attached as Exhibit “C” to the claim for reclamation of property at para. 31 that the 2008 refinancing was impressed by a trust, such that the Sale Proceeds are also said to be subject to a trust.
- (ii) The basis on which the claim for the reclamation of property also claims all other assets of the bankrupt as disclosed on Exhibit “B” to the affidavit (i.e. beyond the Sale Proceeds) and the associated evidence.

16. The Trustee also asked ART to consider delivering any further materials within the statutory 15-day appeal period referred to in the Notice.

### **Appeal of the Trustee’s Disallowance**

17. On April 30, 2019, ART’s counsel served the Trustee’s counsel with Notice of Appeal from Disallowance of Claim by Trustee (“**NOA**”). The NOA referenced that in support of its application are the affidavits of Victor sworn on the 25th and 29th days of March 2019 and the Affidavit of Bruce G. Buckley sworn the 17th day of December 2018. The

affidavits of March 25, 2019 and December 17, 2018 were filed with the unsecured proof of claim filed by the Plaintiffs in Galty's bankruptcy.

18. The appeal was scheduled for a hearing on July 23, 2019 before Master Jean of the Ontario Superior Court of Justice (In Bankruptcy). Prior to the hearing, counsel for the Plaintiff requested the Trustee consent to an adjournment to allow it an opportunity to submit new evidence and offered to pay \$2,000 in costs. The Appellant's counsel did not have this evidence with it at the hearing. The Trustee did not agree to the adjournment. The Appellant requested an adjournment and intended to bring a motion to file further evidence. The Master recused herself of the matter on the basis of a conflict, without disclosing the nature of the conflict and ordered that the motion proceed to September 3, 2019. The Master also adjourned the appeal to September 3, 2019 for a motion by the Appellant to adduce fresh evidence and for scheduling the appeal. A copy of the Court's endorsement is attached as **Appendix "D"**.
19. Subsequent to the July 23, 2019 hearing, on August 20 and 21, 2019, ART, through its counsel offered to settle ("**Offer to Settle**") the dispute over ART's claim to reclaim Galty's property by abandoning its appeal of the Trustee's decision to dispute ART's entitlement to reclaim Galty's property without costs, provided such abandonment did not affect or prejudice ART's claim as being a creditor of the bankrupt.. On August 28, 2019, ART's counsel advised that the Offer to Settle was retracted and then subsequently reinstated. A copy of the email exchanges between counsel for ART and the Trustee are attached as **Appendix "E"**.
20. On August 29, 2019, the Trustee, through its counsel and with Inspector approval, communicated its acceptance of the Offer to Settle.
21. On August 30, 2019, counsel for ART served the Trustee's counsel with Notice of Abandonment in respect of ART's appeal of the Trustee's dispute of its claim for reclamation.
22. On September 3, 2019, the Trustee's counsel appeared before Master Mills wherein the Court noted the dispute was settled and the appeal of the Trustee's disallowance was



withdrawn. A copy of the endorsement dated September 3, 2019 is attached as **Appendix “F”**.

### **Settlement of A&B’s fee claim**

23. Subsequent to September 3, 2019, A&B advised the Trustee that notwithstanding the matter of ART’s claim to Galty’s property being settled:

- (i) It still requires a Court Order before releasing the funds to the Trustee as the previous Court orders obligated A&B to hold the funds in its trust pending further order of the Court; and
- (ii) A&B initially took the position that it was is amenable to directing to the Trustee the balance of Sale Proceeds after deducting the A&B Professional Fees and Disbursements (the “**Net Sale Proceeds**”). Under this scenario, the A&B Professional Fees and Disbursements would have been held by A&B pending further order of the Court or by mutual agreement between the A&B and the Trustee.

24. Thereafter, the Trustee’s counsel entered into discussions with representatives of A&B wherein A&B asked whether the amount payable to it could be resolved as part of the Trustee’s motion seeking authorization to have A&B release the Sale Proceeds to the Trustee.

25. As a result of A&B’s request, the Trustee called an Inspectors meeting to seek their instructions on settling A&B’s claim in relation to the A&B Professional Fees and Disbursements on a pragmatic basis. At the Inspectors meeting held on December 11, 2019, the Inspectors provided the Trustee with instructions.

26. After the Inspectors meeting and having regard to the Inspectors’ instructions, the Trustee’s counsel engaged in discussions with representatives of A&B wherein the parties agreed to settle the A&B Professional Fees and Expenses for an amount of \$45,805.93 (the “**Retained Amount**”), representing payment of the July, 2017 Invoice plus interest. A&B would be paid from the Sale Proceeds, such payment representing full and final settlement

of A&B's entitlement to payment of the A&B Professional Fees and Expenses from the Sale Proceeds. The Trustee recommended the settlement to the Inspectors on the basis that:

- (i) A substantial portion of the July, 2017 Invoice was for services rendered in connection with the sale of the Property and related tax work, whereas the balance of the A&B Professional Fees and Expenses relate, in part, to the Litigation and efforts to have A&B paid;
- (ii) The July, 2017 Invoice appears to be subject to the direction given by Galty in favour of A&B; and
- (iii) Settling the A&B Professional Fees and Disbursements as part of this motion eliminates the costs associated with bringing a separate motion to have the matter determined.

The settlement was confirmed in an email exchange on January 7, 2020 between counsel for the Trustee and a representative of A&B, a copy of which is attached as **Appendix "G"**.

### **Recommendation**

27. Given the foregoing, the Trustee recommends and requests the Court's assistance in directing A&B to transfer the Remaining Sale Proceeds to the estate. These funds will then be in the hands of the Trustee and available for distribution in accordance with the scheme of distribution set out in the BIA or to fund the Litigation or a challenge to Galty's payment to the Brazilian Trust (see OTHER MATTERS section).

## Liabilities

28. The claims of creditors as per the Company's sworn SOA and the claims filed as at January 16, 2020 are summarized below:

	<b>As per Statement of Affairs</b>	<b>Claims as Filed</b>
Secured	\$ Nil	\$ Nil
Preferred Unsecured	Nil	Nil
Ordinary Unsecured	21,400,488	21,882,296
Contingent	1	3,197,204
	<u>\$ 21,400,489</u>	<u>\$ 25,079,500</u>

29. At this time, the Trustee has not determined the admissibility of the proofs of claim for distribution purposes.

## V OTHER MATTERS

### The Litigation

30. As noted above, Galty was involved in the Litigation, wherein the Plaintiffs claimed from Galty, *inter alia*:

- (i) Payment of £472,790 and \$1,150,000 Canadian; and
- (ii) An interlocutory injunction as against all defendants not to dispose of the Sale Proceeds until further order of the Court or consent of the Plaintiff.

31. Galty defended the claim and the various cross claims it has become subjected to as part of the Litigation. It also brought a cross claim against certain of the defendants for, *inter alia*, contribution and indemnity for any amount for which Galty is found to be liable.

32. Galty also commenced a claim against Victor, for, *inter alia*:

- (i) \$3,600,000 in damages due to Victor's alleged negligence and breach of fiduciary duties; and

- (ii) An accounting and restitution or disgorgement of any and all benefits that Victor unjustly received as a result of his breach of fiduciary duty to Galty, including legal and professional fees paid to Victor in respect of his positions at Galty.

33. At this time, the Trustee has served a Notice of Stay of Proceedings on the parties to the Litigation but has not taken any other steps in respect of the Litigation.

### **Payment to Brazilian Trust**

34. The Trustee completed a limited review of the Company's books and records in order to identify any potential transfers at undervalue or preference payments. The scope of the review was limited to a review of Galty's bank statements for the period January 1, 2018 and March 11, 2019 (the "**Banking Records**"), a review of certain board of director meeting minutes and inquiries with management.

35. Apart from the matter noted in paragraph 36, the Trustee did not identify any noteworthy and material transactions from its review of the Banking Records.

36. Galty is owned by Galty Investments N.V. ("**N.V.**"). N.V. is owned by a Brazilian Trust. At a meeting of Galty's directors, held on July 13, 2017, the Directors authorized Galty transferring the sum of \$1,100,000 from its bank account to the Brazilian Trust. Based on the SOA, N.V. is Galty's largest unsecured creditor, with a declared claim of \$20,169,128 against Galty. N.V. has now filed a proof of claim against the estate, which asserts that the transfer of \$1,100,000 to the Brazilian Trust was to be set off against this loan. The monies used to fund payment of this transfer were derived from a corporate tax refund (associated with the taxes withheld by a non-resident on the sale of the Property) paid by Canada Revenue Agency on May 26, 2017 and deposited to Galty's bank account on July 6, 2017. The payment to the Brazilian Trust occurred on July 14, 2017. The Trustee is still reviewing the proof of claim of N.V. and the documents that accompanied it.

### **Potential Inspector Conflict**

37. As noted above, there are five Inspectors appointed to act in this estate, including Ron Chapman and Maisel Matus, each of whom is counsel to a party in the Litigation. At the Meeting, the Trustee and its counsel considered whether the BIA disqualifies these

individuals as being eligible to be appointed or act as Inspector, given their respective clients are a party to a contested action or proceedings by or against the estate of the bankrupt.

38. After reviewing the case law and commentary on this matter, the Trustee and its counsel concluded that the removal or disqualification of individuals other than as noted in subsection 116(2) of the BIA (being parties to litigation against the bankrupt) is a matter for the Court and not the Trustee to determine, and accordingly suggested that these individuals remain on the slate of nominees, with the understanding that, if appointed, they would have to be removed from dealing with matters put to the Inspectors that involve the Litigation.
39. At the October 4, 2019 meeting of the Inspectors, the Inspectors were asked to consider the following:
- (i) Status of the Sale Proceeds; and
  - (ii) A&B's claim to those funds.
40. After discussion, the Inspectors unanimously resolved that the Trustee bring an application to Court to seek a Court Order directing A&B to pay the Net Sale Proceeds to the Trustee and providing that A&B's entitlement to keep the Retained Funds will be determined by mutual agreement or by Court Order.
41. Subsequent to the Meeting, Ron Chapman and Masiel Matus respectively advised the Trustee that each of them wished to take no position on the motion notwithstanding their support of the motion at the October 4th Meeting, and further that they objected to the payment of the funds by A&B to the Trustee based on the interests of their clients. Copies of emails received from them are attached as **Appendix "H"**. Copies of the responses from counsel for the Trustee are attached as **Appendix "I"**.
42. In a further Inspectors meeting on December 11, 2019, Mr. Chapman indicated that his position on the A&B fee matters under discussion required instructions from his client.

43. The Trustee is concerned that despite not being themselves parties to litigation against Galty within the meaning of subsection 116(2) of the BIA, their roles as inspectors are being guided by such parties.

44. The Trustee therefore intends on excluding these Inspectors from participating in any matter, directly or indirectly related to the Litigation.

**VI. CONCLUSION**

45. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 5.

All of which is respectfully submitted on this 27th day of February 2020.

**MNP Ltd.**

In its capacity as Trustee of the Estate of  
Galty B.V., a bankrupt

Per:



---

Sheldon Title, Senior Vice-President

**Court No. 31-2484304**

**IN THE MATTER OF THE BANKRUPTCY  
OF GALT B.V., HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM, NETHERLANDS**

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

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**FIRST REPORT TO THE COURT**

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Lawyers for the Trustee, MNP Ltd.

