

Court File No./Estate No.: BK-22-00208582-OT-31

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

IN THE MATTER OF THE BANKRUPTCY OF
AIDEN PLETESKI AND AP PRIVATE EQUITY LIMITED
OF THE TOWN OF WHITBY,
IN THE PROVINCE OF ONTARIO

FIFTH REPORT OF THE TRUSTEE

OCTOBER 18, 2023

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AIDEN PLETERSKI AND AP PRIVATE EQUITY LIMITED
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FIFTH REPORT OF THE TRUSTEE

INTRODUCTION

1. On August 9, 2022, the Ontario Superior Court of Justice (the “**Court**”) ordered that Aiden Pleterski (“**Pleterski**”) and AP Private Equity Limited (collectively, the “**Bankrupts**”) be adjudged bankrupt (the “**Bankruptcy Orders**”). The Bankruptcy Orders were made following a petition filed by several creditors of the Bankrupts. Grant Thornton Limited was appointed as the trustee in bankruptcy (the “**Trustee**”) of both Bankrupts.
2. The purpose of this fifth report (the “**Fifth Report**”) is to provide a comprehensive update to creditors on the administration of the bankruptcies. Since no specific relief is being sought from the Court, the Trustee will not be filing this Fifth Report with the Court at this time. Topics addressed in the Fifth Report include:
 - a) Summaries of the major asset recoveries since the issuance of the Third Report (defined below);
 - b) Summaries of the unresolved litigation matters; and,
 - c) Commentary with respect to next steps in the proceeding, including the future discharge hearing for the Bankrupts.

SCOPE AND TERMS OF REFERENCE

3. Certain information contained in this Fifth Report has been obtained from the records of the Bankrupts, publicly available information, and/or information from the banks and other parties from whom information has been obtained. The information has not been audited by the Trustee as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally acceptable accounting principles and the reader is, therefore, cautioned that this Fifth Report may not disclose all significant matters about the Bankrupts.
4. This Fifth Report has been prepared as general information relating to the Bankrupts. Accordingly, the reader is cautioned that this Fifth Report may not be appropriate for any other purpose. The Trustee assumes no responsibility or liability for any loss or damage occasioned by any party because of the circulation, publication, reproduction or use of this Fifth Report. Any use that a party makes of this Fifth Report, or any reliance on or decisions to be made based on it, is the responsibility of such party.
5. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

BACKGROUND

6. On April 21, 2022, Sacha Amar Dario Singh and 9319697 Canada Ltd. (the “**Mareva Plaintiffs**”) commenced an action against the Bankrupts (the “**Mareva Proceedings**”) claiming relief based on breach of contract, fraudulent misrepresentation, civil fraud, misappropriation of funds, conversion, and unjust enrichment. The Mareva Plaintiffs successfully obtained an *ex parte* worldwide *Mareva* injunction pursuant to the Order of Justice Sutherland dated July 7, 2022. As set out in the related endorsement, the Court was satisfied that there was a strong *prima facie* case that Pleterski committed a breach of contract and civil fraud.
7. The Trustee’s first report and the supplement thereto were prepared on September 9, 2022 and September 26, 2022, respectively, and dealt with Pleterski’s poor conduct and failure to attend to his duties as a bankrupt. The Trustee’s second report dated October 21, 2022 provided a substantive update to the Court on the bankruptcy proceedings. On October 28, 2022, the Court granted an Order which, among other things, consolidated

the estates of the Bankrupts and ordered certain third parties to strictly cooperate and comply with the Trustee's requests, including with respect to the transfer of certain property to the Trustee.

8. The third report of the Trustee dated March 14, 2023 (the "**Third Report**"), provided a comprehensive update to creditors and the Court including a summary of the Trustee's banking analysis including the receipts and disbursements of the Bankrupts as set out in the bank statements of the Bankrupts from Scotiabank, Royal Bank of Canada, TD Bank and the Bank of Montreal (the "**Banking Analysis**"). Attached as **Appendix "A"** is a copy of the Third Report (without exhibits). As detailed in the Banking Analysis, of the \$41.5 million of net amounts received by Pleterski, only 1.6% appears to have ever been invested by the Bankrupts.
9. The Trustee's Fourth Report, dated May 19, 2023 (the "**Fourth Report**") and Fourth Report Supplement, dated June 8, 2023 (the "**Fourth Report Supplement**"), sought the repayment of \$465,982 by Mitchell Learning ("**Learning**") together with an amount for costs. Learning and the Trustee ultimately agreed to a settlement described later in this Fifth Report.

ASSET RECOVERY

10. Most of the vehicles, cash, and personal assets of the Bankrupts were monetized prior to the issuance of the Third Report and, therefore, commented on therein. Since the Third Report (the last report in which the Trustee disclosed asset recovery), the Trustee's asset recovery efforts have focused on parties who appeared to have been unfairly enriched by their dealings with the Bankrupts. Set out below is a status update on each of these parties or issues.

Pleterski Parents

11. As noted in the Third Report, Pleterski's parents, Dragan and Kathy Pleterski (the "**Pleterski Parents**") agreed to settle the Trustee's claims against them pursuant to minutes of settlement (the "**Pleterski Parents Minutes of Settlement**"). The terms of the Pleterski Parents Minutes of Settlement were described in the Third Report and approved by the Court pursuant to the Order of Justice Osborne dated March 31, 2023. All of the

payments owing pursuant to the Pleterski Parents Minutes of Settlement have been made by the Pleterski Parents and the two vehicles referenced in the settlement have been provided to and sold by the Trustee. The estate collected over \$900,000 from the Pleterski Parents in accordance with the Pleterski Parents Minutes of Settlement and the Trustee considers the financial terms of settlement to have been met. The settlement included a limited release as described in the Third Report.

Storage Locker

12. The Pleterski Parents disclosed to the Trustee the existence of a storage locker in Ajax which contained personal effects of Pleterski and had not been previously disclosed by Pleterski. On April 17, 2023, a representative from the Trustee's office met Pleterski and Dragan Pleterski at the storage locker to review the contents which included watches, paintings and personal effects of modest value. At a subsequent visit, a liquidator hired by the Trustee removed any contents of value and sold them at a public auction. The majority of the value of Pleterski's assets was in the cars he owned, but the Trustee did realize approximately \$67,000 in the sale of his miscellaneous assets.

Mitchell Learning

13. Learning was a friend of Pleterski who had introduced a significant number of investors to Pleterski. The Banking Analysis in the Third Report noted that Learning had received over \$1 million from the Bankrupts. However, upon receipt of further information by Learning, the Trustee was able to determine that the actual financial benefit to Learning was much smaller. As noted in the Fourth Report, Learning appeared to have actually profited by \$105,982 in addition to the return of his investment of \$400,000 which equated to \$360,000 more than other investors, who to date, have received dividends of approximately 10%. As a result, as set out in the Fourth Report, the Trustee sought an order requiring Learning repay \$465,982 to the estate of the Bankrupts together with an amount for costs.
14. The Trustee and Learning reached a settlement in which Learning agreed to pay \$250,000 to the estate in exchange for a limited release. Both the Trustee and the estate inspectors were of the view that the settlement was in the best interests of the estate as gave certainty to the repayment and avoided the costs associated with the litigation. Learning has made

all of the payments pursuant to the settlement and the Trustee considers Learning to have completed his financial obligations to the estates pursuant to the settlement agreement.

Tulloch Family

15. As noted in the Third Report, Jerome Tulloch, Kyrsten Tytla and Jocelyn Tytla (collectively the “**Tulloch Family**”) were investors who appeared to have received over \$1 million from the Bankrupts. As a result of their lack of cooperation, the Trustee sought and obtained an Order compelling their attendance at examinations requiring them to answer the Trustee’s questions. The Tulloch Family ultimately attended the examinations and provided evidence of a significant number of payments they had made to Pleterski. These payments were not readily apparent from Pleterski’s bank statements which often showed bulk deposits without corresponding details indicating the source of the deposits. Based on the records provided by the Tulloch Family, the Trustee determined that the actual amount that they benefitted was \$346,157.01 (\$596,157.01 if cash payments were not included).
16. During their examinations, members of the Tulloch family advised the Trustee that they had believed Pleterski’s representations to them that they had made a substantial profit on their original investment. When asked why they were repaid when others had not been, they explained that they were early investors who were diligent in collecting from Pleterski.
17. The Tulloch Family provided the Trustee with disclosure demonstrating that they did not have the financial means to repay the \$346,157.01 they had profited. With approval from the estate inspectors, the Tulloch Family entered into a settlement agreement whereby they were required to repay a total of \$125,000 to the estate by March 31, 2024. The first installment of \$100,000 was paid on August 28, 2023. Provided the Tulloch Family makes their remaining payments and otherwise abides by the terms of the settlement agreement, they will have the benefit of a limited release. The Trustee and the estate inspectors believe that this is a fair outcome for the estate which avoids the potential for protracted and expensive litigation.

Winston Blenman

18. As noted in the Third Report, Winston Blenman (“**Blenman**”) was an investor who appeared to have received over \$1 million from the Bankrupts. As a result of his lack of

cooperation, the Trustee sought and obtained an Order compelling his attendance at an examination requiring that he answer the Trustee's questions.

19. During Blenman's examination, he provided evidence that he had paid significant funds to Pleterski and to others on behalf of Pleterski. The Trustee determined that the financial benefit to Blenman was minimal and that it was not cost effective to pursue litigation to recover any funds from Blenman.

Colin Murphy

20. As noted in the Third Report, Colin Murphy ("**Murphy**") was an investor and originator who appears to have received over \$1.3 million from the Bankrupts. On July 12, 2023, Murphy filed a consumer proposal under the *Bankruptcy and Insolvency Act*. The Trustee filed a proof of claim on behalf of the estate of the Bankrupts in Murphy's proposal proceedings for \$900,000 (\$1.3 million paid to Murphy less \$400,000 Murphy demonstrated as paid to Pleterski). According to Murphy's statement of affairs, he has approximately \$100,000 of realizable assets but these assets may be encumbered. The Trustee expects some recovery from Murphy.

