THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2022-02142

IN A MATTER OF APPEAL AGAINST THE DECISION OF THE TRUSTEE BY PETER MILLER UNDER SECTION 126(5) OF THE BANKRUPTCY AND INSOLVENCY ACT CHAPTER 9:70

BETWEEN

PETER MILLER

Appellant

AND

MARIA DANIEL

Respondent

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: 26th February 2026.

Appearances:

1. **Mr. Bronock Reid and Mr. Kiev Chesney instructed by Ms. Mistique Stewart for the appellant.**
2. **Mr. Kerwyn Garcia SC and Ms. Anora Rampersad instructed by Ms. Chrishaunda Baboolal for the respondent.**

DECISION

Introduction:

1. Before the court for its determination is the appellant's appeal filed pursuant to **section 126(5) of the Bankruptcy and Insolvency Act Chap 9:70 ("BIA")** against the respondent's/trustee's Notice of Disallowance dated 12th May 2022 whereby the respondent valued the appellant's claim at US$110,115.78 instead of USD$635,115.78 as was claimed.

Background:

2. The Trinidad and Tobago Football Association ("TTFA") entered into a contract with the appellant for a period of two (2) years and the appellant agreed to serve as Marketing Director of the TTFA ("the contract"). In the contract, the TTFA and the appellant agreed, *inter alia*, as follows:

> . . .
>
> 4. The Agreement takes effect on January 1, 2020 and shall continue for a period of 24 months ("the Original Contract Date") at a Contract Price at and for the sum of USD$600,000.00 payable by monthly instalments of USD$25,000.00 on or before the 24th day of each Calendar month without statutory deductions.
>
> . . .
>
> 10. The Marketing Director shall provide the duties and services as set out in the First Schedule hereinafter appearing applying an objective reasonable standard of care and shall provide the Association with a Marketing Plan with objectives and goals within

thirty (30) days of the execution of these presents and which Marketing Plan shall be approved by the Association.

11. The Marketing Director shall provide the Association with a list of "Association Initiatives" with thirty (30) days of the execution of these presents.

. . .

16. The Marketing Director's performance shall be reviewed by the Board of Directors of the Association on or after the twentieth month of this agreement and a report would be submitted for his comments to be made within 7 days of the delivery of such report and shall relate to the scope of duties as set out in the First Schedule herein as well as achievements under the Strategic Plan as provided by the Marketing Director. The Marketing Director shall have access to all materials that are used in this appraisal process including all negative reports and shall be given an opportunity to comment on the report before finalisation of the performance appraisal.

. . .

18. Where disciplinary action becomes appropriate for breaches of terms and conditions of this Agreement, the following process shall apply:

. . .

(v) Upon termination of this Agreement, the Association shall not be obligated for the payment of the Marketing Director's monthly and or for the provision of any benefits including Travel and Accommodation as herein above set out. In such instance, all liability to the Marketing Director shall be calculated up to the date of Termination.

(vi) The Association may serve a notice of termination at any time during the continuing of this Agreement for breach of any of the Marketing Director's duties under this Agreement and where the Marketing Director receives a minimum of 2 consecutive negative performance appraisals. Where any such notice is served on the Marketing Director, the dispute resolution process shall engage within 48 hours of such notice being served.

19. In all instances where the Association terminates this Agreement for cause, the Marketing Director shall be entitled to any payments made in accordance with this Agreement or to any benefits whatsoever.

24. The parties shall have the right to terminate this agreement by mutual agreement and by one month's written notice of termination. A termination notice shall be deemed served 24 hours after acceptance of service or 24 hours after electronic service of the said notice.

First Schedule

The Marketing Director shall be responsible for all aspects of the Association's Commercial and Marketing operations including but not limited to the following:

- Securing sponsorship and strategic partnerships in Trinidad and Tobago and globally as head of International Development;
- Assisting in securing friendly games;
- Assisting overseas training camp facilities and international strategic partnerships;
- Restructuring of the Association's communications including social media platforms, website, domestic and international communications and PR;

- Establishing and managing broadcast and digital rights partnerships; and
- Responsible for "Special Projects" for the purpose of assisting in the consolidation and clearing of TTFA Historic Debt.

3. Prior to the signing of the contract, the appellant worked for the TTFA from on or about 25th November 2019 and provided services to the value of US$30,410.95. By Clause 3 of the Contract, it was agreed that the appellant would be paid for that work.

4. In March 2020, a Normalization Committee was appointed, and thereafter, issues arose as to the status of the appellant's engagement.

5. The respondent is a licensed trustee under **section 180(2) of the BIA**, and due to continuing financial challenges faced by the TTFA, she was appointed as trustee of TTFA.

6. On 8th November 2021, the TTFA caused to be filed with the Supervisor of Insolvency, a notice of intention to make a proposal to its creditors, a copy of which was filed with the High Court of Trinidad and Tobago.

7. Pursuant to **section 115 (2) of the BIA**, the appellant submitted a form 12 Proof of Claim in relation to sums which he asserted were due to him under the contract. This form was accompanied by an affidavit which outlined that Six Hundred and Thirty-Fix Thousand, One Hundred and Fifteen United State Dollars and Seventy-Eight Cents (USD$635,115.78) was owed to him under the contract.

8. In the affidavit in support of his Proof of Claim, the appellant included his claim form and statement of case which were filed in a previous civil action which he instituted against the TTFA and in which he sought, *inter alia*, damages for breach of contract (**CV 2021-**

03280 Peter Miller v TTFA). That matter was docketed to the Honourable Madam Justice Joan Charles and has not yet been resolved. In the said statement of case in **CV2021-03280**, he exhibited at "**H**" an e-mail thread from June and July 2020 between Mr. Robert Hadad, Chair of the Normalisation Committee and himself ("**the June and July e-mails**"). This exhibit, therefore, formed part of the appellant's Proof of Claim and the respondent had the June and July e-mails before her.

