

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Conian Developments Inc. (Re)*,  
2025 BCSC 2506

Date: 20251217  
Docket: B200284  
Registry: Vancouver

**In the Matter of *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

**In the Matter of the Bankruptcies of Conian Developments Inc.,  
Conian Developments (La Voda) Inc., Conian Developments (La Voda II) Inc.,  
and FLII Construction Ltd.**

Before: The Honourable Madam Justice Fitzpatrick

## Reasons for Judgment

Counsel for BFO Canada Limited, Trustee  
in Bankruptcy of Conian Developments Inc.,  
Conian Developments (La Voda) Inc.,  
Conian Developments (La Voda II) Inc. and  
FLII Construction Ltd.:

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S. Dhaliwal  
R. Gill

Place and Date of Hearing:

Vancouver, B.C.  
October 27, 2025

Place and Date of Judgment:

Vancouver, B.C.  
December 17, 2025

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**INTRODUCTION**

[1] This application is Malkiat Gill’s appeal from a trustee in bankruptcy’s decision to disallow a portion of her claim against the estate. Mrs. Gill is represented by her daughter, Sarjinder Gill.

[2] The trustee opposes the application, taking the position that the record before it amply justified its decision to disallow certain of Mrs. Gill’s alleged advances.

**BACKGROUND FACTS**

[3] This bankruptcy proceeding involves the estates of four entities: Conian Developments Inc. (“Conian”), Conian Developments (La Voda) Inc. (“La Voda”), Conian Developments (La Voda II) Inc. (“La Voda II”), and FLII Construction Ltd. (“FLII”) (collectively, the “Debtors”). BDO Canada Ltd. is the trustee in bankruptcy (the “Conian Trustee”).

[4] The Debtors collectively carried on business as a real estate development enterprise under the control of Rana Khaliq. Mr. Khaliq ran a Ponzi-like lending scheme (the “Loan Scheme”) through the Debtors and other companies under Mr. Khaliq’s sole control, including BC Currency Exchange Inc., a company in the currency exchange business (“BCCE”), and 0831694 BC Ltd. The Loan Scheme involved the intermingling and diverting of funds invested in Mr. Khaliq’s various companies, often without the knowledge of the people who advanced those funds, and without proper record of those transactions.

[5] BCCE is also bankrupt and its estate is being separately administered by its trustee in bankruptcy, McEown + Associates Ltd. (the “BCCE Trustee”).

[6] On July 20, 2023, Justice Ahmad granted an order substantively consolidating the estates of Conian, La Voda and La Voda II, and also ordering the procedural consolidation of all the Debtors’ estates. On that same date, Ahmad J. granted a Claims Process Order (the “Conian CPO”), which set out the claims process for the Debtors’ creditors. Earlier, on May 20, 2022, this Court granted a

separate claims process order for BCCE’s creditors (the “BCCE CPO”) on similar terms.

[7] On May 2, 2025, Justice Warren (as she then was) issued an order that the assets of the Conian, La Voda, La Voda II and BCCE estates be treated as common assets for the purposes of distribution to creditors of those entities (the “Warren Order”): *Conian Developments Inc. (Re)*, 2025 BCSC 831 [Warren RFJ]. The assets of FLII’s bankruptcy estate were to remain separate for the purposes of distribution to its creditors and are not relevant here.

[8] Pursuant to the Warren Order, claims against the consolidated estate of the Debtors filed pursuant to the Conian CPO were to be adjudicated by the Conian Trustee, including dealing with any appeal from a notice of disallowance. The Warren Order also required that the BCCE Trustee review any disallowance by the Conian Trustee and vice versa.

[9] The Conian CPO and the BCCE CPO are largely consistent in their approach. The Conian CPO provides:

1. For the purpose of this Order, the following terms shall have the following meanings:

(a) “**Amounts Advanced**” means the aggregate of all amounts whether in cash or otherwise advanced by or on behalf of a Direct Lender to any of the Joint Debtors to invest in the Loan Scheme;

(b) “**Amounts Received**” means the aggregate of all amounts received by a Direct Lender, or paid to any third party on behalf of or for the benefit of the Direct Lender, in respect of amounts advanced by or on behalf of the Direct Lender to any of the Joint Debtors, whether received in cash or otherwise and without regard to whether any portion was characterized as interest, dividends, redemptions or profits;

[...]