Tab A



# Appendix "A"



District of: Ontario  
 Division No. 09 - Toronto  
 Court No. 31-2484304  
 Estate No. 31-2484304

\_FORM 68\_  
 Notice of Bankruptcy, First Meeting of Creditors  
 (Subsection 102(1) of the Act)

Original  Amended

In the matter of the bankruptcy of  
 Galty B.V.  
 having its head office in the City of Amsterdam, Netherlands

Take notice that:

1. Galty B.V. filed (or was deemed to have filed) an assignment on the 11th day of March 2019, and the undersigned, MNP LTD., was appointed as trustee of the estate of the bankrupt by the official receiver (or the Court), subject to affirmation by the creditors of the trustee's appointment or substitution of another trustee by the creditors.
2. The first meeting of creditors of the bankrupt will be held on the 1st day of April 2019, at 10:00 AM, at the office of TORONTO, at 300 - 111 Richmond Street West, Toronto, ON, M5H 2G4.
3. To be entitled to vote at the meeting, a creditor must lodge with the trustee, before the meeting, a proof of claim and, where necessary, a proxy.
4. Enclosed with this notice is a proof of claim form, proxy form, and list of creditors with claims amounting to \$25 or more showing the amounts of their claims.
5. Creditors must prove their claims against the estate of the bankrupt in order to share in any distribution of the proceeds realized from the estate.

Dated at the City of Toronto in the Province of Ontario, this 12th day of March 2019.

MNP LTD. - Licensed Insolvency Trustee  
 Per:

Sheldon Title - Licensed Insolvency Trustee  
 300 - 111 Richmond Street West  
 Toronto ON M5H 2G4  
 Phone: (416) 596-1711 Fax: (416) 323-5242

District of:  
 Division No. \_\_\_\_\_  
 Court No. \_\_\_\_\_  
 Estate No. \_\_\_\_\_

Original  Amended

-- Form 78 --  
 Statement of Affairs (Business Bankruptcy) made by an entity  
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)  
 In the matter of the bankruptcy of  
 Galty B.V.  
 having its head office in the City of Amsterdam, Netherlands

To the bankrupt:  
 You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the bankruptcy, on the 11th day of March 2019. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

LIABILITIES (as stated and estimated by the officer)	ASSETS (as stated and estimated by the officer)
1. Unsecured creditors as per list "A" ..... 21,400,488.41	1. Inventory ..... 0.00
Balance of secured claims as per list "B" ..... 0.00	2. Trade fixtures, etc. .... 0.00
Total unsecured creditors ..... 21,400,488.41	3. Accounts receivable and other receivables, as per list "E"
2. Secured creditors as per list "B" ..... 0.00	Good ..... 8,000.00
3. Preferred creditors as per list "C" ..... 0.00	Doubtful ..... 0.00
4. Contingent, trust claims or other liabilities as per list "D" estimated to be reclaimable for ..... 1.00	Bad ..... 0.00
Total liabilities ..... 21,400,489.41	Estimated to produce ..... 8,000.00
Surplus ..... NIL	4. Bills of exchange, promissory note, etc., as per list "F" ... 0.00
	5. Deposits in financial institutions ..... 1,538.63
	6. Cash ..... 0.00
	7. Livestock ..... 0.00
	8. Machinery, equipment and plant ..... 0.00
	9. Real property or immovable as per list "G" ..... 0.00
	10. Furniture ..... 0.00
	11. RRSPs, RRIFs, life insurance, etc. .... 0.00
	12. Securities (shares, bonds, debentures, etc.) ..... 0.00
	13. Interests under wills ..... 0.00
	14. Vehicles ..... 0.00
	15. Other property, as per list "H" ..... 7,343,603.40
	If bankrupt is a corporation, add:
	Amount of subscribed capital ..... 23,912.00
	Amount paid on capital ..... 23,912.00
	Balance subscribed and unpaid ..... 0.00
	Estimated to produce ..... 0.00
	Total assets ..... 7,353,142.03
	Deficiency ..... 14,047,347.38

I, Oliver Egerton-Vernon, of Jersey, in the United Kingdom, in my capacity as an officer of G.B. Directors Limited, corporate director of Galty B.V., do swear (or solemnly declare) that this statement and the attached lists are, to the best of my knowledge, a full, true and complete statement of Galty B.V.'s affairs on the 11th day of March 2019 and fully disclose all property of every description that is in its possession or that may devolve on it in accordance with the Act.

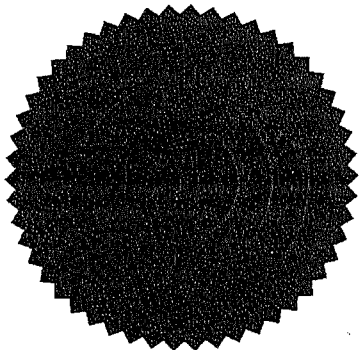
SWORN (or SOLEMNLY DECLARED)  
 before me at the City of Toronto in the Province of Ontario, on this 11th day of March 2019.

*in St. Helier, Jersey* *OEV*  
*NP*

*Oliver Egerton-Vernon*  
 Oliver Egerton-Vernon

For G.B. Directors Limited

Robert Harman, Notary Public  
 De Carterot House,  
 7 Castle Street, St. Helier,  
 Jersey JE2 3BT  
 Tel: 01534 766077  
 E mail: Robert.harman@notary.je  
**11 MARCH, 2019**



FORM 78 - Continued

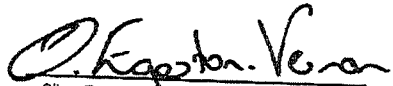
List "A"  
Unsecured Creditors

Galty B.V.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	Aird & Berlis LLP Attn: Judy L. Zammit	Brookfield Place 181 Bay Street Suite 1800 Box 754 Toronto ON M5J 2T9	44,905.93	0.00	44,905.93
2	AMI Business Solutions	5163 Guelph Road # 1 Guelph ON N1H 6J4	204,095.00	0.00	204,095.00
3	Anne Marie Heinrichs	5163 Township Road 1 RR7 Guelph ON N1H 6J4	256,755.00	0.00	256,755.00
4	Bennett Jones LLP - Toronto	3400 One First Canadian Place PO Box 130 Toronto ON M5X 1A4	557,934.22	0.00	557,934.22
5	Brazilian Trust	The Brazilian Trust CTV House, LaPouquelaye St. Helier, Jersey Channel Islands JE2 3TP Channel Islands	14,148.00	0.00	14,148.00
6	Galty Investments N.V.	Dr. M. J. Hugenholzweg 2D, Unit 5, Vredenberg Business Center Curacao Dutch Antilles	20,169,268.00	0.00	20,169,268.00
7	Garfield Bennett	CTV House La Pouquelaye St. Helier JE2 3TP Jersey Chanel Islands	40,335.26	0.00	40,335.26
8	Local Corporation Management	c/o Bennet Jones LLP 3400 One First Canadian Place PO Box 130 Toronto ON M5X 1A4	94,047.00	0.00	94,047.00
9	Victor M. Seabrook & Timothy Seabrook	c/o Ron Chapman 2200-181 University A venue Toronto ON M5H 3M7	19,000.00	0.00	19,000.00
Total:			21,400,488.41	0.00	21,400,488.41

11-Mar-2019

Date

  
 Oliver Egerton-Venon  
 For G.B. Directors Limited

FORM 78 -- Continued

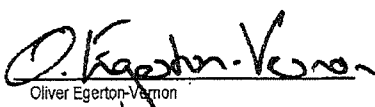
List "B"  
Secured Creditors

Galty B.V.

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
			Total:			0.00	0.00	0.00

11-Mar-2019

Date

  
Oliver Egerton-Vernon

For G.B. Directors Limited

FORM 78 – Continued

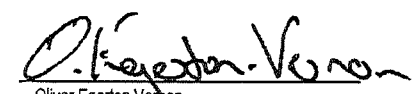
List "C"  
Preferred Creditors for Wages, Rent, etc.

Galty B.V.

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued	Amount of claim	Amount payable in full	Difference ranking for dividend
Total:					0.00	0.00	0.00

11-Mar-2019

Date

  
Oliver Egerton-Vernon

For G.B. Directors Limited

FORM 78 - Continued

List "D"  
Contingent or Other Liabilities

Galty B.V.

No.	Name of creditor or claimant	Address and occupation	Amount of liability or claim	Amount expected to rank for dividend	Date when liability incurred	Nature of liability
1	Victor M. Seabrook & Timothy Seabrook	c/o Ron Chapman 2200-181 University A venue Toronto ON M5H 3M7	1.00	0.00		Contingent claim
<b>Total:</b>			1.00	0.00		

11-Mar-2019  
Date

*O. Egerton-Vernon*  
Oliver Egerton-Vernon

For G.B. Directors Limited

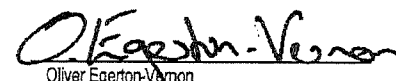
FORM 78 - Continued

List "E"  
Debts Due to the Bankrupt  
Galty B.V.

No.	Name of debtor	Address and occupation	Nature of debt	Amount of debt (good, doubtful, bad)	Folio of ledgers or other book where particulars to be found	When contracted	Estimated to produce	Particulars of any securities held for debt
1	Victor M. Seabrook & Timothy Seabrook, trustees	2200-181 University A Toronto ON M5H 3M7	Cost award granted pursuant to Master Abrams Endorsement, dated	8,000.00 0.00 0.00		15-Oct-2018	8,000.00	Unsecured
Total				8,000.00 0.00 0.00			8,000.00	

11-Mar-2019

Date

  
Oliver Egerton-Vernon



FORM 78 -- Continued

List "F"

Bills of Exchange, Promissory Notes, Lien Notes, Chattel  
Mortgages, etc., Available as Assets

Galty B.V.

No.	Name of all promissory, acceptors, endorsers, mortgagors, and guarantors	Address	Occupation	Amount of bill or note, etc.	Date when due	Estimated to produce	Particulars of any property held as security for payment of bill or note, etc.
Total:				0.00		0.00	

11-Mar-2019

Date

*Oliver Egerton-Vernon*  
Oliver Egerton-Vernon

For G.B. Directors Limited

FORM 78 - Continued

List "G"  
Real Property or Immovables Owned by Bankrupt  
Galty B.V.

Description of property	Nature of bankrupt interest	In whose name does title stand	Total value	Particulars of mortgages, hypothecs, or other encumbrances (name, address, amount)	Equity or surplus
Total:			0.00		0.00

11-Mar-2019

Date

*O. Egerton-Vernon*  
Oliver Egerton-Vernon

For G.B. Directors Limited

FORM 78 - Concluded

List "H"  
Property

Galy B.V.

FULL STATEMENT OF PROPERTY

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade			0.00	0.00
(b) Trade fixtures, etc.			0.00	0.00
(c) Cash in financial institutions	ING BANK N.V. 1102 BW Amsterdam Netherlands	0006977928	1,481.19	1,481.19
	ING BANK N.V. 1102 BW Amsterdam Netherlands	0020066643	57.44	57.44
(d) Cash on hand			0.00	0.00
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant			0.00	0.00
(g) Furniture			0.00	0.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities			0.00	0.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles			0.00	0.00
(l) Taxes			0.00	0.00
(m) Other		Aird & Beris LLP - Funds held in trust on behalf of the company in respect of sale of 88 Elm Avenue, Toronto	591,503.40	591,503.40
		Cause of Action by cross claim against	0.00	6,752,100.00
			<b>Total:</b>	<b>7,345,142.03</b>

11-Mar-2019

Date

*Oliver Egerton-Vernon*  
Oliver Egerton-Vernon

MNP LTD.  
300 - 111 Richmond Street West  
Toronto ON M5H 2G4  
Phone: (416) 596-1711 Fax: (416) 323-5242

District of: Ontario  
Division No. 09 - Toronto  
Court No. 31-2484304  
Estate No. 31-2484304

FORM 31  
Proof of Claim  
(Sections 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1),  
and Paragraphs 51(1)(e) and 66.14(b) of the Act)

In the matter of the bankruptcy of  
Galty B.V.  
having its head office in the City of Amsterdam, Netherlands

All notices or correspondence regarding this claim must be forwarded to the following address:

\_\_\_\_\_  
\_\_\_\_\_

In the matter of the bankruptcy of Galty B.V. of the City of Amsterdam in -- and the claim of \_\_\_\_\_, creditor.  
I, \_\_\_\_\_ (name of creditor or representative of the creditor), of the city of \_\_\_\_\_ in the  
province of \_\_\_\_\_, do hereby certify:

1. That I am a creditor of the above named debtor (or I am \_\_\_\_\_ (position/title) of \_\_\_\_\_,  
creditor).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, namely the 11th day of March 2019, and still is, indebted to the creditor in the sum of  
\$ \_\_\_\_\_, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any  
counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in  
support of the claim.)