9. Before this court, the appellant filed a supplemental affidavit in support of the fixed date claim form dated 28th April 2025 and the said affidavit attached six (6) exhibits, one of which was "**P.M.8**". This exhibit contained an e-mail dated 6th April 2020 from himself to the then General Secretary of the TTFA, Mr. Ramesh Ramdhan. This e-mail thread will be discussed later in this decision ("**the 6th April e-mail**").

10. The deponent-appellant also exhibited at "**P.M. 10**" of his said supplemental affidavit, an e-mail dated 9th January 2021 from himself to Mr. Ravi Rajcoomar, attorney-at-law. In that e-mail, the appellant recounted that in or around 15th June 2020, he, Mr. Hadad, and Mr. Terry Fenwick had a Zoom call in which it was agreed that he would be paid up to that date and his contract would be torn up thereafter. He outlined that that Mr. Hadad indicated to him (the appellant) that he (Mr. Hadad) wanted to work with him on a case per case or commission only basis and that he, the appellant, was agreeable to same ("**the Zoom e-mail**").

11. Neither the 6th April e-mail nor the Zoom e-mail was attached to the appellant's Proof of Claim.

12. The respondent and her team reviewed the appellant's claim and, on 31st March, 2022, she requested a meeting with him and his attorneys to discuss an amicable solution which would benefit all parties involved. During this time, the respondent also engaged in discussions with the TTFA.

13. The appellant's attorneys asked to view the claims submitted by other persons by way of the requisite Proofs of Claim, and the respondent informed them that they could view the respondent's files in relation to such other claims, even though the respondent was still deliberating on the appellant's claim. The respondent provided the names of the other creditors as requested, and told the appellant's attorneys that they would have to visit the respondent's office to view the information in respect of those other creditors' claims. No date was set, and neither the appellant nor his attorneys followed up on the matter of viewing the other creditors' claims.

14. On 4th April 2022, a virtual meeting was held with the appellant and his attorneys, after which the respondent requested additional information in respect of the appellant's claim. This request included further information in relation to the sponsorship arrangements which the appellant alleged he had secured for the TTFA.

15. On 21st April 2022, the respondent filed with the Supervisor, pursuant to **section 44 of the BIA**, a proposal to the TTFA's creditors. On even date, the respondent issued to all creditors, including the appellant, an invitation to the first creditor's meeting.

16. On 27th April 2022, after reviewing the additional information provided by the appellant's attorneys-at-law, the respondent issued a query in relation to the value of the work purported to be completed by the appellant.

17. On 28th April 2022, the respondent held another meeting with the appellant's attorneys. After that meeting, the respondent engaged in discussions with the Normalization Committee and was advised that it did engage in settlement discussions with the appellant and a figure at or around One Hundred and Eighty Thousand United States Dollars (USD$180,000.00) was discussed. The Normalization Committee explained that this figure was based on the three months of work which was actually performed by the appellant pursuant to the Contract, together with the outstanding sum which existed

prior to the Contract, as well as additional expenses alleged to have been incurred by the appellant.

18. On 4th May 2022, after examining all the facts before her, and taking into consideration the fact that the TTFA was under serious financial distress, the respondent issued to the appellant, through his attorneys-at-law, a Proof of Claim receipt in response to his claim.

19. By Notice of Disallowance dated 12th May 2022, the appellant's claim was partially validated/partially disallowed. The Notice stated *inter alia* that:

> "(A) As trustee acting in the matter of the bankruptcy (or proposal) of Trinidad and Tobago Football Association, I have disallowed your claim (or your right to a priority or your security on the property) in whole (or to the extent of $3,517,5000), pursuant to section 126(3) of the Act, for the following reasons:
>
> 1. You effectively stopped performing your services after 3 months of contract, therefore the remainder salary of contract as claimed for breach will not be paid. After reconciling with the TTFA, your salary for the 3 months is outstanding and will be paid (3 x USD 25,000) plus 30.4k as agreed in contract and 4.7k in additional expenses that was agreed.
>
> (B) As trustee acting in the matter of the bankruptcy (or proposal) of Trinidad and Tobago Football Association, I have determined that your contingent or unliquidated claim is a provable claim and have valued it at $737,775.73 and therefore, it is deemed a proved claim to this amount pursuant to section 126(2) of the Act."

20. The appellant contends, *inter alia*, that at all material times, the contract was valid and enforceable and asserts that the respondent's opinion of the sponsorship agreements and their value ought not to have been considered in the valuation of his claim. He further asserts that it was incorrect and improper for the respondent to give her opinion, or take into consideration in the valuation of the claims, matters which did not affect the validity of his claim under the **BIA**. He states that, by her decision to pay to him three months' salary, the respondent recognized the validity of the Contract and he maintains that he is entitled to the payment for the remainder of the contract term.

21. The respondent contends that her decision to allow part of the appellant's claim in the sum of Seven Hundred and Thirty-Seven Thousand Seven Hundred and Seventy-Five Trinidad and Tobago Dollars and Seventy-Three Cents (TTD$737,775.73) which represented (i) payment for three months of service pursuant to the Contract; (ii) payment of the previously owed sum as agreed in the Contract; and (iii) additional expenses, was valid and reasonable.

Issues:

22. By Statement of Agreed and Unagreed Issues filed on 1st November 2023, the parties agreed the following issues:

i. Whether the trustee's decision to validate part of the appellant's claim in the amount of TTD$737,775.72 and disallow the remainder of his claim in the sum of TTD$3,517,500.00 is reasonable? ("The first issue");

ii. Whether the trustee considered irrelevant matters in arriving at her decision? ("The second issue"); and

iii. Whether the appellant is entitled to be paid the portion of his claim that was disallowed? ("The third issue").

23. By Statement of Unagreed Issues filed on 1st November 2023, the parties identified the following Unagreed Issues:

iv. Whether the trustee was entitled to disallow part of the appellant's claim on the basis that he abandoned his contract with the TTFA after the appointment of the Normalization Committee in March 2020? ("The fourth issue");

v. Whether the trustee's decision to disallow part of the appellant's claim should be upheld? ("The fifth issue");

vi. Whether the trustee ought to have considered the consequence of the TTFA's failure to defend the claim in CV2021-03280, and the appellant's resulting Request for Judgment in Default? ("The sixth issue"); and

vii. Whether the trustee discharged her duties and obligations in keeping with the **BIA** in relation to the appellant in a fair and objective manner? ("The seventh issue").

