IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canaccord Genuity Corp. v. Vita*,
2026 BCSC 237

Date: 20260212
Docket: S251350
Registry: Vancouver

Between:

Canaccord Genuity Corp.

Plaintiff

And

Nicholas Vita

Defendant

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Plaintiff:	E. Young
Counsel for the Defendant:	W.J. McMillan A. Mok
Place and Dates of Summary Trial:	Vancouver, B.C. September 10, October 29-31 and December 15, 2025
Place and Date of Judgment:	Vancouver, B.C. February 12, 2026

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Introduction

[1] In this summary trial, Canaccord Genuity Corp. seeks judgment for approximately $7.4 million under Mr. Vita's personal guarantee signed in December 2019.

[2] Mr. Vita's defences are that: (a) the underlying debt was extinguished by expiry of the limitation period; (b) some of the amounts claimed are unproven; (c) Canaccord failed to reasonably mitigate its losses; and (d) his guarantee is unenforceable as part of an illegal transaction.

[3] In my view, Mr. Vita's defences are defeated pursuant to the terms of his guarantee and the agreements associated with it. Canaccord is awarded judgment for its claims against Mr. Vita under his personal guarantee. The amount owing, including the accounting of interest and solicitor and client costs, is referred to the Registrar for assessment.

Parties and Jurisdiction

[4] Canaccord Genuity Corp. ("Canaccord") is a financial services firm incorporated in Ontario. It provides investment, banking and brokerage services in offices across the country.

[5] Mr. Vita resides in Greenwich, Connecticut, USA.

[6] Mr. Vita's personal guarantee contains a choice of law and forum clause which selects the law and courts of British Columbia, and no issue was taken with this Court's jurisdiction.

Background

[7] From 2012–2024, Mr. Vita was the Chief Executive Officer of two cannabis companies, Columbia Care LLC and Columbia Care Inc. ("Columbia Care").

[8] In April 2019, Canaccord closed a major transaction for Columbia Care, taking the company public on a Canadian stock exchange. In doing so, Canaccord

developed a business relationship with Mr. Vita and with Michael Abbott, Columbia Care's Executive Director and Chairman.

[9] In 2019, Messrs. Vita and Abbott discussed with senior Canaccord representatives using their shares of Columbia Care as collateral for a significant loan. This type of loan, known as a "margin account", allows the account holder to borrow against the value of securities it deposits as collateral. If the collateral becomes insufficient security, the lender has the right to sell some or all the securities to reduce the debt.

[10] The parties agree that Canaccord could not open a margin account for Mr. Vita personally because of US regulatory laws applicable to him as a US citizen. Instead, the margin account was opened in the name of Amaranthus, an Isle of Man company beneficially owned by Mr. Abbott's family trust.

Amaranthus Margin Account

[11] In June 2019, Canaccord opened the margin facility account for Amaranthus ("Account"), allowing Amaranthus to borrow funds for purchasing securities and Canaccord to hold and deal with the Columbia Cares shares ("CC Shares") and make transfers in both Canadian and US dollars.

[12] The Account documentation consisted of an "Account Information Form", signed on behalf of Amaranthus, which incorporated the terms and conditions of Canaccord's Client Account Agreement (together, the "Account Agreement"). The Account Agreement entitled Canaccord to decide what amounts Amaranthus could borrow in the Account (s. 3.5).

[13] Two authorized signatories for Amaranthus's sole director signed the Account documentation on the company's behalf, and Amaranthus designated Mr. Abbott to give instructions for the Account. Mr. Vita was not a signatory. On the evidence, he was never a director, authorized signatory, or authorized representative of Amaranthus. In discovery, he acknowledged never being authorized by Amaranthus to instruct Canaccord regarding the Account.

[14] Amaranthus deposited 10,630,500 CC Shares into the Account, valued at around $6.50/share. Canaccord then paid into the account loans to Amaranthus of US$8,300,000 on June 10, 2019 and US$3,000,000 on July 5, 2019.