(r) “**Direct Lender**” means any Person or assignee who participated in the Loan Scheme by advancing funds directly to one or more of the Joint Debtors;

(s) “**Direct Lender Claim**” means a Claim of a Direct Lender;

[...]

(x) “**Involuntary Lender**” means any Person or assignee who participated in the Loan Scheme by advancing funds to BCCE;

[...]

(aa) “**Known Creditor**” means a Direct Lender or an Ordinary Creditor who has submitted a Filed Claim or who is known by the Trustee or the BCCE Trustee as of the date of pronouncement of this Order and who received a Claims Package from the Trustee;

[...]

12. The Trustee shall allow a Proof of Claim with respect to a Direct Lender Claim only for the amount by which the Amount Advanced by the Direct Lender exceeds the Amount Received by the Direct Lender.

13. In determining the Amount Received by a Direct Lender, in the absence of evidence to the contrary acceptable to the Trustee, the Trustee shall assume that interest was received by the Direct Lender in respect of their investment in the Loan Scheme, as evidence in the records of BCCE or any of the Joint Debtors.

[10] In the usual fashion, the Conian CPO (para. 15) provided that, upon receipt of a completed proof of claim, the Conian Trustee would review it and come to a decision as to whether to accept the claim or, alternatively, revise or disallow the claim through a notice of revision or disallowance (NORD). Any creditor receiving a NORD had the right to file a notice of application to set aside the NORD, supported by an affidavit containing all evidence intended to be relied upon by that creditor in support (para. 16).

[11] The hearing to determine any appeal from a NORD is to be conducted as a true appeal and not a hearing *de novo* (Conian CPO, para. 18).

### **MRS. GILL’S CLAIM AND THE NORD**

[12] In accordance with the Conian CPO, the Conian Trustee provided Mrs. Gill with a claims package, including a proof of claim form to be completed and submitted in accordance with the instructions noted in it. The proof of claim form included a note emphasizing the need to provide documentation in support of any claim:

NOTE: All relevant documentation on which you rely in making your Claim must be attached to this Proof of Claim, as the validity of your Claim will be determined solely on this Proof of Claim and attachments thereto. If the claim is disallowed for any reason, and you file an appeal of that disallowance, the appeal will be heard as a true appeal and your ability to introduce fresh or new evidence in support of your claim will be limited accordingly.

[13] On September 23, 2023, Mrs. Gill filed two proof of claim forms outlining claims for the two separate amounts, both against the La Voda estate: \$700,000 and \$1,120,626.19.

[14] Only Mrs. Gill's proof of claim for \$700,000 is in issue on this appeal (the "Proof of Claim"). In support of her Proof of Claim, Mrs. Gill attached various Schedules and supporting documents, including:

- a) Schedule "A": A spreadsheet referencing three advances on August 27, 2016 (in the amounts of \$20,000, \$40,000 and \$640,000) and monthly interest paid of \$8,750 from September 2016 to March 2020 totalling \$376,250;
- b) Schedule "B": Various documents, being:
  - a. An uncashed cheque from BCCE to Ms. Gill dated October 27, 2016 for \$700,000 (the "2016 Cheque");
  - b. Copies of bank drafts and cheques payable to BCCE in the amount of \$640,000 and various account statements, including:
    - i. A \$500,000 cheque dated August 27, 2016, which cleared through a joint account owned by Mrs. Gill and her daughter, Lakhbir Gill-Chattha;
    - ii. A \$50,000 cheque dated September 1, 2026, which cleared through the Gill/Gill-Chattha joint account;
    - iii. A \$40,000 cheque dated August 31, 2026, which came from a construction company, M Kanj Construction Ltd., with which Mrs. Gill appears to be affiliated; and
    - iv. A copy of a bank statement from August/September 2016 regarding a joint account of Raghbir Gill (another of Mrs. Gill's daughters) and her husband, Amarjit Johal (the "Gill/Johal Bank