4. (Check and complete appropriate category.)

A. UNSECURED CLAIM OF \$ \_\_\_\_\_  
(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and  
(Check appropriate description.)

Regarding the amount of \$ \_\_\_\_\_, I claim a right to a priority under section 136 of the Act.

Regarding the amount of \$ \_\_\_\_\_, I do not claim a right to a priority.  
(Set out on an attached sheet details to support priority claim.)

B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ \_\_\_\_\_

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:  
(Give full particulars of the claim, including the calculations upon which the claim is based.)

C. SECURED CLAIM OF \$ \_\_\_\_\_

That in respect of this debt, I hold assets of the debtor valued at \$ \_\_\_\_\_ as security, particulars of which are as follows:  
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security,  
and attach a copy of the security documents.)

D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ \_\_\_\_\_  
(Attach a copy of sales agreement and delivery receipts.)

E. CLAIM BY WAGE EARNER OF \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ \_\_\_\_\_,

That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ \_\_\_\_\_.

FORM 31 --- Concluded

F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ \_\_\_\_\_,

That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ \_\_\_\_\_,

G. CLAIM AGAINST DIRECTOR \$ \_\_\_\_\_

*(To be completed when a proposal provides for the compromise of claims against directors.)*

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ \_\_\_\_\_

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:

*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

5. That, to the best of my knowledge, I \_\_\_\_\_ (am/am not) (or the above-named creditor \_\_\_\_\_ (is/is not)) related to the debtor within the meaning of section 4 of the Act, and \_\_\_\_\_ (have/has/have not/has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

7. (Applicable only in the case of the bankruptcy of an individual.)

Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Creditor

Phone Number: \_\_\_\_\_

Fax Number : \_\_\_\_\_

E-mail Address : \_\_\_\_\_

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 20(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

District of: Ontario  
Division No. 09 - Toronto  
Court No. 31-2484304  
Estate No. 31-2484304

FORM 36  
Proxy  
(Subsection 102(2) and paragraphs 51(1)(e) and 66.15(3)(b) of the Act)

In the matter of the bankruptcy of  
Galty B.V.  
having its head office in the City of Amsterdam, Netherlands

I, \_\_\_\_\_, of \_\_\_\_\_, a creditor in the above matter, hereby  
appoint \_\_\_\_\_, of \_\_\_\_\_, to be  
my proxyholder in the above matter, except as to the receipt of dividends, \_\_\_\_\_ (with or without)  
power to appoint another proxyholder in his or her place.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Individual Creditor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Corporate Creditor

Per \_\_\_\_\_  
Name and Title of Signing Officer

Return To:

MNP LTD. - Licensed Insolvency Trustee

\_\_\_\_\_  
300 - 111 Richmond Street West  
Toronto ON M5H 2G4  
Phone: (416) 596-1711 Fax: (416) 323-5242

## CHECKLIST FOR PROOFS OF CLAIM

This checklist is provided to assist you in preparing the accompanying proof of claim form and, where required, proxy form in a complete and accurate manner. Please specifically check each requirement.

Under Section 109 of the Bankruptcy and Insolvency Act only those creditors who have filed their claims in the proper form with the trustee, before the time appointed for the meeting, are entitled to vote at the meeting.

Section 124 states that every creditor shall prove his claim and the creditor who does not prove his claim is not entitled to share in any distribution that may be made.

### General

- ◆ The signature of a witness is required;
- ◆ The claim must be signed personally by the individual completing this declaration;
- ◆ Give the complete address where all notices or correspondence is to be forwarded
- ◆ The amount of the statement of account must correspond to the amount indicated on the proof of claim.
- ◆ It is permissible to file a proof of claim by fax or by email.

### Paragraph 1

- ◆ Creditor must state full and complete legal name of company or firm;
- ◆ If the individual completing the proof of claim is not the creditor himself, he/she must state his/her position or title.

### Paragraph 3

- ◆ The statement of account must be complete;
- ◆ A detailed statement of account must be attached to the proof of claim and must show the date, the number and the amount of all the invoices or charges, together with the date, the number and the amount of all credits or payments. A statement of account is not complete if it begins with an amount brought forward.

### Paragraph 4

- ◆ Subparagraph 4.A must be completed by an unsecured creditor and must indicate if priority is claimed pursuant to Section 136.
- ◆ Subparagraph 4.B must be completed by a landlord only in a Proposal, for any claim related to disclaimer of lease. The amount of the claim is to be calculated according to the terms of the proposal. Provide details of calculation.
- ◆ Subparagraph 4.C must be completed by a secured creditor. A certified true copy of the security instrument as registered must be provided.
- ◆ Subparagraph 4.D must be completed a farmer, fisherman or aquaculturist creditor. A copy of the sales agreement and delivery documents must be provided.
- ◆ Subparagraph 4.E applies if you are a wage earner (ie, a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation by a bankrupt (subsection 81.3) or by a "person" that is subject to a receivership (subsection 81.4) for services rendered during the six months immediately before the date of bankruptcy or receivership).
- ◆ Subparagraph 4.F applies to claims by employees for unpaid amounts regarding pension plans. Please note that such claims apply only to unremitted pension contributions outstanding when the sponsoring employer becomes bankrupt or is subject to a receivership.
- ◆ Subparagraph 4.G is to be completed only in a Proposal, and only if the proposal provides for the compromise of claims against Directors. Provide full details including calculations.
- ◆ Subparagraph 4.H applies if you are a "customer" of a bankrupt securities firm (as contemplated by Section 262 of the Bankruptcy and Insolvency Act).

**Paragraph 5**

- ◆ All claimants must indicate if he or she is related or not to the debtor, as defined in Section 4 of the Bankruptcy and Insolvency Act, by striking out "AM" or "IS" or "AM NOT" or "IS NOT".

**Paragraph 6**

- ◆ All claimants must attach a detailed list of all payments or credits received or granted, as follows:
  - a) Within the three (3) months preceding the bankruptcy or the proposal, in the case where the claimant and the debtor are not related;
  - b) Within the twelve (12) months preceding the bankruptcy or proposal, in the case where the claimant and the debtor are related.

**- APPOINTING PROXY -**

Note: The Bankruptcy and Insolvency Act permits a proof of claim to be made by a duly authorized agent of a creditor but this does not give such a person power to vote at the first meeting of creditors or to act as the proxy of the creditor.

**General**

- ◆ A creditor may vote either in person or by proxy;
- ◆ A debtor may not be appointed as proxy to vote at any meeting of his creditors;
- ◆ The Trustee may be appointed as a proxy for any creditor;
- ◆ In order for a duly authorized person to have a right to vote he must himself be a creditor or be the holder of a properly executed proxy. The name of the creditor must appear in the proxy.



Tab B

## **Appendix "B"**

Estate number: 31-2484304

In the matter of the bankruptcy of  
Galty B.V.  
having its head office in the City of Amsterdam, Netherlands

MINUTES OF THE FIRST MEETING OF CREDITORS

Minutes of the first meeting of creditors held at TORONTO

300 - 111 Richmond Street West

Toronto ON M5H 2G4, on April 1, 2019 10:00 AM.

Present:

Sheldon Title

Oliver Egerton-Vernon

Brendan Bissell

(see attached attendance list for other attendees)

Representing

Trustee

Bankrupt Corporation (by telephone)

Trustee's legal counsel

Sheldon Title acted as the Chairperson of the meeting. The Chairperson informed the meeting that pursuant to section 105(1) of the Bankruptcy and Insolvency Act ("**BIA**"), he would act as Chairperson and would decide any questions or disputes arising at the meeting and from such discussion any creditor may appeal to the court. The Chairperson examined the proofs of claim and established the quorum. The Chairperson declared the meeting legally constituted and called the meeting to order.

The Chairperson advised that the main purpose of the meeting is:

1. To consider the affairs of the Bankrupt
2. To affirm the appointment of the Trustee or to make a substitution
3. To appoint Inspectors, if necessary
4. To give such directions to the Trustee as required

The Chairperson tabled the following documents:

- assignment
- Trustee's preliminary report
- Trustee's affidavit calling first meeting of creditors
- Trustee's proof of publication

The Trustee provided its Preliminary Report (see attached) and there was a general discussion. During the recitation of the Preliminary Report, the Trustee provided the creditors with an update on the proofs of claims filed, taking into the account the claims filed ahead of the meeting.

## QUESTIONS

Q. Masiel Matus asked if the Trustee was aware of the extent of Aird & Berlis LLP's unpaid fees.

The Trustee's counsel advised that it understands from his discussions with a representative of Aird & Berlis LLP ("**A&B**") that its unpaid fees are approximately \$60,000 and has requested copies of the related invoices from A&B. This will allow the Trustee to identify the extent to which those fees relate to the transaction involving the sale of the property at 88 Elm Avenue, Toronto.

The Trustee's legal counsel also advised that A&B may have a solicitor's lien to the extent of its unpaid fees.

Q. Anne Marie Heinrichs asked for the Trustee to detail the \$12,573 reflected in Section E- Provable Claims of the Preliminary Report.

A. The Trustee advised that it represented the unsecured claim filed by LaHogue Financial Management Services Corp. ("**LaHogue**") and Pantrust International, S.A. ("**Pantrust**"). Masiel Matus, legal counsel to LaHogue and Pantrust, advised the Meeting that this amount represents the costs awarded by Master Abram to be paid by Galty to LaHogue and Pantrust pursuant to a Court Order, dated November 23, 2018.

Q. Maureen Ward asked the Trustee whether it would comment on the motion filed by Plaintiffs<sup>a</sup> (as defined in the Preliminary Report) to further amend the statement of claim to add parties as defendants in respect of an alleged fraudulent preference in favour of Galty N.V.

A. The Trustee's counsel advised that any amendment of the statement of claim that deals with the plaintiffs claim as against Galty would be subject to the stay of proceedings. Whether that affects the standing or ability of the Plaintiffs to make the proposed claims against other parties will have to be for those parties to consider and, if so advised, contest. The Trustee does not believe it appropriate for it to take a position or comment on this matter.

The Trustee and its counsel also noted that the alleged fraudulent preference reported on in the Preliminary

---

<sup>a</sup> The motion to amend the Statement of Claim is dated January 14, 2019.

Report is beyond the “lookback period” of the Trustee, which generally covers the one-year period preceding the date of bankruptcy. The Trustee’s counsel also noted that the Trustee and its counsel have not had an opportunity to consider what, if anything, the Trustee would recommend to the creditors with regards to the possible claims by the estate, as identified by the Notice of Motion.

#### AFFIRMATION OF TRUSTEE

The Trustee was appointed at the filing by the Official Receiver to administer the estate. Per the BIA, the trustee’s appointment is affirmed by a majority vote on an ordinary resolution.

It was moved by: Maureen Ward

seconded by: Anne Marie Heinrichs

that MNP Ltd. be affirmed as Trustee. Carried unanimously.

#### APPOINTMENT OF INSPECTORS

Prior to voting on the appointment of Inspectors, the Trustee briefly reviewed the role of the Inspector. The Trustee then asked whether anyone wished to put forward nominees. After discussion, the following individuals were nominated and the motion carried unanimously.

	Name
1.	Maureen Ward
2.	Anne Marie Heinrichs
3.	Ron Chapman
4.	Oliver Egerton Vernon
5.	Maisel Matus

The Trustee and its counsel advised the Meeting that the BIA states that no person is eligible to be appointed or act as Inspector who is a party to any contested action or proceedings by or against the estate of the bankrupt.” A discussion then ensued as to whether Ron Chapman and Maisel Matus could act as Inspectors as each is counsel to a party in the Litigation. The Trustee recessed the Meeting to confer with its counsel on this matter.

