SUPERIOR COURT
(Commercial Chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

No.: 200-11-025040-182

DATE: October 29, 2020

PRESIDED BY THE HONORABLE DANIEL DUMAIS, Superior Court Judge

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AUTORITÉ DES MARCHÉS FINANCIERS (French Financial Markets Regulator)
Plaintiff

vs.

DOMINIC LACROIX
Defendant

-and-

RAYMOND CHABOT ADMINISTRATEUR PROVISOIRE INC.
Provisional Administrator

-and-

AD HOC COMMITTEE OF PLEXCOIN'S INVESTORS
-and-
MAXIME VAILLANCOURT et *al.*
-and-
COMMITTEE OF CREDITORS/INVESTORS
-and-
LEMIEUX NOLET INC., in its capacity as management agent of DL Innov inc., Micro-Prêts inc. and FinaOne inc.
-and-
SECURITIES AND EXCHANGES COMMISSION
Intervening parties

JD3065

-and-

AGENCE DU REVENU DU QUÉBEC (Quebec's Revenue Agency)
-and-
ATTORNEY GENERAL OF CANADA
Parties involved

JUDGEMENT
(by declaratory request)

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1. INTRODUCTION

[1] Dominic Lacroix thinks big. He had the ambition of building a financial giant, focused on online services. The products that he offered were intended to be leading-edge. His target market was not limited to the Province, nor even to the country.

[2] He met quick success, which encouraged him to go farther, to cast a wider net. Until the day when the financial regulators and authorities received complaints. They intervened to block the operations, deeming them illegal and unauthorized.

[3] That gave rise to multiple inquiries, legal and administrative procedures with the goal of halting these activities and protecting the numerous sought investors. The procedure was not simple. It required plenty of effort and resulted in substantial costs. The Autorité des marchés financiers ("The AMF") needed to, in particular, request the nomination of a Provisional Administrator to provide it with assistance.

[4] These procedures enabled the recovery of assets in Quebec and in the United States. Their assessed value is around $7,000,000, subject to additional costs to be deducted. Now we have to determine to whom this money so be allocated. That is the heart of the dispute that originated this judgement.

[5] There is a clash of three proposals regarding the category of creditors eligible to share that sum. According to the first, only the investors of the Plexcoin cryptocurrency should benefit. That is the option submitted by the Provisional Administrator, the Securities Exchange Commission ("the SEC") and the ad hoc committee of Plexcoin's investors ("the Plexcoin Committee"). Their justification will be analyzed below. A second proposed solution consists of sharing among these same Plexcoin investors and the creditors that funded the small loans activities offered by Mr. Lacroix and his companies to insolvable clients. That avenue is defended by around thirty people appointed as the Committee of creditors/investors ("the Committee of Lenders"). Lastly, the third scenario contemplates a distribution amongst all of Mr. Lacroix's creditors, without regard to the nature of their debts (and subject to their surety bonds).

[6] There is also the issue of knowing if we should exclude the debts of low value (namely less than $250), taking into account their number (several thousand) and the costs that will be generated by the processing of those claims. Opinions diverge on that matter.

[7] Finally, the Court is asked to make a decision regarding the next steps, particularly regarding the opportunity to resort to the rules of the *Bankruptcy and Insolvency Act* and to entrust the procedure to a bankruptcy trustee.

[8] Those are the elements that will be analyzed below. To better understand these issues, we should summarize the general context of this case, at both the factual and the procedural level.

2. BACKGROUND

[9] It was in 2009 that Dominic Lacroix began to operate in the financial sector. He created Mini-Prêts, a company that offered instant funding to people that needed an immediate $500 loan. The process happened online and was intended to be expeditious. Being a solution of last resort, the interest rates and additional costs proved to be exorbitant. The company was incorporated and became Micro-Prêts inc.

[10] Lacroix did not possess any license and was not registered with the AMF to act in any way whatsoever. He operated freely. In 2011, he was the subject of orders made by the Tribunal administrative des marchés financiers (Administrative court of the financial markets) (the "TAMF") regarding illegal investments[1]. These were his first conflicts with this institution.

