

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

THIRD REPORT TO THE COURT  
SUBMITTED BY MNP LTD.

MAY 12, 2023

**I. BACKGROUND AND 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**”) is 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.

4. On February 27, 2020, the Trustee issued its first report (the “**First Report**”) in support of its motion to have the Court Order, *inter alia*, that Aird & Berlis LLP release to the Trustee an amount of \$591,503 (“**Net Sale Proceeds**”), representing the balance of funds in its trust account from the sale of real property formerly owned by Galty, less an amount of \$45,805.93 (“**Retained Funds**”) in satisfaction of that firm’s claim against the Company for fees owing. A copy of the First Report, without appendices, is enclosed as **Appendix “B”**.
5. On May 27, 2020, the Court ordered that Aird & Berlis LLP pay the Net Sale Proceeds less the Retained Funds to the Trustee.
6. Galty’s creditors have filed claims totaling \$25,079,500; the largest claim is Galty N.V. (“**NV**”), which filed a claim for \$20,679,439. The second largest claim made in the bankruptcy is a contingent claim filed by Avenue Road Trust (“**ART**”) for an amount equivalent to CAD \$3,197,000. As detailed more fully below, the Trustee has disallowed ART’s unsecured proof of claim. ART’s appeal (the “**ART Appeal**”) from the Trustee’s disallowance of the unsecured claim is pending, which appeal is the subject matter of this Report.
7. During the administration of the estate, the Trustee identified a potential preferential payment in the amount of \$1.1 million (the “**Brazilian Trust Transfer**”) made in favour of NV. Galty is owned by NV. NV 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. The Brazilian Trust Transfer was to be set off against the loan owing to NV. 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.

8. The Trustee negotiated the terms of a settlement with NV (the “**Proposed NV Settlement**”), concerning the Brazilian Trust Transfer, which settlement requires NV to return to the estate the portions of the Brazilian Trust Transfer that would not have gone to NV in any event under a distribution to creditors.
9. The Proposed NV Settlement was considered by the Inspectors at a meeting held on August 30, 2021 (the “**August 30<sup>th</sup> Meeting**”). As detailed in the Second Report (defined below), after the August 30<sup>th</sup> Meeting, the Trustee was uncertain whether the vote taken at the meeting was valid as one Inspector was potentially conflicted, and if so, should have been recused from the vote on the Proposed NV Settlement.
10. If that Inspector should not have voted, then the vote of the remaining Inspectors attending the August 30<sup>th</sup> Meeting would have been a 1:1 tie.
11. Subsection 117(2) of the BIA requires that in the event of a tie that the opinion of the absent Inspector(s) be sought to break the tie. The Trustee sought the opinion of the absent Inspector, who opposed the Proposed NV Settlement. The Trustee also considered that Inspector to be potentially conflicted in voting on the issue.
12. Given the foregoing, the Trustee issued its second report, dated October 6, 2021 and its Supplementary Report to the Second Report, dated October 22, 2021 (collectively, the “**Second Report**”) in support of its motion (returnable on October 26, 2021) for, *inter alia*, advice and directions whether the decision of the Inspectors at the August 30<sup>th</sup> Meeting to authorize the Trustee to enter into the Proposed NV Settlement was valid; and if not, authorization and direction for the Trustee to enter into the Proposed NV Settlement. A copy of the Second Report, without appendices, is enclosed as **Appendix “C”**.
13. On November 3, 2021, the Court issued an endorsement wherein it noted the “Trustee is entitled to disregard the vote of Ron Chapman (“**Chapman**”) as having been disqualified” by virtue of a conflict of interest and authorizing the Trustee to “exercise his prerogative under s.117(2), therefore, to cast the deciding vote.” A copy of the Endorsement is enclosed as **Appendix “D”**.

14. On November 3, 2021, the Trustee exercised its prerogative under s.117(2) of the BIA and voted to accept the Proposed NS Settlement and concurrently implement the Proposed NV Settlement.
15. The publicly available documents related to these proceedings are posted on the Trustee's website at: <https://mnpdebt.ca/en/corporate/corporate-engagements/galty-b-v> (the "**Case Website**").

## **II. PURPOSE OF THIS REPORT**

16. This report is filed to:
  - a) To provide the Court with an update on the administration of Galty's bankruptcy estate since the filing of the Second Report; and
  - b) Provide the court with information on the status of the ART Appeal, and more particularly the Trustee's observations on the motion filed by ART, dated May 5, 2023 (returnable on May 30, 2023) (the "**ART Motion**") wherein ART seeks an order admitting the documents attached as Exhibit G to the affidavit of Timothy Seabrook sworn May 5, 2023 (the "**Supplementary Documents**") included as part of the ART Motion.

## **III. RESTRICTIONS**

17. 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.

#### IV. BACKGROUND INFORMATION

18. 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. At the date of bankruptcy, the Company was involved in litigation (the “**Litigation**”) with ART and with La Houge Financial Management Services Corp. and Pantrust International (collectively “**LaHogue**”). The Litigation concerned respective claims by ART and LaHogue against the Company, NV and individuals and entities affiliated with them for multimillion dollar amounts claimed to be owing to each of ART and LaHogue. ART also relies in its claims on a partial assignment by LaHogue to ART of claims against the Company.
19. 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.

#### V. TRUSTEE’S ACTIVITIES

20. Since filing the Second Report, the Trustee’s activities include:
- (i) attendance at Court on October 26, 2021 and March 28, 2023;
  - (ii) updating the Case Website, as necessary;
  - (iii) as described above, entered into the Proposed NV Settlement;
  - (iv) attendance at Inspectors meetings on June 29, 2022, August 2, 2022, February 22, 2023, and March 21, 2023;
  - (v) as described in greater detail below, discussions with counsel relating to, among other things, the ART Appeal and various other matters related to the administration of the estate; and
  - (vi) preparing this report.

## **VI. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

21. The Trustee's Interim R&D as at April 30, 2023, attached as **Appendix "E"**, reflects an excess of receipts over disbursements of \$461,724 (the "**Excess Funds**"). The change in Excess Funds since the Second Report is comprised of additional interest of \$4,223 and a payment of Trustee's fees of \$42,153 (inclusive of HST). The Excess Funds are also subject to the fees and expenses relating to the administration of the estate.

## **VII. CONTINGENT CLAIM BY ART**

22. On March 25, 2019, Chapman, as counsel for Victor M. Seabrook & Timothy Seabrook, Trustees of ART and Isobel R. Seabrook by her Litigation Guardian, Timothy Seabrook, filed an unsecured claim in Galty's bankruptcy. ART later filed a claim that it held a trust interest in the property of the Company for the amounts in the unsecured claim, which was subsequently disallowed by the Trustee and an appeal from the disallowance was abandoned. Chapman had also been counsel for the claimants in the Litigation.

23. On August 6, 2021, the Trustee issued a Notice of Disallowance to Chapman in respect of ART's proof of claim.

24. On September 3, 2021, Jaffe & Peritz LLP as agent for Chapman served an Appeal Record upon the Trustee's counsel in respect of the Notice of Disallowance.

25. Given the foregoing, ART's claim remains subject to determination by the Court.

26. As noted above, as part of the ART Motion, ART seeks an order permitting the admission of the Supplementary Documents.

27. As detailed in the Second Report, the following summarizes the Trustee's efforts to request from ART's counsel further documents that may provide evidence in support of ART's claim:

- (i) on July 23, 2020, the Trustee's counsel advised ART's counsel that the Trustee had reviewed the documents in ART's proof of claim and requested further documents that may provide evidence in support of ART's claim;

- (ii) ART submitted additional documentation by way of an affidavit of Mr. Victor Seabrook on August 14, 2020;
- (iii) on August 30, 2020, ART's counsel notified the Trustee's counsel of the scheduling of examinations for discovery in November 2020 and advised that the examinations would be helpful in respect of its asserting ART's claim against Galty. ART asked for the Trustee to defer deciding on ART's claim pending the completion of the examination;
- (iv) in February, 2021, the Trustee's counsel followed up with ART and asked that any further documentation be delivered by the end of February, 2021. ART's counsel responded on February 22, 2021 to advise that the examinations were still pending and that the examinations would provide further evidence of the monies owed to ART by Galty. The Trustee's counsel responded by advising that it was not prepared to wait for the further documents requested in connection with ART's claim due to the fact that, *inter alia*, considerable time had elapsed in respect of both the Litigation and the bankruptcy administration; and
- (v) ART requested and received a two-week extension to submit further documentation to March 15, 2021. On March 23, 2021, ART submitted supplementary information to the Trustee.

28. The Trustee considered the supplementary information before issuing its Notice of Disallowance to ART.

29. Notwithstanding the foregoing accommodations, on April 14, 2022, ART's counsel sent a letter to the Trustee's counsel enclosing an affidavit of Victor Seabrook, dated October 5, 2021 (the "**October 5<sup>th</sup> Affidavit**"). ART's counsel indicated it had previously sent the October 5<sup>th</sup> Affidavit to the Trustee's counsel, although the Trustee's counsel had no record of receiving it. ART's counsel advised that its delay in scheduling the appeal hearing was attributable to his waiting for the Trustee's position on the supplementary information ART delivered to the Trustee, including the October 5<sup>th</sup> Affidavit.

30. The October 5<sup>th</sup> Affidavit provided further documentary that ART wished to rely upon in support of its claim. The Trustee considered the contents of the October 5<sup>th</sup> Affidavit, and concluded that it did not alter the Trustee's position vis-à-vis ART's claim.
31. On April 21, 2022, the Trustee's counsel sent an email to ART's counsel advising him that the Trustee's position on ART's claim had not changed after a review of the October 5<sup>th</sup> Affidavit and also that such review was without prejudice to the issues of (a) whether further material should have been submitted given the several prior requests for evidence in support of the Proof of Claim, and (b) whether having already issued the Notice of Disallowance the Trustee is itself able to alter that.
32. On May 18, 2022, Victor Seabrook passed away.
33. On or around May 18, 2022, Fred Tayar & Associates Professional Corporation ("**Tayar**") was retained as ART's counsel to deal with the ART Appeal.
34. After Tayar's retention, the Court scheduled a hearing for September 20, 2022 with respect to the ART Appeal.
35. After Victor Seabrook's passing, ART took its instructions from Timothy Seabrook, Victor Seabrook's son and a trustee of ART.
36. Tayar took the position that the October 5<sup>th</sup> Affidavit must be before the Court as part of ART's appeal notwithstanding the affidavit was not before the Trustee on the consideration of ART's proof of claim.
37. The Trustee and ART's counsel entered into discussions and exchange of information with the view of reaching an agreement on the documentary evidence that would be admitted on the appeal. An agreement was not reached prior to the September 20, 2022 court hearing, resulting in the Court issuing an endorsement that read, in part, "Counsel for the Trustee and the Creditor appealing the Trustee's disallowance will caucus and advise whether there will be any preliminary evidentiary or other issues before the disallowance is heard and set the schedule for exchange of Materials, if needed, at a further 9:30 Appointment before me on my October 25<sup>th</sup> In writing Motion day".