The Trial:

24. The trial took place on 27th January 2026 and during same, the following witnesses were cross-examined after their respective affidavits were tendered into evidence:

i. The appellant, Peter Miller;

ii. The respondent, Maria Daniel; and

iii. Robert Hadad.

25. At the trial, it was evident that the critical issue before this court involves a determination as to the actual period over which the appellant worked and the court ultimately has to consider whether there was evidence to suggest that after the appointment of the

Normalization Committee of the TTFA in March 2020, the appellant actually performed any services to the benefit of the TTFA pursuant to the terms of the Contract.

The evidence:

The appellant's evidence:

26. During cross-examination, the appellant accepted that his contract term commenced on 1st January 2020 and that the reason advanced by the trustee for disallowing part of his claim was that he effectively ceased performing his services three months after the contract commenced.

27. The witness was taken to the revised briefing document dated 17th February 2020 which he submitted to the then TTFA President, William Wallace. He confirmed that this briefing document outlined some of the decisions and actions which he had effected, matters which were active, as well as those which were contemplated and in a planning phase.

28. The appellant was taken to paragraph 10 of his statement of case where he averred that he delivered to the TTFA a four-year sponsorship/partnership with Caribbean Chemical worth One Million Trinidad and Tobago Dollars (TT$1,000,000.00), and that he was also engaged in advanced discussions with other commercial entities such as Sports and Games and Goal Esports. However, he accepted that he did not exhibit any copies of contracts to the statement of case in respect of the sponsorship partnership with Caribbean Chemical or documentation with respect to his discussions with Sports and Games and Goal Esports.

29. The witness was also taken to paragraph 11 of his statement of case where he outlined that he secured commitments from Gridpowr (Switzerland), Spectrum Brands (USA), and Ola (India) to the value of Four Hundred Thousand United States Dollars (USD$400,000.00), One Hundred and Fifty Thousand United States Dollars

(USD$150,000.00) and One Hundred and Twenty-Five Thousand United States Dollars (USD$125,000.00) respectively, and he accepted that no documents or contracts which supported these assertions were exhibited.

30. The appellant was also referred to paragraph 12 of his affidavit where he deposed that through his networks and professional relationships, he commenced discussions with Manchester City Football Club, Charlton Athletic Football Club ("CAFC") and the Brazilian National Team for the staging of international friendly matches in Trinidad and Tobago as well as other potential partnerships and revenue earners and he outlined that he secured 'in-principle agreements' for mutually beneficial partnerships for the respondent.

31. The appellant was shown a chain of e-mails with one Ms. Christina Mora in relation to a potential opportunity for collaboration between Manchester City and the TTFA and he agreed that the said e-mail exchange was in respect of matters which occurred prior to the appointment of the Normalization Committee on March 17th, 2020.

32. The witness was taken to paragraph 13 of his statement of case where he averred that he created proposals which were submitted to the respondent for the development of Women's Football and that he established a partnership with Glasgow City Football Club and had agreements in principle for the women's side to be hosted by Glasgow City Football Club in Scotland in July 2020. He was then shown the e-mail thread between himself and one Ms. Carol Ann Stewart. The first in time e-mail was sent on 31st January 2020 and adverted to a possible visit by the Trinidad and Tobago Women's Football team to Scotland sometime in July 2020. The witness stated that that visit never occurred because of the onset of the COVID pandemic and he accepted that the e-mail thread occurred prior to the appointment of the Normalization Committee.

33. The appellant further accepted that he produced no documentation to support his pleaded assertion that, as Marketing Director, he procured deals with PRM Sports as well as with SportX Marketing, Jelly Bean Media Agency, and MacoSports USA, IMR (UK).

34. At paragraph 20 of his affidavit, the witness referenced the fact that he secured one of the largest Kit deals in the respondent's history namely a twenty-five million-dollar ($25, 000, 000.00) deal with Avec, but he accepted that the deal with Avec had already been struck by the time that the Normalisation Committee was appointed.

35. The witness accepted that, at paragraph 9 of his affidavit in support, he stated that he communicated with Mr. Hadad to update him and get a sense of the direction of the TTFA, but at paragraph 10, he acknowledged that Mr. Hadad was not forthcoming on setting out a plan for a continued partnership with him. The witness further testified that he understood Mr. Hadad's phrase "continued partnership with you" to refer to continued employment as the TTFA's Marketing Director.

36. The appellant accepted that he had discussions with Mr. Hadad about whether his employment with the TTFA as its Marketing Director would be continued and it was pointed out to him that very soon after the Normalization Committee's appointment, he was willing to accept a reduced sum to part ways amicably with the TTFA.

37. The witness also agreed that by e-mail sent on April 6th 2020, he inquired of the Normalization Committee whether his employment by the TTFA as its Marketing Director would be continued. He also accepted that as early as April 2020, he was aware that there were financial constraints which impacted the TTFA's ability to discharge its payment obligations under his employment contract.

38. The witness was taken to his e-mail of 26th April 2021 and it was suggested to him that the reason that he stated therein that he was not expected to be paid up to that date was

due to fact that prior to the said date, he had long ceased working. He disagreed with the said suggestion, but he accepted that the records which he produced only reflected work which was done as at March 2020.

39. The appellant was also taken to paragraph 11 of his supplemental affidavit and he accepted that he discussed compromising his contract and continuing to provide his services to the TTFA on a "case per case basis" as at June 2020.

40. The witness was shown the Zoom e-mail and Counsel for the respondent pointed out that in the third paragraph of that e-mail, there was a reference to a Zoom call around June 15th 2020 between him and Messrs Robert Hadad and Terry Fenwick where it was agreed that he would be paid up to June 2020 and then his contract would be torn up.

41. The appellant also acknowledged that what was outlined at paragraph 9(c) of his supplemental affidavit about the challenges he faced in the performance of his duties, was attributable to varying factors and that the spread of the global coronavirus pandemic impeded the realisation of some of the goals which he actively pursued.