Statement”), which indicated a debit on August 31, 2016 of \$50,000 and two handwritten notes stating “\$20k” and “\$40k”; and

- c) Schedule “C”: A document dated June 5, 2018, purporting to be an agreement between Mrs. Gill, Conian and Mr. Khaliq (the “June 2018 Agreement”), and which was signed by them, and provided:

Pursuant to the agreements for funds loaned by Gill to BC Currency Exchange Inc. in the amount of \$700,000.00 on or about August 28, 2016.

It is hereby agreed that all the funds are transferred and advanced to Conian Developments Inc. for the 156 unit condo site on Ravine Road. (the “Project”)

Conian will guarantee Gill a return of 15% on the funds per annum. Conian will pay \$8,750.00 per month until completion of the Project.

Gill will provide 60 days notice to Conian if Gill wishes to withdraw the funds otherwise the funds will be paid in full upon Completion of the Project including any accrued interest.

In the event of default, Gill may commence legal action and any costs incurred will be paid by Conian and Khaliq

Khaliq personally guarantees these funds.

This is a legally binding contract signed on this 5th day of June in the City of Surrey, BC

[15] In addition to the documents provided by Mrs. Gill with her Proof of Claim, in adjudicating the Proof of Claim, the Conian Trustee also reviewed certain business records of the Debtors and BCCE which were in the Conian Trustee’s possession or power, including:

- a) certain spreadsheets provided to the Conian Trustee by the BCCE Trustee (the “Spreadsheets”). These Spreadsheets had been prepared by the BCCE Trustee for the purpose of its review of Mrs. Gill’s claim or were prepared by a former employee of BCCE who was assisting the BCCE Trustee to retrieve records; and

b) BCCE's bank statements for the period of time when Mrs. Gill provided funds to BCCE.

(collectively, the "Documents")

[16] On review of the Proof of Claim and the Documents, the Trustee was satisfied that Mrs. Gill advanced to BCCE the total amount of \$590,000. This arose from the Conian Trustee's acceptance of proof of the two advances provided by Mrs. Gill of \$550,000 (from Mrs. Gill and her daughter's joint bank account) and \$40,000 (payment from M Kanj Construction Ltd.).

[17] The Conian Trustee disallowed Mrs. Gill's claim for \$50,000, which was said to be supported by reference to an August 31, 2016 debit on the Gill/Johal Bank Statement. The Conian Trustee did not allow this claim because the amount came from a bank account unconnected to Mrs. Gill and she had not provided any explanation or supporting documentation as to why she included this amount in her Proof of Claim. The further claimed amounts (\$20,000 and \$40,000) were disallowed. These amounts were only noted in handwriting on the Gill/Johal Bank Statement and Mrs. Gill did not provide any source documentation to support her position that she had made these further advances.

[18] The Conian Trustee concluded that, while one of the Spreadsheets supplied by the BCCE Trustee attributed \$700,000 of deposits into the BCCE account by Mrs. Gill, this amount was not supported by BCCE's bank statements or the supporting documents produced by Mrs. Gill.

[19] On review of the Spreadsheets, the Conian Trustee identified loan interest payments made to Mrs. Gill from September 2016 to March 2020, in the total amount of \$376,250, as asserted by Mrs. Gill in her Proof of Claim.

[20] On July 11, 2025, the Conian Trustee issued a NORD to Mrs. Gill, in respect of her Proof of Claim. The Conian Trustee partially disallowed Mrs. Gill's claims to the extent of \$110,000. In accordance with the Conian CPO, the Trustee determined that the "Amounts Advanced" by or on behalf of Mrs. Gill was \$590,000 (not

\$700,000) and the “Amounts Received” by, on behalf of, or for the benefit of Mrs. Gill was \$376,250. In accordance with the Conian CPO, the Conian Trustee therefore allowed Mrs. Gill's claim in the amount of the difference, being \$213,750.