The Meeting was called back to order. The Trustee's counsel advised that during the recess the Trustee and its counsel reviewed the available commentary and cases. After its review, the Trustee's position is that where there is doubt about whether or not a person is eligible to act as Inspector, in circumstances such as this, the Trustee or any other interested party may apply to the Court for directions, if they wish.

Given the commentary, the Trustee is not able to decide whether Ron Chapman and/or Maisel Matus are qualified to act as Inspectors. The Trustee suggested that these individuals remain on the slate of nominees, with the understanding that, if appointed, they would have to be removed from dealing with matters put to the Inspectors that involve the Litigation. For clarity, the Trustee's counsel indicated that Inspectors are generally recused from voting on issues where they are in conflict with the estate, but in this case, these Inspectors would not be permitted to participate in the portions of the Meeting dealing with the Litigation.

The Trustee was asked to explain the powers and duties of the Inspector. The Trustee explained that sections 30 and 116 of the BIA are the most relevant sections of the BIA relating to the powers and duties of the Inspector. The Trustee also explained that the decisions and actions of the Inspectors are subject to review by the creditors at large and the Court.

#### OTHER DIRECTIONS

The Trustee asked if there any issues that the Creditors wished to address. The creditors asked the Trustee to provide information on the next steps in the administration of the bankruptcy estate. The Trustee advised that it intends on reviewing and determining the validity of the property claim that was filed by the Plaintiffs and report back to the Inspectors.


#### ADJOURNMENT

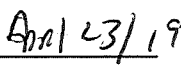
There being no further business

It was moved by: Maureen Ward

seconded by: Anne Marie Heinrichs

that the meeting be adjourned.

  
 \_\_\_\_\_  
 Chairperson

  
 \_\_\_\_\_  
 Date

April 1, 2019

Galty B.V.

File No. 31-2484304

Attendance Sheet - First Meeting of Creditors

Name (print)	Signature	Representing	Amount of Claim	Remarks
SHELDON TITUE	<i>Sheldon Titue</i>	MNP LTD. - TRUSTEE	-	
A. CHAPMAN	<i>AC</i>	The Apax Red Trust	2,000,000	
M. Matus	<i>M. Matus</i>	La House Financial Management Services Corp.; LaTrust International	\$12,573.08	
Anita Ferricks	<i>Anita Ferricks</i>	Amu Marie Ferricks Ami Business Solutions GP Directors Ltd.	\$25,000 \$20,000 \$40,000	
R. S. Bissell	<i>RSB</i>	counsel for the Trustee	-	
M. Ward	<i>M. Ward</i>	on behalf of Bemetfone.	\$609,900.11	former counsel to Galty
O. Egeron-Vernon	<i>per: ESS</i>	Officer of the bankrupt	-	

CANADA  
 District of ONTARIO  
 Division No. 09 - Toronto  
 COURT NO. 31-2484304  
 ESTATE NO. 31-2484304

**TRUSTEE'S PRELIMINARY REPORT**  
**IN THE MATTER OF THE BANKRUPTCY OF**  
**GALTY B.V.**  
**HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM, NETHERLANDS**

Licensed Insolvency Trustee ("Trustee"): MNP Ltd.

*The information contained in this Preliminary Report has been prepared from the available books and records of the Company. These books and records have not been reviewed or otherwise audited by the Trustee and, consequently, the Trustee expresses no opinion whatsoever with respect to the validity, the exactness or the reliability of the information taken from those records contained herein.*

**SECTION A BACKGROUND**

Galty B.V. ("Galty" or the "Company") was incorporated on July 31, 1979 as a limited liability company under the laws of The Netherlands and previously operated as a property investment, property rental and holding company. As detailed below, at the date of bankruptcy, the Company was involved in litigation (the "Litigation").

On March 11, 2019, the Company made an assignment in bankruptcy, which was accepted by the Office of the Superintendent of Bankruptcy the same day. MNP Ltd. was appointed to act as Licensed Insolvency Trustee of the estate of Galty, subject to affirmation by the creditors at the First Meeting of Creditors.

On March 13, 2019, the Notice of Bankruptcy and First Meeting of Creditors, a list of the creditors and a proof of claim form, along with a proxy were sent to all known creditors of Galty. Pursuant to subsection 102(4) of the *Bankruptcy and Insolvency Act* ("BIA"), a Notice of Bankruptcy was published in the Friday, March 15, 2019, edition of the *Toronto Sun* newspaper.

The Trustee has been advised by Galty's designated officer, Harold Pothoven, that the Company's bankruptcy was as a result of the ongoing legal costs associated with defending the Litigation.

**SECTION B PRELIMINARY EVALUATION OF ASSETS AND SECURITY INTERESTS**

The Company's assets and their estimated realizable value according to its sworn Statement of Affairs ("SOA") are as follows:

Description	Estimated Realizable Value (\$)
Cash in Bank	1,539



Funds Held in Trust by Aird & Berlis LLP (the "Sale Proceeds")	591,503
Costs Award – Victor M. Seabrook & Timothy Seabrook, trustees	8,000
Cause of Action	6,752,100

### Cash in Bank

Galty maintained bank accounts at ING Bank N.V. ("ING") in Amsterdam. Upon the bankruptcy, the Trustee directed correspondence to ING requesting it freeze the bank accounts and forward the funds to the Trustee. To date, the Trustee has not received a response to its letter.

### Sale Proceeds

Galty owned a property with a municipal address of 88 Elm Avenue, Toronto (the "Property"). The Property was sold in April, 2015. The proceeds of sale were applied to satisfy payment of the mortgage, real estate commissions, utilities and remittance to CRA of taxes withheld by a non-resident on the sale of the Property and other miscellaneous disbursements.

Aird & Berlis LLP ("A&B") is holding Sale Proceeds, being the balance of the proceeds of sale less the payments noted above, in its trust account. As part of the Litigation, Victor M. Seabrook ("Victor") and Timothy Seabrook ("Timothy"), trustees of the Avenue Road Trust ("ART") and Isobel R. Seabrook ("Isobel" and together with Victor and Timothy hereinafter collectively referred to as the "Plaintiffs"), by her litigation guardian Timothy, assert a trust claim over the Sale Proceeds.

Upon its appointment, the Trustee served A&B with its notice of its appointment and its interest in the Sale Proceeds. A&B responded by noting that the Court has previously ordered that the Sale Proceeds remain in A&B's trust account pending further Court order. Goldman Sloan Nash & Haber ("GSNH"), the Trustee's counsel, requested that no steps be taken by A&B in respect of the Sale Proceeds without consent of the Trustee or further order on notice to the Trustee. On March 29, 2019, A&B responded to the Trustee and GSNH to advise that, *inter alia*:

1. Not all of the funds currently in the possession of A&B, which funds total \$591,503.40, are being held by A&B in trust on behalf of Galty.
2. Pursuant to a written direction from Galty to A&B, which written direction specifically authorizes and directs A&B to apply a portion of the funds in A&B's possession on account of A&B's outstanding legal fees and disbursements for professional fees rendered by A&B to Galty ("**A&B's Professional Fees and Disbursements**"), the portion of the funds in the possession of A&B equal to the amount of A&B's Professional Fees and Disbursements is the property of A&B, not the property of Galty, the Trustee or any other person.
3. Certain parties alleged an interest in certain amounts of the above-mentioned funds and commenced certain legal proceedings in respect of this allegation. A&B subsequently made an undertaking to not release certain amounts of these funds in certain circumstances, which undertaking was subsequently recognized and confirmed by the Ontario Superior Court of Justice.

The Trustee also issued to ART a Notice by Trustee to Prove Claim pursuant to s.81(4) of the BIA. On March 29, 2019, the Trustee received a Reclamation of Property form from ART. The Trustee is in the process of reviewing ART's claim and the supporting material provided in connection with determining whether to accept or disallow such claim.

Costs Award/Cause of Action – see Section F below

### SECTION C BOOKS AND RECORDS

The Trustee has taken possession of the books and records it requires in order to administer the bankruptcy estate.

### SECTION D CONSERVATORY MEASURES

As noted above, the Trustee has notified A&B of its appointment and the estate's interest in the Sale Proceeds and requested that ING freeze Galty's bank accounts.

### SECTION E PROVABLE CLAIMS

The claims of creditors as per the Company's sworn SOA and the claims filed as at 5:00 pm on March 29, 2019 are summarized below:

	<u>As per Statement of Affairs</u>	<u>Claims as Filed</u>
Secured	\$ Nil	\$ Nil
Preferred Unsecured	Nil	Nil
Ordinary Unsecured	21,400,488	12,573
Contingent	1	3,197,204
	<u>\$ 21,400,489</u>	<u>\$ 3,209,777</u>

The Trustee, at the time this Report was issued, held no proxies on behalf of creditors.

The above-noted claims have not yet been reviewed for the purposes of admitting the claims for distribution.

### SECTION F LEGAL PROCEEDINGS, TRANSFERS AT UNDERVALUE AND PREFERENCE PAYMENTS

#### *Legal Proceedings*

Galty was involved in the Litigation, wherein the Plaintiffs claimed from Galty, *inter alia*:

1. Payment of £472,790 and \$1,150,000 Canadian; and
2. An interlocutory injunction as against all defendants not to dispose of the Sale Proceeds until further order of the Court or consent of the Plaintiff.

Galty defended the claim and the various cross claims it has become subjected to as part of the Litigation. It also brought a cross claim against certain of the defendants for, *inter alia*, contribution and indemnity for any amount for which Galty is found to be liable.

Galty also commenced a claim against Victor, for, *inter alia*:

1. \$3,600,000 in damages due to Victor's alleged negligence and breach of fiduciary duties; and
2. An accounting and restitution or disgorgement of any and all benefits that Victor unjustly received as a result of his breach of fiduciary duty to Galty, including legal and professional fees paid to Victor in respect of his positions at Galty.

At this time, the Trustee has served a Notice of Stay of Proceedings on the parties to the Litigation and will further consider the Litigation with the Inspectors appointed to act in the estate.

#### *Transfers at Under-Value and Preference Payments*

The Trustee completed a limited review of the Company's books and records in order to identify any potential transfers at undervalue or preference payments. The scope of the review was limited to a review of Galty's bank statements for the period January 1, 2018 and March 11, 2019 (the "**Banking Records**"), a review of certain board of director meeting minutes and inquiries with management.

The Trustee did not identify any noteworthy and material transactions from its review of the Banking Records.

Galty is owned by Galty Investments N.V. ("**N.V.**"). N.V. is owned by a Brazilian Trust. At a meeting of Galty's directors, held on July 13, 2017, the Directors authorized Galty transferring the sum of \$1,100,000 from its bank account to the Brazilian Trust. Based on the SOA, N.V. is Galty's largest unsecured creditor, with a declared claim of \$20,169,128 against Galty. To date, N.V. has not filed a proof of claim against the estate. The transfer of \$1,100,000 to the Brazilian Trust was to be set off against this loan. The monies used to fund payment of this transfer were derived from a corporate tax refund (associated with the taxes withheld by a non-resident on the sale of the Property) paid by Canada Revenue Agency on May 26, 2017 and deposited to Galty's bank account on July 6, 2017. The payment to the Brazilian Trust occurred on July 14, 2017.

#### **SECTION G ANTICIPATED REALIZATIONS AND PROJECTED DISTRIBUTION**

Given the foregoing, the Trustee is unable to estimate the realizations in the estate until a determination is made as to the estate's entitlement, if any, to the Sale Proceeds.

#### **SECTION H OTHER MATTERS**

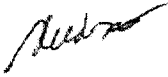
The Trustee has received from Bennet Jones LLP a third-party guarantee to the extent of \$50,000 plus HST in respect of the administration costs of the bankruptcy estate.