38. The Trustee had through its counsel proposed a resolution (the “**Appeal Record Agreement**”) to ART on August 3, 2022, whereby evidence on the appeal would include (i) all materials that ART provided to the Trustee prior to the disallowance of the claim, (ii) Galty’s financial statements for all years relevant to the periods at issue in the proof of claim, and (iii) the October 5<sup>th</sup> Affidavit. In exchange for this agreement, ART would agree not to seek to admit any other materials and the argument will proceed before the Associate Justice sitting as Registrar in bankruptcy on this record. A copy of that email is attached as **Appendix “F”**.
39. The Trustee’s proposal to address the contents of the appeal record was made after a specific meeting of Inspectors to consider the progress of the ART claim and its appeal from disallowance. The Inspectors and the Trustee were concerned that the outstanding appeal by ART was preventing the administration of the Bankrupt’s estate and also that ART had been afforded multiple opportunities over a long period of time to provide evidence to substantiate its claims. The Inspectors and Trustee agreed on making the offer that was ultimately communicated to ART as a way to attempt to ensure that ART’s appeal would progress promptly thereafter.
40. On September 19, 2022, Tayar and the Trustee’s counsel discussed the record that should be before the Court on ART’s appeal from the disallowance. Tayar indicated concern that the terms proposed by the Trustee would prevent further materials from being admitted. The Trustee’s counsel responded to advise by email that in the circumstances that was precisely what was intended. A copy of the aforementioned email from the Trustee’s counsel to Tayar is attached as **Appendix “G”**. Tayar then requested that the Trustee provide until September 30, 2022 for Tayar to determine whether ART wished to rely on any further documentation. If there were no further documents, the Appeal Record Agreement would be implemented.
41. On September 30, 2022, Tayar advised the Trustee’s counsel that ART may have additional evidence to add to the appeal record but was waiting on particulars.

42. The Trustee's counsel followed up with Tayar on October 15, 2022 to determine if there was any further evidence on which rely and noted that repeated attempts by the Trustee to obtain evidence from ART in support of its proof of claim.
43. On October 17, 2022, Tayar advised the Trustee that "I understand that there is nothing new (i.e., that you are not already aware of) to be added." Accordingly, the Appeal Record Agreement was implemented. The correspondence between Tayar and counsel for the Trustee in that regard between September 30 and October 27, 2022 is attached as Exhibit "F" to the Timothy Seabrook sworn May 5, 2023.
44. Since the parties had entered into the Appeal Record Agreement, counsel for the Trustee and ART agreed to forgo preliminary evidentiary motions, with the Court scheduling the hearing on the appeal for February 16, 2023, noting that "if issues arise between now and the hearing date they may schedule a case conference before me through the Bankruptcy Court Office."
45. On January 24, 2023, Tayar advised the Trustee's counsel that Mr. Timothy Seabrook was recently going through some of his late father's personal effects, in his former residence, and came upon the Supplementary Documents. Tayar's office shared the Supplementary Documents with the Trustee's counsel and proposed to introduce them as evidence on the appeal, noting "I'm aware that the agreed-upon deadline for the submission of additional documents has passed, but as I understand it the documents were in an unexpected location (and had apparently been forgotten by the senior Seabrook himself.)"
46. Given the possible evidentiary issues arising from the Supplementary Documents, the February 16<sup>th</sup> appointment to hear the appeal was adjourned *sine die* to permit the Trustee and the Inspectors time to determine whether ART will be required to bring a Motion to introduce the Supplementary Documents at the appeal hearing.
47. After considering the Supplementary Documents, consulting the Inspectors, and having regard to the Appeal Record Agreement, the Trustee advised ART's counsel that the Trustee requires a Court order to introduce the Supplementary Documents as part of the appeal record. Similarly, on March 28, 2023, the Court was advised of the Trustee's

position, resulting in ART filing the ART Motion. The Court's endorsement relating to the ART Appeal is attached as **Appendix "H."**

48. In the Trustee's view, the Supplementary Documents should not be admitted as part of the appeal record for the following reasons:

- (i) the Trustee's determination of ART's claim and its Notice of Disallowance did not consider the Supplementary Documents;
- (ii) the Trustee has been advised by Anne Marie Heinrichs, one of the inspectors of the estate of the Bankrupt and a party to the Litigation, that most of the Supplementary Documents have previously been disclosed as part of the Litigation and were available to ART from productions in the Litigation such that ART could have submitted them to the Trustee (a) when ART filed its proof of claim, (b) when ART provided further documents in response to requests by the Trustee, (c) prior to the Trustee issuing its Notice of Disallowance and (d) prior to the parties entering into the Appeal Record Agreement. A list prepared by Ms. Heinrichs of where the Supplementary Documents had been previously produced in the civil litigation is attached as **Appendix "I"**.
- (iii) the admission of the Supplementary Documents may result in additional delay and expense to the estate; and
- (iv) the terms of the Appeal Record Agreement were that ART agreed not to seek to admit any other materials.

All of which is respectfully submitted on this 12th day of May 2023.

**MNP Ltd.**

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

Per:



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Sheldon Title, Senior Vice-President

**IN THE MATTER OF THE BANKRUPTCY  
OF GALTY 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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**THIRD REPORT TO THE COURT**

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**RECONSTRUCT LLP**  
200 Bay Street, Suite 2305  
Toronto, ON M5J 2J3

**R. Brendan Bissell**  
**LSO #: 40354V**  
Tel: 416-613-0066  
Fax: 416-613-8290  
Email: [bbissell@reconllp.com](mailto:bbissell@reconllp.com)

Lawyers for the Trustee, MNP Ltd.

# 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"	Bad . . . . . 0.00
estimated to be reclaimable for . . . . . 1.00	Estimated to produce . . . . . 8,000.00
Total liabilities . . . . . 21,400,489.41	4. Bills of exchange, promissory note, etc., as per list "F" . . . . . 0.00
Surplus . . . . . NIL	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.

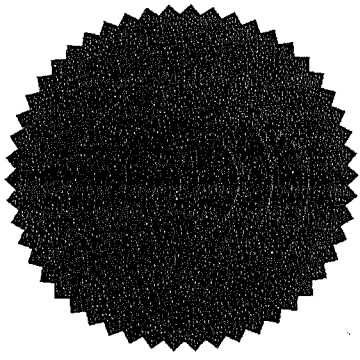
SWORN (or SOLEMNLY DECLARED)  
 before me at the City of Toronto in the Province of Ontario, on this 11th day of March 2019.

*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

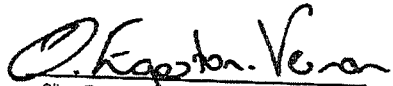
List "A"  
Unsecured Creditors

Galty B.V.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	Aird & Berlis LLP Attr: 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

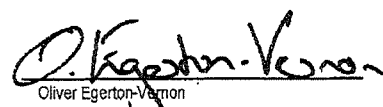
List "B"  
Secured Creditors

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	0.00

11-Mar-2019

Date

  
Oliver Egerton-Vernon

For G.B. Directors Limited

FORM 78 – Continued

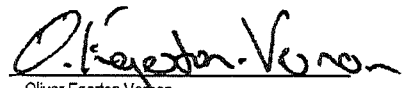
List "C"  
Preferred Creditors for Wages, Rent, etc.

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

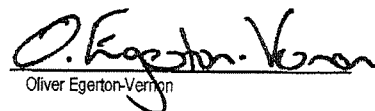
List "D"  
Contingent or Other Liabilities

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
Total:			1.00	0.00		

11-Mar-2019

Date

  
Oliver Egerton-Vernon

For G.B. Directors Limited

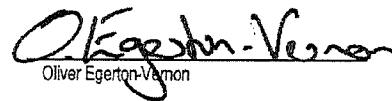
FORM 78 – Continued

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"

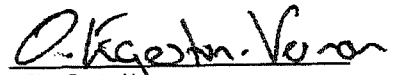
Bills of Exchange, Promissory Notes, Lien Notes, Chattel  
Mortgages, etc., Available as Assets

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-Veron

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

Galty 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

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 \$ \_\_\_\_\_.



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.

## **Appendix “B”**

**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:



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Sheldon Title, Senior Vice-President

**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.

## **Appendix “C”**

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**

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

**OCTOBER 6, 2021**

**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**”) is 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”**.

4. The Inspectors consist of the following individuals:

Name	Representing
Ronald Chapman (“ <b>Chapman</b> ”)	Counsel to ART (as defined herein)
Anne Marie Heinrichs (“ <b>Heinrichs</b> ”)	AMI Business Solutions/Herself
Masiel Matus (“ <b>Matus</b> ”)	Counsel to La Houge Financial Management Services Corp, Pantrust International
Oliver Egerton-Vernon (“ <b>OEV</b> ”)	NV (as defined herein)
Maureen Ward (“ <b>Ward</b> ”)	Bennett Jones LLP (as creditor)

5. On February 27, 2020, the Trustee issued its first report (the “**First Report**”) in support of its motion to have the Court Order, *inter alia*, that Aird & Berlis LLP release to the Trustee an amount of \$591,503 (“**Net Sale Proceeds**”), representing the balance of funds in its trust account from the sale of real property formerly owned by Galty, less an amount of \$45,805.93 (“**Retained Funds**”) in satisfaction of that firm’s claim against the Company for fees owing. A copy of the First Report, without appendices, is enclosed as **Appendix “C”**.
6. On May 27, 2020, the Court ordered that Aird & Berlis LLP pay the Net Sale Proceeds less the Retained Funds to the Trustee.
7. The publicly available documents related to these proceedings are posted on the Trustee’s website at: <https://mnpdebt.ca/en/corporate/corporate-engagements/galty-b-v> (the “**Case Website**”).

## II. PURPOSE OF THIS REPORT

8. This report is filed to:

- a) To provide the Court with information:
  - (i) relating to Galty's potential preferential payment in the amount of \$1.1 million (the "**Brazilian Trust Transfer**") to Galty Investments N.V. ("**NV**");
  - (ii) on the activities of the Trustee in administering Galty's bankruptcy estate since the First Report, particularly relating to it negotiating the terms of a settlement agreement the Trustee proposes to enter into with NV concerning the Brazilian Trust Transfer (the "**Proposed NV Settlement**");
  - (iii) relating to the results of an Inspectors meeting held on August 30, 2021 (the "**August 30<sup>th</sup> Meeting**") to consider the Proposed NV Settlement;
  - (iv) information relating to certain Inspectors' involvement with NV and the potential conflict arising therefrom in voting on the Proposed NV Settlement; and
- b) Given the foregoing, to request the Court advise whether the decisions of the inspectors at the August 30<sup>th</sup> Meeting authorizing the Trustee to enter into the Proposed NV Settlement are valid, and/or to authorize and direct the Trustee to enter into the Proposed NV Settlement or provide such directions as it deems proper in substitution thereof.

## III. RESTRICTIONS

9. 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.

#### **IV. BACKGROUND INFORMATION**

10. 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. At the date of bankruptcy, the Company was involved in litigation (the “**Litigation**”) with The Avenue Road Trust (“**ART**”) and with La Houge Financial Management Services Corp. and Pantrust International (collectively “**LaHogue**”). The Litigation concerned respective claims by ART and LaHogue against the Company, NV and individuals and entities affiliated with them for multimillion dollar amounts claimed to be owing to each of ART and LaHogue. ART also relies in its claims on a partial assignment by LaHogue to ART of claims against the Company.
11. 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.