[21] On August 14, 2025, Mrs. Gill filed a notice of application appealing the NORD in respect of the partial disallowance of her Proof of Claim. She also later delivered Affidavit #3 of Sarjinder Dhaliwal (Mrs. Gill's daughter and representative for the purposes of her appeal) affirmed August 18, 2025 (the “Dhaliwal Affidavit”).

**STANDARD OF REVIEW**

[22] There is no issue as to the appropriate form of this appeal and the standard of review, which arises under s. 135(4) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA].

[23] This appeal is a “true appeal”: *Galaxy Sports Inc. (Re)*, 2004 BCCA 284 [Galaxy Sports] at para. 40, cited in *Anderson Square Holdings Ltd. (Re)*, 2025 BCSC 186 [Anderson Square] at para. 32.

[24] Where the issue on appeal from a disallowance raises a question of mixed fact and law, or a question of fact, the standard of review is one of palpable and overriding error. Where the appeal raises a question of law, the standard of review is one of correctness: *Anderson Square* at para. 33.

[25] No questions of law are raised on this appeal. The substance is Mrs. Gill's argument is that the Conian Trustee erred in rejecting that she advanced a further \$110,000 beyond what was accepted. In that case, the alleged error is factual and must be established as a “palpable and overriding” error. This standard is highly deferential. A “palpable” error means one that is obvious, and an “overriding” error means that one that goes to the very core of the outcome of the case: *Anderson Square* at para. 34, citing *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2016 BCCA 479 at para. 18.

**FRESH EVIDENCE APPLICATION**

[26] As above, Mrs. Gill’s appeal was said to be supported by the filing of the Dhaliwal Affidavit. The Conian Trustee objected to the admission of this evidence, arguing that the appeal should proceed on the basis of the record before the Conian Trustee in its adjudication of the Proof of Claim.

[27] Ultimately, Mrs. Gill resiled from any reliance on the Dhaliwal Affidavit and I have therefore disregarded it.

[28] Nevertheless, in the course of the hearing, Mrs. Gill sought to rely on further fresh evidence, said to support her claims, not referenced in the Proof of Claim and not considered by the Conian Trustee in that respect.

[29] This “fresh evidence” was found in the Affidavit #1 of Ramona Brar sworn August 7, 2024 (the “Brar Affidavit”). Ms. Brar was the representative of certain unsecured creditors of BCCE and she was also an inspector of the BCCE estate. She provided the Brar Affidavit in support of the Conian Trustee’s application before Warren J. to substantively consolidate certain of the estates and which led to the Warren Order.

[30] *Galaxy Sports* is support for the proposition that fresh evidence may not be adduced in support of an appeal from a disallowance as a matter of course. It is only admissible where it is “justified in the interests of justice or on some other principled basis”: *Galaxy Sports* at para. 42. As noted in *Galaxy Sports* at para. 41, the efficient administration of bankruptcy estates is defeated to a great degree if creditors are allowed to supplement or “cooper up” their claims on appeals to the courts, rather than submitting all of the evidence in the first instance for consideration by the trustee who has considerable experience in adjudicating claims.

[31] The test in *R. v. Palmer*, [1980] 1 S.C.R. 759, 1979 CanLII 8 has been recently restated and confirmed in *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 29. In both decisions, the Court noted the overriding question as to whether to admit

fresh evidence was whether it was in the interests of justice. Answering that question involves, among other relevant matters, a consideration of whether:

- a) the evidence could not, by the exercise of due diligence, have been obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases);
- b) the evidence is relevant in that it bears upon a decisive or potentially decisive issue;
- c) the evidence is credible in the sense that it is reasonably capable of belief; and
- d) the evidence is such that, if believed, it could have affected the result at trial.

[32] BC Courts have regularly applied the “*Palmer* test” in considering whether or not fresh evidence should be admissible on an appeal under the *BIA: Lin (Re)*, 2010 BCSC 264 at paras. 57–60; *White (Re)*, 2021 BCSC 2031 at paras. 34–47; *Anderson Square* at paras. 107–111.