UNRESOLVED LITIGATION MATTERS

21. Below is a summary of the litigation assets of the estate which remain unresolved as at the date of this Fifth Report:

Westney

22. The Trustee sought the return of a \$500,000 deposit (the "**Westney Deposit**") relating to a property located at 725 Westney Road in Ajax, Ontario (the "**Westney Property**"). The issue is summarized in the Third Report. On May 25, 2023, the Trustee sought for an Order that the Westney Deposit be paid to the Trustee for the benefit of the Bankrupts' creditors whereas the seller sought an order for the Westney Deposit to be paid to the seller.
23. On September 29, 2023, the Ontario Superior Court ruled that the Westney Deposit of \$500,000 should be paid to the Trustee along with a further \$15,000 for the Trustee's legal costs. Attached as **Appendix "B"** is a copy of the Court Order and the related

endorsement explaining the rationale for the decision. 2649360 Ontario Inc., the landlord of the Westney Property, is appealing the decision. No hearing date has been set for the appeal, but the Trustee does not expect the appeal will be heard until early in 2024.

Sunray

24. As noted in the Third Report, there were two assets of interest to the Trustee involving Sunray Group of Hotels Inc. and related entities and individuals (“**Sunray**”). The first was a McLaren Senna sports car which was provided by Sunray to the Trustee and, following a negotiation between the Trustee and a lienholder which had filed a lien on the car, was ultimately sold for approximately \$1.3 million. The Trustee considers the matter to have been resolved.
25. The second asset of interest was a \$500,000 deposit related to a home located at 5126 Lakeshore Road, Burlington, Ontario (the “**Burlington Property**”) and any potential equity in the home which was owned by Sunray. Similar to the Westney Deposit, this \$500,000 appears to have been paid by Pleterski using investor money without their consent.
26. The Burlington Property was sold for \$8,400,000 on May 17, 2023. Sunray appears to have made a profit as the Burlington Property was sold for more than the mortgage balance owed by Pleterski to Sunray. The Trustee has been advised that the purchaser of the property has commenced litigation against Sunray in an attempt to void the transaction. Sunray has defended the litigation.
27. The Trustee continues to consider its position in respect of its rights regarding the Burlington Property.

Other Parties

28. The Trustee is assessing other parties who financially benefitted but cannot comment further at this time.

OTHER MATTERS AND NEXT STEPS

29. There have been questions asked of the Trustee related to Akil Heywood who served as one of the five inspectors of the estate; Heywood was appointed by the creditors at the first meeting of creditors which occurred shortly after the Bankruptcy Orders were granted.

The Trustee cannot comment on an active police investigation, but can confirm that Mr. Heywood resigned as an inspector on July 7, 2023.

30. Certain investors have also asked questions about videos recently posted online wherein Pleterski appears to be in possession of valuable digital assets held on Steam, a video game digital distribution service and storefront. The Trustee, together with a colleague from Grant Thornton's forensics practice, confronted Pleterski with this allegation. Pleterski explained that the inventory of assets displayed in the videos in question was not real. Pleterski further explained, in detail, how he manufactured the appearance of being in possession of these digital assets. The Trustee has requested Pleterski's login information to confirm his claims and has contacted the Valve Corporation (the developer of Steam) seeking to obtain access to Pleterski's Steam account(s) to confirm Pleterski's representations that he did not own these digital assets. As of the date of this Fifth Report, the Trustee has not received access.
31. The Trustee continues to administer the claims process as proofs of claim are received. To date, the Trustee has paid out four dividends to proven creditors totalling \$3.15 million.
32. The Trustee considers the administration of the estate to be substantially complete with the exception of a small number of unresolved litigation matters described above. The amount and timing of a potential fifth dividend depends on the outcome of these matters.
33. In late 2023 or early 2024, prior to the statutory deadline, the Trustee will appear at Pleterski's discharge hearing. The Trustee's position on Pleterski's conduct is outlined in the Third Report.

DATED at Toronto, Ontario this 18th day of October 2023.

GRANT THORNTON LIMITED

In its capacity as Trustee for the bankrupt estate of
Aiden Pleterski and AP Private Equity Limited
and not in its personal or corporate capacity

Per.



Rob Stelzer, CPA, CA, CIRP, LIT

Senior Vice President

IN IN THE MATTER OF THE BANKRUPTCY OF AIDEN PLETERSKI and AP PRIVATE EQUITY LIMITED, of the Town of Whitby, in the Province of Ontario

Court File No./Estate No.: BK-22-00208582-OT-31

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
Proceedings commenced at Toronto, Ontario

FIFTH REPORT OF THE TRUSTEE

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as trustee in bankruptcy of the estates of AP Private
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Appendix “A”

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

IN THE MATTER OF THE BANKRUPTCY OF
AIDEN PLETERSKI AND AP PRIVATE EQUITY LIMITED
OF THE TOWN OF WHITBY,
IN THE PROVINCE OF ONTARIO

THIRD REPORT OF THE TRUSTEE

INTRODUCTION

1. On August 9, 2022, the Ontario Superior Court of Justice (the “**Court**”) ordered that Aiden Pleterski (“**Pleterski**”) and AP Private Equity Limited (collectively, the “**Bankrupts**”) be adjudged bankrupt (the “**Bankruptcy Orders**”). The Bankruptcy Orders were made following a petition filed by several creditors of the Bankrupts. Grant Thornton Limited was appointed as the trustee in bankruptcy (the “**Trustee**”) of both Bankrupts.

PURPOSE

2. The purpose of this report (the “**Third Report**”) is to:
 - a) Provide an update to the Court and the creditors on key developments related to the Bankrupts;
 - b) Share the results of the Trustee’s Banking Analysis (defined below);
 - c) Provide support relating to relief to be sought at the motion scheduled on March 31, 2023 for orders:
 - i. Approving the Trustee’s activities as described herein;
 - ii. Directing Jerome Tulloch (“**Tulloch**”), his partner, Kyrsten Tytla, his partner’s mother, Jocelyn Tytla (collectively, the “**Tulloch Family**”) and Winston Blenman (“**Blenman**”) attend at an examination pursuant to section 163 of the *Bankruptcy and Insolvency Act* (the “**BIA**”); and

- iii. approving the settlement agreement between the Trustee, Dragan Pleterski and Kathy Pleterski (collectively, the “**Pleterski Parents**”) dated March 14, 2023,
- d) Provide support for the Trustee’s motion (to be heard on a date to be scheduled by the Court) granting it relief from forfeiture and directing that the Westney Deposit (as defined below) be paid to the Trustee;
- e) Provide an update on remaining realizations and investigations relating to:
 - i. Mitchell Learning (“**Learning**”);
 - ii. Colin Murphy (“**Murphy**”); and
 - iii. The Burlington Property (as defined below);
- f) Advise the creditors of the Trustee’s intention to proceed with an interim dividend; and
- g) Advise the creditors of the Trustee’s position regarding the Bankrupts’ discharge.

SCOPE AND TERMS OF REFERENCE

- 3. Certain information contained in this Third Report has been obtained from the records of the Bankrupts, publicly available information, and/or information from the banks and other parties from whom information has been obtained. The information has not been audited by the Trustee as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally acceptable accounting principles and the reader is, therefore, cautioned that this Report may not disclose all significant matters about the Bankrupts.
- 4. This Third Report has been prepared for the use of this Court as general information relating to the Bankrupts and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Third Report may not be appropriate for any other purpose. The Trustee assumes no responsibility or liability for any loss or damage occasioned by any party because of the circulation, publication, reproduction or use of this Third Report. Any use that a party makes of this Third Report, or any reliance on or decisions to be made based on it, is the responsibility of such party.
- 5. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

BACKGROUND

6. On April 21, 2022, Sacha Amar Dario Singh and 9319697 Canada Ltd. (the “**Mareva Plaintiffs**”) commenced an action against the Bankrupts (the “**Mareva Proceedings**”) claiming relief based on breach of contract, fraudulent misrepresentation, civil fraud, misappropriation of funds, conversion, and unjust enrichment. The Mareva Plaintiffs allege that they were induced into making substantial investments with Pleterski between April 2021 and January 2022 and that the inducement was based on fraudulent misrepresentation.
7. The Mareva Plaintiffs successfully obtained an *ex parte* worldwide *Mareva* injunction pursuant to the Order of Justice Sutherland dated July 7, 2022. As set out in the related Endorsement (the “**Mareva Endorsement**”), a copy of which is attached as **Appendix “A”**, the Court was satisfied that there was a strong *prima facie* case that Pleterski committed a breach of contract and civil fraud.
8. As noted earlier, the Trustee was appointed in August of 2022. The Trustee’s first report and the supplement thereto were prepared on September 9, 2022 and September 26, 2022, respectively, and dealt with Pleterski’s poor conduct and failure to attend to his duties as a bankrupt. The Trustee’s second report dated October 21, 2022 (the “**Second Report**”) provided the Trustee’s first substantive update to the Court on the bankruptcy proceedings. Attached as **Appendix “B”** is the Second Report (without exhibits). On October 28, 2022, the Court granted an Order which, among other things, consolidated the estates of the Bankrupts and ordered certain third parties to strictly cooperate and comply with the Trustee’s requests, including with respect to the transfer of certain property to the Trustee; attached as **Appendix “C”** is the Order.
9. Since the commencement of the bankruptcy proceedings, claims totaling approximately \$25 million have been filed in the consolidated estates of the Bankrupts. As outlined in the Second Report, Pleterski has not been cooperative with the Trustee. Since its appointment, the Trustee has expended considerable effort attempting to trace and recover property of the Bankrupts that had been transferred to other persons or not otherwise delivered up to the Trustee.