#### **V. TRUSTEE’S ACTIVITIES**

12. Since filing the First Report, the Trustee’s activities include:
  - (v) attendance at Court on May 27, 2020;
  - (vi) updating the Case Website, as necessary;
  - (vii) review of proof of claims filed in Galty’s bankruptcy and communications with creditors relating thereto;
  - (viii) attendance at Inspectors meetings on September 25, 2020, February 25, 2021, August 10, 2021, and the August 30th Meeting;
  - (ix) as detailed further herein, with counsel’s assistance, reviewed, considered and disallowed ART’s (as defined below) proof of claim

- (x) review with Netherland-based accountants the need to file further corporate tax returns for Galty;
- (xi) discussions with counsel relating to, among other things, ART’s claim, the Proposed NV Settlement, and various other matters related to the administration of the estate;
- (xii) as detailed further herein, entered into without prejudice discussions with NV concerning potential resolutions of the potential preferential payment in NV’s favour arising from the Brazilian Trust Transfer; and
- (xiii) preparing this report.

## VI. INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

13. The Trustee’s Interim R&D as at September 30, 2021, attached as **Appendix “D”**, reflects an excess of receipts over disbursements of \$499,654 (the **“Excess Funds”**).

## VII. CREDITOR CLAIMS

14. The claims of creditors as per the Company’s sworn statement of affairs and the claims filed as at October 5, 2021 are summarized below:

	As per Statement of Affairs		Claims as Filed	
Secured	\$	Nil	\$	Nil
Preferred	\$	Nil	\$	Nil
Ordinary Unsecured	\$	21,400,488	\$	25,079,500
Contingent	\$	1	\$	Nil
	\$	21,400,489	\$	25,079,500

15. At this time, the Trustee has not made a final determination as to the admissibility of the proofs of claim for distribution purposes, however, as detailed below, has disallowed



ART's proof of claim. As detailed below, the Trustee has advised the Inspectors that based on its review, it has accepted NV's proof of claim.

### **Contingent Claim by ART**

16. On March 25, 2019, Chapman, as counsel for Victor M. Seabrook & Timothy Seabrook, Trustees of ART and Isobel R. Seabrook by her Litigation Guardian, Timothy Seabrook, filed an unsecured claim in Galty's bankruptcy. ART later filed a claim that it held a trust interest in the property of the Company for the amounts in the unsecured claim, which was subsequently disallowed by the Trustee and an appeal from the disallowance was abandoned.
17. On July 23, 2020, the Trustee's counsel advised Chapman that the Trustee had reviewed the documents in ART's unsecured proof of claim and requested further documents that may provide evidence in support of ART's claim.
18. On August 6, 2020, Chapman advised the Trustee's counsel that he would provide a response by August 13, 2020. Chapman provided further materials by way of an affidavit of Mr. Seabrook on August 14, 2020.
19. On August 30, 2020, Chapman notified the Trustee's counsel of the scheduling of examinations for discovery in November 2020 and advised that the examinations would be helpful to ART in respect of ART's claim against Galty. Chapman asked for the Trustee to defer making a determination of ART's claim pending the completion of the examination.
20. In February, 2021, the Trustee's counsel followed up with ART and asked that any further documentation be delivered by the end of February, 2021. Chapman responded on February 22, 2021 to advise that the examinations were still pending and that the examinations would provide further evidence of the monies owed to ART by Galty. The Trustee's counsel responded by advising that it was not prepared to wait for the further documents requested in connection with ART's claim due to the fact that, *inter alia*, considerable time had elapsed in respect of both the Litigation and the bankruptcy administration.

21. ART requested and received a two-week extension to submit further documentation to March 15, 2021. On March 23, 2021, ART submitted supplementary information to the Trustee.
22. On August 6, 2021, the Trustee issued a Notice of Disallowance to Chapman in respect of ART's proof of claim.
23. On September 3, 2021, Jaffe & Peritz LLP as agent for Chapman served an Appeal Record upon the Trustee's counsel in respect of the Notice of Disallowance.
24. Given the foregoing, ART's claim remains subject to determination by the Court.
25. Subsequent to the bankruptcy of the Company, ART has amended its Statement of Claim against the Company to also make claims against NV and persons related to it in respect of the Brazilian Trust Transfer.

#### **Galty Investments NV claim**

26. NV filed a proof of claim in the amount of \$20,679,439, which represents approximately 82% of the claims filed in the estate. NV's claim is comprised of a series of loans it advanced to Galty over time.
27. The Trustee has reviewed the proof of claim, which accords with Galty's records, and based on the information provided, has advised the Inspectors that it has accepted the proof of claim. The Trustee's determination of the NV claim is not subject to further review by the Court on the application of any creditors at this time.
28. NV advises that the Brazilian Trust Transfer was in partial satisfaction of amounts owing by Galty to NV.

#### **VIII. PAYMENT TO BRAZILIAN TRUST**

29. As noted in the First Report, 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 between January 1, 2018 and March 11, 2019 (the “**Banking Records**”), a review of certain board of director meeting minutes and inquiries with management.

30. Other than the transaction noted in paragraph 31, the Trustee did not identify any noteworthy and material transactions from its review of the Banking Records.
31. Galty is owned by 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. As noted above, N.V. is Galty’s largest unsecured creditor and the transfer of \$1,100,000 to the Brazilian Trust was to be set off against the loan owing to NV. 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.
32. The Brazilian Trust Transfer, which resulted in payment to NV, constitutes a potential preferential payment made by Galty in NV’s favour.
33. The Trustee entered into discussions with representatives of NV regarding the possible resolution of any claims by the Trustee and/or the Company against NV arising out of, in relation to, or in connection with the Brazilian Trust Transfer.

## **IX. TOLLING AGREEMENT**

34. Due to the restrictions in Court activity during the state of emergency declared by the Province of Ontario resulting from the COVID-19 pandemic, the limitation periods in civil matters were suspended from March 16, 2020 to September 13, 2020, inclusively. The claim against NV may have therefore become statute barred on or around September 8, 2021.
35. The discussions with NV regarding a possible resolution of the Brazilian Trust Transfer became protracted and the Trustee and NV wished to defer any limitation periods to avoid

the necessity of engaging in litigation while the parties could pursue a potential resolution of the matter.

36. On March 1, 2021, with Inspector approval, the Trustee entered into a Tolling Agreement with NV that provided that the parties may terminate the Tolling Agreement by providing written notice to the other, in which case the Tolling Agreement shall be terminated on the thirtieth (30th) calendar day following the date on which such written notice was sent. Subject to the proceeding, the Agreement was to terminate on August 11, 2021 .

37. The tolling agreement has since twice been extended, with the agreement scheduled to terminate on October 15, 2021.

#### **X. PROPOSED NV SETTLEMENT**

38. As noted above, the Trustee and NV have engaged in without prejudice discussions that culminated in the Proposed NV Settlement, whereby N.V. would return to the estate the portions of the Brazilian Trust Transfer that would not have gone to N.V. in any event under a distribution to creditors. The mechanism for recovering the funds from NV would likely be by way of a deduction from its dividend. The Proposed NV Settlement is predicated on the Trustee's acceptance of NV's proof of claim. Correspondence with OEV on behalf of NV regarding the terms of the Proposed NV Settlement is attached as **Appendix "E"**.

39. The Trustee was of the view that the Proposed NV Settlement should be recommended to the Inspectors for the following reasons:

- (i) it avoids the necessity of further extending the Tolling Agreement;
- (ii) it avoids the costs of initiating litigation in Canada where there is risk that it would not succeed, and which if successful would then need to be enforced against NV in one or more foreign jurisdictions as NV has no assets in Canada; and
- (iii) given the extent of NV's claim, it is a pragmatic, cost-effective and efficient way of resolving a potential dispute and will contribute to a timelier completion of the bankruptcy administration.

## XI. INSPECTORS MEETING TO CONSIDER PROPOSED NV SETTLEMENT

40. The Proposed NV Settlement was presented to the Inspectors at the August 30<sup>th</sup> Meeting.
41. Prior to the August 30<sup>th</sup> Meeting, the Trustee circulated to all Inspectors an interim statement of receipts and disbursements and a table illustrating possible distribution scenarios to assist the Inspectors in better understanding the impact of the Proposed NV Settlement. A copy of that table is attached as **Appendix “F”**.
42. The August 30<sup>th</sup> Meeting was attended by Heinrichs, Matus and Ward; Chapman had also confirmed by email his availability to attend, but did not participate in the August 30<sup>th</sup> Meeting, despite an attempt by the solicitor for the Trustee to call him once the meeting had commenced and he was not present. OEV did not attend the meeting based on his conflict of interest in voting on this issue. Given that a majority of Inspectors was in attendance, a quorum was established.
43. After considering the Proposed NV Settlement, Heinrichs and Ward voted in favour of acceptance of the Proposed NV Settlement and Matus voted against the acceptance. Based on this vote, the motion carried. The Trustee’s minutes of that meeting are attached as **Appendix “G”**.

## XII. POTENTIAL CONFLICT INTEREST

44. As noted above, there are five Inspectors appointed to act in this estate. The agenda for the August 30<sup>th</sup> Meeting was limited to considering the Proposed NV Settlement. OEV was disqualified in voting on the issue by virtue of having a conflict in voting on the acceptance of the Proposed NV Settlement as a representative of NV.
45. Based on information available to the Trustee, Heinrichs is a beneficiary of the Brazilian Trust. The Brazilian Trust was the recipient of the Brazilian Trust Transfer, and accordingly, Heinrichs potentially has a conflict of interest in voting on the acceptance of the Proposed NV Settlement. The Trustee previously raised this with Heinrichs, who disagreed that she should be disqualified, in part by noting that all the inspectors are related to parties involved in the Litigation one way or the other. The Trustee has responded to

these explanations to note that adversity to the Company is not a disqualifying interest in the same manner as an interest in NV as a possible target of a claim by the Company.

### **XIII. ISSUES WITH THE AUGUST 30, 2021 VOTE OF INSPECTORS**

46. If Heinrichs is determined to be disqualified on voting on the Proposed NV Settlement, only Matus and Ward's votes should be counted in determining the outcome. In that case, there would be a tie vote with one in favour and one against.
47. Such a 1:1 tie vote could raise issues of whether there was a quorum of inspectors, given that there are five inspectors overall. The BIA does not define whether a quorum is of the total number of inspectors or, in the case of disqualification, whether it is of the inspectors not disqualified. This quorum issue, however, is resolved in this case by the provisions of subs. 117(2) of the BIA, which states that "In the event of an equal division of opinion at a meeting of inspectors, the opinion of any absent inspector shall be sought in order to resolve the difference, and in the case of a difference that cannot be so resolved, it shall be resolved by the trustee, unless it concerns his personal conduct or interest in which case it shall be resolved by the creditors or the court." The BIA would therefore require that Chapman's views on the vote be sought to break the tie.
48. On September 30, 2021, the Trustee's counsel sent an email (the "**September 30<sup>th</sup> Email**") to Chapman noting that "*Among the possible results here is that Anne Marie was not entitled to vote on the proposed settlement with Galty N.V., which would then mean that there was a 1:1 tie as between Maureen and Masiel among the inspectors who were at the Aug. 30 meeting. In that case, your opinion should be sought to break the tie even though you were not at the meeting (see s. 117(2) of the BIA). Could you therefore please advise what your opinion on the proposed settlement with Galty N.V is, please?*". On October 4, 2021, Chapman responded to the Trustee's counsel by acknowledging receipt of the September 30<sup>th</sup> Email by noting "*Please advise as to the terms of the settlement and I will seek instructions.*"
49. The Trustee's counsel promptly responded to Chapman by providing him with the proposed terms of settlement, which were previously provided to him on August 11, 2021

and also noting “*that your reference to seeking instructions is concerning. As noted in the Trustee’s First Report to the Court dated February 27, 2020, your appointment as inspector is in a personal capacity with fiduciary obligations to the entire group of creditors of the bankrupt and is not supposed to be on the basis of representing your client. This dynamic is all the more problematic because your client would be precluded from being an inspector himself by virtue of BIA s. 116(2) since he is involved in litigation against the estate.*” A copy of the September 30<sup>th</sup> Email and the email exchanges between Chapman and the Trustee’s counsel is attached as **Appendix “H”**.

