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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF CATALX CTS LTD. AND CATALX MANAGEMENT LTD.

APPLICANTS CATALX CTS LTD. and HYUK JAE PARK

RESPONDENT CATALX CTS LTD. and CATALX MANAGEMENT LTD.

DOCUMENT **BENCH BRIEF**

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I. INTRODUCTION

1. This Bench Brief is in support of the application (the “**Application**”) of Catalx CTS Ltd. (“**CatalX**”) and Hyuk Jae Park (“**Mr. Park**”) for the appointment of Deloitte Restructuring Inc. as receiver-manager (the “**Receiver**”) over CatalX and Catalx Management Ltd. (“**Catalx Management**”, together with CatalX, the “**Companies**”).
2. Capitalized terms not otherwise defined shall have the meaning given to them in the Affidavit of Hyuk Jae Park, sworn January 10, 2024 (the “**Park Affidavit**”), as the context requires.
3. The Applicants submit that they have met the test for this Honourable Court to grant the Order appointing the Receiver over the Companies as it is just, convenient, and equitable in the circumstances.

II. BRIEF SUMMARY OF FACTS

The Companies

4. Until recently, CatalX was an internet-based platform for the trading of crypto assets through which customers could buy, sell, hold, deposit, and withdraw crypto assets such as Bitcoin, Ether, and anything commonly considered to be a crypto asset, digital or virtual currency, or digital or virtual token (collectively, “**Crypto**”).¹
5. CatalX was first incorporated in British Columbia in 2018, and was continued into Alberta under the *Business Corporations Act*, RSA 2000, c. B-9 (the “**ABCA**”) in 2019.²
6. Mr. Park is the Chief Executive Officer of CatalX. He is now also the only remaining officer and the sole director of CatalX.³
7. Jae Ho Lee (“**Mr. Lee**”) was the Chief Financial Officer and a director of CatalX until December 22, 2023, when CatalX accepted his resignation.⁴

¹ Affidavit of Hyuk Jae Park, sworn on January 10, 2024 [“**Park Affidavit**”] at para 3.

² Park Affidavit at para 4 and Exhibit “A”.

³ *Ibid* at para 8 and Exhibit “A”.

⁴ *Ibid* at para 9 and Exhibit “G”.

8. Catalx Management was incorporated in British Columbia in 2018 under the British Columbia *Business Corporations Act*, SBC 2022, c 57 (the “**BCBA**”), and is extra-provincially registered in Alberta.⁵
9. Catalx Management employed the employees that provided services to CatalX until recently. Catalx Management also held the bank accounts that CatalX used for its operations.⁶
10. Mr. Park and Mr. Lee are the only two directors and shareholders of Catalx Management.⁷

CatalX’s Decision to Cease Operations

11. CatalX operated its Crypto-trading platform through its platform-support supplier, Bittrex Global GMBH (“**Bittrex Global**”), which served as custodian for the Crypto clients obtained through CatalX.⁸
12. On November 20, 2023, Bittrex Global publicly announced its decision to wind-down its operations and cease the provision of all trading services effective December 4, 2023.⁹
13. CatalX determined it was not feasible for it to continue to operate its platform without the required technological and liquidity support from Bittrex Global and in light of certain financial difficulties.¹⁰
14. During a meeting between Mr. Park and Mr. Lee on November 24, 2023, certain without prejudice information was disclosed about CatalX’s financials. This information caused concern and Mr. Park began making internal enquires.¹¹
15. Mr. Park subsequently became aware that CatalX’s clients were no longer able to withdraw their Crypto from CatalX Wallets, and that Catalx Management employees were

⁵ *Ibid* at para 6 and Exhibit “B”.

⁶ *Ibid* at para 7.

⁷ *Ibid* at para 10 and Exhibit “B”.

⁸ *Ibid* at para 12.

⁹ *Ibid* at para 14 and Exhibit “C”.

¹⁰ *Ibid* at para 15.