[11] Rather than making amends, he continued his activities and increased his volume of business. In 2013 he pleaded guilty on six counts of illegal investments, illegal practices and transmission of false or misleading information regarding securities.

[12] On the prior month of December (2012), he incorporated DL Innov inc., a holding company of which he is a director and major shareholder. He then created FinaOne inc. This one also offers small loans, but to clients outside of Quebec. The global turnover of the companies grows and several employees were hired to handle the requests for loans that come through. The team is located in an office building.

[13] Other companies were also founded with the goal of offering supplementary services, including, among others, Gestio inc., Interaxe inc. and Gap Transit. Dominic Lacroix controls all of these entities.

[14] Micro-Prêts inc., FinaOne inc. and their parent company, DL Innov, inc., continue to grow. In 2017 they employ about forty people[2]. At the end of that expansion, Lacroix and his companies require additional funds in order to multiply the mini loans to their customers, hence their need to obtain funding themselves. Approaching the traditional banks is out of the question. Lacroix searches for private lenders, starting on 2013, and offers them attractive returns that could reach as high as 42% per year, depending on the size of the loan[3].

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1 In particular, see AMF vs. Micro-Prêts inc., 2011 QCBDR 60.

2 See document R-29.

3 See the loan of Charles Hayes-Dupras, document R-3, as an example.

[15] The proposal resonated with several people, including the about thirty stakeholders gathered in the Committee of Lenders involved in this case. One of the first to invest was Mr. Charles Hayes-Dupras, who contributed $70,000 in March 2014 at a rate of 40% per year[4]. He would go on to substantially increase his ante in the three following years. Admittedly, his lenders obtain a significant return. They collect interests every month and lend usually between $25,000 and $100,000[5]. The capital is refundable, subject to a short notice. Some of them will have the chance to be entirely refunded over time. Others, such as Mr. Anass Elakkathi and Mr. Steve McMahon, earn few interests and never recover their money.

[16] As part of the recruitment of potential lenders, Mr. Lacroix sometimes issued a document named "synopsis"[6], in which he explains who he is, what he is seeking and the general outline of his operations in the subject of mini loans. He defines himself as the number 1 lender in Quebec.

[17] The evidence does not clearly describe the total balance that was owed to the entirety of his lender creditors. That is not the subject of the discussion. However, we note that their attorneys reported an amount between $4,000,000 and $5,000,000, the same as reported in the trustee's files[7] and by the Provisional Administrator in his report of March 25, 2020[8]. The Court does not know if that estimate includes the accrued interests. The number of creditors was around 50. All of that still needs to be clarified.

[18] Regarding the loans and amounts owed by the small borrowers, according to Mr. Lacroix, they are substantial. He mentions receivables of nearly $9,000,000$ to Micro-Prêts and $2,500,000 owed to FinaOne, when the restraint orders were issued. Micro-Prêts had made around 50,000 loans while FinaOne had made tens of thousands. Once again, these numbers are suspect, just like the financial statements, of which there is more than one version[9].

[19] In parallel with the money lending activities, Dominic Lacroix conceived a new project: creating a new cryptocurrency. We are now in springtime of 2017. Lacroix and his colleague Yan Ouellet were interested in that domain, relatively unknown by the public. They decide to launch Plexcoin, a cryptocurrency purportedly better than Bitcoin, a monetary revolution based on technology and anonymity.

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4 See document RCP-3. The Court has renamed the documents of the Committee of Lenders under the RCP mark. Mr. Todd Fraser invested up to $800,000 in FinaOne.

5 But there are exceptions.

6 See document RCP-7.

7 See document RCP-6.

8 See document R26.

9 See documents SI-29 and SI-30. Copies of the financial statements with strong conflicting and irreconcilable results.

[20] The machine is racing. The team writes a white paper[10] that describes this innovation. The growth forecasts are fantastic. The publicity suggests an increase in value that could reach 1354% in the short term. Quite a story! The white paper announces, falsely, that the company, whose name we do not know, is based in Singapore and that 53 people work in its head office. A dream, perhaps. Certainly not real. Numerous people are fooled.