50. On October 6, 2020, Chapman responded to the September 30<sup>th</sup> Email, by stating “*in my opinion the proposed settlement by the Trustee of the Galty NV claim should not be accepted.*” In order to formally consider Chapman’s position on this matter would require that another Inspectors meeting be called.
51. Given the uncertainty of Heinrich’s standing to vote on the Proposed NV Settlement, the Trustee is uncertain whether formally seeking the vote of Chapman as the absent Inspector is appropriate given the foregoing. Part of the Trustee’s reasoning in that regard is that as an inspector, Chapman has consistently acted on the basis of what is desirable for ART his client, rather than what is in the interest of all creditors of the Company. At times, Chapman’s position has been expressly noted to be on the basis of “instructions.” The Trustee is accordingly concerned that the dynamics of the Litigation are merely being repeated in meetings of inspectors, all of whom were involved in the Litigation before the Company was bankrupt and remain involved in the portions that are still proceeding, such that the views of the Court as an independent adjudicator may be more appropriate in any event. If Heinrichs is disqualified from voting, then the Trustee seeks advice and direction from the Court on entering into the Proposed NV Settlement irrespective of the inspectors’ votes. In so doing, the Trustee relies on subsection 119(2) of the BIA, which states “The decisions and actions of the inspectors are subject to review by the court at the instance of the trustee or any interested person and the court may revoke or vary any act or decision of the inspectors and it may give such directions, permission or authority as it deems proper in substitution thereof or may refer any matter back to the inspectors for reconsideration.”

52. Accordingly, the Trustee seeks the Court's advice and direction in authorizing the Trustee to enter into the Proposed NV Settlement and/or to provide such directions, permission or authority as it deems proper in substitution thereof.

**XIV. CONCLUSION**

53. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 8.

All of which is respectfully submitted on this 6th day of October 2021.

**MNP Ltd.**

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

Per:



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Sheldon Title, Senior Vice-President



Court No. 31-2484304

**IN THE MATTER OF THE BANKRPTCY  
OF GALTY 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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**SECOND REPORT TO THE COURT**

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Lawyers for the Trustee, MNP Ltd.

## **Appendix “D”**

**CITATION:** Galty B.V. (Re), 2021 ONSC 7250  
**COURT FILE NO.:** 31-248304  
**DATE:** 2021-11-03

**SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)**

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

**BEFORE:** Penny J.

**COUNSEL:** *Brendan Bissell* for MNP Ltd. in its capacity as the trustee in bankruptcy of Galty  
B.V.  
*Mark Wiffen* for The Avenue Road Trust

**HEARD:** October 26, 2021

**ENDORSEMENT**

- [1] This is a motion by MNP Ltd., the trustee in bankruptcy of Galty B.V., for advice and directions regarding a vote by inspectors on a proposed settlement of a potential claim by the Bankrupt against its parent corporation, Galty N.V.
- [2] The key issue on the motion is whether a lawyer acting for one of the creditors in litigation with the bankrupt and related companies, who was also made that creditor's appointee as an inspector, had a disqualifying conflict of interest when he voted against accepting the proposed settlement of the potential claim by the estate.
- [3] For the reasons that follow, I conclude that the lawyer/inspector did have an operative and disqualifying conflict at the time of the vote and that the Trustee is entitled to disallow or disregard that inspector's vote on the proposed settlement.

**Background**

[4] As of the date of bankruptcy (which was March 11, 2019):

- the Bankrupt's only tangible asset was \$591,503 held by its solicitors on account of the sale of property in Toronto. After payment of the solicitor's fees, the amount on hand is now \$499,654.03, before fees for the administration of the estate; and
- the Bankrupt was involved in litigation with The Avenue Road Trust and with La Hogue Financial Management Services Corp. and Pantrust International. That litigation concerned respective claims by ART and LaHogue against the Bankrupt. After the bankruptcy, the plaintiffs amended their claim to assert claims against Galty N.V. and individuals and entities affiliated with them (in particular, the Brazilian Trust, which owns Galty N.V.) for multi-million dollar amounts claimed

to be owing to each of ART and LaHogue. This includes a fraudulent preference claim for monies received by the defendants from Galty B.V. pre-bankruptcy.

- [5] The creditors of the Bankrupt have filed claims totalling \$25,079,500. Of the total claims, the largest claim is by Galty N.V., which has filed a claim for \$20,679,439. This is based on a term loan made by Galty N.V. to its subsidiary, Galty B.V. The Trustee reviewed that claim, including various grounds raised by the inspectors about the bona fides of the loan and its quantum. The Trustee concluded that the loan and the amount claimed were consistent with the Bankrupt's records and advised the inspectors of the estate that the Trustee had accepted Galty N.V.'s claim. The Trustee's acceptance of that proof of claim was not appealed or otherwise challenged and is, therefore, not under further review by the court on the application of any creditor.
- [6] The second largest claim made in the bankruptcy was a claim by ART for an amount that the Trustee calculated as being about CAD \$3,197,000. ART had originally made a trust claim against the Bankrupt for that amount, but that claim was disallowed by the Trustee. ART's appeal of that disallowance was abandoned. ART's claim then proceeded as unsecured, but it too was disallowed by the Trustee. ART's appeal from that decision is pending.

### ***The Potential Preference Claim***

- [7] On July 13, 2017, Galty B.V.'s directors authorized the transfer of \$1.1 million to the Brazilian Trust to be applied against Galty N.V.'s loan to Galty B.V. The funds for this transfer came from a corporate tax rebate arising out of the sale of 88 Elm Street in Toronto, which was the Bankrupt's only material asset in Canada. The payment was made to Galty N.V. on July 14, 2017.
- [8] Upon analysis, the Trustee determined that the \$1.1 million payment, in light of Galty B.V.'s subsequent assignment in bankruptcy in March 2019, might constitute a preferential payment in Galty N.V.'s favour. The Trustee entered into negotiations with Galty N.V. about this potential claim by the estate. Because the claim may have become statute-barred on September 8, 2020, the Trustee entered into a tolling agreement with Galty N.V., originally set to expire in August 2021. The deadline was extended twice, with the expiry to take place on October 15, 2021. Galty N.V. was not prepared to grant any further extensions. Because of certain delays in the hearing of this motion, however, Galty N.V. did ultimately agree to an extension of the tolling agreement until 10:00 PM of the day on which the decision of the court on this motion is released.
- [9] A settlement between the Trustee and Galty N.V. was reached. The proposed settlement was put to the inspectors for approval at a meeting on August 30, 2021. It is the consequences of that meeting of inspectors that give rise to this motion.
- [10] The terms of the settlement are that Galty N.V. shall return to the estate that portion of the payment that would not otherwise be distributed to it as the principal creditor in the bankruptcy. Depending on the outcome of the ART appeal of the disallowance of its claim, the settlement is worth something in the order of \$100,000 to \$150,000 to the estate.

*The Meeting of Inspectors*

[11] The proposed settlement was considered at the August 30, 2021 meeting of inspectors called for that purpose. The Trustee recommended to the inspectors that they approve the settlement for the following reasons:

- (1) the settlement avoids the necessity of extending the tolling agreement (which, as noted above, Galty N.V. is no longer willing to do);
- (2) the settlement avoids the cost of litigation with Galty N.V. over the alleged preference claim which:
  - (a) even if successful, might not succeed; and
  - (b) might not be enforceable (because Galty N.V. is a foreign corporation with no assets in Canada); and
- (3) given the extent of Galty N.V.'s accepted claim in the bankruptcy (which acceptance has not been challenged in any way), the settlement is a pragmatic, cost-effective way to resolve the dispute which will contribute materially to the funds available for distribution and to the timely completion of the estate's administration.

[12] There are five inspectors:

Ron Chapman – counsel to ART in the litigation  
 Anne Marie Heinrich – a discretionary beneficiary of the Brazilian Trust (the Brazilian Trust being a potential defendant in the preference claim)  
 Masiel Matus – counsel to La Houge  
 Oliver Egerton-Vernon – Galty N.V. (creditor with accepted claim but potential defendant in preference claim by the estate)  
 Maureen Ward – Bennett Jones (creditor with accepted claim)

[13] Egerton-Vernon did not attend the meeting to vote on the proposed settlement on the basis that he had a disqualifying conflict as the representative of Galty N.V. Chapman did not attend, apparently thinking, incorrectly, that because ART's claim had been disallowed, he was no longer an inspector. Heinrich and Ward voting in favour of the settlement; Matus voted against.

[14] After the vote, however, the Trustee was concerned that, as a discretionary beneficiary of the Brazilian Trust, Heinrich might also have a disqualifying conflict. The Trustee reasoned that, while all of the inspectors were in some way associated with parties having an adverse claim against the bankrupt, the Brazilian Trust, like Galty N.V., was a potential defendant in the preference claim, which was a different kind of conflict and one more likely to be disqualifying on a vote to approve the settlement of that claim. No one, during the argument of this motion, took the position that the Trustee was wrong in his assessment of this issue or that Heinrich's vote should be restored. For that reason, I will not comment on this issue further, as it is not before me.

- [15] The disallowance of Heinrich's vote left a 1:1 tie in votes of the inspectors.
- [16] Under s. 117(2) of the BIA, in the event of an equal division of opinion among inspectors, the opinion of any absent inspector shall be sought. If that does not resolve the difference, "it shall be resolved by the trustee".
- [17] Accordingly, the Trustee sought Chapman's views to break the tie. Upon being advised of the situation, Chapman asked for "the terms of the settlement" and indicated he would "seek instructions". Chapman's reference to seeking instructions raised a red flag for the Trustee. Counsel for the Trustee responded to Chapman, indicating to him that "your appointment as inspector is in a personal capacity with fiduciary obligations to the entire group of creditors" not on the basis of "representing your client". This was especially so, in the Trustee's view, because Chapman's client was precluded from being an inspector by s. 116(2) because ART and Mr. Seabrook, its principal, were parties in the litigation with the bankrupt.
- [18] A few days later, Chapman provided his opinion that the proposed settlement "should not be accepted".<sup>1</sup>
- [19] The Trustee is concerned that the dynamics of the litigation between ART and Galty N.V. and the Brazilian Trust, which is of course ongoing, is motivating and being played out in the vote of the inspectors on the proposed settlement. Four of the five inspectors (all but Ward) are connected to that litigation. The Trustee takes the view, in short, that Chapman, as counsel of record for ART and Seabrook in the litigation, is conflicted and, in voting against the settlement, has not conducted himself in accordance with his obligations to the entire group of creditors of the bankrupt as a whole. The Trustee takes the position, therefore, that Chapman's vote, like Heinrich's (and Egerton-Vernon's), should not be counted. In this circumstance, the Trustee proposes to exercise the deciding vote, under s. 117(2), in favour of the settlement.
- [20] This is what has brought to parties to court on the present motion by the Trustee.