¹¹ *Ibid* at para 17.

no longer being paid. Both of these business activities had been Mr. Lee's responsibility to complete and oversee.¹²

16. In response, Mr. Park requested the login information for the CatalX Wallets and the bank accounts of the Companies from Mr. Lee in mid-December.¹³
17. Mr. Park did not receive a response from Mr. Lee. Counsel to CatalX then wrote to counsel for Mr. Lee demanding access to the CatalX Wallets and the bank accounts on two occasions. Counsel to CatalX also advised counsel to Mr. Lee in the second letter that certain Catalx Management staff had discovered that the balances of customer funds in the CatalX Wallets had been withdrawn or transferred out of the accounts.¹⁴
18. To Mr. Park's knowledge, Mr. Lee was the only person with access to move Crypto to and from the CatalX Wallets.¹⁵

The ASC Investigation

19. CatalX advised the ASC on December 21, 2023 of its suspicions that Mr. Lee may have wrongfully transferred or withdrawn CatalX customer Crypto out of the CatalX Wallets, and that it had engaged Deloitte LLP to investigate the missing Crypto.¹⁶
20. The ASC granted an interim cease trade order (the "**Interim Order**") against Mr. Lee and CatalX on December 21, 2023, terminating on January 5, 2024, and advised that it had commenced an investigation into CatalX. The ASC later extended the Interim Order to January 5, 2025.¹⁷

¹² *Ibid* at paras 18 – 20.

¹³ *Ibid* at para 21 and Exhibit "E".

¹⁴ *Ibid* at paras 22 – 23 and Exhibits "F" and "G".

¹⁵ *Ibid* at para 9.

¹⁶ *Ibid* at para 24 and Exhibit "H".

¹⁷ *Ibid* at paras 25 – 26 and Exhibits "I" and "J".

The Applicants' Efforts to Prevent Harm

21. Mr. Park caused CatalX to engage Deloitte LLP to provide independent and impartial forensic and investigative services to trace the Crypto that was to be held by CatalX for its customers in its Bittrex Global accounts.¹⁸
22. Mr. Park also caused the Companies to retain Deloitte Restructuring Inc. to assist them in the wind-down the Companies' businesses.¹⁹
23. Mr. Park advanced the Loan to CatalX in order for it to engage Deloitte LLP, Deloitte Restructuring Inc., and CatalX's counsel.²⁰ The Loan is evidenced by a Promissory Note and is secured by a General Security Agreement (the "**Security**").²¹
24. Deloitte LLP and Deloitte Restructuring Inc. have been working closely with the Companies' management and certain former employees to gather and secure records and documents, and secure web-based accounts including with respect to the CatalX Wallets.²²

III. ISSUES

25. The issue before the Court is whether it is just or convenient to appoint Deloitte Restructuring Inc. as receiver-manager over the Companies.

IV. LAW AND ARGUMENT

Relevant Statutory Provisions

26. The Applicants bring the Application pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c. J-2 (the "**Judicature Act**") and section 99(1) of the *ABCA* to appoint the Receiver as against CatalX.

¹⁸ *Ibid* at para 27.

¹⁹ *Ibid* at para 28.

²⁰ *Ibid* at paras 33 – 35 and Exhibits "N", "O", and "P".

²¹ *Ibid* at para 34 and Exhibit "N".

²² *Ibid* at para 36.

27. Section 13(2) of the *Judicature Act* provides:²³

(2) An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should be made, and the order may be made either unconditionally or on any terms and conditions the Court thinks just. [Emphasis added]

28. Section 99(a) of the *ABCA* provides:²⁴

99. On an application by a receiver or receiver-manager, whether appointed by the Court or under an instrument, or on an application by any interested person, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving the receiver's or receiver-manager's accounts;

29. Catalx Management is incorporated in British Columbia. Therefore the Applicants bring the Application to appoint the Receiver over Catalx Management pursuant to section 39 of the *Law and Equity Act*, RSBC 1996 (the "**LEA**"), which states:²⁵

39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made. [Emphasis added]

Standing to Apply for the Receivership Order

(a) **Judicature Act s. 13(2) and LEA s. 39(1)**

30. An applicant who is not a creditor may apply to appoint a receiver under the *Judicature Act* at section 13(2).²⁶ Any major stakeholder with respect to the operations and financial

²³ *Judicature Act* at s. 13(2) [TAB 1].

²⁴ *ABCA* at s. 99(a) [TAB 2].

²⁵ *LEA* at s. 39(1) [TAB 3].