[33] In this case, at the outset, I am prepared to acknowledge certain circumstances here that could justify the relaxation of the strict test for the admission of the Brar Affidavit as being in the interests of justice. Mrs. Gill is self-represented and is elderly. She says that she is unsophisticated. She submits that the Conian Trustee is fully aware of the contents of the Brar Affidavit given that this evidence was before the Court on the Conian Trustee’s own earlier application before Warren J. She therefore submits that the Conian Trustee will suffer no prejudice if Ms. Brar’s evidence is considered and the Conian Trustee does not assert any prejudice.

[34] Despite those preliminary considerations, Mrs. Gill’s reliance on portions of the Brar Affidavit on this appeal meets other headwinds arising from the *Palmer* test – notably, relevance and failure to affect the result. As I will discuss in more detail below, in my view, these portions of the Brar Affidavit are irrelevant to the issue to be decided and of no significance to the result of this appeal.

**DISCUSSION**

[35] As stated above, the focus on this appeal is whether Mrs. Gill has met her onus to establish that the Conian Trustee erred in disallowing a portion of her claim—\$110,000—and that, indeed, this amount is an “Amount(s) Advanced” by her in accordance with the Conian CPO. In accordance with the definition of that phrase in para. 1(a), that advance can be in cash or otherwise advanced by or on behalf of Mrs. Gill.

[36] Mrs. Gill concedes that she cannot produce the source documents to establish these further amounts; they are only referenced in and on other people’s documentation (the Gill/Johal Bank Statement which includes the debit and two handwritten notations). Mrs. Gill states she cannot obtain copies of the bank drafts or cheques for these amounts because banks did not scan them in 2016 and do not scan them today.

[37] Despite these difficulties, Mrs. Gill argues that the Conian Trustee is taking an “unduly rigid evidentiary approach” and has ignored other evidence that she says supports that the full \$700,000 was advanced. She says that:

- 1) When the funds (\$700,000) were advanced in late August 2016, she received the 2016 Cheque (being #22270) from BCCE dated October 27, 2016, payable to her in the amount of \$700,000 (the “2016 Cheque”). She says that this is evidence of her loan to BCCE for an initial two-month term;
- 2) At the same time as the advance, she received another cheque (#22271) from BCCE in the amount of \$17,500 payable on October 27, 2026, representing the agreed upon interest rate of 15% for the two-month loan, said to be consistent with a \$700,000 loan with interest payable at 15% per annum;
- 3) She did not cash the 2016 Cheque for \$700,000 in October 2016 because Mr. Khaliq asked her to continue the loan and she agreed to do so on the original terms agreed to in August 2016;

- 4) The Conian Trustee accepts that BCCE paid Mrs. Gill the monthly amount of \$8,750 from September 2016 to March 2020, which amount equates to a 15% annual return on \$700,000, also said to be consistent with a \$700,000 loan with interest payable at 15% per annum;
- 5) She argues that, if her loan had been in the amount of \$590,000, as reflected in the NORD, the interest payments made would have reflected an interest rate of 17.79666101%. Mrs. Gill says that it is unreasonable to expect that a person such as her, an unsophisticated and elderly investor, would have gone to such a complex interest rate; and
- 6) Finally, she points to the June 2018 Agreement, stating that it is consistent with her having initially advanced \$700,000 to BCCE and which was later advanced to La Voda.

[38] As I have mentioned above, this appeal—including a consideration of the Conian Trustee’s reasons for the NORD—must be considered in light of the context and evidentiary record before the Conian Trustee: *Anderson Square* at paras. 35–36, citing *De Beers Diamond Jewellers (Canada) Ltd*, 2024 BCSC 911 at para. 61.

[39] The Conian Trustee understandably placed some emphasis on Mrs. Gill’s lack of source documentation—being cheques or bank drafts—for the alleged further advances of \$110,000.