### **Analysis**

- [21] The law is well settled that inspectors stand in a fiduciary relation to the general body of creditors in a bankruptcy: *Re Bryant Isard & Co.* (1923), 4 C.B.R. 41 at 48 (ON SC). An inspector must not permit their duty as inspector to conflict with some other interest and, if they do, they may be disqualified from acting on that matter: *Re Fentiman* (1926), 7 C.B.R. 355 (ON SC).
- [22] In *Re Preston* (1979), 30 C.B.R. 222 at 223, Registrar Ferron concisely outlined the law applicable to the type of situation we have here. He said, in that case, that the decision of the trustee to disqualify an inspector on account of a conflict:

was based on the best evidence available to the trustee and on the documents which he had, and in my opinion he acted prudently in

---

<sup>1</sup> Seabrook's October 18, 2021 affidavit filed on this motion confirmed that Chapman has since resigned as an inspector. ART has not appointed any successor.

proceeding with the action without the consent of the inspector. It is not necessary for the trustee to prove that a conflict existed, as one would prove that conflict in court, as long as he acts reasonably on the evidence available.

[23] Mr. Wiffen, counsel for Chapman on this motion, argues, however, that in order for the Trustee to disallow Chapman's vote, it must be shown that Chapman acted in bad faith. Because there is no evidence of conduct on Chapman's part that could meet the threshold of bad faith, the Trustee would be wrong to disregard Chapman's vote. In making this argument, he relies on *Lamb Ford Sales Ltd. (Re)*, [2006] N.B.J. No. 329 (Registrar).

[24] In *Lamb Ford Sales Ltd.*, the registrar of bankruptcy in New Brunswick dealt with the question of whether a counsel of record for a party engaged in litigation with the bankrupt could act as an inspector. Registrar Bray held that being in the role as counsel of record did not, of itself, constitute a disqualifying conflict. Rather, he reasoned, the question was whether there is a sufficient commonality of interest between the lawyer who has been acting as inspector and his client who is suing the bankrupt that there exists either a true conflict of interest that would be detrimental to other creditors or a perceived conflict of interest that would undermine the confidence of a reasonable person that the BIA was being properly administered.

[25] At para. 4 he wrote:

Another way of phrasing the question is to ask whether Mr. Gillis as inspector was participating in making any arrangement that would advance the litigation interests of the creditor that he represents. An inspector acts in a fiduciary capacity to the Estate and must cooperate with the Trustee to ensure that the Estate is effectively administered for the general benefit of the creditors. One must ask if there is proof of an element of bad faith in Mr. Gillis' activities.

[26] I agree with Registrar Bray's conclusion that the mere fact of being counsel of record for a party in litigation with the bankrupt is not, of itself, offside s. 116(2) nor, standing alone, does it constitute a disqualifying conflict of interest for an inspector's ability to act or to vote. This conclusion seems consistent with The Inspectors' Handbook prepared by the Office of the Superintendent of Bankruptcy which provides the general guidance that "a lawyer representing a client may be appointed an inspector".

[27] I also agree with the Registrar's conclusion that the real issue, where counsel of record for a creditor in pre-bankruptcy litigation is an inspector, is whether there is a sufficient commonality of interest between the lawyer and his client who is suing the bankrupt that there exists either a true conflict that would be detrimental to other creditors or a perceived conflict of interest that would undermine confidence in the administration of the scheme of the BIA. Put slightly differently, while the appointment, as an inspector, of counsel to a creditor in litigation with the Bankrupt may not be prohibited, the counsel runs the risk that they may, on

issues that come before the inspectors, come into conflict between their duty to creditors at large as inspector and their duty to their client as litigation counsel.

[28] Where I part company with Registrar Bray is over his implication of a requirement of bad faith to establish the necessary disqualifying conflict. Registrar Bray's decision is, of course, not binding on me in any event. But, in my view, his decision is inconsistent with the decisions in *Re Bryant Isard*, *Re Fentiman* and *Re Preston* as well as *Intercoast Lumber (Re)(Trustee of)*, 1995 CanLII 1240 (BCSC), which all stand for the proposition that it is sufficient, to disqualify an inspector from voting on an issue, if there is an operative conflict of interest with respect to that issue. A material conflict of interest is a question of fact, the existence of which does not require any finding of bad faith. Registrar Bray's imputation of this requirement into the conflict of interest analysis is wrong, in my view. Further, it conflates the issue of whether the trustee may disqualify an inspector's vote on the basis of a conflict with the quite different question of whether a decision of the inspectors can be overturned by a court under s. 119(2) of the BIA. Under s. 119(2), the case law suggests a court ought not to interfere with a decision of the inspectors "unless it is shown they are acting fraudulently or in some way not in good faith for the benefit of the estate". *Rizzo & Rizzo Shoes Ltd. (Bankruptcy of)* (1998), 38 O.R. (3d) 280, 1998 CanLII 2673 (ON CA).

[29] While the Trustee's alternative argument does rely on s. 119(2), in light of my disposition of the conflict issue, it is not necessary to address s. 119(2).<sup>2</sup>

[30] The question here, therefore, is whether Chapman, in voting against the proposed settlement, was participating in making any arrangement that would advance the litigation interests of the creditor, ART, that he represents in litigation against the Bankrupt, Galty N.V. and the Brazilian Trust, to the possible detriment of the creditors as a whole. In my view, he was. The conflict was of a nature as to constitute a "true conflict" or one that would undermine confidence in the administration of the scheme of the BIA.

[31] It is manifestly true that, if Galty N.V.'s claim was finally disallowed or if a preference claim against Galty N.V. and the Brazilian Trust was successfully pursued, the other creditors would be better off. If those choices were the real basis for Chapman's vote, it might not involve a disqualifying conflict for him to have voted as he did. On the evidence, however, those are not the binary choices available and that is not the basis upon which ART and Chapman now argue the disputed vote was taken.

[32] In this case, Mr. Wiffen argues that Chapman's (and ART's) opposition to the settlement was on the basis that the settlement assumes the validity of Galty N.V.'s \$20 million claim in the bankruptcy. Chapman, and more importantly ART, does not accept the validity of the Galty N.V. claim. Mr. Wiffen submits that a finding by the Trustee that the Bankrupt's debt owed to

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<sup>2</sup> I agree with Mr. Wiffen that there is no evidence Chapman acted in bad faith. Accordingly, to the extent bad faith were a requirement in order for the court to revoke or vary any decision of the inspectors under s. 119(2), I would not have been prepared to do that in this case.



Galty N.V. is bona fide could be prejudicial to ART in its outstanding litigation with Galty N.V. and the Brazilian Trust.

[33] The nature of Chapman's conflict is made plain, it seems to me, by this submission and, more generally, by the manner in which Mr. Wiffen has, on Chapman's behalf, responded to this motion. On one hand, Chapman has filed affidavit evidence that he was not "acting on [his] client's instructions" when he voted against the settlement. On the other, Mr. Seabrook has also filed affidavits, supported by evidence from Chapman as his counsel in the litigation, vociferously attacking the Trustee's allowance of the Galty N.V. claim in the bankruptcy. Among other things, Mr. Seabrook says, the quantum of Galty N.V.'s claim has not been explained or justified, enforcement of Galty N.V.'s claim would be barred by the *Limitations Act, 2002*, and no demand for payment was ever delivered by Galty N.V. to the Bankrupt.

[34] The Trustee's reasons for accepting Galty N.V.'s claim are, on their face, entirely reasonable. Each of Mr. Seabrook's concerns was considered and rejected by the Trustee. The Trustee concluded that the expanded quantum of the claim is fully explained by the provision for compound interest in the loan documents; the debt became due in December 2017, so the two year limitation had not yet run when Galty B.V.'s assignment into bankruptcy took place; and, the loan is a term loan, not a demand loan such that whether there was ever a demand for payment is irrelevant.

[35] More importantly, it was open to ART to apply to the court to expunge or reduce Galty N.V.'s claim under s. 135(5) of the BIA. ART appealed the disallowance of its own claim under s. 135(4) but has not taken any similar action with respect to the Trustee's allowance of the Galty N.V. claim.

[36] It was also open to ART, in the face of the Trustee's proposed settlement of the preference claim with Galty N.V., to apply under s. 38 of the BIA for an order authorizing ART to take that proceeding in its own name and at its own expense and risk. ART has not done that either. Indeed, it seems clear that ART wants the Trustee to take carriage of that claim, and the associated risks of the litigation, utilizing the funds available to the estate for that purpose. This, the evidence is clear, the Trustee is not prepared, and cannot be compelled, to do. That is precisely why s. 38 exists; it is the creditor's fall back if the trustee will not pursue a potential claim. Here, the Trustee has weighed the merit of the preference claim, together with the risks, costs and delay in the administration of the estate associated with pursuing that claim, and come to the conclusion that to pursue the claim is not consistent with the interests of the creditors as a whole. That assessment was the very foundation for the settlement reached with Galty N.V.

[37] All of this leads me to the following conclusion: it was reasonable for the trustee to conclude, from the circumstances of this case, that Chapman, in voting against the proposed settlement, was "participating in making an arrangement that would advance the litigation interests of" his client, ART (which he represents in ongoing litigation against the Bankrupt, Galty N.V. and the Brazilian Trust), to the detriment of the other creditors. It was therefore reasonable for the Trustee to conclude that Chapman was, therefore, either acting in his client's interests (as he was, frankly, obliged to do), and not in the interests of creditors as a whole, or was at least engaging in conduct which would undermine confidence in the administration of

the scheme of the BIA, when he voted to refuse the settlement. The Trustee is entitled to disregard Chapman's vote as having been disqualified by that conflict: *Intercoast Lumber; Re Preston*.

[38] In light of this conclusion, there remains a 1:1 tie in the inspectors' vote on the proposed settlement. The Trustee may exercise his prerogative under s. 117(2), therefore, to cast the deciding vote.

[39] Finally, the Trustee raised a technical issue about whether there was a quorum of inspectors if Chapman is not able to vote. This was not pursued by any other party. I take the view that inspectors disqualified by conflict are not considered in determining quorum, or, if they are, the workings of s. 117(2) and the proper administration of the scheme of the BIA require that where the trustee must cast the deciding vote, the trustee be counted in determining quorum. In any event, I do not regard quorum as a barrier to the Trustee's exercise of the power to cast the deciding vote under s. 117(2) of the BIA in this case.

[40] I make no order as to costs.

  
\_\_\_\_\_  
Penny J.

**Date:** November 3, 2021

## Appendix “E”

**Galty BV**  
**Interim statements of receipts and disbursements**  
**March 11, 2019 to April 30, 2023**

**Cash Receipts**

Cash in Bank	1,464.27
Transfer of Funds from Aird & Berlis LLP	545,697.47
Funds advanced by MNP Ltd. to estate	710.00
Interest	4,852.54
<b>Total Cash Receipts</b>	<u>\$ 552,724.28</u>

**Less:**

**Cash Disbursements**

Trustee's fees	79,281.00
OSB Filing Fee	150.00
Advance to be repaid to MNP Ltd.	710.00
HST Paid	10,370.08
Notice of bankruptcy - Newspaper	488.79
<b>Total Disbursements</b>	<u>\$ 90,999.87</u>

<b>Excess of receipts over disbursements</b>	<u>\$ 461,724.41</u>
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## Appendix “F”

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**From:** Brendan Bissell <IMCEAEX-\_O=EXCHANGELABS\_OU=EXCHANGE+20ADMINISTRATIVE+20GROUP+20+28FYDIBOHF23SPDLT+29\_CN=RECIPIENTS\_CN=5557672099884345B7FBB1EEE8F7EC02-BISSELL@CANPRD01.PROD.OUTLOOK.COM>  
**Sent:** August 3, 2022 9:07 PM  
**To:** 'Colby Linthwaite'; 'ronaldchapman@lawchambers.com'; 'Fred Tayar'; Sheldon Title  
**Subject:** RE: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Colby (and Fred): I write for two reasons:

1. Can you please advise if the forms have been sent in to the bankruptcy office?
2. The Trustee now has instructions from the estate inspectors on the request to admit further evidence on the appeal of the disallowance in this matter. The Trustee is prepared to agree that the evidence on the appeal will include (i) all materials that The Avenue Road Trust ("ART") provided to the Trustee prior to the disallowance of the claim, (ii) the bankrupt's financial statements for all years relevant to the periods at issue in the proof of claim, and (iii) the further affidavit of Mr. Seabrook sworn October 5, 2021 and delivered after the disallowance. In exchange for this agreement, ART will agree not to seek to admit any other materials and the argument will proceed before the Associate Justice sitting as Registrar in bankruptcy on this record. Please advise if that is acceptable.