[15] It is undisputed that Amaranthus's authorized representatives instructed Canaccord to send the June 10, 2019 funds to a Connecticut law firm representing Mr. Vita. It is also undisputed that the July 5, 2019 funds were sent to Mr. Abbott. There is no evidence of Mr. Vita's involvement in this latter transfer, and he disputes that Amaranthus authorized it.

Mr. Vita's Guarantee

[16] In November 2019, Mr. Vita asked Canaccord for Amaranthus to borrow a further US$2,000,000 in the Account. By then, Columbia Care's share price had fallen to around $3.40.

[17] Canaccord agreed to the loan on certain conditions, including: (a) deposit of 17 million more CC Shares; and (b) Mr. Vita personally guaranteeing Amaranthus's debt.

[18] Mr. Vita signed his personal guarantee for the Account on December 31, 2019 ("Guarantee"). Under its terms, he unconditionally guaranteed the payment and performance of all present and future debts and liabilities of Amaranthus arising on default under the Account.

[19] On discovery, Mr. Vita confirmed that, when signing the Guarantee, he had the opportunity to read it, agreed to its terms, and understood it was intended to allow Canaccord to collect Amaranthus's debt from him directly rather than from Amaranthus itself.

[20] On January 3, 2020, Mr. Abbott signed an undertaking, as director on behalf of Amaranthus, in consideration for the further loan ("Undertaking"), by which Amaranthus agreed to deposit an additional 17 million shares of CC Shares into the

Account. The Undertaking required Amaranthus to maintain a specified ratio of market value of the CC Shares relative to any outstanding margin loans.

[21] On January 6, 2020, 17 million more CC Shares were deposited in the Account as additional collateral.

[22] On January 7, 2020, Canaccord advanced an additional US$2,000,000 into the Account. Amaranthus's representatives again authorized and directed the transfer of these funds out of the Account. At the end of January 2020, the account held CC Shares worth approximately CA$127,000,000, and held just under US$14,000,000 in debt.

CC Share Price Falls

[23] In 2020, the CC Share price fell such that the margin ratio in the Account was below the requisite level in the Undertaking.

[24] In December 2020, Amaranthus sold 850,000 CC Shares, paying down more than US$3,500,000 of the debt. In December 2021, Mr. Abbott transferred US$1,000,000 into the Account to further reduce the debt. In July 2022, Amaranthus paid down a further US$800,000. By this time, the account held CC Shares worth approximately CA$30,000,000, and debt valued at around US$6,700,000.

[25] In 2022–2023, Canaccord sold no more CC Shares, primarily because of a proposed acquisition of Columbia Care by an arm's-length buyer. Messrs. Vita and Abbott advised Canaccord that share sales would threaten the transaction and that the CC Share price would increase once the proposed acquisition closed. In July 2023, the potential purchase of Columbia Care collapsed.

Default and Partial Payment

[26] In November 2023, Canaccord again sold CC Shares to reduce the debt in the Account.

[27] From March–July 2024, Mr. Vita paid US$275,000 to reduce the debt in the Account. In discovery, he testified to making these payments because he was a guarantor on the Amaranthus account.

[28] After that, neither Mr. Vita nor Amaranthus made any further payments on the outstanding debt in the Account.

Canaccord Demands Payment

[29] By letter of October 18, 2024, Canaccord advised Amaranthus's representatives of its election to cancel the margin facility in the Account, and thus the total outstanding indebtedness in the Account was due and payable.

[30] On the same day, Canaccord delivered a demand letter to Mr. Vita under the Guarantee, demanding payment of Amaranthus's debt by October 31, 2024. Canaccord calculated the total outstanding debt to be US$6,933,951.

Litigation

[31] On February 21, 2025, Canaccord filed this Notice of Civil Claim to enforce the Vita Guarantee. Mr. Vita filed his Response on May 12, 2025.