42. The appellant was referred to paragraph 17 of his statement of case and he agreed that he stated that he had performed his duties during the first six months of the contract period i.e. between January 1st to June 30th 2020.

43. It was suggested to the witness that although he claimed in his statement of case that he performed his duties during the first six months of the contract period, the exhibits to the statement of case did not provide any documentary proof that he actually performed his duties after the first three months, that is to say, after March 31st, 2020 and the witness agreed with this suggestion.

The respondent's evidence:

The evidence of Maria Daniel:

44. In cross-examination, the trustee explained that in November 2021, she was first appointed as trustee of the TTFA and she dealt with the Normalization Committee. She outlined that part of her mandate was to address the TTFA's financial health.

45. Her evidence was that she became aware of the appellant's contract with the TTFA sometime between November 2021 and April 2022, and at that time, she read the appellant's contract and noted that he was being paid twenty-five thousand United States dollars (US$25,000.00) per month. She went on to admit that she became concerned about the quantum of the appellant's salary.

46. The trustee indicated that she was aware that the appellant was not paid from the time he commenced the contract until he finished working.

47. She reiterated that the appellant had not worked after March 2020 and that this view was based on a review of the appellant's documents, and from her discussions with the management of the TTFA, as well as the Normalisation Committee.

48. During cross-examination, the trustee was asked whether she had a conversation with Mr. Hadad relative to the appellant working beyond March 2020 and she responded by saying that she asked whether there was evidence that the appellant worked past 2020.

49. The witness agreed that she spoke to Mr. Hadad about the appellant's employment and that he told her that the appellant did not work beyond March 2020. She also admitted that she inquired of Mr. Hadad whether he had conversations with the appellant after March 2020 and she stated that Mr. Hadad did not indicate to her that he had conversations with the appellant relative to his working beyond March 2020.

50. Importantly, in cross-examination, the trustee explained that she was aware of e-mail correspondences passing between the appellant and Mr. Hadad after March 2020. The trustee was questioned about the contents of that e-mail correspondence and she indicated that the e-mail correspondence concerned things that were outstanding and whether work should be continued.

51. The trustee was specifically taken to the June and July e-mails and when asked about her knowledge of these, she was markedly evasive. She initially indicated that she may have seen them, but upon further questioning, she stated that she did not remember seeing the said e-mails. However, later in her cross-examination, the witness stated "*Let's go with that I saw them*" and she agreed that Mr. Hadad requested the appellant to keep working.

52. The trustee was asked whether she raised the June and July e-mails with Mr. Hadad and she said that she did not.

53. The witness was also asked whether she requested the Normalization Committee to provide any matters or any evidence as to whether or not the appellant worked after March 2020 and she indicated that she sent an e-mail to Mr. Amiel Mohammed requesting such information. However, it was pointed out to her that no such e-mail was referenced in her evidence.

54. In further cross-examination, the trustee accepted that in dealing with contracts or discussions with potential clients, one would not pick up the phone and immediately close a contract and she also agreed that in some situations, client care would be required.

55. The witness conceded that under the Contract, the appellant was responsible, in part, for getting sponsors for the TTFA. She also accepted that as part of the various negotiations and consultations that the appellant may have pursued, there may have been the need

to exercise client care. The trustee further accepted that if the appellant was asked by Mr. Hadad to keep creditors, partners, and sponsors informed and supported, that would constitute client care. She, however, explained that she did not know the context of Mr. Hadad's request nor was she aware of what took place before and as a result, she preferred not to put any labels on that discussion.

56. The witness was asked whether keeping in touch with creditors, supporters, or sponsors amounted to work and she indicated that it depended on the context.

57. The witness was shown one of the June and July e-mails, to wit an e-mail dated Friday 26th June 2020 from the appellant to Mr. Hadad which stated, "Please advise how and when you wish to do this as I explained previously they are collectively happy to work with you (in terms of the above options) but in fairness need to move on at this point one way or another".

58. The witness was asked whether it would be reasonable to conclude from the aforesaid e-mail that the appellant was in contact with sponsors and she said that it was reasonable to conclude that he was.

59. The witness accepted that Mr. Ramesh Ramdhan was the General Secretary of the TTFA in April 2020 and she was taken to the April 6th e-mail. This e-mail was not included in the appellant's Proof of Claim, but, at the fourth paragraph, the appellant stated:

> "As you are aware, I have worked in my role for the TTFA since November 25th 2019 and to date have received no pay whatsoever, neither has any of the commercial/communications team."

60. The witness was asked whether she saw this e-mail, and she indicated that she definitely did not see same.

61. Finally, the witness accepted that the June and July e-mails were attached to the appellant's Proof of Claim, but she insisted that she was not provided with evidence that the appellant had worked after March 2020. She further stated that the June and July e-mails, in her mind, did not amount to evidence and she explained that as an independent trustee, she looked at independent documentation which affirmed whether actual work was done.

The evidence of Robert Hadad:

62. Mr. Robert Hadad testified that he was the Chair of the Normalization Committee and that he knew that the appellant was the TTFA's Marketing Director of the TTFA and he was aware that the appellant had not been paid for the duration of his contract.

63. The witness was taken to the June and July e-mails, and, in particular, his e-mail of 26th June 2020 to the appellant and he agreed, after reading that e-mail, that he never told the appellant that the Normalization Committee wanted him to stop working or that he should stop working. The witness also agreed that a contract would usually require client care before it is eventually closed.

64. The witness was asked to read the appellant's e-mail of 26th June 2020 where the appellant explained that he was in communication with the TTFA's service providers, and the sponsors, but he did not accept that it was reasonable to infer that the appellant was engaged in was client care with them.