[21] The publicity is done via Facebook and is addressed to the entire world. Later, Lacroix will attempt to exclude Quebec and American residents following interventions from financial regulators in those locations. The Plexcoin investors come from everywhere, as is evidenced by the addresses of those that have emerged up to this day.

[22] The transactions of that cryptocurrency remain confidential and are performed via the "Blockchain". Trades for Bitcoins or other forms of cryptocurrency or even payments by credit card are accepted. The official launch, the "IPO" (Initial Public Offering) is scheduled for springtime/summer of 2017 with a pre-launch. The transactions start at around April or May of that same year. The non-existence of records of exchanges and the anonymity of the buyers complicates the collection of data.

[23] The project sparks plenty of interest. Not all the investments are big, but the number of buyers is impressive. This, according to the surveys of the Provisional Administrator, more than 50 million Plexcoins were exchanged from 14,325 addresses of known portfolios[11], in just a few months. Barely a hundred investors would have invested more than $10,000 each, whole around 10,000 of the 14,325 portfolios had purchases inferior to $250. In short, a lot of people, but not many large amounts.

[24] That is when the AMF and the SEC, its American equivalent, come in. They received complaints and made inquiries about the situation. They deemed that the activities connected to the Plexcoins were illegal and unauthorized. Hence multiple requests for freezing of funds and injunctions forcing the immediate termination of the operations. An arm-wrestling match begins between Lacroix, his partner Sabrina Paradis-Royer and Yan Ouellet, partners in the project, as well as their companies.

[25] At this moment, the business is very lucrative for Lacroix and his friends. He receives significant returns and benefits from a splendorous standard of living. His sumptuous residence[12] and the vehicles that he drives[13] reflect it. What he does not know is that his decline is beginning. The fall will be brutal, but will not happen without opposition. He intends to fight.

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10 See document SI-10. It is a version dated August 2017.

11 The absence of sales record and the anonymity of the cryptocurrency complicates the gathering of accurate and exact data.

12 Greatly mortgaged.

13 All of them leased.

[26] The AMF's intervention began on June 2017. It addressed the TAMF requesting the termination of the lending activities of DL Innov inc. and its subsidiaries. This is TAMF's file # 15. It orders the freezing of accounts and operations deemed illegal. The order was of conservative nature[14]. It does not specifically concern the Plexcoins, whose official launch did not yet take place[15]. Rather the money lending operations are the ones targeted.

[27] The next month, more specifically on July 20, 2017, a new order is pronounced by the TAMF[16], this time connected to the Plexcoin cryptocurrency[17]. A third order would follow on September 21, 2017, due to the absence of collaboration and the continuation of the activities[18].

[28] All of that would lead to a first charge of contempt of court against Lacroix, declared by the judge Marc Lesage of the Superior Court. Lacroix's objection is rejected and he is found guilty. He decides to appeal the decision.

[29] Lacroix files requests for partial waiver of the orders with the goal, he states, of reimbursing the Quebec Plexcoin buyers[19]. His request was not granted[20].

[30] The bank accounts were seized, the refunds of the loans (to and by Lacroix) cease. Everything slows down. The defendant files three notices of intention, on behalf of the Micro-Prêts, FinaOne and DL Innov companies, to make a proposal to his creditors[21]. He attests that he can no longer address his financial obligations. However, Lacroix has control over a significant quantity of untraced bitcoins. He uses them as he sees fit. In the month of December 2017, orders are issued by the United States SEC[22]. A court of the state of New York granted the asset freezing and injunction requests. The assets on American soil were thus frozen and Lacroix cannot henceforth sell or transfer Plexcoins without disobeying these judgements.

[31] The year 2018 does not improve the situation. Lacroix maintains his objections and opposes the various indicated procedures. He does not collaborate and portrays himself as the victim of this case.

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14 See document RCP-10.