[32] Document production and examinations for discovery occurred from August–October 2025.

Analysis

Summary Trial Suitability

[33] Canaccord submits that judgment against Mr. Vita on the Guarantee is suitable for summary trial determination.

[34] It says the key facts are not in dispute: (a) Mr. Vita acknowledges signing the Guarantee and thereby agreeing to its terms; (b) the Guarantee obliges him to pay Amaranthus's debt to Canaccord as guarantor; and (c) the evidence of Mr. Adrian Pelosi, Canaccord's Chief Risk Officer, is that Canaccord's Account statements correctly indicate the total debt to be US$7,391,516.82, as of July 31, 2025.

[35] Mr. Vita's position on suitability is that, apart from illegality, his defences are suitable for summary trial in his favour. He submits that the illegality defence is unsuitable because it depends on findings about the understandings and intentions of key Canaccord representatives when they organized the Account.

[36] The Court of Appeal recently summarized summary trial suitability in *Direct Horizontal Drilling Inc. v. North American Construction Management Ltd*., 2025 BCCA 104:

> [27] It is uncontroversial that the purpose of the summary trial rule is the efficient resolution of disputes. A summary disposition will be available where the judge is able to find the facts necessary to decide the legal and factual issues in the case. At the same time, the judge retains a discretion to refuse to grant judgment where he or she considers it unjust to do so…
>
> [28] The factors to be considered in deciding whether it will be unjust to grant judgment on a summary trial include the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of a conventional trial in relation to the amount involved, the course of the proceedings, the time of the summary trial, whether credibility is a critical factor in deciding the issues, whether the summary trial may create unnecessary complexity, and whether a summary trial will result in litigating in slices. This is not a closed list: *Inspiration Management* at 214; *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30–31.

Mr. Vita's Defences

Is Amaranthus's Debt Extinguished by Expiry of the Limitation Period?

[37] Mr. Vita says the limitation period for Canaccord's claim against Amaranthus expired on August 31, 2024, the Account having been in default since September 1, 2022. The underlying debt having been extinguished in this way, he has no remaining obligation under the Guarantee.

[38] In response, Canaccord submits that Amaranthus's debt did not become due and payable until October 2024, when Canaccord cancelled the Account under s. 3.5 of the Account Agreement. It further argues that, even if the Amaranthus limitation period has expired, this does not bar its claim against Mr. Vita under the Guarantee.

[39] In my view Canaccord is correct that, even if the Amaranthus limitation period has expired, this does not bar its claim under the Guarantee.

[40] First, I agree with Canaccord that, even if Amaranthus's debt were extinguished under the *Limitation Act*, S.B.C. 2012, c. 13, Mr. Vita remains liable to Canaccord under the principal debtor clause in s. 5 of the Guarantee, which says:

> If, for any reason other than the termination of this Guarantee in accordance with its terms, the Guarantor is released from this Guarantee or ceases to be liable for any of the Guaranteed Obligations, the Guarantor will be liable to the Firm as principal debtor for and in respect of those Guaranteed Obligations.
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> [Emphasis added.]

[41] A guarantor is generally liable to the creditor only to the same extent as the principal, and there is usually no liability if the primary obligation becomes void, unenforceable or ceases to exist. The exact nature of the obligation owed by the guarantor to the creditor depends, however, on the construction of the contract.

[42] A principal debtor clause describes the circumstances in which a guarantor will be liable, not just as guarantor, but also as an indemnifier. Under such a clause a guarantor can remain liable for the extinguished debt of the principal debtor if that is the proper interpretation of a principal debtor clause in the circumstances of the case (*Bus. Dev. Bank v. Papke et al*, 2003 BCSC 1179, paras. 35–46).

[43] In my view, the wording of s. 5 makes Mr. Vita liable to Canaccord even if Amaranthus ceases to be liable under the *Limitation Act*.