Dated at Toronto, Ontario, this 30th day of March 2019.

**MNP LTD.**

*Trustee of the Estate of Galty B.V., a bankrupt*

Per:

A handwritten signature in black ink, appearing to read 'Sheldon Title', written in a cursive style.

Sheldon Title  
Licensed Insolvency Trustee

Tab C

## **Appendix "C"**

## RONALD G. CHAPMAN

Barrister

Law Chambers, Suite 2200  
181 University Avenue  
Toronto, Ontario M5H 3M7  
E-mail: [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)

Telephone: (416) 601-1945 Direct  
Facsimile: (416) 601-9984  
Lisa D. Whiting: (416) 601-0140 (Law Clerk)  
E-mail: [lisawhiting@lawchambers.com](mailto:lisawhiting@lawchambers.com)  
Assistant: (416) 601-2273  
E-mail: [assistantrc@lawchambers.com](mailto:assistantrc@lawchambers.com)

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Our File No. 77283

March 29, 2019

MNP Ltd.  
Licensed Insolvency Trustees  
Suite 300  
111 Richmond Street West  
Toronto, ON M5H 2G4

Cover page by fax: 416 596-7894  
Enclosures by Courier

Attention: Sheldon Title, CPA, CA, CIRP, LIT  
Senior Vice President

Dear Sir:

**RE: In the Matter of the Bankruptcy of Galty B.V.  
Estate # 31-248304  
Court File No. CV-15-530070-0000**

---

With respect to the above noted matter, I attach herewith the following:

- a) Proxy dated March 29<sup>th</sup>, 2019 signed by Victor M. Seabrook; and
- b) Affidavit of Victor M. Seabrook sworn the 29<sup>th</sup> day of March, 2019 and the exhibits annexed thereto.

Yours very truly,



Ronald G. Chapman

RGC:ldw  
Enc.

District of: Ontario  
Division No.: 09- Toronto  
Court No.: 31-248304  
Estate No. 31-248304

In the Matter of the Bankruptcy of  
**Galty B.V.**  
Debtor

I, Victor M. Seabrook, Trustee of The Avenue Road Trust, of the City of Toronto, one of the creditors, hereby appoint Ronald G. Chapman of the City of Toronto as our proxy at the meeting of creditors to be held on Monday the 1<sup>st</sup> day of April 2019, or any adjournment thereof.

Dated at Toronto this 29<sup>th</sup> day of March, 2019.



Signature of Witness

R. CHAPMAN.



Victor M. Seabrook



**AFFIDAVIT OF VICTOR SEABROOK  
SWORN March 29<sup>th</sup>, 2019**

District of: Ontario  
Division No.: 09 – Toronto  
Court No.: 31-248304  
Estate No. 31-248304

In the Matter of the Bankruptcy of  
**GALTY B.V.**  
Debtor

I, **VICTOR M. SEABROOK**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Trustee of The Avenue Road Trust.
2. I have knowledge of all the circumstances connection with the claim referred to below.
3. Now shown to me and marked as **Exhibit "A"** to this my Affidavit is a true copy of an Order of His Honour Judge Hood dated Tuesday, the 2<sup>nd</sup> day of October, 2019 in the *Ontario*, Superior Court of Justice in Action No. 15-CV-530070.
4. The Order was sent to counsel for Galty B.V. on October 30<sup>th</sup>, 2018.
5. No payment has been received by the Plaintiffs/Claimants.

6. On the 11<sup>th</sup> day of March, 2019, the Debtor made an Assignment in Bankruptcy.

7. On March 11, 2019, the property enumerated in the document attached and marked as Exhibit "A" <sup>✓ B ✓ AC</sup> was in the possession of the bankrupt, and still remains in the possession of the bankrupt and the trustee.


8. The Avenue Road Trust hereby claims that property, or interest or right in it, by virtue of the documents attached and marked as Exhibit "B", <sup>✓ C ✓ AC</sup> namely:


i) Amended Amended Amended Amended Statement of Claim.

9. The Avenue Road Trust is entitled to demand from the trustee the return of the property enumerated in this document.

10. I hereby demand that the trustee return to me the property enumerated in the document within the 15 days after the filing of this form, or within the 15 days after the first meeting of the creditors of the Debtor, whichever is the later.

SWORN BEFORE ME at the City of )  
Toronto, in the Province of Ontario )  
This 29<sup>th</sup> day of March, 2019 )

  
\_\_\_\_\_  
A Commissioner for taking Affidavits, etc.  
RONALD G. CHAPMAN

  
\_\_\_\_\_  
Victor M. Seabrook  
Trustee of The Avenue Road Trust

This is Exhibit A referred to in the affidavit of Victor M. Seabrook sworn before me on the 15 day of March, 2019

Court File No. 15-CV-00070-0000

ONTARIO  
SUPERIOR COURT OF JUSTICE

[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS  
**RONALD G. CHAPMAN**

THE HONOURABLE )  
MR. JUSTICE HOOD )

TUESDAY, the 20<sup>th</sup> day of  
OCTOBER, 2018

BETWEEN:

VICTOR M. SEABROOK and  
TIMOTHY SEABROOK,  
TRUSTEES OF THE AVENUE ROAD TRUST  
ISOBEL R. SEABROOK, by her Litigation Guardian,  
TIMOTHY SEABROOK

Plaintiff

- and -

GALTY B.V., La HOUGUE FINANCIAL MANAGEMENT  
SERVICES LIMITED, PANTRUST INTERNATIONAL, S.A.  
WERNER CORNELIUS HEINRICHS, WAYNE WEAVER,  
AIRD & BERLIS LLP, ANNE MARIE HEINRICHS,  
ELFRIEDA ELIZABETH HEINRICHS, RICHARD WIGLEY  
AND JAMES WIGLEY

Defendants

**ORDER**

**THIS MOTION**, brought by the Defendant, Galty B.V., was heard Tuesday, the 21<sup>st</sup> day of August, 2018 at Toronto, Ontario, this Honourable Court releasing its decision with respect to the costs of the motion on this date referred to above.



**UPON READING** the Cost Submissions of the Plaintiffs and Responding  
Cost Submissions of the Defendant, Galty B.V.,

1. **THIS COURT ORDERS THAT** costs are fixed in the amount of  
\$19,000.00, inclusive of disbursements and HST, to be payable by the  
Defendant, Galty B.V. to the Plaintiffs within 30 days of this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 23 2018

PER / PAR:

  
Giuseppe Di Pietro  
Registrar

THE AVENUE ROAD TRUST et al

Plaintiffs

and

GALTY B.V. et al

Defendants

Court File No. CV-15-530070-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

---

**ORDER**

---

RONALD G. CHAPMAN  
Barrister  
Suite 2200,  
181 University Avenue  
Toronto, Ontario M5H 3M7

Tel: (416) 601-1945  
Fax: (416) 601-9984

Lawyer for the Plaintiffs  
File No. 77283  
LSUC Reg. No. 12820G

This is Exhibit B referred to in the affidavit of Vicki M. Seabrook sworn before me, this 29 day of March, 2019

FORM 78 - Concluded

List "H"  
Property

Galty B.V.

FULL STATEMENT OF PROPERTY

**RONALD G. CHAPMAN**  
A COMMISSIONER OF THE SUPERIOR COURT OF JUSTICE

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade			0.00	0.00
(b) Trade fixtures, etc.			0.00	0.00
(c) Cash in financial institutions	ING BANK NV 1102 BW Amsterdam Netherlands	0006977928	1,481.19	1,481.19
	ING BANK N.V. 1102 BW Amsterdam Netherlands	0020066643	57.44	57.44
(d) Cash on hand			0.00	0.00
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant			0.00	0.00
(g) Furniture			0.00	0.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities			0.00	0.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles			0.00	0.00
(l) Taxes			0.00	0.00
(m) Other		Aird & Beris LLP - Funds held in trust on behalf of the company in respect of sale of 88 Elm Avenue, Toronto	591,503.40	591,503.40
		Cause of Action by cross claim against	0.00	6,752,100.00
<b>Total:</b>				<b>7,345,142.03</b>

11-Mar-2019  
Date

*Oliver Egerton-Vernon*  
Oliver Egerton-Vernon

AMENDED THIS July 27/16 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT A  
 RULE/LA RÈGLE 26.02 (        )  
 THE ORDER OF Marta Brett  
L'ORDONNANCE DU  
DATED / FAIT LE July 25/2016

REGISTRAR SUPERIOR COURT OF JUSTICE  
GREFFIER COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

This is Exhibit C related to in the  
affidavit of Victor M. Seabrook  
sworn before me, this 27  
day of March, 2019  
A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 15-CV- 530070-0000

Ronald G. Chapman  
RONALD G. CHAPMAN

BETWEEN:

VICTOR M. SEABROOK and  
TIMOTHY SEABROOK,  
TRUSTEES OF THE AVENUE ROAD TRUST  
ISOBEL R. SEABROOK, by her Litigation Guardian,  
TIMOTHY SEABROOK

Plaintiff

-and-

GALTY B.V., La HOUGUE FINANCIAL MANAGEMENT  
SERVICES LIMITED, PANTRUST INTERNATIONAL, S.A.  
WERNER CORNELIUS HEINRICHS, WAYNE WEAVER,  
and AIRD & BERLIS LLP, ANNE MARIE HEINRICHS,  
ELFRIEDA ELIZABETH HEINRICHS, RICHARD WIGLEY  
AND JAMES WIGLEY

Defendants

**AMENDED AMENDED AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by  
the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within 5 years after the action was commenced unless otherwise ordered by the Court.



DATE: June 10, 2015

ISSUED BY "Y. Grant, Registrar"

Local Registrar

ADDRESS OF COURT OFFICE 10<sup>th</sup> Floor  
393 University Avenue  
Toronto, ON M5H 1E6

TO: GALTY B.V.  
Hoekenroda 6, 1102 BR  
P.O. Box 1469  
1000 BL  
Amsterdam, The Netherlands

TO: LA HOUGUE FINANCIAL MANAGEMENT  
SERVICES LIMITED  
19 Seaton Place  
St. Helier, Jersey  
Channel Islands JE4 8RZ

P.O. Box 0830-01906  
San Francisco Plaza  
Belen Calle 66  
Piso 1, Oficina 103  
Ciudad de Panama

TO: PANTRUST INTERNATIONAL, S.A.  
P.O. Box 0830-01906  
San Francisco Plaza  
Belen Calle 66  
Piso 1, Oficina 103  
Ciudad de Panama

TO: WERNER CORNELIUS HEINRICHS  
5153 Guelph Road, #1,  
5163 Township Road, #1,  
Guelph, Ontario M1H 6J4 N1H 6J4

TO: ANNE MARIE HEINRICHS  
5163 TOWNSHIP ROAD, #1  
GUELPH, ONTARIO N1H 6J4

TO: ELFRIEDA ELIZABETH HEINRICHS  
5163 TOWNSHIP ROAD, #1  
GUELPH, ONTARIO N1H 6J4

TO: WAYNE WEAVER  
c/o LA HOUGUE FINANCIAL MANAGEMENT  
SERVICES LIMITED  
19 Seaton Place  
St. Helier, Jersey  
Channel Islands JE4 8RZ

And

P.O. Box 0830-01906  
San Francisco Plaza  
Belen Calle 66  
Piso 1, Oficina 103  
Ciudad de Panama

TO: AIRD & BERLIS LLP  
Barristers & Solicitors  
Brookfield Place  
Suite 1800, 181 Bay Street  
Toronto, Ontario M5J 2T9  
Attn: Randy T. Hooke

**CLAIM**

1. The Plaintiffs claims:
  - a. Payment of the sum of £472,790 in the amount of Canadian currency necessary to purchase £472,790 at a bank in Ontario listed in Schedule I to the *Bank Act* (Canada) at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of the British pound before the day payment is received by the Plaintiffs and Cdn \$1,150,00.00;
  - b. Interest on the said £472,790 at the rate of 9% per annum until payment and Cdn \$1,150,000.00 at the rate of 7% per annum until payment;
  - c. Damages for fraudulent breach of trust and negligence in the operation of a trust as against the Defendants La Hougue, Werner Cornelius Heinrichs, Galty B.V., Pantrust International, S.A., Richard Wigley, James Wigley and Wayne Weaver;
  - d. Damages as against the individuals, Anne Marie Heinrich and Elfrieda Elizabeth Heinrichs, as beneficiaries of the Brazilian Trust by which the Trustees of the Brazilian Trust committed a breach of trust by misappropriating a Brazilian trust asset namely monies

received from a refinancing of a trust property, namely 88 Elm Avenue, Toronto.