[40] Mrs. Gill says that she was able to get the source documentation from TD Bank and Canada Trust to establish the advances of \$590,000. She says that the “other bank” was not able to do so, referring presumably to Scotiabank which was the financial institution that issued the Gill/Johal Bank Statement.

[41] I agree with Conian Trustee that it is odd that, in 2023, Mrs. Gill was quite able to obtain some source documentation, but not others. Yet, in Mrs. Gill’s Proof of Claim, she failed to present any evidence to explain this matter, including what efforts were made to obtain the documents and the results of that effort. She did not provide any evidence to the Conian Trustee to establish some facts that might have given credence to her bare assertions about these further advances. The only

documentation provided was the Gill/Johal Bank Statement, which on its face had no connection to Mrs. Gill whatsoever. Further, the handwritten notations referring to “\$20k” and “\$40k” are simply unexplained (including who made them and when and why) and unconnected to any evidence that might suggest, let alone prove, that these amounts were advanced by Mrs. Gill.

[42] As I stated above in the Background Facts, Mr. Khaliq’s enterprises were in both real estate and in a currency exchange business. The Loan Scheme involved the intermingling and diverting of funds invested in those various companies, often without the knowledge of the people who advanced those funds, and without proper record of those transactions: *Warren RFJ* at paras. 11–13.

[43] The state of BCCE’s and the Debtors’ records—apparently more accurately described as a state of disarray—was considered by Warren J. in the *Warren RFJ* in respect of whether substantive consolidation was warranted as between the BCCE and Conian estates. Warren J. described the state of the record keeping as follows:

[14] According to the Conian Trustee, the purpose of the funds injected into BCCE was often not documented, there is incomplete documentation concerning the movement of funds between Conian and BCCE, and the movement of those funds was not always contemporaneous with the injection of funds into BCCE, making it impracticable, if not impossible, to discern which BCCE investors’ money was actually transferred to Conian.

...

[16] The [Conian CPO] was based on a proposal that the Conian Trustee developed using information available to it at the time. This included lender information summaries and a preliminary forensic review of the accounting records conducted by Ernst & Young, in consultation with the BCCE Trustee. The Conian Trustee considered commissioning a full forensic accounting to provide greater clarity, but because of the large volume of transactions, the limited record keeping, the intermingling of funds, and the absence of formal loan documentation for most of the unsecured loans, the Conian Trustee concluded that the benefit of a full forensic analysis would be minimal and would result in significant and disproportionate additional expense.

[44] In the face of those unreliable records, the Conian Trustee was understandably wary of what might be taken from the records and instead, placed considerable reliance on what independent documentation could be produced by any creditor asserting that monies were owing to them.

[45] The Conian Trustee also asserts that it did not err in disregarding the 2016 Cheque or the June 2018 Agreement relied upon by Mrs. Gill. The Conian Trustee, in addition to relying on the lack of evidence of any further direct advances, asserts that the 2016 Cheque and the June 2018 Agreement do not conclusively establish that BCCE (or later La Voda) actually received that amount from Mrs. Gill.

[46] In my view, the uncertainty surrounding the veracity of documentation issued by Mr. Khaliq on behalf of BCCE and Conian is evident from the Conian Trustee's administration of the bankruptcy. This applies to whether or not the 2016 Cheque and the June 2018 Agreement are a reliable indication of the true state of the creditor/debtor relationship between Mrs. Gill and BCCE/Conian.

[47] Firstly, I will return to the issue of fresh evidence as the Brar Affidavit.

[48] Ms. Brar's evidence, said by Mrs. Gill to be relevant here, arises from paras. 9–10 of the Brar Affidavit. Ms. Brar states that the unsecured creditors she represents engaged BCCE to provide foreign currency exchange services. In that vein, Ms. Brar says that each transaction involved an exchange of cheques and/or bank drafts. She says that when BCCE representatives undertook these transactions:

...

- b) BCCE would provide one or more post-dated cheques for the total amount of the currency ordered; and
- c) [the unsecured creditor companies] would simultaneously hand deliver one or more cheques and/or bank drafts for the equivalent amount of the opposite currency to a BCCE representative in settlement of the transaction.