Analysis of The Evidence:

65. In **Reid v Charles Privy Council Appeal No. 36 of 1987**, the Judicial Committee explained the way a trial judge should approach analysing the evidence adduced in a case and stated that:

> "However in such a situation, where **the wrong impression can be gained by the most experienced of judge if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporaneous documents, where they exist, against the pleaded case and against the inherent probability and improbability of rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner**. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses." (emphasis added)

66. The appellant deposed to approximately three affidavits in this matter and in all three documents, he indicated that he included in his statement of case all the relevant particulars and evidence which demonstrated that he fulfilled all his contractual obligations within the relevant contractual period. However, he accepted in cross-examination that all the documents exhibited to his statement of case related to matters until March 2020. While the appellant was adamant that he discharged his contractual obligations fully under the Contract and that he did more work than was recorded, he did not annex or exhibit before this court, any copies of any contracts or any e-mail threads or any other documentary proof so as to buttress his contention that he completed work with companies such as Caribbean Chemical, Sports and Games, Grid Powr (Switzerland), Spectrum Brands (USA), Ola (India), PRM Sports, SportX or Jelly Bean Media Agency. Further, no such documentation was provided to the respondent in his Proof of Claim.

67. Moreover, the court noted that the appellant himself admitted in cross-examination that he only had records up to March 2020. While it may be plausible to conclude that if the

appellant actively pursued opportunities for the TTFA after March 2020, he should have produced records of such work, given the nature of the appellant's obligations, his global institutional knowledge surrounding football, and the contacts which he had, it is also plausible that he may have initially conceptualized and/or pursued deals during informal conversations and/or in social settings. In addition, it must be recognised that interactions of this manner may not have been recorded.

68. At paragraph 11 of the appellant's affidavit in support of his fixed date claim form, he stated that, "More than a year passed and [Chairman] Hadad and the Normalisation Committee failed to give [the appellant] any indication in relation to the remuneration owed to me under the contract so [he] decided to engage [his] attorneys to take the appropriate action". The aforesaid statement suggests that, as at that time, the appellant may have also formed the view that the Contract was no longer subsisting and/or continuing and/or effective, however, it could also be implied that at least up to the time that discussions were being engaged with Mr. Hadad in June 2020 that the appellant had not abandoned the contract.

Analysis of the evidence:

69. The court considered the respondent's evidence during cross-examination and noted her demeanour, the contemporaneous e-mails adduced, and the probabilities and improbabilities of her assertions.

70. The court found that the trustee was unhelpful, slightly arrogant, unnecessarily adversarial, and her evidence was marked by evasion during cross-examination. The court's observations in this regard does not align with the demeanour expected of a trustee whose purpose was to justify the reasonableness of her decision. Further, as alluded to earlier, the June and July 2020 e-mails seemingly contradicted the instructions which Mr. Hadad gave to her that the appellant abandoned his contract after March 2020.

71. In her evidence, the trustee explained that she was unaware of the 6th April 2020 e-mail and she admitted that she did not inquire of anyone about communications which the appellant may have had with Mr. Ramdhan. It was evident that this e-mail, as well as the particulars relating to the Zoom call, formed no part of the Proof of Claim and as a consequence, they could not have been considered by the trustee.

72. The trustee was asked if she contacted anyone about the issue as to whether the appellant continued to work after March 2020, and she stated that she asked Mr. Mohammed, who was a member of the Normalisation Committee, for all the contracts involving the appellant.

73. The trustee and Mr. Hadad both agreed that contracts do not come into fruition overnight, and that they would usually require time. These two witnesses also agreed that part of business included working on building client relations by exercising client care. In this court's view, based on these assertions relative to the fruition of contracts and the engagement in client care, it is clear that evidence of the appellant's work could not be limited to finalised contracts as suggested by the trustee. Foundational work and follow-up conversations with clients, partners, sponsors, and prospective clients could have been engaged and such engagement would have amounted to work under the Contract.

74. It is obvious to this court that the June and July e-mail exchanges illustrated that the appellant actively communicated with functionaries within the TTFA after March 2020. The said exchanges frontally referenced the engagement of aspects of the appellant's work as Marketing Director under the Contract, and this information was not indicative of a scenario which suggested that he abandoned his contractual obligations with the TTFA.

75. In the appellant's e-mail dated Monday 20th July 2020, he stated to Mr. Hadad:

> "Good Morning Robert. Following on from your last email of June 26th I am dropping you a short note to enquire where we are in terms of initiating any meaningful dialogue in regards to moving forwards. **Since our last communication I have continued, as you requested me to do so, to keep outstanding partners/sponsors/creditors informed and supportive**. Not surprisingly given the most recent media reports relating to payments starting to be made you will appreciate I am being asked for renewed updates and in order to maintain these relationships it would most helpful if you could provide me some insight into where we are as well as indeed in terms of my own specific situation also. I look forward to hearing from you soon. Regards. Peter" (emphasis added)

76. The contents of this e-mail were never refuted by Mr. Hadad, and in same, the appellant clearly referred to aspects of client care which he pursued post-March 2020.

77. Evidently, the engagement of client care fell within the broad remit of the work which the appellant was contracted to perform under the Contract and the said e-mail outlined that work under the Contract was effected after the appointment of the Normalization Committee.

78. In this e-mail of 20th July 2020, the appellant wrote to the Chair of the Normalisation Committee and informed the latter that he continued to inform and support partners, sponsors, and creditors of the TTFA. Notably, under cross-examination, Mr. Hadad admitted that he never directed the appellant to stop working in the June and July e-mails.

79. The evidence suggests that the respondent took into consideration the fact that she had been advised by the Normalization Committee that the appellant had only performed three months of work pursuant to the Contract and that he had effectively abandoned the performance of his contractual obligations after the Normalization Committee was appointed. However, she did not properly consider or resolve the impact of the June and July e-mail exchanges upon the veracity or fairness of that position.

80. The evidence further suggests that the respondent relied heavily on the fact that the Normalization Committee was unable to locate any records or documentation which established that the appellant performed any work after its appointment, however, she failed to consider the fact that the appellant's continued liaising with clients and his proffering of client care also amounted to work under the Contract.

81. In her evidence, the trustee accepted that she saw the June and July e-mails, but stated that she did not view them as being independent evidence of continued work. The said e-mails contained an enquiry by the appellant as to whether work should continue and Mr. Hadad never responded by saying to the appellant that he had ceased working since March 2020. This exchange was not evaluated by the respondent although it conflicted with the instructions which were given to her.