[44] Second, I agree with Canaccord that, under the *Limitation Act*, a guarantee remains enforceable even after the limitation period has expired for a claim under the underlying debt. This is because the *Act* does not extinguish the underlying debt itself but instead bars the remedy against the debtor. Thus, Amaranthus's debt still exists as a legally valid basis for a claim against Mr. Vita under the Guarantee.

[45] On this issue, Mr. Vita relies on *Bus. Dev. Bank*. As Canaccord points out, however, the case was decided under s. 9(1) in the previous *Limitation Act*, R.S.B.C. 1996, c. 266, an extinguishment provision not found in the current *Act*.

[46] In the prior *Act*, s. 9(1) said that on:

> … the expiration of a limitation period set by this Act… the right and title of the person formerly having the cause of action …is…extinguished.
>
> [Emphasis added.]

[47] *Bus. Dev. Bank* held that s. 9(1) extinguished the debt and right to repayment on expiry of the limitation period (as a matter of substantive law), rather than simply barring a remedy (as a matter of procedural law). As a result of the extinguishment, the guarantor's obligations did not survive.

[48] The court noted that our prior *Act* was unique in expressly extinguishing "both remedy and the debt", and that it "was generally considered in the law of limitations that a limitations statute did not bar the debt, but only took away the remedy by action".

[49] Section 9(1) having been removed from the *Limitation Act*, S.B.C. 2012, c. 13, this issue now falls to be decided under s. 6(1) of the current *Act* and the common law.

[50] Section (6(1) says:

> Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.

[51] In Ontario, where the *Limitations Act* [*2002*, S.O. 2002, c. 24, Sched. B] is similar to the current BC *Act*, the courts have held expiry of the limitation period bars a plaintiff's remedy but their right to be paid is not extinguished (*Duca v. 2203824 Ontario Inc.*, 2020 ONSC 3119, paras. 51–55). In my view, that is the also the effect of expiry of the limitation period under our current *Act,* which bars the right to commence the litigation but does not suggest the cause of action is extinguished.

[52] Mr. Vita argued, in the alternative, that the "non-judicial remedy clause" in s. 27 of the *Act* barred Canaccord's claim against him once the limitation period against Amaranthus expired. Section 27 says:

> (1) In this section, "non-judicial remedy" means a remedy that a person is entitled, by law or by contract, to exercise in respect of a claim without court proceedings.
>
> 2) If a claimant is prevented from commencing a court proceeding in relation to a claim as a result of the expiry of a limitation period under this Act, the claimant is not entitled to exercise against the person against whom the claim is or may be made, or against any other person, any non-judicial remedy that the claimant would, but for this section, be entitled to exercise in relation to the claim.
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> [Emphasis added.]

[53] I do not accept Mr. Vita's argument. In my view, the wording of s. 27 targets a different issue – remedies achievable without legal proceedings, such as a commercial landlord's distress rights for non-payment of rent, or a secured creditor's self-help rights such as repossessing and disposing of collateral. These examples of non-judicial remedies are given in the New Brunswick Attorney General's paper on limitations reforms, on which our s. 27 was based.[1]

[54] The British Columbia *White Paper on Limitation Act Reform* supports Canaccord's position on this issue:[2]

> Reforms to the current Act will simplify the law related to extinguishment. Instead of retaining the current extinguishment provision, a new section based on New Brunswick's non-judicial remedies clause is proposed, in order to make the law clearer and more easily understood. While a non-judicial remedies clause differs from an extinguishment clause in that once a limitation period expires, the clause prohibits a person from exercising a legal remedy rather than extinguishing a legal right, the practical effect is the same.

[1] New Brunswick, Office of the Attorney General, *Limitations and Prescription: A Discussion Paper* (Fredericton: Office of the Attorney General, January 2009) at 16, online (pdf).

[2] See British Columbia, Ministry of the Attorney General, White Paper on Limitation Act Reform: Finding the Balance (Victoria: Ministry of the Attorney General, September 2010) at 101–103, online (pdf): PSC, Tab 22.