- e. An interlocutory injunction as against all defendants not to retain dispose of or otherwise deal with all proceeds of sale from a property known as 88 Elm Avenue, Toronto Ontario, until further order of this Court or consent of the Plaintiff;
  - f. An order tracing the monies referred to in paragraph 1(a) supra, and judgment as against the Defendants accordingly;
  - g. Costs of these proceedings on a full indemnity scale; and
  - h. Such further and other Order as to this Honorable Court may seem just.
2. The Plaintiffs Victor M. Seabrook and Timothy Seabrook ~~is a~~ are the Trustees [hereinafter referred to as "the Trustees"] of The Avenue Road Trust [hereinafter referred to as "The Trust"]. The Trust is resident in Toronto, Ontario.

3. The Plaintiff, Isobel R. Seabrook resides in the City of Toronto, Ontario. Isobel R. Seabrook at all material times was the sole beneficiary of The Avenue Road Trust.
4. The Defendant Galty B.V. [hereinafter referred to as "Galty"] is a corporation with its head office in Amsterdam, The Netherlands.
5. The Defendant, La Hougue Financial Management Services Limited [hereinafter referred to as "La Hougue"], is a corporation with its head office at St. Helier, Jersey, Channel Islands in the City of Panama, in the Country of Panama.
6. The Defendant Pantrust International S.A. [hereinafter referred to as "Pantrust"] is a corporation with its head office in the city of Panama in the country of Panama. At all material times, the Defendants, Richard Wigley and James Wigley were in control of the operations of La Hougue and then Pantrust. La Hougue and latterly Pantrust were the trustees of the Brazilian Trust. Galty is an asset of the Brazilian Trust.
7. The Defendants Werner Cornelius Heinrichs, Anne Marie Heinrichs, and Elfrieda Elizabeth Heinrichs [hereinafter referred to as "Heinrichs"] resides at 5153 Guelph Road 5163 Township Road, #1, Guelph, Ontario M1H 6J4 N1H 6J4. Heinrichs are the beneficiaries of the Brazilian Trust.

8. The Defendant Wayne Weaver [hereinafter referred to as "Weaver"] resides in St. Helier, Jersey, Channel Islands and was at all material times the Managing Director of La Hougue.
9. The Defendant Aird & Berlis LLP is a law firm in Toronto, Ontario.
10. By Agreement dated October 14, 1992, the Plaintiff The Trust and La Hougue agreed by way of Declaration of Trust that the Plaintiff The Trust would advance £472,790 to La Hougue, and La Hougue agreed to invest the monies on behalf of the Plaintiff The Trust. Victor M. Seabrook and Isobel R. Seabrook were the source of the monies that were so advanced to La Hougue.
11. Isobel R. Seabrook states that, while the source of the monies were from Victor M. Seabrook and Isobel R. Seabrook on behalf of The Avenue Road Trust, that it may have been the situation that The Avenue Road Trust was not established until well after October 1992.
12. Isobel R. Seabrook states that at some point in time, unknown to her, The Avenue Road Trust was established.
13. Isobel R. Seabrook states that it was the duty of Richard Wigley to establish The Avenue Road Trust as soon as possible after the advance of monies referred to in paragraph 10 supra.

14. The Plaintiff Trust states that it was the duty of La Hougue and its employees, directors, and officers to at all material times take all steps necessary to preserve the assets of The Trust, and not to take any steps that might place the assets of The Trust in jeopardy. The Defendant, Werner Cornelius Heinrichs [hereinafter referred to as "Werner"] at all material times was aware of the provisions in the Declaration of Trust.
15. Using the monies advanced to La Hougue by The Trust Plaintiff, La Hougue entered into a loan agreement with Galty wherein La Hougue loaned Galty for the benefit of Heinrichs the sum of £472,790.
16. Galty provided as security for the loan:
  - a. a promissory note in the amount of £472,790 payable to La Hougue;
  - b. a mortgage (the Plaintiffs' mortgage) in the amount of £472,790 on property known municipally as 88 Elm Avenue [mistakenly shown as 88 Elm Street, Toronto in the mortgage document and hereinafter referred to as the property], which mortgage is dated November 1, 1993 and registered as no. CA257826 in the Toronto Registry office no. 64. The beneficial owner of the property was Heinrichs. The mortgage was renewed in 1994 and the renewal was registered on December 1, 1994 as No. CA320126; and

- c. A personal guarantee dated November 1, 1993 made by Heinrichs Werner wherein Heinrichs Werner guaranteed repayment of the monies referred to in the promissory note referred to in paragraph 11-12-16(a).
17. The loan amount was increased from time to time by payment by the Plaintiffs to La Hougue, which monies were then advanced to Galty for the benefit of Heinrichs and, as a result, Galty gave as further security to The Trust for the increased loan ~~then~~ in the amount of £1,006,123 a further mortgage which was registered as no. E481312 as against the property 88 Elm Avenue, Toronto ON, on November 28<sup>th</sup>, 2001.
18. Galty gave LaHougue a Promissory Note dated November 1, 2001 signed by Galty in the amount of £1,006,123.00.
19. Heinrichs gave LaHougue a Payment Guarantee dated November 1, 2001 wherein he guaranteed payment of the Promissory Note dated November 1, 2001.
20. The loan amount was further increased from time to time and as a result Galty gave as further security to The Trust for the its loans then in the



amount of Can \$4,500,000.00 a further mortgage on 88 Elm Avenue, Toronto ON in the amount of Can \$4,500,000.00 which was registered as no. AT502775 as against the property, on June 1, 2004. The rate of interest in the mortgage is 12% per annum, subsequently reduced to 7% per annum. Notwithstanding the foregoing, that portion of the loan in English pounds carried interest at the rate of 9% per annum, and that portion in Canadian dollars carried interest at the rate of 7%.

21. By Agreement dated November 30, 2007, La Hougue retired as Trustee of The Trust Plaintiff, and appointed the Defendant Pantrust in its place. Pantrust took over all responsibilities of La Hougue to The Trust Plaintiff.
22. Monthly interest payments continued to be made by Pantrust to The Trust Plaintiff until May 31, 2014 when same ceased. No further payments have been made.
23. The balance owing as of May 31, 2015 is \$2,191,682 £515,341.10 and Cdn @1,230,500.00. Interest owing is calculated as follows:

$$\underline{\underline{\pounds 472,790 \times .09 = \pounds 42,551 \div 12 = \pounds 3545.925 \text{ monthly}}}$$

$$\underline{\underline{\text{Cdn } \$750,000 \times .07 = \$52,500 \div 12 = \$4,375.00 \text{ monthly}}}$$

$$\underline{\underline{\text{Cdn } \$250,000 \times .07 = \$17,500 \div 4 = \$4,375.00 \text{ quarter yearly}}}$$

$$\underline{\underline{\text{Cdn } \$150,000 \times .07 = \$10,500 \div 4 = \$2,625.00 \text{ quarter yearly}}}$$

24. The property was sold on or about April 1, 2015.
25. The Defendant Aird & Berlis is holding the monies remaining from the sale of the property.
26. On or about February ~~10~~ 9, 2015, the Plaintiff Trustees of The Trust learned that by Discharge of Mortgage dated May 15, 2009 and registered as No. AT2070825 the mortgage referred to in paragraph 14 17 supra ~~was~~ had been discharged.
27. The Discharge of Mortgage was signed by the Defendant, Wayne Weaver, Managing Director of La Hougue. At that date, La Hougue was not able to execute any discharge of mortgage, having vested all assets under its control in Pantrust.
28. The Plaintiff Trust and its advisor, now one of the Trustees of the Trust states that it the Trust and the advisor were ~~was~~ never asked to nor did it nor he consent to the discharge of the mortgage referred to in paragraph 14 supra.
29. Furthermore, Werner Heinrichs admits that in or about April, 2008 he was informed by the Defendant, Wayne Weaver, that any of, or all of, Isobel R. Seabrook, Victor M. Seabrook or The Avenue Road Trust were the beneficial mortgagees of 88 Elm Avenue, Toronto.

30. In May, 2008, Werner Heinrichs gave instructions to the Defendant, Wayne Weaver, to arrange for the refinancing of 88 Elm Avenue and the discharge of the Plaintiffs' mortgage as registered against 88 Elm Avenue.
31. However, Werner Heinrichs and his Trustee, Galty, neglected or refused to provide instructions to their solicitors to make payment to The Avenue Road Trust out of any new mortgage proceeds. The mortgage monies so advanced were impressed with a trust in favor of the Plaintiffs.
32. The Plaintiff Trust states that by the Defendants La Hougue, Pantrust, and Weaver, Richard Wigley, James Wigley, Galty, and Heinrichs causing a discharge of the mortgage referred to in paragraph 14 17 supra without payment to The Trust or the providing provision of alternate security, these Plaintiff has Defendants have committed a breach of trust and exposed The Trust Plaintiff to substantial loss, and claims any such loss from La Hougue and Weaver all Defendants for fraudulent breach of trust and negligence acting as a trustee, and for improperly discharging the Plaintiff's mortgage.
33. Galty obtained from Home Trust Company [hereinafter referred to as "Home Trust"] a mortgage securing the principal sum of Cdn \$2,500,000 registered as No. AT2071542 on May 15, 2009.

34. Certain proceeds from the Home Trust mortgage were first paid to Galty. Heinrichs and Galty knew that such proceeds from the Home Trust mortgage were not being used to pay the Plaintiffs' mortgage indebtedness. Heinrichs and representatives of Galty fraudulently caused Galty to transfer the mortgage proceeds from the Home Trust mortgage to Pantrust and not to The Trust, so as to put the proceeds of the Home Trust mortgage further away from the Plaintiffs, to purport to repay the mortgage loans of The Trust and to void Werner Heinrichs' personal guarantee. Pantrust did not pay the Plaintiffs in respect of the monies owing to the Plaintiffs as set out herein.
35. Anne Marie Heinrichs and Elfrieda Elizabeth Heinrichs, now having been advised that the payment to Galty is a breach of trust and improper, are liable to pay to the Plaintiffs all monies that were paid to Galty, and/or paid by Galty to Pantrust.
36. Galty had no reason to advance the mortgage proceeds to Pantrust, and Pantrust had no right to receive same.
37. Therefore both of Galty and Pantrust are liable to the Plaintiffs for knowing receipt of the monies, knowing that they were the property of the Plaintiffs, and which should have been paid to the Plaintiffs, or failing to make reasonable inquiries with respect to the ownership of the monies. Werner Heinrichs, Anne Marie Heinrichs and Elfrieda Elizabeth

Heinrichs as the beneficiaries of the Brazilian Trust, operated by Pantrust, are also responsible for the wrongful actions of their Trustee, Pantrust, and should be ordered to compensate the Plaintiffs for this breach of trust.

38. Pantrust used the proceeds to benefit Heinrichs, pursuant to the Pantrust – Heinrichs lending – borrowing program. Pantrust knew or ought to have known that the monies so advanced to Pantrust from Galty were, in fact, trust monies that should have been used to pay the Plaintiffs.