82. The trustee indicated that she sent an e-mail to Mr. Amiel Mohammed requesting information as to whether the appellant had worked after March 2020, however, this e-mail request was not placed before the court.

83. This court notes that the case of **Efobi v Royal Mail Group Ltd [2021] UKSC 33** was cited with approval by the local Court of Appeal in **Abed v Courtyard Marriott Port of Spain CA P340/2017** and this court agrees with and adopts Lord Leggatt's dicta in **Efobi** with respect to the drawing of inferences.

84. This court is inclined to draw an adverse inference against the trustee and holds that the trustee should have exhibited the e-mail(s) by which she purportedly enquired of Mr. Mohammed as to whether the appellant worked after March 2020.

85. In the circumstances, the court does not accept that any such enquiry was made and the court is inclined to hold that the trustee-respondent relied solely on what Mr. Hadad told her and she failed to evaluate these representations as against the contradictory contents of the June and July 2020 e-mails.

86. This court remained cognizant that an appeal from a Notice of Disallowance is not a trial de novo, and it is required to examine the record and determine whether there has been an error of law or a palpable error of fact.

87. The **BIA** is a statute governed by business principles and it imposes the day-to-day administration into the hands of trustees who are usually business people. The case law also recognizes that the statutory obligations should not be interpreted in an overly narrow or legalistic fashion and consideration must be had to the realities of commerce, practicality, and business efficacy.

88. The court took note that the trustee is also bound by the Code of Ethics prescribed in **Part XVI of the BIA** under the **Bankruptcy and Insolvency Regulations** ("the **BIA Regulations**").

89. Pursuant to **Part 75 of the BIA Regulations**, a trustee is mandated perform the duties in a timely manner and discharge the functions with a standard of care which displays competence, honesty, integrity and reasonableness.

90. At all material times, TTFA's **BIA** proceedings was subject to the court's authority and had to be governed by principles of fairness. As a consequence, the trustee was, effectively, an officer of the court.

91. Section 126 of the BIA provides that:

> "126. (1) The trustee shall examine every proof of claim or proof of security and the grounds for the proof and may require further evidence in support of the claim or security.
>
> (2) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if it is a provable claim, the trustee shall value it, and the claim is, subject to this section, deemed a proved claim to the amount of its valuation.
>
> (3) The trustee may disallow in whole or in part—
>
> (a) any claim;
>
> (b) any right to a priority under the applicable order of priority set out in this Act; or
>
> (c) any security.
>
> (4) Where the trustee makes a determination under subsection (2), or pursuant to subsection (3), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall provide in the prescribed manner, to the person whose claim was subject to a determination under subsection (2) or whose claim, right to a priority or security was disallowed under subsection (3), a notice in the prescribed form setting out the reasons for the determination or disallowance.

> (5) A determination under section (2), or a disallowance referred to in subsection (3) is final and conclusive unless, within a thirty-day period after the service of the notice referred to in subsection (4) or such further time as the Court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the Court in accordance with the Bankruptcy Rules.
>
> (6) The Court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor is the trustee declines to interfere in the matter.

92. By virtue of **section 126(1) of the BIA**, the respondent, as trustee, had both the obligation and the right to examine every Proof of Claim submitted and was vested with the authority to either allow or disallow in whole, or in part, the claim submitted.

93. In **Galaxy Sports Inc. (Re), 2004 BCCA 284**, it was recognized that the trustee's conduct has to be evaluated using a standard of reasonableness and correctness.

94. The case law has established that the standard of reasonableness involves asking "After a somewhat probing examination, can the reasons given, when taken as a whole, support the decision?" (see **Hayes Canyon Road Maintenance Ltd (Re), 2019 BCSC 195**, per Wilson J, at para 36).

95. In **Hayes Canyon Road Maintenance Ltd. (Re)** (***supra***), reference was also made to paragraph 73 of **Transglobal Communications Group Inc 2009 ABQB 195**, where it was stated that:

> "[73] On an appeal based on the standard of reasonableness, the court recognizes that certain questions may give rise to a number of possible, reasonable conclusions. As indicated the Dunsmuir [v. New Brunswick, 2008 SCC 9] court at para. 47, **reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process**. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (emphasis added)

96. A trustee's obligation when considering a claim was succinctly explained in **Re 5274398 Manitoba Ltd o/a Cross Country Manufacturing (Bankrupt), 2019 MBQB 89** where the court stated that:

> "13. In performing the task of assessing Proofs of Claims, the trustee must maintain an even hand between the various stakeholders, including the claimant whose claim is then under consideration. In practical terms, this will require a trustee to objectively assess the information contained within the Proof of Claim, to investigate other sources of information which might shed some light on the claim, when appropriate to request further information from the claimant, to consider the legal position upon which the claim is based, and to render a decision as to whether the claim is allowed or disallowed. It is not unusual in the course of this process for a trustee to engage in negotiation with a claimant with a view to finding a compromise. The amount of work done by the Trustee in assessing a claim should be performed with a view to the

> practicalities of the situation. The trustee represents creditors of an entity which is financially strapped and there is no requirement for the trustee to look under every stone in order to satisfy itself to a degree of certainty. Were that the case, the estate would be eroded by the trustee's efforts to achieve that overwhelming standard. It is reasonableness that governs, both as to the nature of the investigation and the decision that is made. This is even the case where the trustee is faced with the assessment of a claim that is contingent or unliquidated."

97. Based on the authorities, it is evident that this court must review the respondent's reasons and evaluate the reasonableness of same based on the evidence which she had before her. The court has to also consider whether there was transparency and intelligibility in the decision-making process and whether the decision could withstand a "somewhat probing examination".

98. The law acknowledges that a creditor who wishes to participate and share in estate dividends must prove his claim. As a consequence, where a trustee is unsatisfied with the material provided in support of a claim, the trustee has both the right and duty to demand further evidence from the creditor.

99. If a creditor adduces relevant and probative evidence from which a valid claim can be reasonably inferred, the test is then met and the claim should be viewed as having been proved.