[49] Mrs. Gill then argues that the 2016 Cheque was a normal part of her loan transactions with BCCE in recording the true state of the amounts owed and how the parties intended those amounts to be repaid. I disagree. As the Conian Trustee notes, Ms. Brar's statements in the Brar Affidavit described what she said were the normal operations of BCCE's currency transactions. Yet, there is no evidence that Mrs. Gill advanced the funds to BCCE for currency exchange purposes.

[50] Accordingly, Ms. Brar's evidence at best is not relevant to a determination as to how Mr. Khaliq operated his business in relation to advances by Mrs. Gill. This evidence can have no bearing on the outcome of the issues here. Her statements are not properly admissible as fresh evidence for the purposes of this appeal in accordance with the *Palmer* test.

[51] Secondly, the reliability of the June 2018 Agreement is also questionable. Despite Mrs. Gill's assertion that the funds advanced by her to BCCE were transferred to La Voda (the entity which owned the real estate project), the June 2018 Agreement is with Conian, not La Voda. In addition, while not a large discrepancy, the June 2018 Agreement refers to her having advanced funds to BCCE in the amount of \$700,000 "on or about August 28, 2016"; however, the actual source documents refer to three separate advances to BCCE on August 27 and September 1, 2016.

[52] Again, the matter of deficient record keeping was the subject of comment by Warren J. in the context of funds that were transferred from BCCE to Conian in relation to certain "promissory notes", which I take to be similar to what is purportedly recorded in the June 2018 Agreement:

[46] Under the Conian Inspectors' proposal, much hinges on the ability of Involuntary Lenders who submitted claims in the Conian Consolidated Estate to substantiate, with documentary evidence, an intention to have their investments in BCCE transferred to Conian. The Conian Inspectors say that Mr. Khaliq produced documentation when BCCE investors agreed to have their funds diverted. For example, Malkiat Gill, Wendy Langfield, and Hardip Chattha have attached to their affidavits copies of promissory notes which they say were issued to them by Mr. Khaliq when they agreed that funds they had previously invested in and loaned to BCCE would be transferred to Conian. Moncef Dif attached a copy of a promissory note that he says was issued to him when he agreed to provide funds to BCCE for use by Conian.

[47] The Conian Trustee disputes that Mr. Khaliq always produced documentation when BCCE investors agreed to have their funds diverted to Conian. In its Second Report, the Conian Trustee says that loans to BCCE "were often not supported by any documentation" and that, in discussions with some lenders, "many believe to be entitled to recovery of their claim via the Conian Estates regardless of documentation as it was their understanding that their funds were to be utilized for [Conian] real estate development purposes". I accept this representation.

[48] Also, the Conian Trustee says that the promissory notes do not evidence actual transactions between BCCE and Conian, and cannot be relied on as records of funds actually transferred. The money put into BCCE, whether to participate in a currency exchange transaction, to loan money to BCCE for BCCE operations, or to loan money to Conian through BCCE, all went into a single account that Mr. Khaliq used at his pleasure. The Conian Trustee emphasizes that the documentation that does exist does not include documentation recording the original source of the funds transferred from BCCE to Conian. The Conian Trustee argues that although Ms. Gill and others like her may have intended that certain of their funds be transferred from BCCE to Conian, the promissory notes are not evidence that those funds actually were transferred.

[49] I accept the representations of the Conian Trustee to the effect that it is not possible, given the state of the record-keeping, to trace the individual advances of money to Conian.

[Emphasis added.]

[53] In short, the Conian Trustee properly considered that all of BCCE and the Debtors' records were deficient and not reliable.

[54] Turning to other sources of record keeping of advances received by Mr. Khaliq, equally, I find that the banking records of BCCE and Conian are of little assistance.