ACTIVITIES SINCE THE SECOND REPORT

10. As detailed in the Second Report, the Trustee's investigation efforts from its appointment in August through to October 2022, included a review of the Bankrupts' available banking records, searching properties in locations in which Pleterski was known to frequent, running vehicle searches, and imaging and reviewing Pleterski's cell phones. Since the Second Report, the Trustee's investigation has included:

- a) Banking – Reviewing and analyzing bank transactions following the receipt of the bank statements and supporting information, such as bank drafts, from the banks;
- b) Searches – Expanding the property searches previously obtained based on information from the Banking Analysis or tips from investors;
- c) Crypto tracing – The Trustee's forensics practice traced certain crypto wallets referenced in Pleterski's phone and in the Mareva Proceedings and contacted exchanges which received the funds;
- d) Examinations – The Trustee examined Tyson Heyes, Learning and Mason Doucette just prior to the date of the Second Report. Since the date of the Second Report, the Trustee also examined:
 - (i) Aiden Pleterski on November 24, 2022;
 - (ii) Kathy Pleterski on December 22, 2022;
 - (iii) Dragan Pleterski on December 22, 2022; and,
 - (iv) Sandeep Gupta on February 9, 2023.

In addition, as more particularly described below, the Trustee attempted to examine Blenman and each member of the Tulloch Family.

11. Since the Second Report, the Trustee's efforts have resulted in:

- a) Collecting the sale proceeds from the 11 vehicles that were registered in the name of Pleterski as noted in the Second Report;
- b) Collecting the sale proceeds for the BMW M8 registered in the name of Dragan Pleterski;
- c) Negotiating a settlement with Audi in respect of the Trustee's interest in a leased Audi RSQ8;

- d) Negotiating a settlement with Paul Motor Company in respect of a Lamborghini Aventador SVJ and selling the Trustee's interest in that vehicle;
 - e) Collecting the balance of a retainer from Landart, a landscape architecture firm, which had received the retainer in respect of plans it had started working on at the Burlington Property (defined below); and
 - f) Monetizing Pleterski's jewelry, including the diamond encrusted Rolex which was returned by Pleterski in response to an Order sought by the Trustee.
12. The Trustee notes that the most significant assets in the estate left to recover are the litigation assets as summarized later in this Third Report.
13. Since the Second Report, the Trustee has also:
- a) administered the claims process in order to determine the creditors entitled to receive a dividend from the estate;
 - b) liaised with law enforcement (including in respect of Pleterski's kidnapping as is described below);
 - c) reviewed information provided through the litigation commenced against Murphy as set out below; and
 - d) met with the estate inspectors periodically to keep them up to date on the proceedings and seek their instructions.

BANKING ANALYSIS

14. The banking analysis described in this section of the Third Report (the "**Banking Analysis**") was a major focus of the Trustee's investigation and provides critical information for the Trustee's asset recovery efforts.
15. Shortly after it was appointed in August, the Trustee reached out to all of the financial institutions where it understood the Bankrupts maintained accounts. Pursuant to the information it obtained, the Trustee determined that the Bankrupts primarily maintained chequing accounts at Scotiabank, RBC, TD and BMO (collectively, the "**Banks**").
16. There was a reluctance by some of the Banks to provide certain banking records, including supporting documentation such as bank drafts, on privacy grounds. The supporting

documentation was essential to the Trustee as, in many instances, a bank statement shows a withdrawal but not the recipient of the withdrawal. Pursuant to the Information and Property Transfer Order dated October 28, 2022, this Court ordered all financial institutions having banking information relating to the Bankrupts, to provide same to the Trustee. Most of the information was provided by the Banks in November and December of 2022, subject to follow up questions from the Trustee based on the information received. In January 2023, the Trustee received the last of the banking information. The Trustee has reached out to a total of 18 banks and 17 other financial institutions (including investment platforms and cryptocurrency exchanges) in an effort to track any funds on deposit in the name of the Bankrupts.

17. Set out below is a summary of the banking transactions in the chequing accounts of the Bankrupts with the Banks. Total receipts in these accounts were \$44.3 million and total disbursements were \$44.3 million. Receipts exceeded disbursements by less than \$10,000 and all chequing account balances have been collected by the Trustee. The Trustee has collected a total of approximately \$431,000 from all of the Bankrupts' bank accounts – most of the funds collected were from the Bankrupts' savings accounts. The Trustee notes that its Banking Analysis dates back as far as July 11, 2015, but the relevant period relates primarily between January 1, 2020 and August 9, 2022 (the date of bankruptcy) (the “**Review Period**”); pre-2020 receipts and disbursements were not material (receipts were \$63,556 and disbursements were \$61,865).
18. Of the \$44.3 million of disbursements, \$2.8 million were inter-account transfers, leaving \$41.5 million of net receipts (the “**Net Receipts**”) and \$41.5 million of net disbursements (the “**Net Disbursements**”). The table below summarizes the Net Disbursements and the notes below provide the Trustee's observations with respect thereto:

| Payment | Total Amount | % |
|--------------------------------|----------------------|----------|
| Investor Repayments | \$ 15,920,517 | 38.4% |
| Lifestyle Expenses | \$ 13,549,981 | 32.7% |
| Pleterski Parents | \$ 3,527,099 | 8.5% |
| Colin Murphy | \$ 1,319,267 | 3.2% |
| Burlington Property | \$ 1,095,764 | 2.6% |
| Jerome Tulloch & Family | \$ 1,060,457 | 2.6% |
| Winston Blenman | \$ 1,036,700 | 2.5% |
| Mitchell Learning | \$ 1,020,417 | 2.5% |
| Unidentifiable | \$ 902,248 | 2.2% |
| Small Transfers | \$ 855,185 | 2.1% |
| Invested by Pleterski | \$ 670,706 | 1.6% |
| Westney Deposit | \$ 500,000 | 1.2% |
| Total Net Disbursements | \$ 41,458,341 | |

- a) Pleterski represented to investors that he would invest their money. Attached as Appendix “D” is an example of a typical investment agreement. However, of the \$41.5 million in Net Disbursements shown in the accounts at the Banks, only \$670,706 appears to have been invested by the Bankrupts. To put this figure into context, of the money collected from investors, Pleterski’s chequing accounts show that only 1.6% of the funds received were actually invested, meaning that 98.4% of what Pleterski collected was never invested.
- b) Pleterski spent \$13.5 million on his personal lifestyle including the purchase of exotic vehicles, renting private jets, elaborate vacations, etc., during the Review Period. In addition to the \$13.5 million paid directly from the Bankrupts’ accounts, the Pleterski Parents paid \$1.2 million of lifestyle expenses on Pleterski’s behalf, as detailed below. Additionally, Pleterski paid \$1.1 million in rent and a deposit on the Burlington Property, bringing the total lifestyle expenses funded by the Bankrupts’ investors to \$15.9 million during the Review Period – in other words, Pleterski spent approximately 38% of the money he raised from investors on his own lifestyle expenses.
- c) The Pleterski Parents received \$3.5 million from the Bankrupts. As described later in this Third Report, \$2.1 million of this amount was paid to other parties at the request of Pleterski leaving the net amount that the Pleterski Parents benefited to be approximately \$1.1 million.

- d) Certain other individuals have received significant funds from the Bankrupts which appear to be in excess of their original investment (if any). These individuals include Murphy (\$1.3 million), the Tulloch Family (\$1.1 million), Blenman (\$1.0 million) and Learning (\$1.0 million), as detailed further below.
- e) A deposit of \$500,000 was paid by Pleterski in respect of a property municipally known as 725 Westney Road in Ajax, Ontario (the “**Westney Property**”), as detailed below. It is the Trustee’s understanding that the Westney Property was intended to be purchased to store exotic cars belonging to Murphy and Pleterski.

REQUEST FOR ORDER COMPELLING EXAMINATION ATTENDANCE

The Tulloch Family

- 19. Based on the Banking Analysis, the Trustee determined that (i) the Tulloch Family collectively only invested \$50,000 with the Bankrupts, but (ii) the Tulloch Family collectively received payments from the Bankrupts’ accounts totaling \$1.1 million. The Trustee is not aware of any reason for these payments. The Trustee has been advised by numerous investors that Tulloch was involved in the raising of capital for Pleterski.
- 20. The Trustee tried numerous times to contact Tulloch and Jocelyn Tytla to discuss the payments received and their role, if any, in the Bankrupts investment scheme. As a result of the Trustee’s inability to contact a member of the Tulloch Family, the Trustee served a formal notice of examination pursuant to section 163 of the BIA to each member of the Tulloch Family for an examination to take place on February 14, 2023.
- 21. None of the Tulloch Family attended at the examinations or contacted the Trustee to reschedule. Attached as **Appendix “E”** are the certificates of non-attendance from the Court reporter. Accordingly, the Trustee seeks an Order that each of Tulloch, Kyrsten Tytla and Jocelyn Tytla attend at an examination to be conducted by the Trustee. The Trustee contemplates seeking a contempt order from this Court if the members of the Tulloch fail to comply with the order sought, if granted.

Winston Blenman

22. Based on the Banking Analysis, the Trustee determined that (i) Blenman only invested \$40,000 with the Bankrupts, but (ii) Blenman received payments from the Bankrupts' accounts totaling \$1.0 million. The Trustee has spoken to Blenman several times but no explanation for the receipt of funds has been provided. Having not received a satisfactory response, the Trustee served a formal notice of examination pursuant to section 163 of the BIA to take place on February 13, 2023.
23. Blenman advised the Trustee on February 13, 2023 that he would not attend the examination but that his lawyer would be in touch with the Trustee. Attached as **Appendix "F"** is the certificate of non-attendance from the Court reporter. Counsel, on behalf of Blenman, contacted counsel to the Trustee on February 15, 2023 but has not been responsive since that time despite the Trustee's repeated requests for Blenman's cooperation. Accordingly, the Trustee seeks an Order that Blenman attend an examination to be conducted by the Trustee. The Trustee contemplates seeking a contempt order from this Court if Blenman fails to comply with the order sought, if granted.