15 Although the transactions had begun under the pre-launch. The excitement of the investors is thus triggered.

16 This is TAMF's file #23.

17 See document R-5.

18 See document R-6.

19 See documents R-7, R-9 and R-10.

20 See document R-8.

21 See document RCP-6 or SI-32.

22 See documents R-11 and R-12.

[32] The trustee of the proposals of the three lending companies, Mr. Jean Lelièvre, negotiates with the AMF to achieve the unfreezing of certain frozen accounts. He wants to use an amount of about $100,000 to continue the activities of the three companies and collect the debts owed by the small borrowers. An agreement is made with the AMF, subject to ratification by the TAMF. That request is rejected on April 24, 2018[23]. A proposal is then made to the creditors of the companies. It is refused on June 21, 2018, causing their bankruptcy. Mr. Martin Poirier becomes trustee of the three files and takes over. The lists of creditors show us that there is nearly $2,000,000 in secured debts and nearly $5,000,000 in ordinary debts, the majority of which is made up of loans granted by the lender creditors.

[33] During his administrations, Lelièvre collected $1,360,000 of receivable accounts, of which an amount of around $260,000 was sent to the secured creditor, Capital Transit. The rest represents operation fees and expenses. This report comes from Poirier, the trustee that replaced him.

[34] The AMF and the SEC renew their prior freezing orders of May 24 and June 15, 2018[24]. However, that does not enable them to seize the cryptocurrency that Lacroix controls and whose destination he secretly controls.

[35] Faced with that, the AMF asks the superior Court to nominate a Provisional Administrator that can help retrace Lacroix's assets, in particular the cryptocurrency. That is how judge Raymond W. Pronovost of the Superior Court receives, on July 5, 2018, the AMF's request and nominates Raymond Chabot Administrateur Provisoire inc. ("RCAP") and his associate, Mr. Emmanuel Phaneuf, as Provisional Administrator. Armed with this decision, they seized several assets, including the computer equipment in Lacroix's residence. Threatened with charges of contempt, the next day, July 6, 2018, the defendant transferred a total of 435 bitcoins originating from a portfolio address under his control.

[36] Subsequently, the undersigned judge is assigned to manage this file and to assume the responsibility. Multiple requests are sent to him along the way, which give rise to several judgements.

[37] That is how he authorizes, in particular, the conversion of the retraced bitcoins into cash, the seizure and sale of other assets and the granting of additional powers. He also orders Lacroix to provide a balance of his possessions, to present a report on his accounts and his administration and to provide the codes and passwords that will allow access to the seized computer devices. Lacroix resists and does not cooperate. A second charge of contempt of

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[23] See document SI-12.

[24] See documents R-13 and R-14.

Court and prison time would be needed to finally get him to modify his behavior and cooperate[25].

[38] In regards to the American procedures, Lacroix ends up consenting to an agreement on June 2019[26]. He undertakes to pay 4,900,000 USD, on top of a fine of 1,000,000 USD, for the purpose of reimbursing the Plexcoin investors. That agreement is approved by the United States District Court of New York[27]. His partner also agreed with the same. This matter will be discussed below.

[39] On July 24, 2019, Lacroix and his partner declared to the TAMF that they agreed to renounce all rights to the seized assets so that they would be distributed to the Plexcoin investors[28]. Lacroix reiterates it in writing[29] in a recently held hearing.

[40] On the next August 30, the AMF asked that RCAP were given additional powers to prepare a distribution plan with the goal of reimbursing the investors of the Plexcoin project[30]. That request, uncontested, was granted by the Court.

[41] Then began the preparation of the distribution plan which leads us to the present judgement. Intervention requests are presented by the Plexcoin committee and the committee of lenders. Each one seeks, as is natural, to defend their interests and to recover the money as well as the assets to be distributed.

[42] The undersigned presides over the procedures, judgements and managements leading to the five-day hearing held at the start of September.

[43] On the margin of that chronology, certain supplementary materials, useful for the analysis, should be highlighted. These are indicated in the following paragraphs.

[44] The funds to be distributed that are located in Canada (in the account of the RCAP and the account of Sabrina Paradis-Royer in the Royal Bank, which is frozen) and in the United States (in the accounts of financial institutions subject to the SEC's orders).

[45] According to Mr. Phaneuf, we can "retrace the path of the money". Thus, the assets fully originated from the Plexcoin investors, with the exception of an amount of $2,247 about which no accurate response could be obtained[31].

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25 Among others, see his two letters of apology (R-28) and the balance sheet of the report on the accounts (SI-23). Mr. Phaneuf corroborates the change of behavior following the incarceration.