Regards,  
R. Brendan Bissell

t. 416.597.6489 f. 416.597.3370 m 416.992.4979

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

a. 480 University Ave. | Suite 1600 | Toronto ON | M5G 1V2

Assistant Karen Jones | 416.597.9922 ext 101 | [jones@gsnh.com](mailto:jones@gsnh.com)

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**From:** Brendan Bissell  
**Sent:** Friday, July 22, 2022 12:15 PM  
**To:** Colby Linthwaite <colby@fredtayar.com>; ronaldchapman@lawchambers.com; Fred Tayar <fred@fredtayar.com>; sheldon.title@mnp.ca  
**Subject:** RE: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Thanks, Colby. Please send in the forms to the bankruptcy office so that we can get a case conference date set, and I will of course get back to you once the trustee has those instructions so that we can be ready to discuss all the issues before the associate justice on Aug. 4 or 11 (assuming the court still has those dates available).

Regards,  
Brendan

**R. Brendan Bissell**



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

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**From:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>

**Sent:** July 22, 2022 12:07 PM

**To:** Brendan Bissell <[bissell@gsnh.com](mailto:bissell@gsnh.com)>; [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com); Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>; [sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

**Subject:** RE: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Brendan,

Thank you for clarifying. Please let us know once you have your instructions.

Regards,

Colby Linthwaite  
Barrister and Solicitor  
Fred Tayar & Associates  
Professional Corporation  
65 Queen Street West, Suite 1200  
Toronto, ON M5H 2M5  
416.363.1800 ext. 300

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

**Sent:** Friday, July 22, 2022 12:03 PM

**To:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>; [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com); Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>; [sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

**Subject:** RE: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Hi Colby: The affidavits after the date of the disallowance would be fresh evidence on appeal, as they were not before the trustee on the consideration of the proof of claim (and despite more than a few requests from the trustee for evidence to support the claim, I should add). It is not automatic that they would be admitted on that basis, and the trustee needs to seek direction from the inspectors of the estate on that point. So whether we will need a predicate motion on that point is going to have to be determined. That said, the trustee expects to have that direction from the inspectors before we see the associate justice at a case conference, so we can deal with this aspect appropriately then as well.

Regards,  
Brendan

R. Brendan Bissell



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

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---

**From:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>

**Sent:** July 22, 2022 11:59 AM

**To:** Brendan Bissell <[bissell@gsnh.com](mailto:bissell@gsnh.com)>; [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com); Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>; [sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

**Subject:** FW: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Dear Brendan,

Fred has sent me your email for review. The affidavits from Mr. Seabrook, the admissibility of which you have revised the request form to question, are material necessary for the hearing of the appeal, and for that reason must be before the Court. Please confirm the trustee's agreement to that state of affairs.

Regards,

Colby Linthwaite  
Barrister and Solicitor  
Fred Tayar & Associates  
Professional Corporation  
65 Queen Street West, Suite 1200  
Toronto, ON M5H 2M5  
416.363.1800 ext. 300

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

**Sent:** Thursday, July 21, 2022 6:48 PM

**To:** Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>; Marie Pacheco <[marie@fredtayar.com](mailto:marie@fredtayar.com)>

**Cc:** [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com) <[ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com)>; [lisawhiting@lawchambers.com](mailto:lisawhiting@lawchambers.com)



<[lisawhiting@lawchambers.com](mailto:lisawhiting@lawchambers.com)>; Sheldon Title ([sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)) <[sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)>

**Subject:** RE: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Fred: Thanks for our call last week on this.

I believe that we agreed that, aside from the further affidavit that Ron submitted in October, 2021 and perhaps the financial statements of the bankrupt that the Trustee may want to have before the Court, there likely is not more material that needs to go in for the appeal, and that there does not appear to be any need for cross-examinations. I've therefore revised the attached forms to indicate no cross, and to show my available dates for the case conference before the associate justice (i.e. Aug. 4 and 11).

On the issue of the further affidavit, I'm unable to give you a firm position on that now. Sheldon and I are going to convene an inspectors' meeting (which will have to exclude Ron) to get direction from the inspectors on whether to consent to or oppose that in the circumstances of this proof of claim and disallowance. We should have that done before Aug. 4, though, so we will be able to deal with that intelligently before the associate justice when we get heard.

I did also put a NTD on the request forms where it notes that *viva voce* evidence is required. I'm not sure that is the case based on what you and I discussed, but if I'm missing something please let me know?

If the forms are satisfactory to you then please feel free to send them in so that we can get in the queue on the associate justice's list for a special appointment sooner than later.

Regards,  
Brendan

---

**From:** Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>

**Sent:** Thursday, July 14, 2022 8:58 AM

**To:** Brendan Bissell <[bissell@gsnh.com](mailto:bissell@gsnh.com)>; Marie Pacheco <[marie@fredtayar.com](mailto:marie@fredtayar.com)>

**Cc:** [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com); [lisawhiting@lawchambers.com](mailto:lisawhiting@lawchambers.com); Sheldon Title ([sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)) <[sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)>

**Subject:** RE: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Brendan,

the court needs both forms filled out and submitted at the same time today. So let me know what the issues are.

Fred Tayar  
Fred Tayar & Associates  
Professional Corporation  
65 Queen St. West  
Suite 1200  
Toronto, Ontario  
M5H 2M5

tel: (416)363-1800 x200

fax: (416)363-3356

[fred@fredtayar.com](mailto:fred@fredtayar.com)

---

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

**Sent:** July 13, 2022 8:29 PM

**To:** Marie Pacheco <[marie@fredtayar.com](mailto:marie@fredtayar.com)>

**Cc:** [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com); [lisawhiting@lawchambers.com](mailto:lisawhiting@lawchambers.com); Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>; Sheldon Title ([sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)) <[sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)>

**Subject:** RE: In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Fred (and Marie): Thank you for this. Of the dates suggested, I can presently make August 4 or 11 work. Could we seek to book one of those, please, for the initial case conference before the associate justice?

We should, however, discuss the special appointment request form. There are some things that have been provisionally indicated on that, which I would like to discuss with Fred. If need be, we can of course address any points of departure with the Court, but better to have attempted to narrow or resolve issues as between counsel before we get there.

Regards,  
Brendan

R. Brendan Bissell



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

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

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---

**From:** Marie Pacheco <[marie@fredtayar.com](mailto:marie@fredtayar.com)>

**Sent:** July 13, 2022 2:31 PM

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

**Cc:** [ronaldchapman@lawchambers.com](mailto:ronaldchapman@lawchambers.com); [lisawhiting@lawchambers.com](mailto:lisawhiting@lawchambers.com); Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>

**Subject:** In the matter of the Bankruptcy of Galty B.V. | Our File No. 22-3154

Please see attached.

Regards.

Marie Pacheco

Law Clerk

[marie@fredtayar.com](mailto:marie@fredtayar.com)

Fred Tayar & Associates  
Professional Corporation  
Suite 1200 – 65 Queen St. W  
Toronto, ON M5H 2M5  
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fax: (416) 363-3356

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## Appendix "G"

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**From:** Brendan Bissell <bissell@gsnh.com>  
**Sent:** September 19, 2022 5:43 PM  
**To:** Sheldon Title  
**Subject:** FW:

**CAUTION:** This email originated from outside of the MNP network. Be cautious of any embedded links and/or attachments.  
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Sheldon: My email to Colby on what we just discussed, FYI.

Regards,  
Brendan

**R. Brendan Bissell**



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---

**From:** Brendan Bissell  
**Sent:** September 19, 2022 5:42 PM  
**To:** Colby Linthwaite <colby@fredtayar.com>  
**Subject:** RE:

Colby: Our emails below discussed a possible further affidavit from Mr. Seabrook that you would also want to be part of the record on the appeal from the disallowance in addition to what we set out below. I don't yet have instructions to agree to any such further affidavit, and that is in part because I confess I'm not following why/how the affidavit noted (Oct. 21, 2021) has anything to do with the ART proof of claim and its disallowance.

In addition to that, though, you and I also discussed in our call that you were not comfortable with the precise terms on which I indicated that the Trustee was prepared to resolve the issue of further evidence in the appeal record beyond what was submitted to the Trustee prior to the disallowance. Those terms were set out in my email of Aug.8 and were:

The Trustee is prepared to agree that the evidence on the appeal will include (i) all materials that The Avenue Road Trust ("ART") provided to the Trustee prior to the disallowance of the claim, (ii) the bankrupt's financial statements for all years relevant to the periods at issue in the proof of claim, and (iii) the further affidavit of Mr. Seabrook sworn October 5, 2021 and delivered after the disallowance. In exchange for this agreement, ART will agree not to seek to admit any other materials and the argument will proceed before the Associate Justice sitting as Registrar in bankruptcy on this record.

The problem you outlined with that is that it would foreclose further materials and you instead preferred that further materials could go in by either agreement or by further order.

I have reviewed that suggestion and discussed it with the Trustee and it is unfortunately not acceptable. The directions from the estate inspectors were rather clear, and moreover the entire point of the terms suggested was to “nail down” the appeal record with finality. The history of this matter is replete with many requests from ART for supporting documentation and several deadlines to do so (along with several extensions of those deadlines). There is a real issue with the suggestions that for a matter that has been in litigation since 2015 that there is any evidence left to find or that a failure to find that evidence would not be due to a lack of diligence.

I understand the normal desire of counsel to leave “wobble room” on something like this, but in this case I suggest it is unwarranted and in any event it is unacceptable to the Trustee.

If what I set out is agreeable then we can advise Ilchencko AJ. that there is no need to argue a fresh evidence motion. If what I set out is not agreeable then I think we need to tell His Honour the contrary and then we should schedule that motion in tomorrow’s case conference.

Regards,  
Brendan

**R. Brendan Bissell**



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

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---

**From:** Brendan Bissell  
**Sent:** September 19, 2022 4:15 PM  
**To:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>  
**Subject:** RE:

Thanks for the reply, Colby. I think that the Oct. 21, 2021 affidavit is attached (or, more to the point, I don’t think there were any other Oct. 21, 2021 affidavits from Mr. Seabrook).

If so, then I am confused, as I alluded to in our call, because this is one of the affidavits from that time that really seems to solely deal with issues about the amounts owing to Galty NV (the parent company of the bankrupt), which ART and Ron Chapman were disputing as part of their opposition to the proposed settlement with Galty NV on the estate’s possible claim against it.

Am I missing something here?

Regards,  
Brendan

**R. Brendan Bissell**



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**From:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>  
**Sent:** September 19, 2022 4:08 PM  
**To:** Brendan Bissell <[bissell@gsnh.com](mailto:bissell@gsnh.com)>  
**Subject:** RE:

I believe it was the 21<sup>st</sup>, rather than the 19<sup>th</sup>.