100. Where a trustee, however, has suspicions, the obligation shifts to the trustee to investigate further and seek additional evidence from creditors to enable a critical review of the reasonableness of the issues raised.

101. The respondent justified her decision to disallow part of the appellant's claim by concluding that the appellant effectively stopped performing his services after three months of the contract, and she formed the view that the remainder of salary for the contract period could not be paid.

102. After considering the evidence and engaging in discussions with the Normalization Committee, the respondent determined that the appellant's salary for the three months was outstanding and she also determined that he should be paid (USD$25,000 x 3), plus USD Thirty Thousand Four Hundred United States Dollars (USD$30, 400) as agreed in contract, and a further Four Thousand Seven Hundred United States Dollars (USD$4,700) by way of additional expenses.

103. At the material time, the TTFA was an entity which was financially-strapped and the respondent was not required to look under every stone in order to satisfy herself to a degree of perfect or absolute certainty, but she was obligated to act reasonably.

104. Upon reviewing the Proof of Claim, the terms of the appellant's contract of employment, the additional information submitted by the appellant, and the instructions given by the Normalization Committee, the respondent determined that there was insufficient evidence/proof to support the full value of the appellant's claim.

105. The court is, therefore, mindful that the respondent had to balance complex competing interests, and she was permitted to exercise her expertise and judgment in evaluating the appellant's claim. **However, in this court's view, it is clear that the trustee had no clear, definitive, and/or reasonable basis to conclude that the appellant effectively stopped working after March 2020.**

106. She did not, as an independent arbitrator of claims, make any serious or real enquiries into the appellant's claim although she stated in cross- examination that she

relied on the evidence provided by the appellant. Even after information was provided by the appellant's attorney-at-law, the trustee's e-mail in response impliedly accused the appellant of providing misinformation:

> "Thank you for the information**. I am agnostic to misinformation as I deal with fact and experience and professional knowledge of which I have 30 plus years and have worked with many organisations in many industries and across countries**." (emphasis added)

107. It is patently obvious that the trustee did not give appropriate weight and consideration to the contents of the e-mails of June and July 2020 between Mr. Hadad and the appellant. The information contained in these strands of contemporaneous documentation contradicted the position which she indicated was conveyed to her by the Normalization Committee. During her cross-examination, she stated that she may have seen the e-mail exchanges between Mr. Hadad and the appellant, but that what these two individuals were discussing needed to be addressed in context.

108. During the trial, Mr. Hadad was very frank and forthright about the e-mail exchanges and the position which was discussed in June 2020 with the appellant, however, there is no evidence which suggests that the respondent sought to obtain any clarification from Mr. Hadad as to why discussions took place with the appellant if he had in fact abandoned the contract after March 2020.

109. The trustee attempted to explain why she did not consider what was contained in the e-mail exchanges by saying that, as an independent trustee, she looked at independent documentation which made her feel sure that actual work was done. While that may be a commendable position, in general, in the circumstances of this case, the trustee did not act reasonably or fairly in ignoring and excluding from her

consideration, these e-mails which provided relevant and contemporaneous information which materially contradicted the instructions she received from Mr. Hadad.

110. In this court's view, the fact that these e-mails were annexed to the appellant's statement of case which was attached to his Proof of Claim, ought to have signalled to the respondent that, as an independent trustee, she should have explored whether there was any veracity or accuracy in the appellant's assertion that he continued to work post-March 2020. She also needed to consider the issue as to the client care which the appellant may have extended and ought to have been mindful that telephone calls, for example, may not have been documented.

111. The respondent had an obligation to impartially evaluate all the relevant and material evidence before her. However, the approach which she adopted was not thorough. Instead, it was perfunctory, slipshod and fell below the standard which is objectively expected of someone who acts as an officer of the court.

112. Having considered the evidence, this court is resolute in its view that the trustee failed to embark on a comprehensive inquiry in relation to the June and July e-mails and she did not objectively assess all the pertinent information which was before her. She failed to obtain the required clarification from the appellant and from the Normalization Committee as to why they engaged in the June and July e-mail exchange and she failed to consider the purport and effect of those discussions on the position that the appellant had ceased working as at the end of March 2020.

113. The respondent was not required to conduct a forensically-probing examination or to be convinced beyond reasonable doubt, but she was required to conduct a measured and probing examination as she applied day-to-day business administration principles mindful that the approach engaged had to accord with business efficacy and

reflect the financial realities which confronted the TTFA. Regrettably, she failed to discharge this obligation.

114. A measured and probing examination, which took into account the day-to-day business administration and business efficacy practices and principles, would have required the need for serious consideration to be given to the contents of the June and July e-mails and to the fact that not every scintilla of work in which the appellant engaged would have been comprehensively documented. As a professional trustee versed in insolvency proceedings, this is the approach which the respondent should have adopted.

115. As a consequence, the court is resolute in its view that the respondent made palpable errors of fact and she prematurely and unreasonably determined that the appellant ceased working under the Contract as at March 2020.

116. In Re 5274398 Manitoba Ltd o/a Cross Country Manufacturing (Bankrupt), 2019 MBQB 89, the court opined that in performing the task of assessing Proofs of Claims, the trustee must maintain an even hand between the various stakeholders, including the claimant whose claim is then under consideration. The court noted that, in practical terms, a trustee had to, *inter alia*, objectively assess the information contained within the Proof of Claim, and to investigate other sources of information which might shed some light on the claim and all of this must be done to a reasonable standard.

117. In this court's view, in assessing the appellant's Proof of Claim, the trustee neither maintained an even hand nor did she properly balance the information she received from Mr. Hadad, the Normalization Committee, and from the appellant himself.

118. The evidence demonstrates, that the respondent robotically accepted Mr. Hadad's views, but she displayed scepticism when she reviewed the information provided by the appellant. This approach was not indicative of the adoption of an even-handed stance.