REMAINING ASSETS TO BE PURSUED

Pleterski Parents

24. As noted above, the Trustee's counsel conducted an examination of the Pleterski Parents on December 22, 2022. In accordance with section 163(3) of the BIA, a copy of the transcripts of the examinations of Dragan Pleterski and Kathy Pleterski are attached as **Appendices "G" and "H"** respectively. The following is a summary of certain facts established by the examinations which were not readily apparent from the Banking Analysis:
 - a) The Pleterski Parents set up Pleterski's Scotiabank account many years ago, before he started collecting funds from investors, and have always had access to it as a result, including the ability to initiate wire transfers;¹

¹ Examination of Kathy Pleterski (December 22, 2022) ("**Kathy Examination**"), page 25, lines 3-23.

- b) Dragan Pleterski advised that he purchased bank drafts from Pleterski's Scotiabank account to pay certain investors of the Bankrupts at the instruction of Pleterski;²
 - c) The Pleterski Parents invested \$58,000³ with the Bankrupts which was repaid; and
 - d) Kathy Pleterski did not appear to be actively involved in Pleterski's business, though she did acknowledge receipt of \$50,000 in cash from Pleterski and an Audi e-tron paid for by Pleterski.⁴
25. The Trustee notes that the Pleterski Parents were cooperative in the examinations and have provided their undertakings on a timely basis. The Pleterski Parents assert that they believed their son was operating a successful investment business.
26. As noted in the Banking Analysis, the Pleterski Parents received a total of \$3,527,099 from Pleterski's accounts – \$3,107,298 in cash and \$419,802 paid by Pleterski to car dealerships for the purchase of a Bentley SUV, Audi E-tron and Audi S5 which were bought for and driven by members of the Pleterski family (the "**Pleterski Family Vehicles**"). The Pleterski Parents provided the Trustee with evidence that, from the funds received, they paid \$886,000 to investors and \$1,207,749 towards Pleterski's lifestyle expenses; they also repaid \$312,516 to Pleterski directly. Attached as **Appendix "I"** is a detailed chart prepared by the Trustee showing the calculation for each of these figures. The Trustee notes that \$288,926 (\$226,500 USD) of the funds received from Pleterski were used by the Pleterski Parents to buy a house in Indiana for their other son (this purchase is factored into the cash received).⁵
27. The amount owing from the Pleterski Parents should also reflect \$50,000 of cash received by Kathy Pleterski and repayment of the Pleterski Parents' investments (as was admitted in their examinations); it should deduct a \$128,748 payment they made to Pleterski via BitCoin. As a result of the foregoing, the Trustee calculates that the Pleterski Parents benefitted a total of \$1,100,087 as set out in the table below.

² Examination of Dragan Pleterski (December 22, 2022) ("**Dragan Examination**"), page 18, lines 24-25, page 19, lines 18- 25 and page 20, lines 1-17.

³ *Ibid.*, page 14, lines 13-17.

⁴ Kathy Examination, page 37, lines 12-15 and page 39, lines 7-11.

⁵ Kathy Examination, page 40, lines 2-14.

| Pleterski Parents' Benefit | Amount | Comments |
|---|---------------------|---|
| Received from Aiden's Account | \$3,107,298 | Funds received by Pleterski parents. |
| Pleterski Family Vehicles | \$419,802 | Vehicles paid for by Pleterski ⁶ |
| Payments to Pleterski's investors | (\$886,000) | Amounts paid to Pleterski's investors |
| Payments for Pleterski's lifestyle expenses | (\$1,207,749) | Amounts paid for Pleterski's lifestyle expenses |
| Paid to Pleterski | (\$312,516) | Amounts paid to Pleterski |
| BitCoin Payments | (\$128,748) | Paid to Pleterski |
| Cash Kathy Received | \$50,000 | Acknowledged in Pleterski Parents' examinations |
| Repaid Investment | \$58,000 | Acknowledged in Pleterski Parents' examinations |
| Total Benefit | \$1, 100,087 | |

28. After negotiations with the Pleterski Parents, the Trustee entered into the Minutes of Settlement dated March 14, 2023 (the "**Settlement Agreement**"), subject to Court approval, attached as **Appendix "J"**. The fundamental terms of the Settlement Agreement are as follows:

- a) The Pleterski Parents shall cause the return of the Audi S5 and VW Atlas to the Trustee and provide executed ownership papers permitted the Trustee to sell the vehicles on or before March 21, 2023 (the Trustee estimates that the two vehicles have a market value in excess of \$100,000);
- b) The Pleterski Parents will pay \$812,000 (the "**Settlement Funds**") to the Trustee from third party funding or from the sale of their properties in Whitby, Ontario and Fort Wayne, Indiana;
- c) The Settlement Funds are to be paid to the Trustee on or before June 30, 2023 or such other date as the Trustee may agree;

⁶ Dragan Examination, page 26, lines 4-14; Kathy Examination, page 37, lines 12-15 and page 39, lines 12-14.

- d) In the event that the Settlement Funds are not received by the date specified, the Pleterski Parents have consented to an order directing the Settlement Fund be paid to the Trustee forthwith;
 - e) The Pleterski Parents and the Trustee have agreed to the terms of a mutual release which includes a carve out in favour of the Trustee in the event that the Trustee later discovers:
 - i. that the Pleterski Parents did not properly disclose their assets which would give the Trustee rights therein, the Trustee shall be at liberty to pursue those assets; and
 - ii. assets not disclosed by the Bankrupts to the Trustee which can be shown to be within the knowledge of Dragan and/or Kathy Pleterski either at the time of execution of the Settlement Agreement or thereafter, the Trustee shall be at liberty to pursue its rights and remedies against the Pleterski Parents.
29. The Trustee recommends that the Settlement Agreement be approved by the Court as it offers the estate certainty, reduces legal costs and results in quicker recovery for investors. The estate inspectors have been kept apprised of the discussions and are supportive of a settlement with the Pleterski Parents.

Mitchell Learning

30. Learning was referenced in the Trustee's Preliminary Report as an originator who helped bring investors to Pleterski. At the First Meeting of Creditors and since that time, investors have approached the Trustee requesting a better understanding of the role Learning played in Pleterski's investment scheme. On September 6, 2022, Learning agreed to meet with the Trustee and share the information he had related to Pleterski's assets. The Trustee found Learning to be forthright and helpful in this meeting. Learning attended a formal examination on October 11, 2022 pursuant to section 163 of the BIA. In accordance with section 163(3) of the BIA, a copy of the transcript of that examination is attached as **Appendix "K"**.
31. Learning advised the Trustee prior to his examination that he originally believed Pleterski to be a trading prodigy. After investing personally, Learning suggested to friends and

family that they also invest with Pleterski.⁷ Learning testified that he was upset when he discovered the true nature of Pleterski's investment scheme.⁸

32. Learning testified that he had received approximately \$1 million from Pleterski.⁹ This is consistent with the Banking Analysis' findings related to Learning as noted below. Learning advised that, of the \$1 million he received, \$400,000 was a repayment of his initial investment with Pleterski¹⁰ and that much of the money he received was, in turn, used by him to pay investors.¹¹ Learning further advised during his examination that he believed that he had benefitted approximately \$170,000 in addition to the return of his investment from his involvement with Pleterski.¹²
33. The Banking Analysis shows that Learning received \$101,982 more from Pleterski than he paid (\$1,020,417 received from Pleterski less \$918,435 paid to Pleterski). The Trustee has been unable to independently verify the total amount that Learning profited from Pleterski's scheme because, among other things, it does not have adequate evidence of the amount that Learning alleges he paid to investors. As a result, during Learning's examination, the Trustee requested and Learning undertook, among other things, to provide his bank statements and identify any funds paid to or received from Pleterski.¹³
34. The Trustee made numerous requests of Learning, since November, 2022, to satisfy his undertakings to illustrate what amount he benefitted from the bankruptcy estate. Since his examination, Learning, through his counsel, has advised that he has not benefitted at all due to repayments he made to investors, but adequate support for this assertion has not been provided. His assertion also contradicts the Banking Analysis which shows a net outflow of \$101,982 to Learning.
35. After failing to fully satisfy his undertakings, the Trustee sought a Court Order requiring Learning's compliance. An hour before the hearing in February, Learning's counsel provided a large volume of records to the Trustee and the hearing was adjourned. The Trustee subsequently reviewed the information and determined that Learning has still not

⁷ Examination of Mitchell Learning (October 11, 2022) ("**Learning Examination**"), page 23, lines 6-9 and page 24, lines 21-23.

⁸ *Ibid.*, page 38, line 19.

⁹ *Ibid.*, page 26, lines 20-25.

¹⁰ *Ibid.*, page 87, lines 21-25.

¹¹ *Ibid.*, page 88, lines 4-25.

¹² *Ibid.*, page 92, lines 15-17.

¹³ *Ibid.*, page 16, lines 17-25 and page 17, lines 1-13.

fully complied with his undertakings and has advised Learning's counsel what documentation remains outstanding and/or needs to be clarified. It is the intention of the Trustee to bring the adjourned motion back before Justice Osborne to seek an Order requiring Learning's compliance with his undertakings together with a cost award.

36. Unlike most other investors, Learning has received the entirety of his investment back from the Bankrupts and appears to have benefited in excess of his return on investment. Unless conclusive evidence is provided by Learning to prove that he has not benefited from the Bankrupts' scheme, the Trustee anticipates that it will pursue Learning for the amount that he has benefited in preference over other investors.