39. In addition, Heinrichs Werner agreed, by Payment Guaranty dated November 1, 1993 referred to supra, to guarantee repayment of £472,790 of the aforesaid monies owing by Galty to La Hougue. Such guaranty was renewed in 2001.

40. Therefore The Trust Plaintiff claims the said sum of £472,790 plus interest at 7 9% per annum from the Defendant Heinrichs in respect of his said guarantee, as follows:

$$\underline{\underline{\pounds 472,790 \times 0.9 = \pounds 42,551.1 \div 12 = \pounds 3545.925 \text{ monthly}}}$$

41. The Trust also claims from the Defendants the balance of the monies owing under its mortgage security on the property by reasons of Heinrichs' fraudulent actions.

42. The Defendant Aird and Berlis LLP is holding the net proceeds from the sale of the property. The Plaintiff seeks an interlocutory injunction restraining all defendants, including Aird & Berlis LLP, from dealing with in any manner whatsoever, with the net proceeds from the sale of the property until further order of this Honorable Court, or the consent of all parties.
43. This originating process is to be served outside of Ontario without leave pursuant to the provisions of Rule 17.02 of the *Rules of Civil Procedure*.
44. Rule 17.02 provides that a party can be served outside Ontario with an Originating Process without leave when:
- a. Rule 17.02(a) - the claim is in respect of real property in Ontario;
  - b. Rule 17.02© - enforcement of a contract;
  - c. Rule 17.02(d) – trustee where assets include property in Ontario;
  - d. Rule 17.02(e) – mortgage on property in Ontario;
  - e. Rule 17.02(f)(iv) – breach of contract in Ontario;
  - f. Rule 17.02(g) – tort in Ontario; and
  - g. Rule 17.02(i) - - injunction in Ontario.

DATED: June 24<sup>th</sup>, 2016

Ronald G. Chapman  
Barrister  
Law Chambers, Suite 2200  
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Tel: (416) 601-1945  
Fax: (416) 601-9984  
[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)  
Solicitor for the Plaintiffs  
Our File No. 77283  
LSUC No. 12820G

THE AVENUE ROAD TRUST et al

Plaintiff

and

GALTY B.V. et al

Defendants

Court File No. CV-15-530070-0000

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

---

**AMENDED AMENDED AMENDED  
STATEMENT OF CLAIM**

---

RONALD G. CHAPMAN  
Barrister  
Suite 2200,  
181 University Avenue  
Toronto, Ontario M5H 3M7

Tel: (416) 601-1945  
Fax: (416) 601-9984

Lawyer for the Plaintiffs  
File No. 77283  
LSUC Reg. No. 12820G



Tab D

## Appendix "D"

Court File Number: 31-2484304

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

*Stally. BV.*

Judges Endorsment Continued

July 23, 2019

*Appellant*  
Counsel for the ~~Respondent~~ seeks an adjt to allow him to bring a motion to file further evidence in support of this appeal. Parenthetically, no appeal book/motion record was found in the court file & the <sup>appellant's</sup> ~~factum~~ does not comply with r. 4.07(5) of the RCP. Counsel for the trustee has provided today/nov a copy of the motion record & counsel for the appellant will provide another copy to Mr. Bessell.

The motion shall proceed on Sept <sup>3</sup>/~~4~~/2019 (45 mins). The appeal is also adjourning to Sept 3/2019 <sup>TBST</sup> for scheduling at the return of the motion.



Master Jea

Addendum

I recuse myself from this matter due to conflict.

Page \_\_\_\_\_ of \_\_\_\_\_

Judges Initials

*[Signature]*  
Master Jea

Tab E

## Appendix "E"

## Jessie Hue

---

**From:** Brendan Bissell <bissell@gsnh.com>  
**Sent:** August 28, 2019 4:23 PM  
**To:** Ronald Chapman  
**Cc:** Sheldon Title  
**Subject:** RE: The Avenue Road Trust claim in the Galty B.V. bankruptcy proceeding

Thank you, Ron. I appreciate that and our call. We will continue with seeking approval from the inspectors to accept.

Regards,

**R. Brendan Bissell**



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | [www.gsnh.com](http://www.gsnh.com)

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | [jones@gsnh.com](mailto:jones@gsnh.com)

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---

**From:** Ronald Chapman <ronaldchapman@lawchambers.com>  
**Sent:** Wednesday, August 28, 2019 4:21 PM  
**To:** Brendan Bissell <bissell@gsnh.com>  
**Subject:** RE: The Avenue Road Trust claim in the Galty B.V. bankruptcy proceeding

77/383

Without Prejudice

Thank you for your e-mail dated August 28, 2019.

My client's offer to abandon the appeal on a without costs basis is reinstated.

**Ronald G. Chapman**  
Barrister  
Law Chambers, Suite 2200  
181 University Avenue  
Toronto, Ontario M5H 3M7

Tel: (416) 601-1945  
Fax: (416) 601-9984

[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)

---

**From:** Brendan Bissell ([bissell@gsnh.com](mailto:bissell@gsnh.com)) [<mailto:bissell@gsnh.com>]  
**Sent:** Wednesday, August 28, 2019 3:17 PM  
**To:** Ronald Chapman <[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)>  
**Cc:** Sheldon Title <[Sheldon.Title@mnp.ca](mailto:Sheldon.Title@mnp.ca)>  
**Subject:** RE: The Avenue Road Trust claim in the Galty B.V. bankruptcy proceeding

WITHOUT PREJUDICE

Ron: Thanks for our call earlier this afternoon. I will try to set out what I understood that we discussed here. Please let me know if I have it right, or if you would like to change anything.

We discussed that your client, The Avenue Road Trust, is prepared to abandon its trust (or in BIA terms, its s. 81 return of property) claim provided that doing so does not prejudice its other ordinary claim.

As I indicated when we spoke, I thought you made that clear in your email of August 21, 2019 (9:31 am), but the Trustee is prepared to try to ensure that a proper mutual understanding is in place if that helps move matters along.

To that end, I can confirm that it is the Trustee's position (and what it will take to the inspectors for approval, assuming you confirm that this is what your client is prepared to offer) that:

1. The present appeal is only in respect of the disallowance of the s. 81 claim by your client, which was set out in Mr. Seabrook's affidavit dated March 29, 2019.
2. Your client also has a separate (ordinary) proof of claim dated March 25, 2019.
3. The disallowance by the Trustee of the s. 81 claim was on the basis that there was not a proven basis to conclude that any of the assets of the bankrupt were held in trust for your client (as set out in the Trustee's notice of disallowance dated April 15, 2019, attached).
4. The Trustee did not consider and has not made a determination on whether there is (or is not) a debt owing to your client by the bankrupt, and if so what the amount of that debt is. That would remain to be dealt with in connection with the (ordinary) proof of claim dated March 25, 2019.
5. As a result, the practical effect of the disallowance (which would stand if the appeal is abandoned) is that the constructive trust remedy will not be effective as against the estate of the bankrupt, but the ordinary claim for a debt will be dealt with subsequently under the normal BIA process.

Regards,

**R. Brendan Bissell**



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Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | [ijones@gsnh.com](mailto:ijones@gsnh.com)

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---

**From:** Ronald Chapman <[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)>  
**Sent:** Wednesday, August 28, 2019 2:05 PM

**To:** Brendan Bissell <[bissell@gsnh.com](mailto:bissell@gsnh.com)>

**Subject:** RE: The Avenue Road Trust claim in the Galty B.V. bankruptcy proceeding

Without Prejudice

I need a confirmation that the abandonment of the appeal does not affect my client's other position as a general creditor of Galy B.V.

**Ronald G. Chapman**

Barrister

Law Chambers, Suite 2200

181 University Avenue

Toronto, Ontario M5H 3M7

Tel: (416) 601-1945

Fax: (416) 601-9984

[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)

---

**From:** Brendan Bissell ([bissell@gsnh.com](mailto:bissell@gsnh.com)) [<mailto:bissell@gsnh.com>]

**Sent:** Wednesday, August 28, 2019 8:05 AM

**To:** Ronald Chapman <[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)>

**Subject:** Re: The Avenue Road Trust claim in the Galty B.V. bankruptcy proceeding

I am unable to call right now. Please explain this by reply.

R. Brendan Bissell

Office: [\(416\) 597-6489](tel:4165976489) | Mobile: [\(416\) 992-4979](tel:4169924979)

Sent from my iPhone

On Aug 28, 2019, at 7:51 AM, Ronald Chapman <[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)> wrote:

77/383

Without Prejudice

My client withdraws its offer to settle the appeal from the disallowance by the Trustee.

Please call so we can discuss.

**Ronald G. Chapman**

Barrister

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Fax: (416) 601-9984

[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)





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Tab F

## Appendix "F"

IN THE MATTER OF the Bankruptcy of Galty B.V.  
Having its head Office in the City of Amersterdam,  
In the Netherlands

23-July-2019

District of: Ontario  
Division No. 09 - Toronto  
Court No.: 31-2484304  
Estate No.: 31-2484304

SEP 03 2019

*R. Bissell, counsel for Trustee.*

*This matter has settled and the  
appeal of disallowance is withdrawn.*

*J. Mills*  
Master J. Mills

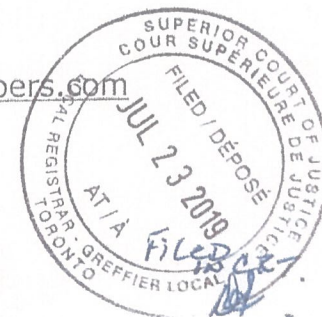
**MOTION RECORD**

**Date: Tuesday, July 23, 2019**

RONALD G. CHAPMAN  
Barrister  
Suite 2200,  
181 University Avenue  
Toronto, Ontario M5H 3M7

Tel: (416) 601-1945  
Fax: (416) 601-9984  
[ronaldchapman@lawchabers.com](mailto:ronaldchapman@lawchabers.com)

Lawyer for the Creditor  
The Avenue Road Trust  
File No. 77283  
LSUC Reg. No. 12820G



Tab G

## Appendix "G"

## Jessie Hue

---

**From:** Ian Aversa <iaversa@airdberlis.com>  
**Sent:** January 7, 2020 3:35 PM  
**To:** Brendan Bissell  
**Cc:** Sheldon Title; Jeremy Nemers  
**Subject:** RE: Galty B.V.

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Thanks, Brendan.

I confirm that the below numbers are what we have agreed to, and would ask that you please provide us with a draft copy of your proposed Order to ensure that we are all content that it reflects the "free and clear" release of the respective funds owing to A&B and the Trustee.

Thanks and happy New Year to you and Sheldon.

### Ian Aversa

**T** 416.865.3082  
**F** 416.863.1515  
**E** iaversa@airdberlis.com

**Aird & Berlis LLP** | Lawyers  
 Brookfield Place, 181 Bay Street, Suite 1800  
 Toronto, Canada M5J 2T9 | airdberlis.com



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---

**From:** Brendan Bissell [mailto:bissell@gsnh.com]  
**Sent:** January-07-20 12:59 PM  
**To:** Ian Aversa <iaversa@airdberlis.com>  
**Cc:** Sheldon Title <Sheldon.Title@mnt.ca>  
**Subject:** Galty B.V.

Ian: I'm writing to follow up on our conversation regarding Aird & Berlis' claims against this bankrupt for fees owing.

Those claims according to the invoices that you provided amounted to \$66,922.01.

I believe that you and I confirmed that a settlement of \$45,805.93 (the original amount of the July 27, 2017 invoice plus \$900 for the approximate interest accruing on that over 2.5 years), for which the trustee has authorizations from the inspectors of the bankrupt.

For purposes of your and my file (as well as the motion we are now going to bring to permit/direct A&B to pay the remainder of the funds held in trust over to the trustee and allow A&B to keep the \$45,805.93 amount), I would appreciate it if you could please either confirm this or let me know where your record differs.