²⁶ *Law Society of Alberta v Higgerty*, 2023 ABKB 499 [Higgerty] at para 28 [TAB 4].

health of the respondent company may apply to appoint a receiver over the company where appropriate.²⁷

31. Section 39 of the *LEA* does not specify who may bring an application to appoint a receiver under it.
32. In both cases, the “appointment of a receiver must be necessary for the protection of the estate of the debtor and... a receiver should not be appointed lightly, but only after careful consideration of the equities.”²⁸ .

(b) ABCA s. 99(a)

33. An “interested person” may apply to appoint a receiver under s. 99(a) of the *ABCA*. “Interested person” is not defined in section 99; however, it is defined in Part 17 of the *ABCA*, which governs liquidations and dissolutions. Courts have referred to the definition provided in Part 17 for guidance when interpreting “interested person” in s. 99.²⁹ Part 17 of the *ABCA* defines an “interested person” as including a “shareholder, a director, an officer, an employee and a creditor of a dissolved corporation”³⁰ or “a person designated as an interested person by an order of the Court”.³¹
34. The Applicants are major stakeholders and interested persons. As such, they have standing to bring the Application.

Test to Appoint a Receiver in Alberta and British Columbia

35. The test to appoint a receiver is identical under Alberta and British Columbia law. In both Alberta and BC, the overarching question a court must answer under the *Judicature Act* and the *LEA* is whether it is just or convenient to appoint a receiver in the circumstances.

²⁷ *Alberta Health Services v Networc Health Inc*, 2010 ABQB 373 at paras 18 – 19 [TAB 5].

²⁸ *Ibid* at para 19.

²⁹ *Concrete Equities (Re)*, 2022 ABQB 185 at para 31 [TAB 6].

³⁰ *ABCA*, s 206.1(a) [TAB 2].

³¹ *ABCA*, s 206.1(d) [TAB 2].

36. In Alberta, Courts apply the “tripartite test” (“**Tripartite Test**”) set out in *Murphy* to establish whether it is just or convenient in the circumstances to appoint a receiver.³² In order to meet this test, an applicant must prove:
- (a) that there is a serious issue to be tried;
 - (b) that it will suffer irreparable damage if the relief is not granted; and
 - (c) that the balance of convenience favours the granting of the relief.³³
37. Even if an applicant does not meet all three elements of the Tripartite Test, a Court may choose to appoint a receiver regardless where the “dictates of fairness may exceptionally be so overwhelming that interim relief is justified”.³⁴
38. More recently, in *Higgerty*,³⁵ this Court added detail to the test to appoint a receiver under the *Judicature Act* at section 13(2) as follows:
- [25] A receivership order “should not be lightly granted”: [Citations]. The court must carefully balance the rights of both the applicant and the respondent as justice and convenience can only be established by considering and balancing the position of both parties: [Citation]. When considering the issue of whether a receiver and manager should be appointed, the court should: (i) explore whether there are other remedies that could serve to protect the interests of the application; (ii) balance the rights of both the Applicants and the other stakeholders (including the secured and unsecured creditors); and, (iii) consider the effect of granting the Draft Receivership Order: [Citations].
39. Courts in Alberta also look to the factors set out in *Paragon*³⁶ to aid in the “just or convenient” analysis, which factors include, among others:
- (a) Whether irreparable harm might be caused if no order is made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed,;

³² *Murphy v Cahill*, 2013 ABQB 335 [“**Murphy**”] at para 8 [TAB 7].

³³ *Ibid* at paras 7-8.

³⁴ *Ibid* at para 8.

³⁵ *Higgerty*, *supra* note 23 at para 25 [TAB 4].

³⁶ *Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co*, 2003 ABQB 430 [**Paragon**] at para 27 [TAB 8].

- (b) The need for protection or safeguarding of the assets;
 - (c) The nature of the property;
 - (d) The apprehended or actual waste of the debtor's assets;
 - (e) The balance of convenience to the parties;
 - (f) The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
 - (g) The effect of the order upon the parties;
 - (h) The conduct of the parties; and
 - (i) The goal of facilitating the duties of the receiver.
40. The Courts in British Columbia apply the same factors as those set out in *Paragon* to determine whether appointing a receiver is just or convenient.³⁷
41. The factors set out in *Paragon* and in *Pandion* are not intended to be a checklist, but rather a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.³⁸
42. The *Paragon* and *Pandion* factors encapsulate the elements of the Tripartite Test from *Murphy*.