Colby Linthwaite  
Barrister and Solicitor  
Fred Tayar & Associates  
Professional Corporation  
65 Queen Street West, Suite 1200  
Toronto, ON M5H 2M5  
416.363.1800 ext. 300

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---

**From:** Brendan Bissell <[bissell@gsnh.com](mailto:bissell@gsnh.com)>  
**Sent:** Monday, September 19, 2022 3:47 PM  
**To:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>  
**Subject:** RE:

Colby: You mentioned another affidavit from Victor Seabrook in October of last year that you thought should (or might) be added to what would be considered the record on the appeal from disallowance.

I believe there were several affidavits filed (mostly in connection with the motion that month to approve the settlement between the bankrupt estate and Galty NV, being the parent company of the bankrupt). Was the one you were referring to the October 19, 2021 affidavit? If not, please let me know which one so I can consider that.

Thanks, and regards,  
Brendan

**R. Brendan Bissell**



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---

**From:** Brendan Bissell  
**Sent:** September 19, 2022 2:03 PM  
**To:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>  
**Subject:** RE:

Colby: Are we still speaking today?

**R. Brendan Bissell**



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---

**From:** Brendan Bissell  
**Sent:** September 19, 2022 10:27 AM  
**To:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>  
**Subject:** RE:

Sure, Colby. I'll be on my mobile then.

**R. Brendan Bissell**



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**From:** Colby Linthwaite <[colby@fredtayar.com](mailto:colby@fredtayar.com)>

**Sent:** September 19, 2022 10:26 AM

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

**Subject:**

Brendan,

Are you available to chat today around 2pm?

Regards,

Colby Linthwaite  
Barrister and Solicitor  
Fred Tayar & Associates  
Professional Corporation  
65 Queen Street West, Suite 1200  
Toronto, ON M5H 2M5  
416.363.1800 ext. 300

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## Appendix “H”

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE BANKRUPTCY COURT**  
**SPECIAL APPOINTMENT SCHEDULING FORM**

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

DATE MOTION FILED: \_\_\_\_\_

**PLEASE NOTE: THIS FORM MUST BE COMPLETED AND RETURNED TO THE**  
**BANKRUPTCY COURT OFFICE PRIOR TO A SPECIAL APPOINTMENT BEING SCHEDULED.**

The purpose of this form is to provide the Registrars in Bankruptcy with information to Assess the readiness of the case for hearing, estimate the probable length of the hearing, and to establish a fixed hearing date.

The Moving Party is expected to attempt to consult with all concerned parties and to seek their assistance with the information to be provided.

Please provide a Brief factual overview and nature of relief sought: Appeal from a disallowance of claim by the Trustee

Party	Name	Telephone	Fax No.	email
Trustee	Sheldon Title, MNP LTD.	416-263-6945	416-323-5240	<a href="mailto:Sheldon.title@mnp.ca">Sheldon.title@mnp.ca</a>
Lawyer for Trustee	Brendan Bissell (LSO No. 40354V)	416-597-6489		<a href="mailto:bissell@gsnh.com">bissell@gsnh.com</a>
Bankrupt				
Lawyer for Bankrupt				
OSB				
Lawyer for OSB				
Other (Specify) Creditor	Ronald Chapman (LSO No. 12820G) Fred Tayar (LSO No. 23909N) Colby Linthwaite (LSO No.49599K)	416-601-1945  416-363-1800 Ext.200  Ext. 300	416-601-9984  416-363-3356	<a href="mailto:ronaldchapman@lawchambers.com">ronaldchapman@lawchambers.com</a>  <a href="mailto:fred@fredtayar.com">fred@fredtayar.com</a>  <a href="mailto:colby@fredtayar.com">colby@fredtayar.com</a>

1. Parties' current **best estimate in minutes for complete hearing of matter** 1/2 day
2. **Percentage estimate of resolution by parties prior to hearing** unknown
3. Case type:
  - Bankrupt's discharge application [ ]
  - Motion [ ]
  - Specify relief sought/type of motion: \_\_\_\_\_
  - Taxation of Statement of Receipts and Disbursements [ ]
  - Taxation of Legal Bill(s) [ ]
  - Trustee's Discharge Application [ ]
  - Other: Appeal of Trustee's disallowance claim [✓]
4. Is any party self represented? YES **NO**
5. Is a translator required? YES **NO** Language \_\_\_\_\_
6. Is oral testimony of any nature required? YES NO **[to be determined]**
7. If the long hearing relates to a motion:
  - Have all motion materials been prepared? YES **NO**
  - If not, when will the materials be served? **[to be determined]**
  - Are cross examinations expected? YES **NO**
  - Have all undertakings and/or refusals been answered? YES **NO**
  - By what date will examinations be completed? \_\_\_\_\_ N/A

Are any interlocutory motions required? **[to be determined; possible re: fresh evidence]**  
 If so, have they been booked? YES NO  
 Please specify date: \_\_\_\_\_  
 Will factums be required? **YES** NO  
 If so, have they been exchanged? YES **NO**  
 If not, please specify date of anticipated exchange: \_\_\_\_\_

8. Are any pre-hearing examinations required? YES **NO**  
 If so, please specify the date agreed upon and booked: \_\_\_\_\_  
 Are transcripts available? YES **NO**  
 If not, please specify when transcripts will be available: \_\_\_\_\_ N/A

9. If Oral Examinations before the Registrar are anticipated please complete the following table:

Witness name	Party calling witness	Length of direct examination	Length of cross examination	Length of re-direct	Total length

**I HEREBY CERTIFY THAT ON BEHALF OF THE MOVING PARTY I HAVE ACCURATELY ANSWERED ALL OF THE QUESTIONS AND THAT I HAVE CONSULTED WITH ALL OTHER LAWYERS/PARTIES FOR THE PURPOSE OF COMPLETING THIS FORM.**

Date: August 11, 2022



Signature: Colby Linthwaite  
 Print Name:

**FOR COURT USE ONLY:**

**ENDORSEMENT:**

\_\_\_\_\_  
 \_\_\_\_\_  
 See attached endorsement  
 \_\_\_\_\_  
 \_\_\_\_\_

Date: September 20, 2022



Registrar

**ASSOCIATE JUSTICE ILCHENKO**

September 20, 2022

R.B Bissell for Trustee

C. Linthwaite and R. Chapman for Appealing Creditor The Avenue Road Trust

Counsel for the Trustee and the Creditor appealing the Trustee's disallowance will caucus and advise whether there will be any preliminary evidentiary or other issues before the disallowance appeal is heard and set the schedule for exchange of Materials, if needed, at a further 9:30 Appointment before me on my October 25th In writing Motion day.

I would ask that the Bankruptcy Office set up a Zoom Courtroom for me at 9:30 on October 25th.

Counsel have penciled in January 19, February 16 and February 23rd as possible hearing dates for 3/4 of a day, to be set at the October 25th Case Conference, and hopefully a determination before which Registrar.

Counsel do not need to have a timetable established today.



ASSOCIATE JUSTICE ILCHENKO

October 25, 2022

R.B. Bissell for Trustee

C. Linthwaite for Appealing Creditor The Avenue Road Trust

Counsel have agreed to forgo preliminary evidentiary motions and will both be filing fresh evidence.

Hearing date to be on February 16, 2023 for a full day.

Counsel have been working cooperatively and do not require a timetable.

If issues arise between now and the hearing date they may schedule a case conference before me through the Bankruptcy Court Office.



ASSOCIATE JUSTICE ILCHENKO

February 6th, 2023

R.B. Bissell for Trustee

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C. Linthwaite and R. Chapman for Appealing Creditor The Avenue Road Trust

As a result of possible evidentiary issues raised by the Trustee regarding the recently discovered further evidence in the dwelling of the late Mr. Seabrook, and the Trustee and the Inspectors of the Estate needing time to determine whether the Appellant will be required to bring a Motion to introduce that Evidence at the hearing, the Special Appointment of the Appeal from the Trustee's Disallowance of the Appellant's Claim scheduled to be heard on Thursday, February 16th, 2023 for a full day is adjourned sine die, pending this determination and, if necessary, the scheduling of an evidentiary motion.

The Parties have agreed to attend at a 9:30 Case Conference before me on February 28th, 2023 on my In-Writing Bankruptcy Discharge day, to advise as to what fork, down what road, this matter will proceed. I would ask the Bankruptcy Court Office to set that Zoom Case Conference up.



ASSOCIATE JUSTICE ILCHENKO

February 27, 2023

February 28 Case Conference adjourned to a Case Conference on March 28, 2023 at 9:30 to allow the parties to continue to consider the above-noted procedural issues.



ASSOCIATE JUSTICE ILCHENKO

March 28, 2023

R.B. Bissell for Trustee  
S. Title, LIT for Trustee  
C. Linthwaite for Appealing Creditor The Avenue Road Trust  
M. Ward, Inspector, observing

Having considered the new documentation, the Trustee has taken the position that the Appealing Creditor requires an Order to introduce the documentation as fresh evidence on the Appeal from Disallowance.

Counsel to exchange materials and bring the motion on my Zoom Motions list for under 1hr that I will schedule for my Zoom Motions day that will occur at the end of May, as I not anticipate that this motion will require more than an hour. The hearing date will be confirmed when the May schedule is released.



ASSOCIATE JUSTICE ILCHENKO

G24

## Appendix "I"

Date	Their Page #	Bates Docus Produced by Galty & Heinrichs	Bates Docus Produced by ART	Bates Docus Produced by Pantrust / La Hougue	Document # of pages	Notes	Year First Produced	# of Times Produced	Galty Source	ART Source	Pantrust / La Hougue Source
	1				1	cover page for year 1980					
31-Dec-80	2-5	TAB16 1761 - 1769			4	indenture re Vace and Galty BV	2016 March	1	Galty Discovery Docs Affidavit of AMH 17 March 2016		
	6				1	cover page for year 1982					
21-Apr-82	7-9	TAB16 1761 - 1769			3	lot transfer from Vace to Galty BV			Galty Discovery Docs Affidavit of AMH 17 March 2016		
	10					cover page for year 1992					
19-Nov-93	11-12	HEI_0102116			2	fax re Murray & Company letter re insurance for Heinrichs from 1992	2021 February	1	Galty Discovery Docs Released Feb 2021		
19-Nov-93	13	HEI_0102118			1	Murray & Company insurance info	2021 February	1	Galty Discovery Docs Released Feb 2021		
19-Nov-93	14-15	HEI_0102119			2	part of the same above fax, re insurance renewal			Galty Discovery Docs Released Feb 2021		
	16				1	cover page for year 1993					
28-Oct-93	17	HEI_0101934			1	memorandum re loan for 0104 using 88 Elm Ave as security	2021 February	1	Galty Discovery Docs Released Feb 2021		
29-Oct-93	18-19	HEI_0101983			2	memorandum re Galty BV	2021 February	1	Galty Discovery Docs Released Feb 2021		
10-Nov-93	20	HEI_0102071			1	letter re Galty BV loan of £472 790	2021 February	1	Galty Discovery Docs Released Feb 2021		
01-Nov-93	21-22	HEI_0102030, 1790 - 1791	65-66 S0720	F120-F121	2	promissory note re £472 790	2016 March	5	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit	Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust/La Hougue AOD July 2020
01-Nov-93	23-30	HEI_0102017, 1794 - 1801	55-62 S0720	G123 - G130	8	*signatures vary - payment guaranty	2016 March	8	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit and Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021 and included in Motion Record from ART 9 Jan, 2018 and also included in Avenue Road Trust AOD July 2020 and Affidavit VM Seabrook Sept 2017	Pantrust/La Hougue AOD July 2020