Colin Murphy

37. Murphy was also referenced in the Trustee's Preliminary Report as an originator who helped bring potential investors to Pleterski. During Pleterski's examination, he testified that Murphy collected money from investors and provided it to him.¹⁴ A copy of the transcript of the examination of Pleterski conducted on November 24, 2022 is attached as **Appendix "L"**. The Trustee has been advised that some of the money Murphy collected from investors was not actually provided to Pleterski. The Banking Analysis shows that Murphy received \$1.3 million from the Pleterski estate but there is no record of Murphy investing any funds with Pleterski. After its appointment, the Trustee understood that Murphy left the country and could not be located.
38. Pursuant to Orders dated September 12, 2022 and September 15, 2022 in a separate proceeding, a worldwide Mareva Order, attached as **Appendix "M"**, was obtained against Murphy by Anthony Milne ("**Milne**"). Milne alleges that he invested with Murphy who claimed to be a partner of Pleterski. Milne's claim asserts that Murphy blamed Pleterski after Murphy failed to return Milne's investment. A copy of the Statement of Claim of Milne is attached as **Appendix "N"**. The Trustee understands that Milne also could not locate Murphy at the time the Orders were granted.
39. The Trustee has recently learned that an *ex parte* Anton Piller Order dated January 10, 2023, attached as **Appendix "O"**, was obtained by Craig Sutherland ("**Sutherland**") and LOW-RIDE-VAC Inc. against certain parties, including Murphy. In addition to the seizure

¹⁴ Examination of Aiden Pleterski (November 24, 2022) ("**Pleterski Examination**"), page 94, lines 8-24.

of Murphy's assets, the Anton Piller Order provided for the seizure of certain assets of the Bankrupts at the premises noted therein.

40. During the execution of the Anton Piller Order, assets of Pleterski were seized including bank drafts payable to Pleterski as well as physical and electronic files. Counsel to Sutherland, Norman Groot ("**Groot**"), has provided the bank drafts and documentation to the Trustee together with any relevant information obtained from his examinations of Murphy. Unfortunately, as of February 28, 2023, all of the \$1,164,000 of bank drafts provided to the Trustee with the exception of \$10,000, have been dishonoured as such drafts had previously been deposited electronically. The Trustee anticipates that the remaining \$10,000 will also be dishonoured.
41. Groot advised the Trustee that he incurred considerable expenses to locate Murphy and execute the Anton Piller Order. The Trustee has agreed that, to the extent that assets are recovered directly from his efforts with Murphy for the benefit of Pleterski's creditors, the Trustee will share a portion of what is recovered with Groot to offset his costs in procuring such assets. The amount of such recovery is at present unknown, and any amount to be paid to Groot would have to be consensually agreed to among the Trustee, the estate inspectors and Groot. If no such agreement can be reached, the Trustee anticipates that it will apply to the Court for advice and directions.

Westney

42. In July of 2021, Murphy and Pleterski each individually signed 5-year rental agreements to rent commercial space located at the Westney Property from 2649360 Ontario Inc. ("**264**"). Approximately three months later, on October 26, 2021, Murphy and Pleterski both entered into an agreement to purchase the Westney Property, a copy of which is attached as **Appendix "P"**. The Trustee understands that it was the intention of Murphy and Pleterski to use the Westney Property to their store exotic cars. The purchase price payable for the Westney Property was \$5.5 million and was supported by a \$500,000 deposit which came solely from Pleterski (the "**Westney Deposit**"). Attached as **Appendix "Q"** is a copy of the bank draft payable from Pleterski's bank account for the Westney Deposit. The Trustee can find no evidence that Murphy contributed to the payment of the

Westney Deposit. The closing date for the transaction was September 28, 2022, approximately one year after the purchase agreement was entered into.

43. The Banking Analysis illustrates that 99.8% of the Westney Deposit was funded by investor funds. The Westney Deposit was paid from Pleterski's TD chequing account which was opened less than two months prior with a balance of \$5,000. By October 18, 2021, the account balance was less than \$1,000. The bank statement for this account shows that the Westney Deposit was paid nine days later from three investor deposits of \$50,000, \$1.3 million and \$0.7 million, totaling \$2.0 million. As a result, it is clear that at least 99.8% of the Westney Deposit came from funds provided by investors. These funds were provided to Pleterski to invest in cryptocurrency and foreign exchange hedges; the use of these funds by Pleterski to finance the Westney Deposit was not consistent with Pleterski's investment agreements and thus not authorized by the investors. The account statements from August 25, 2021 to October 30, 2021 are attached as **Appendix "R"**.
44. After learning of the Westney Deposit, the Trustee communicated with the real estate broker and counsel to 264 to advise of the Trustee's appointment and the estate's interest in the Westney Deposit. Counsel to 264 delivered an anticipatory breach letter to the Trustee on September 13, 2022 as the Trustee was unable to close the sale of the Westney Property. The Trustee was advised that 264 intended to re-list the Westney Property for sale.
45. 264 sold the Westney Property on November 24, 2022 for \$5.8 million (\$300,000 more than originally offered by Murphy and Pleterski (the "**Surplus**")). The Trustee was advised that the sale proceeds are being held in escrow by the listing agent until a resolution as to the entitlement thereto can be determined. 264 has advised the Trustee that it incurred damages while Murphy and Pleterski rented the premises and has taken the position that it is entitled to retain the Westney Deposit in addition to the Surplus.
46. The Trustee has made numerous attempts since October 2022 to come to a consensual resolution with 264 as to the entitlement to the Westney Deposit. In January of 2023, 264 provided the Trustee with support for \$138,500 in repair costs, which is far less than the \$300,000 Surplus. Other repair costs, legal costs and rent (notwithstanding that Pleterski's lease for part of the Westney Property had a one year rent free period) have been asserted by 264 though not demonstrated; based on the support provided to the Trustee, 264 does

not appear to have any damages due to the failure to close. The Trustee believes that it has exhausted all efforts to settle the entitlement to the Westney Deposit having engaged in dialogue with counsel to 264 for over five months.

47. It is the Trustee's view that it is inequitable for 264 to retain the full amount of the Westney Deposit and the balance of the Surplus. Pleterski's investors were duped. Their funds were used to fund Pleterski's lifestyle, including the proposed purchase of the Westney Property. It is the Trustee's position that the Westney Deposit should be returned to the Pleterski's investors for the following reasons:
- a) Any costs demonstrated by 264 have been mitigated by the Surplus and thus 264 has no damages;
 - b) The Westney Deposit was funded by investor funds (the Banking Analysis shows that at least 99.8% can be traced to investor funds) whose money was used by Pleterski in an unauthorized manner to fund the Westney Deposit;
 - c) Most of the Bankrupts' investors will see minimal recovery from their investments while 264 stands to gain a significant profit from its dealings with Pleterski; and
 - d) If 264 was permitted to retain the Westney Deposit, it would result in an unjust and inequitable unfairness to the Bankrupts' investors.
48. As at the date of this Report, the Trustee has made several attempts to coordinate dates with counsel for 264 for the adjudication of the entitlement to the Westney Deposit and requires a scheduling hearing to set a date.

The Burlington Property and the Senna

49. Beginning at the First Meeting of Creditors and continuing throughout these proceedings, investors have questioned Pleterski's relationship with the Gupta family and interest in the property known municipally as 5126 Lakeshore Road, Burlington, ON (the "**Burlington Property**"). The Trustee, at the request of the estate inspectors, has investigated this asset and Pleterski's relationship thereto.
50. The Burlington Property is a private waterfront estate with 100 feet of frontage on Lake Ontario and over 10,000 square feet of living space. On March 4, 2021 (at the age of 21), Pleterski entered into an Agreement of Purchase and Sale (the "**APS**") and Agreement to

Lease to Own (the “**Lease**”) with 1223408 Ontario Limited (“**122**”), the then-owner of the Burlington Property. The APS also states that Pleterski was required to provide a leasehold mortgage to secure the payment of the purchase price which was to be executed by both parties on March 10, 2021 subject to Pleterski’s right to extend the agreement. Pleterski was also required to pay property taxes on a monthly basis to 122. The APS and the Lease (collectively, the “**Agreement**”) explicitly state that they must be read in conjunction with each other; a copy of the Agreement is attached as **Appendix “S”**.

51. 122 transferred the Burlington Property to 1000176653 Ontario Inc. (“**100**”) on May 4, 2022. The Trustee understands that 122 and 100 (each individually at the time the “**Registered Owner**”) are both affiliated with Sunray Group of Hotels Inc. (“**Sunray**”). The Registered Owner and Sunray are collectively referred to as the “**Sunray Group**”. Sunray is a hospitality and development company whose Chairman and CEO is Ray Rattan Lal Gupta (“**Ray Gupta**”); Ray Gupta is also the sole officer and director of both 122 and 100. A copy of the PIN for the Burlington Property is attached as **Appendix “T”**. A copy of the Profile Reports of 122 and 100 are attached as and **Appendix “U”** and **Appendix “V”** respectively.
52. Bank statements of Pleterski reflect that, except for the first month’s rent, which was paid to the Registered Owner’s real estate lawyer, in trust, the rent for the Burlington Property was paid directly to Ray Gupta’s son, Sandeep Gupta, rather than the Registered Owner. The Registered Owner (by virtue of the Burlington Deposit (as defined below) and payments to Sandeep Gupta) has received \$1,095,764 of investor funds in respect of the Burlington Property. Sandeep Gupta appears to have been the main contact between Pleterski and the Registered Owner based on a review of Pleterski’s cellphone.

Relationship between Sandeep Gupta and Pleterski

53. At the time of Pleterski’s bankruptcy, or shortly beforehand, Sandeep Gupta was in possession of several of Pleterski’s vehicles including, the Senna (defined below), a Lamborghini Huracan Performante, an Audi R8 Spyder, a Ferrari 488 Pista, a Honda Civic Type R, a Lamborghini Aventador SVJ, and a BMW i8.¹⁵ Prior to Pleterski’s bankruptcy,

¹⁵ Examination of Sandeep Gupta (February 9, 2023) (“**Gupta Examination**”), page 47, lines 1-25, page 48, lines 1-25 and page 49, lines 1-11.