> Even if a person's legal right survives, in the absence of a remedy to enforce it, “such right, in and of itself, is of little, if any, value.”
>
> [Emphasis added.]

[55] Having found that the *Limitation Act* argument does not assist Mr. Vita, I need not assess whether the limitation period for claims against Amaranthus did in fact expire, as argued by Mr. Vita, or did not begin to run until October 2024, as argued by Canaccord.

Are Two of Canaccord’s Claims Unproven?

[56] Mr. Vita argues that, even if Canaccord establishes his liability under the Guarantee, it has not proven that: (a) it advanced $3 million of its claim; or (b) the amount of interest that validly accrued on its loans.

[57] Regarding the $3 million, Mr. Vita deposes to being unsure if he received this money. He submits that Canaccord’s initial materials lacked evidence that the advance was authorized by Amaranthus. He objects to Canaccord’s reply evidence on this issue because it was submitted beyond the timeline in Rule 8-1(13) of the *Supreme Court Civil Rules*.

[58] In my view, Canaccord’s reply evidence of Amaranthus’s written authorization for this advance should be admitted.

[59] Mr. Pelosi’s initial affidavit evidence was that the total Amaranthus debt to Canaccord, as at July 31, 2025, was US$7,391,516.82 as reflected in the Account Statements. This amount included the US$3 million. Having heard Mr. Vita’s submission about lack of evidence of authorization of the US$3 million, in the break between hearing dates Canaccord submitted an affidavit from Mr. Pelosi in reply. The affidavit attached the Amaranthus authorization letter, dated July 4, 2019, and signed by the authorized signatories for its director, for the US$3 million loan. Canaccord also submitted that neither Amaranthus nor Mr. Vita had previously contested the $3 million loan, which was paid into the Account even before Mr. Vita signed his Guarantee, and so it was unaware that this payment was being challenged until hearing Mr. Vita’s submissions.

[60] In oral argument, Mr. McMillan quite rightly acknowledged the difficulties of objecting to Canaccord's reply evidence. He acknowledged that Mr. Vita himself had put the Account Statements into evidence, and that the Amaranthus authorization letter was included in Canaccord's document production. There was also no identifiable prejudice to Mr. Vita from late admission of the letter.

[61] In my view, it was reasonable for Canaccord to initially rely on Mr. Pelosi's evidence regarding the Account Statements. At that stage, Mr. Vita had not questioned their accuracy, having received a full set of the statements in November 2024. Also, s. 8 of the Guarantee says that "the accounts as settled or stated between [Canaccord] and [Amaranthus] shall be conclusive as to the amounts owing and will be binding on the Guarantor" (emphasis added).

[62] I take a different view, however, regarding the admissibility of the reply evidence explaining Canaccord's interest calculations. Canaccord's initial application materials relied on the Account Statements, which showed the amount of interest that had accrued, but not the interest rate or how it was being applied. The Account Agreement says only that "[t]he interest rate will be that rate designated from time to time by [Canaccord] to its [Client]". Although s. 8 indicates the Account Statements are conclusive as between the parties, I agree with Mr. Vita that this does not relieve Canaccord of the obligation to prove its damages on the balance of probabilities.

[63] After Mr. Vita challenged this accounting in his Response and oral submissions, Mr. Pelosi explained the calculations in his reply affidavit delivered shortly before the hearing recommenced. His evidence identified the specific interest rates charged and a 3% surcharge applied to the outstanding debt on four occasions.

[64] In my view, Mr. Vita is prejudiced by the late delivery of this evidence. He has not had a fair opportunity to assess and challenge the interest calculation as now explained by Mr. Vita's last affidavit. Canaccord should have included this evidence in its initial materials because Mr. Vita had raised the issue in his Response.