[55] The Conian Trustee reviewed BCCE's bank statements for the period of time when Mrs. Gill says that she advanced \$700,000 (August-October 2016). It did not find any entries to substantiate her claim of the further \$110,000 advances, as BCCE's deposits of cheques and drafts were recorded collectively. Multiple cheques and drafts were recorded as a single deposit, without corresponding deposit slips regarding the details. Accordingly, there is no basis upon which to assume that some or all of these deposit monies were advances from Mrs. Gill in relation to the \$110,000.

[56] In addition, the Conian Trustee disagrees with Mrs. Gill's reliance on the Spreadsheets.

[57] One spreadsheet prepared by the former BCCE employee is entitled "700K" (referring to Mrs. Gill's claim) and refers at the end to "\$700,000" as "principal".

Another spreadsheet, entitled “MALKAIT GILL TXNS”, showed all advances purportedly made by Mrs. Gill to BCCE and all interest payments (which presumably includes the “700K” data). The latter spreadsheet was the one relied upon by the Conian Trustee. This spreadsheet suggests advances dated September 19, 2016 of \$20,000, \$40,000 and \$640,000, for a total of \$700,000. However, these references were inconsistent with the source documents provided by Mrs. Gill indicating advances paid of \$500,000 (August 29, 2016), \$50,000 and \$40,000 (September 1, 2016), for a total of \$590,000.

[58] In the above circumstances, in my view, the Conian Trustee properly considered that the BCCE/Conian record keeping was not reliable enough to establish advances actually received from Mrs. Gill and that the Spreadsheets that were later prepared equally reflected this poor record keeping and were also unreliable.

[59] I agree that there is some logic to Mrs. Gill’s argument that there must exist an agreement between her and Mr. Khaliq to the effect that she would advance \$700,000 at 15% interest, given the regular payment by BCCE of interest to her, in an amount that corresponds to that figure.

[60] However, there is no reference or evidence at all in the Proof of Claim to an agreement, whether oral or otherwise, having been formed by Mrs. Gill and BCCE in late August 2016, on the terms that she asserts. Mrs. Gill’s oral statements on this appeal that there was an oral agreement to that effect is not part of the record and is an unsworn statement. For the same reasons, Mrs. Gill’s statement to the Court that \$50,000 of these unsubstantiated amounts were advanced by her on behalf of her daughter cannot be considered.

[61] In any event, discrepancies remain in relation to the interest paid to Mrs. Gill. She asserts that she received a post-dated cheque of \$17,500 dated October 27, 2016. However, Schedule “A” in her Proof of Claim refers to her having received \$8,750 on both September 27 and October 20, 2016, referring to the same cheque #22271, which is of course impossible. In fact, BCCE’s bank statement shows that

cheque #22271 was in the amount of \$8,750 and was cashed on September 28, 2016.

[62] There is simply no explanation for these discrepancies and, in my view, rightly caused the Conian Trustee to be skeptical of Mrs. Gill's assertions, save to the extent that she could provide proper and reliable documentation.

**CONCLUSION**

[63] As set out above, the Conian Trustee was required by the Conian CPO to undertake a claims process.

[64] In the first instance, having decided to participate in the claims process, Mrs. Gill was required to prove her claim by providing evidence that could support that claim, including relevant documentation: s. 124 of the *BIA*.

[65] As part of its duties to both the estates and the creditors, the Conian Trustee was required to act fairly and reasonably in examining all proofs of claim, including that of Mrs. Gill, to determine if the claim was properly proven. This task was particularly focused on a determination as to whether the creditor had proven the "Amounts Advanced", as defined in the Conian CPO.

[66] While it is unfortunate that Mrs. Gill could not gather any source documents for these alleged further advances, the documentation upon which she relies does not, for the reasons outlined above, overcome that difficulty. The Conian Trustee properly considered all of the evidence in the record when considering her claims; yet understandably, it could not rely on much of it because it was unreliable and inconsistent. The Conian Trustee properly considered and based its decision on the only reliable evidence that was produced by Mrs. Gill or found in the records.

[67] I disagree with Mrs. Gill that the Conian Trustee made a palpable and overriding error in disallowing part of her claim to the extent of \$110,000. Mrs. Gill's appeal is dismissed.

"Fitzpatrick J."