Thanks, and regards,

Brendan

**R. Brendan Bissell**



**Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2**

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Assistant | Kamalika Barua | [416 597 9922 ext. 164](tel:4165979922) | [barua@gsnh.com](mailto:barua@gsnh.com)

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Tab H

## Appendix "H"

## Jessie Hue

---

**From:** Ronald Chapman <ronaldchapman@lawchambers.com>  
**Sent:** October 7, 2019 3:57 PM  
**To:** Brendan Bissell  
**Cc:** 'Masiel Matus'; wardm@bennettjones.com; phertz@kwlaw.net  
**Subject:** Avenue Road trust monies with Aird & Berlis

77/383

I confirm my instructions are that the monies being held by Aird & Berlis should not be moved out of its trust account.

### **Ronald G. Chapman**

Barrister

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## Jessie Hue

---

**From:** Masiel Matus <mmatus@agmlawyers.com>  
**Sent:** October 7, 2019 3:54 PM  
**To:** Brendan Bissell  
**Cc:** Ronald G. Chapman (ronaldchapman@lawchambers.com); Peter Greene; wardm@bennettjones.com; Oliver.Egerton-Vernon@garfieldbennett.com; amheinrichs@amibsc.com; Sheldon.Title@mnp.ca  
**Subject:** Inspectors Meeting October 4, 2019 - In the Matter of Galty B.V. Bankruptcy

Brendan:

Further to Peter Greene's voicemail and telephone call with you on Friday October 4, 2019 regarding the Inspectors Meeting that took place on the same date I am confirming as an Inspector that I am taking no position on the Trustee's proposed application to the court for the money held in Aird & Berlis' trust account be paid over to it in a net amount.

While this issue was not discussed during the October 4<sup>th</sup> Inspectors meeting in effect the Trustee is going to have to proceed with Galty's Summary Judgment motion and respond to Mr. Chapman's clients' injunction motion unless Mr. Chapman's clients consent, given Justice Hood's Order maintaining the status quo pending disposition of those motions.



Masiel



**AFFLECK GREENE MCMURTRY LLP**  
**BARRISTERS**

---

### **MASIEL A. MATUS**

+1 416-360-5794 (Tel/Fax)   
[mmatus@agmlawyers.com](mailto:mmatus@agmlawyers.com) 

365 Bay Street, Suite 200  
 Toronto, Canada M5H 2V1  
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[agmlawyers.com](http://agmlawyers.com) / [thelitigator.ca](http://thelitigator.ca)

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Tab I

# Appendix "I"

## Jessie Hue

---

**From:** Brendan Bissell  
**Sent:** October 7, 2019 4:18 PM  
**To:** Ronald Chapman  
**Cc:** 'Masiel Matus'; wardm@bennettjones.com; phertz@kwlaw.net; Sheldon.Title@mnp.ca  
**Subject:** RE: Avenue Road trust monies with Aird & Berlis  
**Attachments:** RE: Inspectors Meeting October 4, 2019 - In the Matter of Galty B.V. Bankruptcy

Ron: Thanks for your email. My email to Masiel on a similar point she was making, on which you were copied (also attached) responds to the comments in your email as well.

Regards,

**R. Brendan Bissell**



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

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---

**From:** Ronald Chapman <ronaldchapman@lawchambers.com>  
**Sent:** Monday, October 07, 2019 3:57 PM  
**To:** Brendan Bissell <bissell@gsnh.com>  
**Cc:** 'Masiel Matus' <mmatus@agmlawyers.com>; wardm@bennettjones.com; phertz@kwlaw.net  
**Subject:** Avenue Road trust monies with Aird & Berlis

77/383

I confirm my instructions are that the monies being held by Aird & Berlis should not be moved out of its trust account.

**Ronald G. Chapman**  
Barrister  
Law Chambers, Suite 2200  
181 University Avenue  
Toronto, Ontario M5H 3M7

Tel: (416) 601-1945  
Fax: (416) 601-9984  
[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)



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## Jessie Hue

---

**From:** Brendan Bissell  
**Sent:** October 7, 2019 4:14 PM  
**To:** Masiel Matus  
**Cc:** Ronald G. Chapman (ronaldchapman@lawchambers.com); Peter Greene; wardm@bennettjones.com; Oliver.Egerton-Vernon@garfieldbennett.com; amheinrichs@amibsc.com; Sheldon.Title@mnp.ca  
**Subject:** RE: Inspectors Meeting October 4, 2019 - In the Matter of Galty B.V. Bankruptcy

Masiel: Thank you for your email. As discussed with you and Peter Greene on Friday, while the trustee and I do acknowledge that you are communicating this now, the meeting of the inspectors took place on Friday morning and the vote was held at that time, which is the time when the position was taken for purposes of authorizing the trustee to take steps in respect of the funds held at Aird & Berlis. It is not at all clear that an inspector can change her vote after the fact.

Insofar as you are suggesting what the trustee's motion must be, we disagree. The substance of the trust claim by The Avenue Road Trust to the funds held in the Aird & Berlis account has already been disposed of through the proof of claim process under the BIA, including the appeal by The Avenue Road Trust of the disallowance of that claim and the subsequent abandonment of that appeal. The funds in question are estate funds to be dealt with under the normal priorities rules applicable to bankruptcies.

Regards  
 Brendan

**R. Brendan Bissell**



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

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**From:** Masiel Matus <mmatus@agmlawyers.com>  
**Sent:** Monday, October 07, 2019 3:54 PM  
**To:** Brendan Bissell <bissell@gsnh.com>  
**Cc:** Ronald G. Chapman (ronaldchapman@lawchambers.com) <ronaldchapman@lawchambers.com>; Peter Greene <PGreene@agmlawyers.com>; wardm@bennettjones.com; Oliver.Egerton-Vernon@garfieldbennett.com; amheinrichs@amibsc.com; Sheldon.Title@mnp.ca  
**Subject:** Inspectors Meeting October 4, 2019 - In the Matter of Galty B.V. Bankruptcy

Brendan:

Further to Peter Greene's voicemail and telephone call with you on Friday October 4, 2019 regarding the Inspectors Meeting that took place on the same date I am confirming as an Inspector that I am taking no position on the Trustee's proposed application to the court for the money held in Aird & Berlis' trust account be paid over to it in a net amount.

While this issue was not discussed during the October 4<sup>th</sup> Inspectors meeting in effect the Trustee is going to have to proceed with Galty's Summary Judgment motion and respond to Mr. Chapman's clients' injunction motion unless Mr. Chapman's clients consent, given Justice Hood's Order maintaining the status quo pending disposition of those motions.



Masiel



**AFFLECK GREENE MCMURTRY LLP  
BARRISTERS**

---

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## Jessie Hue

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**From:** Brendan Bissell  
**Sent:** October 7, 2019 4:14 PM  
**To:** Masiel Matus  
**Cc:** Ronald G. Chapman (ronaldchapman@lawchambers.com); Peter Greene; wardm@bennettjones.com; Oliver.Egerton-Vernon@garfieldbennett.com; amheinrichs@amibsc.com; Sheldon.Title@mnp.ca  
**Subject:** RE: Inspectors Meeting October 4, 2019 - In the Matter of Galty B.V. Bankruptcy

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Masiel



**AFFLECK GREENE MCMURTRY LLP  
BARRISTERS**

---

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Tab 3

Estate File No. 31-248304

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

THE HONOURABLE ) ■DAY, THE ■  
 )  
JUSTICE ■ ) DAY OF ■, 2020  
 )

**IN THE MATTER OF GALTU B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM  
IN THE NETHERLANDS**

**ORDER  
(funds held by Aird & Berlis LLP)**

**THIS MOTION**, made by MNP Ltd. (the “**Trustee**”) in its capacity as the trustee in bankruptcy of Galtu B.V. (the “**Bankrupt**”) for an order:

- (a) directing Aird & Berlis LLP (“**A&B**”) to release to the Trustee the \$591,503 that A&B holds in trust from the sale of real property formerly owned by the Bankrupt (the “**Net Sale Proceeds**”), less \$45,805.93 in satisfaction of A&B’s claim against the Bankrupt for fees owing (the “**Retained Funds**”); and
- (b) directing A&B to apply the Retained Funds in full satisfaction of its accounts with the Bankrupt;

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Trustee's Notice of Motion, and the First Report of the Trustee dated February 27, 2020, filed, and on hearing the submissions of counsel for the Trustee and those other persons appearing on the counsel slip,

1. **THIS COURT ORDERS** that A&B be and hereby is directed to pay the Net Sale Proceeds less the Retained Funds to the Trustee.
  2. **THIS COURT ORDERS** that A&B be and hereby is directed to retain and apply the Retained Funds in full satisfaction of A&B's claims for fees owing as against the Bankrupt.
-

Estate File No. 31-248304

IN THE MATTER OF GALTY B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM  
IN THE NETHERLANDS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**Proceedings commenced at Toronto**

**ORDER**  
(funds held by Aird & Berlis LLP)

**GOLDMAN SLOAN NASH & HABER LLP**

Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario  
M5G 1V2

**R. Brendan Bissell [LSO No. 40354V]**

Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

Tel: (416) 597-6489

Fax: (416) 597-3370

Lawyers for MNP Ltd. in its capacity as the trustee in  
bankruptcy of Galty B.V.



Tab 4

Estate File No. 31-248304

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF GALTY B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM  
IN THE NETHERLANDS**

**SERVICE LIST**

<p><b>GOLDMAN SLOAN NASH &amp; HABER LLP</b> 480 University Avenue, Suite 1600 Toronto, ON M5G 1V2 Fax: 416.597.3370</p> <p><b>Brendan Bissell (LSO#: 40354V)</b> Tel: 416.597.6489 Email: <a href="mailto:bissell@gsnh.com">bissell@gsnh.com</a></p> <p>Lawyers for MNP Ltd. in its capacity as the trustee in bankruptcy of Galty B.V.</p>	<p><b>MNP LTD.</b> 111 Richmond Street West Suite 300 Toronto, ON M5H 2G4</p> <p><b>Sheldon Title, Senior Vice President</b> Tel: 416-263-6945 Fax: 416-323-5240 Email: <a href="mailto:Sheldon.title@mnp.ca">Sheldon.title@mnp.ca</a></p>
<p><b>AFFLECK GREEN MCMURTRY LLP</b> Barristers and Solicitors 200 – 365 Bay Street Toronto, ON M5H 2V1 Tel: 416.360.2800</p> <p><b>Peter R. Green</b> Email: <a href="mailto:pgreene@agmlawyers.com">pgreene@agmlawyers.com</a></p> <p><b>Masiel A. Matus</b> Email: <a href="mailto:mmatus@agmlawyers.com">mmatus@agmlawyers.com</a></p> <p>Lawyers for La Hogue Financial Services Management Limited, Pantrust International S.A., Richard Wigley and James Wigley</p>	<p><b>RONALD G. CHAPMAN LAW CHAMBERS</b> Barrister and Solicitor 181 University Ave., Suite 2200 Toronto, ON M5H 3M7</p> <p><b>Ronald G. Chapman</b> Tel: 416.601.1945 Fax: 416.601.9984 Email: <a href="mailto:ronaldchapman@lawchambers.com">ronaldchapman@lawchambers.com</a></p> <p>Lawyers for The Avenue Road Trust</p>

**AIRD & BERLIS LLP (personally)**  
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IN THE MATTER OF GALTY B.V.  
HAVING ITS HEAD OFFICE IN THE CITY OF AMSTERDAM  
IN THE NETHERLANDS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**Proceedings commenced at Toronto**

**MOTION RECORD  
(Funds held by Aird & Berlis LLP)  
(Returnable March 20, 2020 at 9:30 a.m.)**

**GOLDMAN SLOAN NASH & HABER LLP**

Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario  
M5G 1V2

**R. Brendan Bissell [LSO No. 40354V]**

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