[65] I will therefore not rely on this evidence in this summary trial. If Canaccord wishes to pursue judgment for its contractual interest, this part of its claim should be assessed, determined and certified by the Registrar.

Can Canaccord Claim Avoidable Losses?

[66] Mr. Vita says Canaccord should not obtain judgment for any losses that it could have reasonably avoided by prudent sale of the CC Shares. He argues that, had it sold at optimal times, it would have recovered the full amount of the debt. He alleges Canaccord failed to do so because of its business relationship with Columbia Care.

[67] On September 1, 2022, when the Account went into default, Canaccord had almost 13 million CC Shares, valued at just over $37 million according to the Account Statements. The loan amount was less than $9 million. In July 2023, when the potential purchase of Columbia Care collapsed, the CC Shares were worth almost $10 million, which exceeded the debt at that time.

[68] In my view, Mr. Vita's argument is defeated by the clear terms of ss. 3 and 4.5(c) of the Guarantee (*Canadian Imperial Bank of Commerce v. Wadsworth*, [1985] O.J. No. 1664).

[69] These terms say that: (a) Canaccord can proceed against Mr. Vita under the Guarantee before enforcing its security; and (b) Mr. Vita's liability will not be reduced by Canaccord's acts or omissions regarding its security:

> 3.0 The Firm will not be required to demand payment from, take legal action, enforce any security or exhaust its remedies against [Amaranthus] or any other person, or any security held to secure payment of the Guaranteed Obligation, before making demand or proceeding under this Guarantee …
>
> 4.5 The liability of the Guarantor will not be…reduced, limited, or otherwise affected by:
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> …
>
> (c) any acts done, omitted, suffered or permitted by the Firm in connection with [Amaranthus]…or any other guarantees or security held in respect of the Guaranteed Obligations …
>
> [Emphasis added.]

Is the Illegality Defence Suitable for Determination?

[70] Mr. Vita says the complex factual and legal issues raised by his illegality defence are not suitable for determination by summary trial.

[71] In my view, however, the defence is defeated by the facts that can be found regarding Canaccord's loan, and there are no residual reasons to require a full trial on this issue.

[72] The undisputed evidence is that Canaccord could not, under US law, solicit or open a margin account for Mr. Vita because of his American citizenship and Canaccord not being a registered broker/dealer in the US. Nor could it open such an account through one of its US affiliates because cannabis company shares cannot be used as collateral in America.

[73] Mr. Vita submits that Canaccord's response to these obstacles was circumvention, by a sham arrangement whereby the Account was created for Canaccord to loan money to Mr. Vita using his Columbia Care shares as collateral. Thus, Mr. Vita says he was the "true borrower" of the Canaccord loans.

[74] In resisting enforcement of the Guarantee, Mr. Vita relies on the doctrine of *ex turpi causa* (no remedy from wrongdoing) which can prohibit a plaintiff from obtaining remedies for losses related to their own illegal conduct. The public policy underpinning this principle is that the legal system should not endorse or enforce illegal actions. He relies on the principle's application to a contract made, at least in part, with the object of committing an illegal act (*Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd*., 2020 BCCA 130, at paras. 43–49, 70).

[75] To support his unsuitability argument, Mr. Vita submitted an expert opinion affidavit from Mr. Carl Schoeppl, a former senior federal prosecutor for the US Securities and Exchange Commission. Mr. Schoeppl's opinion is that the loan arrangement appears to be a violation of the federal US securities law. More specifically, Canaccord might have violated:

- the broker-dealer registration provisions of the federal securities law by soliciting Mr. Vita, a US citizen to enter into the loan arrangement;
- the broker-dealer anti-fraud and the general anti-fraud provisions of the federal securities law by using the loan arrangement as a means to conceal that the identity of the control person and beneficiary for the account was Mr. Vita; and
- the *Controlled Substances Act*, *Money Laundering Control Act* and the *Bank Secrecy Act* by engaging in a financial transaction with criminal derived property through the arrangement which involves the concealed use of Mr. Vita's shares which were related to CCHW, a cannabis-related business, when cannabis is an illegal substance in the US.