Sandeep Gupta purchased assets from Pleterski including an Audi R8 Coupe and a Rolex Datejust Perpetual.¹⁶ The Trustee determined that the price paid for the Audi R8 Coupe was below market value. As a result, Sunray paid the Trustee additional proceeds in exchange for the Trustee agreeing not to challenge the sale as a transfer at undervalue.

54. The Trustee was contacted by the Toronto Police in early December advising that Pleterski had been kidnapped. The Toronto Police had questions related to Pleterski which it thought might be helpful to its investigation, but was unable to share any information with the Trustee. In his examination, Dragan Pleterski advised the Trustee that Sandeep Gupta was contacted by Pleterski while Pleterski was in captivity.¹⁷
55. The Trustee examined Sandeep Gupta pursuant to Section 163 of the BIA on February 9, 2023. In accordance with section 163(3) of the BIA, a copy of the transcript of that examination is attached as **Appendix “W”**. During his examination, Sandeep Gupta confirmed that he was contacted by Pleterski while in captivity and that Pleterski was asking for \$3 million to pay his kidnappers.¹⁸ Sandeep Gupta further advised that he contacted law enforcement after receiving Pleterski’s call. Pleterski was released by his kidnappers near Sandeep Gupta’s residence.¹⁹
56. The Trustee understands that, since June of 2022, Pleterski has been living rent-free at a property owned by the Sunray Group.²⁰

The Burlington Property

57. Pursuant to the terms of the Agreement, Pleterski agreed to purchase the Burlington Property for \$8,490,000 (the “**Purchase Price**”) and paid a deposit totaling \$500,000 (the “**Burlington Deposit**”). Rent is calculated using an annual interest rate of 4% with a 25-year amortization for a 2-year term. The Agreement specifically states that the principal component of the Rent “will be applied and credited towards the purchase price” upon completion of the transaction.

¹⁶ *Ibid.*, page 49, lines 18-25, page 50, lines 1-18 and page 52, lines 17-22.

¹⁷ Dragan Examination, page 37, lines 5-7.

¹⁸ Gupta Examination, page 11, lines 7-23.

¹⁹ *Ibid.*, page 67, lines 2-7.

²⁰ *Ibid.*, page 20, lines 23-25 and page 22, lines 16-17; Pleterski Examination, page 73, lines 8-25 and page 74, lines 1-7.

58. Pursuant to the terms of the Lease, Pleterski paid base rent totaling \$42,174.16 per month (the “**Rent**”). Pleterski also paid an allocation for expected property taxes making the total monthly payments \$45,824.16. According to House Sigma, the Burlington Property (in an unfurnished state) was previously listed from December 1, 2020 to February 23, 2021 for rent for \$23,000/month. A copy of the House Sigma listing is attached as **Appendix “X”**.
59. The Sunray Group has taken the position that the governing agreement is actually the version of same attached as **Appendix “Y”**, which appears to be an unsigned version of the Agreement with several pages omitted.
60. The Trustee understands that Pleterski began to fall behind on his Rent payments in early 2022. Pleterski’s last Rent payment was May 16, 2022, presumably covering the period up to June 12, 2022; he vacated the Burlington Property in June 2022. When initially contacted by the Trustee, the Sunray Group took the position that the Lease has been terminated by virtue of this non-payment of Rent but has confirmed that no termination notice was issued to Pleterski. Sunray further asserts that Pleterski caused damage to the Burlington Property.

The Senna

61. Pleterski owned a McLaren Senna, a very rare, limited-production exotic supercar bearing VIN# SBM15ACA8KW800343 (the “**Senna**”). The Trustee understands that in the spring of 2022, the Senna was given to Sunray by Pleterski to hold as collateral for the payment of Rent. Notwithstanding that the Lease was purportedly terminated by the Registered Owner for non-payment, ownership of the Senna was transferred to Sunray on June 27, 2022. A copy of the VIN search in respect of the Senna is attached as **Appendix “Z”**.
62. At the First Meeting of Creditors, Pleterski advised the Trustee that he provided the Senna to Ray Gupta based on a value of \$900,000.²¹ Later, when the Trustee spoke with Sandeep Gupta, it was advised that Pleterski transferred the Senna to Sunray based on a value of \$950,000. Whatever the transfer price, no funds were ever paid to Pleterski. Sandeep Gupta advised the Trustee that title to the Senna was held by Sunray for insurance purposes.²² Based on inquiries of six different dealerships, the Trustee believes that the actual value of the Senna is estimated to be approximately \$1.4 million with the

²¹ First Meeting of Creditors, page 7.

²² Gupta Examination, page 62, lines 10-16.

most likely range between \$1.2 to \$1.9 million. Based on Pleterski's bank records, the Senna appears to have been originally purchased in September of 2021 for \$1.6 million.

63. As of June 2022, when Pleterski stopped paying Rent, there were nine payments left owing under the Lease totaling \$379,567.47 (the "**Unpaid Rent**"). Even based on a \$900,000 value for the Senna, the value of the Senna far exceeded the Unpaid Rent.

Next Steps

64. In October of 2022, the Trustee agreed to take possession of the Senna registered in Sunray's name; it has been stored by the Trustee since that time. On March 8, 2023, at the Trustee's request, Ray Gupta of Sunray executed the ownership papers permitting the Trustee to sell the Senna. It is the intention of the Trustee to monetize the Senna for the benefit of the Bankrupts' creditors.
65. The Burlington Property was recently listed for sale for \$8,999,000. The Trustee reserves its rights and remedies in respect of the \$1,095,764 of investor funds paid to Sandeep Gupta in respect of the Burlington Property, including the \$500,000 Burlington Deposit. Similar to the Westney Deposit, this \$500,000 appears to have been paid for using investor money without their consent.

INTERIM DIVIDEND

66. The estate inspectors have asked the Trustee to proceed with an interim dividend to creditors. The Trustee has disallowed those claims which it has not been able to resolve on consent; after expiration of the 30-day disallowance period, the Trustee intends to proceed with the dividend. Proven creditors should expect to receive their dividend in April.

PLETERSKI'S DISCHARGE

67. In the ordinary course, a person who is personally bankrupt and does not generate surplus income is entitled to an automatic discharge after nine months. The purpose of this is to allow an honest but unfortunate debtor a fresh start. The Trustee is of the view that Pleterski is not an honest but unfortunate debtor. In its first report to the Court and the supplement thereto (attached as **Appendices "AA" and "BB"**) the Trustee outlined

multiple breaches of the BIA committed by Pleterski relating to his failure to attend to his duties and provide his assets to the Trustee.

68. In this Third Report, the Trustee has presented the findings of the Banking Analysis which evidences that less than 1.6% of the funds collected from investors in Pleterski's chequing account were actually invested by the Bankrupts. It appears that Pleterski had no intention to invest the investor's money as he agreed to do in the investor agreements. The Banking Analysis also demonstrates that Pleterski used money from new investors to pay out older investors. This is consistent with Pleterski's explanation of the flow of funds through his bank accounts. Pleterski explained that when money was received from an investor, it would go directly into one of his bank accounts. Pleterski would then keep the money in his bank account but allocate a portion of his investment gains towards the investor's account. Once the money was in one of his bank accounts, Pleterski explained that the cash was his to use for personal expenses or to pay out another investor.²³
69. Lastly, the Banking Analysis also outlines the extravagant lifestyle that Pleterski lived which was funded by his investors and ultimately led to his bankruptcy. The total amount spent by Pleterski on lifestyle expenses, such as his Lamborghinis, McLarens, flights on private jets, etc. is approximately \$15.9 million or 38% of the total disbursements paid by Pleterski over a period of approximately 2.5 years.
70. The Trustee notes that Pleterski has not accounted for all of his assets. Pleterski has never provided the Trustee with the Jacob & Co. Astronomia Casino watch he purchased for \$361,158 CAD or evidence of its sale. Pleterski has also not provided evidence of the location of the crypto currency he received from investors or his alleged trading losses.
71. The Trustee filed a report pursuant to section 170 of the BIA indicating that it opposes an automatic discharge for Pleterski for the following reasons (square brackets indicate the relevant BIA section for reference purposes):
- a) Failure to complete his first and second counselling session [157.1 (3)];

²³ Pleterski Examination, page 32, lines 2-25, page 33, lines 1-5, page 48 lines 8-21, page 152, lines 7-12 and page 153, lines 6-13.

- b) Failure to attend to his basic duties [173 (1)(o)], including preparing a complete Statement of Affairs [158 (d)] and attending the first meeting of creditors in person [158 (h)];
- c) Failure to provide books and records to the Trustee [158 (b)] and to submit all of his necessary income and expense statements along with supporting documents;
- d) Failure to provide a copy of his 2021 tax return with related documents [158 (b)];
- e) Failure to respond to his undertakings from the section 163 examination of the BIA completely and on a timely basis [163 (1)];
- f) Failure to cooperate with the Trustee fully including facilitating the transfer of his vehicles to the Trustee [158 (a)]; and,
- g) Pleterski may have surplus income owing to the estate; however, this amount cannot be determined pursuant to s.68 (3) of the BIA until Pleterski has filed all required income and expense statements.