V. ANALYSIS

43. Applying the *Paragon* and *Pandion* factors, we submit that it is just and convenient for this Court to appoint the Receiver over the Companies.

Irreparable Harm Will Be Suffered if a Receiver is not Appointed

44. Irreparable harm will occur if the Receiver is not appointed over the Companies for the following reasons:

³⁷ See *Pandion Mine Finance Fund LP v Otso Gold Corp*, 2022 BCSC 136 at para 53 [**Pandion**] [**TAB 9**], citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25.

³⁸ *Pandion* at paras 53 – 54 [**TAB 9**].

- (a) Without a Receiver in place, it will be extremely difficult, if not impossible for the Receiver and Deloitte LLP to gain access to all of the Companies' records, files and accounts in order to investigate the alleged misappropriation of client Crypto. There needs to be a full and prompt investigation into the missing Crypto by trained professionals. As time goes on, the likelihood of the investigators being able to recover any portion of the missing Crypto declines.
- (b) Given the nature of the Companies, and their interconnectedness, it is paramount that each of the Companies are placed under receivership. It would be difficult and inefficient for the receiver to manage CatalX without having access and control over Catalx Management, which held the employees, bank accounts, web-based accounts and other documents for CatalX.
- (c) There will likely be a need for a process for CatalX customers to submit claims against the Companies, as the customers are no longer able to withdraw Crypto from the CatalX platform. A Receiver is necessary to manage a fair and transparent and Court approved claims process, and to ensure all proven claims are dealt with in an efficient and transparent manner.

The Nature of the Property Supports the Appointment of a Receiver

- 45. The Crypto is easily dissipated, and the Applicants are not experienced in recovering Crypto that may have been misappropriated.
- 46. The Receiver is in the best position to trace and recover any missing or improperly dissipated Crypto, and to manage the remaining Crypto assets of the CatalX customers.
- 47. The Receiver is necessary for the preservation and protection of the Crypto.

The Balance of Convenience Supports the Appointment of the Receiver

- 48. The balance of convenience favours appointing the Receiver to manage, protect and preserve the remaining assets of the Companies.
- 49. The Receiver is also experienced in running a claims process to fairly and efficiently determine the quantum of the claims of CatalX's customers.

50. Given that the Catalx Management employees have not been paid, the Receiver can also support the operation of a program under the Wage Earner Protection Program to address outstanding eligible wages to the employees (up to a maximum of \$8,507.66 for 2024) and obtain employee records of employment and other relevant records.
51. Mr. Park is the only secured creditor of CatalX and supports the appointment of a receiver over the Companies.

The Effect of the Order on the Parties

52. The Companies have no ongoing operations or employees, and the Receiver can assist with an orderly wind-down of their businesses.
53. There is an ongoing investigation by the Alberta Securities Commission with respect to CatalX and the whereabouts of the Crypto that was held in the CatalX Wallets. The Receiver and Deloitte LLP can recover, trace, and gather information that may assist with the ongoing ASC investigation.
54. There is no prejudice to the Companies or their stakeholders by the appointment of the Receiver.


VI. CONCLUSION

55. For the reasons set out above, we respectfully submit it is just and convenient to appoint the Receiver.
56. Based on the foregoing, the Applicants requests that this Honourable Court grant the Order appointing Deloitte Restructuring Inc. as receiver-manager over the Companies.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF JANUARY 2024.

MILLER THOMSON LLP

Per:



James W. Reid

Counsel for the Applicant CatalX

CTS Ltd.

TABLE OF AUTHORITIES

TAB NO.	AUTHORITY
1	<u>Judicature Act, RSA 2000, c J-2, s 13(2).</u>
2	<u>Business Corporations Act, RSA 2000, c B-9, ss 99, 206.1.</u>
3	<u>Law and Equity Act, RSBC 1996, c 253, s 39.</u>
4	<u>Law Society of Alberta v Higgerty, 2023 ABKB 499.</u>
5	<u>Alberta Health Services v Networc Health Inc, 2010 ABQB 373.</u>
6	<u>Concrete Equities (Re), 2022 ABQB 185.</u>
7	<u>Murphy v Cahill, 2013 ABQB 335.</u>
8	<u>Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co, 2003 ABQB 430.</u>
9	<u>Pandion Mine Finance Fund LP v Otso Gold Corp, 2022 BCSC 136.</u>