119. In her discharge of the statutory obligations with respect to the assessing of Proofs of Claims, as a trustee, the respondent could not operate in a realm where she was divorced from the realities of commerce, practicality or business efficacy and this court is unable to understand how she could say that she needed independent corroboration of the material which the appellant provided while she disregarded the practical realities and the need for client care in the discharge of the appellant's contractual obligations.

120. In the circumstances, this court is resolute in its view that there were fundamental errors in the respondent's analysis of the claim and/or in the approach which she adopted. As a consequence, the Notice of Disallowance has to be set aside.

121. Having set aside the Notice of Disallowance, the court must now consider the proper approach which should be adopted.

122. A useful place to begin is with the decision of **Oil Lift Technology Inc. v. Deloitte & Touche Inc., 2012 ABQB 357** where the court stated that:

> "[34] The Bankruptcy and Insolvency Act is sometimes said to be a "businessman's statute'. All that means is that the Act should be administered in a practical and accessible way. Rigid formalism should be rejected and a pragmatic approach should be preferred. However, a claimant should be encouraged to put their best foot forward with their proof of claim. Automatically accepting fresh evidence on

appeal would encourage a careless approach to initial proofs. It would also have the effect of transferring the obligations imposed upon the Trustee under section 135 of the Act, to the Court. Accordingly, some explanation ought to be given about why the material now before a Registrar was not initially before the Trustee.

[35] This case is striking in that only a faction of the materials now before the court were before the Trustee when the claims were initially considered. However, despite the ever-expanding evidence, there was enough before the Trustee to demonstrate that Oil Lift's contingent, unliquidated claim was not too remote or speculative. There was also, in my view, not enough to demonstrate that ownership of the intellectual property had been displaced from its authors."

123. The court continued:

"Options

[37] A Registrar's powers are determined by section 192 of the Bankruptcy and Insolvency Act. Among the powers set out in section 192 are the powers to hear and determine appeals from the decisions of a Trustee (section 192(1)(n)) and to hear and determine any matter, with the consent of the parties (section 192 (1)(j)). The Registrar may also refer a matter to a Judge for disposition (section 192(6)). (There is a parallel provision in section 13 of the Court of Queen's Bench Act permitting a Master to refer a matter to a Judge).

> **[38] Some of the options open to a Registrar on an appeal from a Trustee's disallowance, in addition to agreeing with the Trustee and upholding the Trustee's determination, would be:**
>
> **(1) to allow the appeal and assess the claim,**
>
> **(2) to allow the appeal and refer it back to the Trustee for a determination,**
>
> **(3) to allow the appeal and permit a revised Proof (Sinnathurai (Trustee of) v. Sabapathipillai, 2010 69 CBR (5th) 287 (Ont SCJ));**
>
> **All of which would be consistent with the Registrar's consideration of new evidence following a disallowance.**

124. This approach was applied with approval in **YG Limited Partnership and YSL Residences Inc. (Re), 2024 ONSC 1617 (CanLII)** where the court stated:

> "Valuation and Damages
>
> . . .
>
> [134] Ms. Athanasoulis has provided sufficient foundational evidence to satisfy the court that, while it may be difficult, efforts should be made to value the Profit Share Claim. As previously directed, the parties shall arrange to attend before me on a case conference at which proposals will be made and directions will be provided regarding the process for the valuation of the Profit Share Claim.
>
> . . .

Order and Final Disposition

[146] The following orders, declarations and directions are made or granted based on the relief requested in Ms. Athanasoulis' Notice of Motion on appeal:

a. The Proposal Trustee's Disallowance of the Profit Share Claim dated August 10, 2023 is set aside;

. . .

e. Maria Athanasoulis shall be paid forthwith her partial indemnity costs of this motion/appeal from the Disallowance fixed in the amount of $169,715.93 plus applicable taxes and total disbursements of $6,812.08 (inclusive of HST), subject to further directions from the court to be provided at a case conference, if requested, regarding by whom, in what proportions and from what source these costs are to be paid;

f. The parties shall arrange a case conference before me for the purpose of making submissions and receiving directions regarding the process for the determination of the amount (valuation) of the Profit Share Claim. The Sponsor (or its counsel) shall also attend this case conference as it may have implications for the ongoing funding of administrative and other expenses of the Proposal Trustee associated with the determination of the Profit Share Claim;

. . ." (emphases added)

125. In the recent decision of **CV2022-02140 In Re Appeal against the decision of the trustee by Terence William Fenwick v Maria Daniel** ("the Fenwick case"), the court quashed the decision of the respondent to reject the appellant's claim and having so

quashed the respondent's decision, the court, instead of remitting the matter back to the trustee, went on to assess the value of the appellant's claim itself.

126. Based on the authorities above, this court is minded to adopt the approach taken in the Fenwick case, and the court holds the view that no useful purpose will be served by remitting the matter to the trustee for her reconsideration.

127. This court is mindful that the TTFA is financially-strapped and that it may be required to pay the trustee for any further work if this matter were to be remitted. Having found that the respondent failed to fairly to conduct a probing enquiry or to evaluate the evidence which was before her in an even-handed manner, it would not be prudent for her to have any further involvement in this matter.

128. This court has before it all the relevant material, it is well-apprised of the factual matrix, and is vested with the jurisdiction to make a determination on the appellant's claim.

129. The uncontradicted evidence has established that the appellant was paid for his services up to March 2020. The court has, however, found that the June and July e-mail exchanges established that the appellant worked until July 2020.

130. Clause 4 of the contract (supra) stipulated that the appellant was entitled to US$25,000.00 per month. Accordingly, the appellant should be paid his salary for the period April – July 2020 which would amount to the sum of One Hundred Thousand United States Dollars (US$100,000.00).

131. For the reasons outlined, this court holds the view that the appellant is entitled to the sums contained in the Notice of Disallowance together with an additional One Hundred Thousand United States Dollars (USD$100,000.00).

132. The court hereby directs that the TTFA should pay this additional sum to the appellant.

133. Statutory interest shall run on the payment of this sum from the date of this decision to the date of payment.

134. There will be a stay of execution of forty-two (42) days on the payment of the judgment sum.

135. The court shall hear the parties on the issue of costs.

Frank Seepersad

Judge