[76] Mr. Vita says a full trial is required on both the facts and law. On the facts, the key issues are whether: (a) Canaccord solicited him to open the margin account knowing that he could not do so under US law; and (b) arranged for the account to be opened in Amaranthus's name despite him being the true borrower. On the facts, he points to examples in the record of Canaccord representatives referring to the Account as if it belonged to Mr. Vita.

[77] In my view, the illegality defence fails because the record clearly demonstrates that Amaranthus, not Mr. Vita, was the true legal holder of the Account and recipient of the loans from Canaccord.

[78] The Account Information Form, signed by Amaranthus's authorized representatives, states that Amaranthus is the account holder. It incorporates the Account Agreement, which states that it is Amaranthus that pledges the collateral security. Mr. Vita's First Affidavit (para. 14) acknowledged that Amaranthus owned the CC Shares deposited into the Account when it was opened. All the Account Statements show Amaranthus as account holder, as does Mr. Vita's Guarantee.

[79] In these circumstances, I can see no basis to claim that Amaranthus was not the true account holder, pledger of the CC Shares, and recipient of Canaccord's loans. Nothing in the record suggests Mr. Vita had legal or factual control over the Account or Canaccord's funds deposited therein. Rather, such control belonged solely to the authorized Amaranthus representatives, which did not include Mr. Vita.

[80] There is no evidence that the legally valid and binding arrangement between Canaccord, Amaranthus, and Mr. Vita was other than as evidenced by the Account Agreement and Guarantee. Nor is there any evidence of Canaccord being a party to, or involved in, the arrangement between Amaranthus and Mr. Vita regarding the loan proceeds. Thus, I can see no way in which this constituted an illegal arrangement or was entered into with the object of committing an illegal act.

[81] The record indicates Mr. Vita's involvement in arranging the Account, and Canaccord's awareness that, as between Amaranthus and Mr. Vita, there was an agreement for Amaranthus to provide some or all the loan proceeds to Mr. Vita. In my view, this explains the Canaccord emails which at times referred to the Account as Mr. Vita's. In my view, however, these facts do not alter the legal effect of the contractual documentation. Amaranthus remained the sole legal owner of the Account and sole recipient of the loans paid into the account by Canaccord.

[82] In my view, Mr. Schoeppl's evidence does not assist Mr. Vita. This is because the facts underpinning his opinion of the arrangement's illegality are at odds with the legal reality of the arrangement as actually structured and carried out according to the governing contractual documentation.

[83] His opinion is that Canaccord violated anti-fraud provisions of broker-dealer securities law "by employing the Amaranthus Margin Account Arrangement as a means to conceal that the identity of the control person and beneficiary for the Canaccord Account was Vita". He also states that "Canaccord opened a margin account under the name of Amaranthus for Vita". He assumes that the Account was arranged so Mr. Vita could "pledge CCHW common stock he beneficially owned to obtain access to margin loans from Canaccord".

[84] In my view, these assumptions are incorrect as a matter of contract law given the express terms of the Account Agreement and Guarantee, and that all formal instructions on the Account came only from Amaranthus's authorized representatives.

Conclusion

[85] Canaccord is granted judgment against Mr. Vita under the Guarantee for (a) the amounts loaned by Canaccord to Amaranthus under the Account Agreement; (b) all contractual interest properly accrued under the Guarantee; and (c) all reasonable legal fees and expenses on a solicitor and own client basis incurred by Canaccord in connection with the enforcement or collection of any amount payable under the Guarantee, pursuant to Guarantee s. 11. Any and all repayments into the Account by Canaccord, Mr. Vita or others are to be subtracted from these amounts.

[86] If the parties are unable to agree on this accounting, either party may seek to have the accounting determined and certified by the Registrar.

"Coval J."