72. The report filed pursuant to section 170 of the BIA also explained that the Court may decide to further delay Pleterski's discharge, add conditions or declare that certain debts are not dischargeable from bankruptcy for the following reasons:

- a) Pleterski has failed to comply with his duties pursuant to section 158 as noted above;
- b) Pleterski's bankruptcy was accelerated by unjustifiable extravagance in living [173 (1)(e)] including driving more than 10 exotic sportscars, spending approximately \$45,000 a month to live in a mansion and flying frequently via private jet;
- c) Pleterski has not answered all questions in his examination pursuant to section 163 truthfully [198 (1) (b)];
- d) Pleterski has not kept proper books of account [200 (1)(a)] or provided evidence of the losses you assert took place [200 (2)];
- e) Pleterski has deleted data on his phone prior to it being imaged by the Trustee [200 (1)(b)];

- f) Pleterski's assets are not equal to 50% of his liabilities [173 (1)(a)];
- g) Pleterski has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the Bankrupts' liabilities [173 (1)(d)]; and
- h) Pleterski raised investments from investors under false pretenses [178 (1)(e)] and appears to have invested less than 2% of the money collected from investors.

REQUESTED RELIEF

73. The Trustee seeks orders:

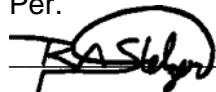
- a) Approving the Trustee's activities as described in this Third Report;
- b) Directing Jerome Tulloch, Kyrsten Tytla, Jocelyn Tytla and Winston Blenman attend examinations at the dates and times set out in the proposed Notices of Examination;
- c) directing Dragan and Kathy Pleterski to repay \$1,100,087 to the estate; and,
- d) Granting the Trustee relief from forfeiture and directing that the Westney Deposit be paid to the Trustee.

DATED at Toronto, Ontario this 14th day of March 2023.

GRANT THORNTON LIMITED

In its capacity as Trustee for the bankrupt estate of
Aiden Pleterski and AP Private Equity Limited
and not in its personal or corporate capacity

Per.



Rob Stelzer, CPA, CA, CIRP, LIT
Senior Vice President

Appendix “B”

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

THE HONOURABLE) FRIDAY, THE 29TH DAY
)
JUSTICE OSBORNE) OF SEPTEMBER, 2023

**IN THE MATTER OF THE BANKRUPTCY OF
AIDEN PLETERSKI and AP PRIVATE EQUITY LIMITED,
of the Town of Whitby, in the Province of Ontario**

**ORDER
(Westney Deposit)**

THIS MOTION made by Grant Thornton Limited, in its capacity as trustee (in such capacity, the “**Trustee**”) of the estates of each of the bankrupts, AP Private Equity Limited and Aiden Pleterski (“**Pleterski**”), for an order granting the Trustee relief from forfeiture pursuant to section 98 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended, and directing that the deposit money paid by Pleterski for the purchase of the property located at 725 Westney Road, Ajax, Ontario (the “**Westney Deposit**”) be returned to the Trustee forthwith, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Third Report of the Trustee dated March 14, 2023, including Appendices “P”, “Q” and “R” thereto, and on hearing the submissions of counsel for the Trustee and counsel for 2649360 Ontario Inc., no one else appearing although duly served as appears from the Affidavit of Service of Roxana G. Manea sworn May 17, 2023,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated such that this motion is properly returnable today, and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DIRECTS** that 2649360 Ontario Inc. shall return or cause to be returned to the Trustee, the Westney Deposit in the amount of CAD \$500,000, as soon as reasonably practicable and in any event no later than five (5) business days from the date of this Order.
3. **THIS COURT ORDERS costs in the amount of \$15,000, inclusive of fees, disbursements and HST, be paid by 2649360 Ontario Inc. within 30 days.**
4. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without further need for entry and filing.

IN THE MATTER OF THE BANKRUPTCY OF **AIDEN PLETERSKI and AP PRIVATE EQUITY LIMITED**, of the Town of Whitby,
in the Province of Ontario

Court File No./Estate No.: BK-22-00208582-OT-31

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Proceedings commenced at Toronto, Ontario

ORDER
(Westney Deposit)

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Lawyers for Grant Thornton Limited, in its capacity
as trustee in bankruptcy of the estates of Aiden
Pleterski and AP Private Equity Limited



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: BK-22-00208582-OT31 DATE: 29 September 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: **BANKRUPTCY of PLETERSKI/AP PRIVATE EQUITY LTD.**

BEFORE JUSTICE: **OSBORNE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------|
| | | |
| | | |

For Defendant, Respondent, Responding Party, Defence:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|------------------|
| Leanne Williams | Trustee | lwilliams@tgf.ca |
| | | |
| | | |
| | | |

For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|----------------------|---------------------------------|
| Kelli Preston | 2649360 Ontario Inc. | Kelli.preston@devrylaw.ca |
| Dhanju-Dhillon | Sandeep Gupta | Sdhanju-dhillon@torkinmanes.com |
| | | |
| | | |

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Trustee in Bankruptcy of Aiden Pleterski and AP Private Equity Limited moves for relief from forfeiture and for an order directing that the Westney Deposit (as defined below) be paid over to the Trustee, pursuant to section 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C,43.
2. This motion represents but one step in the long and complicated series of events that flows from the actions of the Bankrupts. The parties, being the Trustee on the one hand and the vendor of a property sought to be purchased by the Bankrupts on the other hand, are in a sense, both victims of the conduct of the Bankrupts.
3. The motion is thus somewhat unusual: many claims for relief from forfeiture arise in circumstances where the issue turns on the relative conduct of those two parties. Here, the dispute is between two innocent parties. The issue on this motion is who, as between those two parties, should be entitled to a deposit paid by one of the Bankrupts to the vendor in respect of a proposed property purchase, when the deposit came from funds of investors with Pleterski that he misappropriated.
4. The Trustee relies upon the Third Report of the Trustee dated March 14, 2023, together with Appendices thereto. The Respondent, 2649360 Ontario Inc. (“264” or the “Respondent”) relies on the affidavit of Thomas Fairfull sworn May 19, 2023 together with Exhibits thereto. Mr. Fairfull is the president of 264.

Context

5. There is no disagreement on the basic facts underlying this motion.
6. The motion relates to a property located at 725 Westney Road, Ajax, Ontario (the “Westney Property”). Initially, Pleterski and Colin Murphy (“Murphy”) rented commercial space at the Westney Property purportedly for use as a place to store their exotic cars.
7. Pleterski and Murphy each signed five year rental agreements with 264.
8. Later, on October 26, 2021, Pleterski and Murphy entered into an agreement to purchase the Westney Property from 264 for \$5.5 million. A deposit of \$500,000 was paid (the “Westney Deposit”). It came exclusively from Pleterski. Closing was scheduled for September 28, 2022. The transaction contemplated in that agreement of purchase and sale, however, never closed and the sale was not completed.
9. Upon learning of the Westney Deposit, the Trustee put both the real estate broker and 264 on notice of its appointment and its claim to the Westney Deposit. As a result, the proceeds of sale are being held in escrow by the listing agent pending a resolution or determination as to the entitlement thereto.
10. On September 13, 2022, 264 delivered an anticipatory breach letter to the Trustee since both Murphy and the Trustee confirmed to 264 that they would not be completing the transaction to purchase the Westney Property. Closing had been scheduled to take place approximately two weeks later on September 28, 2022.
11. On November 24, 2022, the Westney Property was sold by 264 for a purchase price of \$5.8 million - \$300,000 greater than the amount offered in the proposed agreement of purchase and sale by Pleterski and Murphy (the “Surplus”).

The Positions of the Parties

12. 264 takes the position that it incurred damages during the period in which Pleterski and Murphy rented the premises at the Westney Property, with the result that it (264) is entitled to retain and keep both the Westney Deposit and the Surplus.
13. 264 asserts that it incurred repair costs of \$138,500 in respect of which it has provided some backup to the Trustee. 264 further asserts that it incurred additional costs (repair costs, legal costs in rent) in respect of which backup was not provided.

14. The Trustee takes the position that the Westney Deposit should be returned to it for the benefit of creditors in the bankruptcies for the following principal reasons:
- a. 264 does not appear to have incurred any damages due to the failure to close in excess of the Surplus, notwithstanding its claim for such damages, since it's demonstrated costs of \$138,500 are far less than the Surplus of \$300,000;
 - b. any costs incurred by 264 have been mitigated by the Surplus;
 - c. the Westney Deposit came from the funds of investors whose money was used by Pleterski in an unauthorized manner to fund the Westney Deposit;
 - d. most of the investors of the Bankrupts will see minimal recovery from their investments and yet, 264 stands to gain a significant profit from its own dealings with Pleterski; and
 - e. retention by 264 of the Westney Deposit would result in an unjust and inequitable unfairness to the investors of the Bankrupts.
15. The Trustee submits that if 264 is entitled to keep the Westney Deposit (funded by investors), it will have profited by \$661,000 (being the amount of the Westney Deposit of \$500,000 plus the Surplus of \$300,000 net of the demonstrated repair costs of \$138,500).

The Test

16. Section 98 of the *Courts of Justice Act*, on which the Trustee relies, provides that a court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just. The jurisdiction of the court is equitable in nature.
17. A two-part test is to be applied when determining whether discretion pursuant to s. 98 should be exercised:
- a. whether the forfeited amount is out of all proportion to the damages suffered; and
 - b. whether would be unconscionable for the vendor to retain the benefit.
- See: *Redstone Enterprises Simple Technology Inc.*, 2017 ONCA 282 (“*Redstone*”) at para. 15, quoting with approval *Varajao v. Azish*, 2015 ONCA 218 at para. 11.
18. In the absence of evidence of damages, it is fair for the court to infer that none were suffered. However, that alone does not render the forfeiture unconscionable: *Redstone*, at para. 17.
19. The finding of unconscionability must be an exceptional one, strongly compelled on the facts of the case. While in some circumstances, a disproportionately large deposit, without more, could be found to be unconscionable, such is not always the case: *Redstone*, at paras. 25 and 26.
20. While the list of the indicia of unconscionability is never closed, especially since they are context-specific, useful factors include:
- a. an inequality of bargaining power;
 - b. a substantially unfair bargain;
 - c. the relative sophistication of the parties; existence of *bona fide* negotiations;
 - d. the nature of the relationship between the parties;
 - e. the gravity of the breach, and

f. the conduct of the parties.