01-Nov-93	31-39	HEI_0102017, 1794 - 1801, 1812		LAH011012 - LAH011019	8	*payment guaranty	2016 March	8	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit and Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021 and included in Motion Record from ART 9 Jan, 2018 and also included in Avenue Road Trust AOD July 2020 and Affidavit VM Seabrook Sept 2017	Pantrust/La Hougue AOD July 2020
01-Nov-93	40-45	HEI_0102222, 1802 - 1803, 1816-1817	E117-E118	LH011054 - LH011055	6	1993 Consent resolution documents	2016 March	8	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit and Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021 and included in Motion Record from ART 9 Jan, 2018 and also included in Avenue Road Trust AOD July 2020 and Affidavit VM Seabrook Sept 2017	Pantrust/La Hougue AOD July 2020
19-Nov-93	46-54	HEI_0102107	0720 - 171	LH011007	9	memorandum re Galty BV including realty taxes attachment	2016 March	4	Galty Discovery Docs Affidavit of AMH 17 March 2016	Included in Avenue Road Trust AOD July 2020 and in Affidavit of VM Seabrook May 2016	Pantrust/La Hougue AOD July 2020
26-Nov-93	55-56				2	Fax from Dec re Nov letter from Keard re insurance for Heinrichs - this is not relevant			not relevant		
01-Dec-93	57				1	Alison Knowles invoice - this is not relevant			not relevant		
15-Dec-93	58-59		0720-05	LH011161	2	letter re transfer & consent re Galty BV - Keard Insurance	2016 May	3		Included in Avenue Road Trust AOD July 2020 and in Affidavit of VM Seabrook May 2016	Pantrust/La Hougue AOD July 2020
15-Dec-93	60	HEI_0102032, 1788	0720-05	LH011161	1	letter re Galty BV loan of £472 790	2016 March	7	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit and Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021 and included in Affidavit of VM Seabrook May 2016 and in Avenue Road Trust AOD July 2020	Pantrust/La Hougue AOD July 2020
15-Dec-93	61	HEI_0102034, 1789		LH011162	1	letter re Galty BV loan of £472 790	2016 March	5	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit	Included in Avenue Road Trust AOD July 2020 and in Affidavit of VM Seabrook May 2016	Pantrust/La Hougue AOD July 2020
15-Dec-93	62	HEI_0102027			1	invoice fee to Galty BV from Seabrook	2021 February	1	Galty Discovery Docs Released Feb 2021		
16-Dec-93	63-65				3	Bauman McKay insurance fax to Seabrook - not relevant			not relevant		
	66					cover page for year 1994					
28-Oct-94	67	HEI_0103261			1	*this is the cover page to HEI_0103261 / page 68	2021 February	1	Galty Discovery Docs Released Feb 2021		
28-Oct-94	68	HEI_0103261			1	memorandum re Galty BV loan of £472 790	2021 February	1	Galty Discovery Docs Released Feb 2021		



01-Nov-94	69-70				2	GALTY BV consent resolution - 1994	2017 October	1	Cross Motion Record Galty BV Oct 17, 2017		
04-Nov-94	71				1	Fax cover sheet referring to a different client but likely connected to HEI_0103316 as well			Galty Discovery Docs Released Feb 2021		
04-Nov-94	72	HEI_0103316			1	memorandum re loan arrangement with C0085	2021 February	1	Galty Discovery Docs Released Feb 2021		
	73				1	*we have not seen this before, handwritten note re a fee for VMS plus a list of tasks relevant for another client (Mike - who is likely Michael Duffell who is the beneficiary of The Ontario Trust see fax cover on pg 71)					
15-Nov-94	74	HEI_0103334			1	memorandum re Galty BV loan of £472 790	2021 February	1	Galty Discovery Docs Released Feb 2021		
28-Nov-94	75	HEI_0103348			1	memorandum re Galty BV loan of £472 790	2021 February	1	Galty Discovery Docs Released Feb 2021		
30-Nov-94	76				1	*we have not seen this before, it's the coversheet for the request for a consent resolution in 1994			we do have the consent resolution itself so this fax cover does not add any new information that everyone already acknowledges to be in existence		
30-Nov-94	77-79				3	memorandum re attached charge/mortgage for Galty BV, from VMS to Alison Knowles					
08-Dec-94	80	HEI_0103373/T AB42 1862-1817			2	*pages 2 and 3 of this fax were produced for in Tab42 1862-1817	2016 March	1	Galty Discovery Docs and Affidavit of AMH 17 March 2016		
08-Dec-94	81	HEI_0103361	0720 - 172	LH001603	1	invoice fee to Galty BV from Seabrook	2016 May	4	Galty Discovery Docs Released Feb 2021	Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
14-Dec-94	82	HEI_0103368			1	The second page of this fax is HEI_0103368	2021 February	1	Galty Discovery Docs Released Feb 2021		
14-Dec-94	83	HEI_0103369			1	memorandum re 88 Elm Avenue	2021 February	1	Galty Discovery Docs Released Feb 2021		
15-Dec-94	84-86	HEI_0103370, 1807 - 1809		LH011023 - LH011025	3	letter re Galty BV loan of £472 790	2016 March	4	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit	Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020

28-Dec-94	87		0720-09	LH001598	1	memorandum re Galty BV loan of £472 790	2016 May	3		Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
	88				1	cover page for year 1995					
30-Jan-95	89				1	Alison Knowles invoice			This document is not relevant for the case		
	90				1	cover page for year 1996					
22-Jul-96	91	HEI_0104360	0720-175	LH010831	1	memorandum re loan review for C0104	2016 May	4	Galty Discovery Docs Released Feb 2021	Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
	92				1	cover page for year 1999					
27-Sep-99	93	HEI_0106633, 1821			1	memorandum re 88 Elm Avenue	2016 March	2	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit		
27-Sep-99	94	HEI_0106635			1	memorandum re Galty BV loan of £472 790	2021 February	1	Galty Discovery Docs Released Feb 2021		
28-Sep-99	95	HEI_0106636			1	memorandum re Galty BV loan of £472 790	2021 February	1	Galty Discovery Docs Released Feb 2021		
28-Sep-99	96	HEI_0106638			1	memorandum re Galty BV loan of £472 790	2021 February	1	Galty Discovery Docs Released Feb 2021		
28-Sep-99	97	HEI_0106637, 1823			1	memorandum re Galty BV loan of £472 790	2016 March	2	Galty Discovery Docs Released Feb 2021 and AMH March 2016 Affidavit		
29-Sep-99	98	HEI_0106640, 1824			1	It is the cover page to page 99 which we have in our discoveries	2016 March	2	Galty Discovery Docs Released Feb 2021 and also produced as 1824 in the AMH 17 March 2016 AOD		
29-Sep-99	99	HEI_0106640, 1824			1	memorandum re Galty BV loan of £472 790	2016 March	2	Galty Discovery Docs Released Feb 2021 and also produced as 1824 in the AMH 17 March 2016 AOD		
30-Sep-99	100-103	HEI_0106641			4	*this was attached to the memorandum of 30 September 1999 from Eric Le R. to V Seabrook - we see this Colin Stewart commentary was not disclosed in our disclosures at the time	2016 March	1	Galty Discovery Docs Affidavit of AMH 17 March 2016		

30-Sep-99	104-105	HEI_0106641			2	memorandum re client loan	2021 February	1	Galty Discovery Docs Released Feb 2021		
28-Sep-99	106-109				4	Collins Stewart bond commentary			This is a generic document that is not a relevant document for the case		
	110				1	cover page for year 2001					
01-Nov-01	111-116	HEI_0107983	83 - 85 S0720 0720-84 H132 - H134 T195 - T197	LH009887 - LH009891	6	*we have the promissory note with a different signature, their version also includes an empty copy with no signature, all of these mortgage documents were also released by La Hougue in their July 2020 exhibits, it was also released by ART in July 2020 as 83-85	2017 October	8	Galty Discovery Docs Affidavit of AMH 17 March 2016 and Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021 and included in Motion Record from ART 9 Jan, 2018 and in Avenue Road Trust AOD 2020 and Affidavit of VM Seabrook may 2016 and Affidavit of VM Seabrook Sept 2017	Pantrust / La Hougue AOD July 2020
02-Jan-91	117-120	HEI_0102013			4	land registration reform act	2016 March	1	Affidavit of AMH 17 March 2016		
01-Nov-01	121-127	HEI_0107976	76-82 - S0720 I136 - I142 U199 - U205	LH009892 - LH009898	7	payment guaranty - Vern Heinrichs	2016 May	5	Galty Discovery Docs Released Feb 2021	Included in Affidavit of VM Seabrook Oct 5 2021 and included Avenue Road Trust AOD July 2020 and in Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
01-Nov-01	128-129	HEI_0107986	0720-85	LH009890	2	*this one has no signatures - Galty BV Consent Resolutions	2016 May	5	Galty Discovery Docs Released Feb 2021	Included in Affidavit of VM Seabrook Oct 5 2021 and Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
19-Nov-01	130			LH009875 / LH009867	1	Fax from VMS to WW re 472 000 pound loan as well as the \$CAD 750 000 future loan	2018 March	1			Responding Motion Record from La Hougue / Pantrust - Responding to Galty BV Cross Motion for Summary Judgement March 1, 2018
27-Nov-01	131				1	*appears to be tied to page 130 from Seabrook's additional docs, cover page to the fax					
28-Nov-01	132-138				7	*we have not seen this before - memorandum between Alison Knowles and VM Seabrook			While we have not seen this before it is not a relevant document for the case		
04-Dec-01	139	HEI_0107986			1	fax cover sheet for the consent resolutions	2016 March	1	Galty Discovery Docs Affidavit of AMH 17 March 2016		
01-Nov-01	140-141	HEI_0107986			2	consent resolution	2017 October	3	Galty Discovery Docs Released Feb 2021 and Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021	

10-Dec-01	142-144		0720-87	LH017849 - LH017851	3	letter re Galty BV loan of £1 006 123	2016 May	2		Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
24-Dec-01	145		0720-178	LH009899, LH017864	1	letter re Galty BV loan of £1 006 123	2016 May	3		Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
	146		0720-178	LH009900, LH017865	1	*final version of the mortgage discharge	2017 October	5	Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021 and Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
	147-158	R187	86 S0720	LH001600, LH001599	12	2001 Mortgage Docs	2017 October	5	Cross Motion Record Galty BV Oct 17, 2017	Included in Affidavit of VM Seabrook Oct 5 2021 and Avenue Road Trust AOD July 2020 and Affidavit of VM Seabrook May 2016	Pantrust / La Hougue AOD July 2020
	157		1792			Charge / Mortgage of land with principal amount of 472 790 pounds	Jul-05	1		AMH March 2016 Affidavit	
	158		1793			Schedule to the aforementioned Charge / Mortgage of land	2016	1		AMH March 2016 Affidavit	
	159					cover page of year 2002					
14-Jan-02	160	HEL_0108139			1	memorandum re Galty BV loan of £1 006 123 CAD	2021 February	1		Galty Discovery Docs Released Feb 2021	
15-Jan-02	161	HEL_0108141			1	letter re \$1 0006 123 CAD loan	2021 February	1		Galty Discovery Docs Released Feb 2021	