See: *Redstone*, at para. 30.

21. The analysis is conducted as of the time of the default rather than at the time at which the parties entered into the contract, and not on the basis of a hypothetical situation: *Kechnie v. Sun Life Assurance Company of Canada*, 2016 ONCA 434 at para. 21.
22. The term “unconscionability” has been defined to mean “that which is contrary to the conscience of the court” and “something that is shockingly unfair or unjust ... and not in keeping with a caring society”: *Dar v. The Yards Corporation*, 2018 ONSC 5043 at para. 27, citing *Scheel v. Henkelman*, 2001 CanLII 24133 (ON CA) at para. 19.

Positions of the Parties and Analysis

23. The Trustee submits that, first, as occurred in *Redstone*, 264 as the party seeking to keep the funds has put forward no evidence that it suffered any loss as a result of the breach of the agreement (in this case, the failure to close the agreement of purchase and sale). Accordingly, this court should infer that it has not suffered any such damages.
24. Second, the Trustee submits that it would be unconscionable for 264 to retain the Westney Deposit in the circumstances of this case. The Trustee, recognizing that this case involves two innocent parties, submits that the court is not being asked to grant relief from forfeiture to a party who breached an agreement at the expense of an innocent vendor. Rather, the court is being asked to grant relief from forfeiture for the benefit of the innocent investors of the Bankrupts.
25. It is undisputed that the Westney Deposit came from funds provided to Pleterski by investors¹. The agreements pursuant to which those investor funds were advanced are clear that the purpose of the advances were for investments in crypto currency and foreign exchange hedges. There is no dispute that Pleterski was not authorized by the investors to use their funds to finance the Westney Deposit.
26. The position of the Trustee is that it would be unconscionable and manifestly unfair for 264 to retain the Westney Deposit, in addition to the Surplus. Such would amount to a windfall profit for 264, in contradistinction to the massive losses suffered by the investors of the Bankrupts, most of whom will see minimal recovery on their lost investments.
27. The Trustee argues that relief from forfeiture, if granted, would not unfairly enrich the estate of the Bankrupts for the benefit of creditors, at the expense of the vendor. The vendor, 264, would not be unjustly deprived because there is no evidence that it suffered damages as a result of the anticipatory breach.
28. Further, 264 still stands to gain a significant profit from having sold the Westney Property for the Surplus of \$300,000. Even if relief from forfeiture is granted, that profit will still be \$161,500 (Surplus net of demonstrated expenses and losses). That profit would balloon to \$661,500 if no relief from forfeiture is granted, while investor recoveries are minimal, resulting in an unconscionable outcome.
29. 264 submits that relief from forfeiture should not be granted. It submits that in reliance on the agreement of purchase and sale, it permitted the purchasers (Pleterski and Murphy) to carry out significant destruction as part of an intended remodeling of the property. 264 submits that if the damage was not repaired, the agreement provided that the Westney Deposit would also be used as security for the cost of repairs.
30. 264 also submits that the purchase price as agreed was less than the fair market value of the property at the time, since the buyers had originally agreed to permit 264 to continue to use the back portion of the

¹ At least 99.8 of the Westney Deposit came from investor funds. The delta between that proportion and 100% is immaterial and was not argued as a significant point by either party on this motion.

parking lot located on the property for storage. Moreover, it submits that the fair market value of the property was higher based on the evidence of Mr. Fairfull to the effect that 264 could have sold the property for substantially more, since at the relevant time in the fall of 2022 there was significant demand for commercial properties.

31. In short, 264 submits that the Trustee is in no better position than would be Pleterski. Since both Murphy and the Trustee confirmed they would not be closing on the purchase, the Trustee knew or ought to have known that such anticipatory breach would result in a forfeiture of the deposit.
32. I accept that the law has long recognized that in usual circumstances, a deposit paid pursuant to an agreement of purchase and sale for real property is forfeited unless the parties bargained to the contrary. 264 makes extensive submissions to this effect.
33. In my view, however, those submissions (and the well-settled authorities on which they are based) do not advance the analysis very far because this fundamental point is not at the heart of the dispute. It is indeed the rare case when the law that typically applies to deposits ought not to be applied. That is precisely why, in my view, the equitable remedy of relief from forfeiture exists in the first place, and it is also why such equitable relief is granted only sparingly and in rare cases.
34. 264 also submits that, unlike in *Redstone*, the deposit at issue here represents an amount that is less than “the customary” ten percent of the purchase price, with the result that it is not excessive (or, to use the phrase in the case law, disproportionate), with the result that on this basis alone, the present case is distinguishable from *Redstone*.
35. I disagree, for two reasons. First, the proportionality referred to in the first branch of the *Redstone* test relates to the proportionality of the forfeited amount to the damages suffered, not to the balance of the purchase price for the property. Those may or may not be the same. Second, even if those amounts were the same, the proportionality issue is only the first part of the analysis. The second branch of the *Redstone* test requires the consideration of unconscionability.
36. 264 submits that, while the creditors of the Bankrupts maybe innocent parties, the Westney Deposit did not constitute proceeds of crime. I am not persuaded that this distinction is relevant. There is no requirement that relief from forfeiture requires a finding that the amount to be forfeited constitute proceeds of crime, although, as the Trustee submits in 264 concedes, the funds used to pay the Westney Deposit here may in fact be proceeds of crime. I need not make any determination in that regard.
37. 264 further submits that until such time as that (i.e., whether the Westney Deposit constitutes proceeds of crime) is determined, this motion is premature. I reject this argument for the same reason as above.
38. Finally, 264 submits that the investors were “merely persons investing in a very high risk and speculative investment, albeit possibly fraudulent”. 264 contrasts that with its own role as a “*bona fide* vendor who entered into the agreement in good faith”.
39. I cannot accept this relative characterization of the role of the investors. Even if the investors willingly undertook, in deciding to invest in crypto currency and foreign exchange hedges, “very high risks in speculative investments”, it is wholly unfair to those investors and the analysis to infer that the investors knowingly and willingly took the risk of fraud on the part of the Bankrupts. There is no basis for such a conclusion.
40. Acceptance by an investor of the risks that may be inherent in crypto currency and foreign exchange hedges is not an acceptance by that same investor that her or his money will be simply misappropriated. That was no part of the risks included in the agreement to invest. In fact, it was expressly not part of the agreement of the investors, which authorized the funds to be invested in those markets. The agreement did

not authorize the use of the funds for the purchase of a property to store exotic cars owned by the Bankrupts.

41. 264 submits that, even if it were later determined that the Westney Deposit constituted proceeds of crime, 264 is entitled to rely on the terms of the agreement of purchase and sale it bargained for in good faith.
42. Again, that submission does not assist me. There is no issue on this motion that 264 is an innocent party, and one that relied upon the agreement in good faith. The issue is whether, as one of two innocent parties, it should be entitled to retain the Westney Deposit or whether it would be unconscionable for it to do so.
43. Next, 264 submits that the Westney Deposit does not form property that is part of the estate to which the Trustee can claim title, since at the time of the bankruptcy, it was held in trust for the benefit of either the purchaser or vendor, and the purchaser (first Pleterski and later his successor in title, the Trustee) repudiated the agreement.
44. I do not accept that submission either. The Trustee is not claiming a right to the Westney Deposit *qua* purchaser under the agreement of purchase and sale. It is making an equitable claim for relief from forfeiture: i.e., the forfeiture that would flow from the enforcement of the agreement according to its terms, being the forfeiture of the Westney Deposit upon the failure to close.
45. Finally, 264 submits that in general, a contractual provision which requires one party to pay or forfeit a sum of money in the event of his breach of the contract, is unlawful as being a penalty unless such provision can be justified as a payment of liquidated damages (i.e., a genuine pre-estimate of the loss).
46. 264 submits that the one exception to this general rule is the very one on which it relies: the provision for the payment of a deposit by the purchaser on the contract for the sale of land. It relies on “ancient law” to the effect that a deposit on an agreement for the purchase of land can be validly forfeited even if it bears no reference to the anticipated loss to the vendor.
47. I reject that argument for the same reasons: that law is precisely why the equitable remedy of relief from forfeiture exists.
48. The Trustee accepts that the costs claimed by 264 of \$138,000 were incurred. That amount is not in dispute. Beyond that, however, 264 has offered no evidence of any other losses.
49. The bald statement in the Affidavit of Mr. Fairfull to the effect that: “but for the damages incurred to the property we could have sold the property for the substantially more as at the time in the fall of 2022 there was significant demand for commercial properties” is not sufficient. There is no market evidence, no appraisals, and no evidence from, for example, a real estate expert, appraiser or valuator, to support the statement made. No other out-of-pocket expenses or disbursements have been proven.
50. Similarly, Mr. Fairfull’s affidavit refers, without any particulars or terms, to what counsel referred to as a “gentleman’s agreement” pursuant to which the purchasers agreed to let 264 use the back portion of the parking lot for storage. There is no evidence upon which I can conclude that there was any additional loss suffered, let alone quantify the value of such a loss.
51. As stated above, even if the Westney Deposit is paid over to the Trustee, 264 will realize a net profit of \$135,500. The investors, on the other hand, will recover *de minimus* amounts on their investments. Having considered all of the circumstances, I conclude that it would be unconscionable to permit 264 to retain the additional \$500,000 of the Westney Deposit.

Result and Disposition

52. For all of these reasons, the motion for relief from forfeiture is granted.

53. At the conclusion of argument, counsel for the parties advised the Court that they had reached an agreement as to costs to the effect that the successful party should be entitled to costs in the amount of \$15,000 inclusive of fees, disbursements and HST.
54. The Trustee was successful on the motion. It is entitled to its costs, fixed in the agreed amount of \$15,000 all-inclusive, and payable by 264 within 30 days pursuant to Rule 57.03.
55. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

Olson, J.