26 See documents R-17 to R-20.

27 See document R-20.

28 See document R-1.

29 See document R-2.

30 See document SI-19.

31 $2,247 originated from a payment of an account by Giroux Maçonnex. See report R-26, p. 18.

[46] Regardless of what can theoretically be transacted on the "blockchain", the Plexcoin currently has zero value.

[47] Certain Plexcoin buyers, having paid through credit card, succeeded in obtaining a full or partial refund of their payments, via the issuers of these credit cards or their insurer. We do not have specific details regarding this subject.

[48] Mr. Poirier, the bankruptcy trustee of the three companies, considers himself entitled to claim from Lacroix the sum of $845,000 for services rendered by the three entities to the Plexcoin project[32].

[49] The people that have invested in Plexcoins are not the same (with some possible rare exceptions) as the lender creditors. These are two distinct groups of people, with no relation other than having invested in a project initiated by Dominic Lacroix.

[50] According to their balance sheet, the defendant does not possess any other major asset that can represent any interest or equity whatsoever[33]. The receivables of the three companies have very little chance of being collected, besides what was already obtained as of today. The secured creditor, Capital Transit inc., received no interest and declares an unpaid balance of around $1,900,000[34].

[51] As the balance sheet prepared last July shows[35], Lacroix is certainly not solvent. Among others, he is facing large fiscal contributions, around $17,000,000, of which a substantial part is related to interests and fines[36]. He challenges the justification of the decision. However, he is not bankrupt and does not intend to become bankrupt. To this day, no procedure has been initiated to request his bankruptcy declaration, besides an ancillary conclusion from the trustee in this file.

[52] Here are, then, the main elements presented during the process. Now we have to identify the disputed issues.

3. DISPUTED ISSUES

[53] Much has been written to this day about Dominic Lacroix's file, particularly regarding cryptocurrency and the Plexcoins. There were the stages of the investigation and various requests with the goal of halting the activities. Then there was the period of recovery and protection of the assets. These two phases have been advanced. The court ignores if there are other important assets that the frozen, besides those encompassed by this judgement.

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32 See document SI-16.
33 See document SI-23.
34 See document SI-24.
35 See document SI-23.
36 See document R-27.

There are surely receivables in the three bankrupt companies. However, these rights are secured by mortgage collateral. Perhaps there are other untraced or undeclared assets. That hypothesis cannot be confirmed despite all the research and investigation work.

[54] Now we have to distribute the obtained net proceeds. This is what led the AMF to address the Court to ask that the RCAP be allowed to put forward a distribution plan. Presented as part of this file, the proposed plan is essentially aimed at the Plexcoin investors. That is the premise that seems to have guided the RCAP, taking into account its mandate and the source of the funds.

[55] Having been granted additional powers on September 12, 2019 by the undersigned judge, the RCAP then prepared a distribution plan to be presented to the Court. That plan, dated November 4, 2019[37], proposes that the assets be shared among the initial Plexcoin buyers, those that are part of the scope of the IPO, excluding every other investor or creditor.

[56] Informed of the situation, various stakeholders stepped forward to present their point of view. The Plexcoin committee, grouping together hundreds of investors, also stepped up to the stage. There was also the intervention of the SEC, then the intervention of the lender creditors and their committee, following by that of Poirier, the trustee. Lastly, we add the tax authorities, both provincial and federal.

[57] Confronted with conflicting claims, the Provisional Administrator agreed to present a request for a declaratory judgement in order to settle the discussion regarding the identity of the beneficiaries of the distribution (per group). Therefore, above all, the decision to be made is if the Distribution Plan, subsequently modified, should receive the approval of the Court or if it should perhaps provide for a different allocation as suggested by the trustee and the Committee of Lenders.

[58] It should be noted that the Court will not look into the entirety of the distribution modalities at this stage. Instead, they will determine who should be allowed to benefit from the redemption of the assets. That is the main problem discussed by the parties.

[59] A second question raised concerns the proposal to exclude the debts below $250, in light of their number and the costs that would arise from their processing. Is this justified?

[60] The third issue instead regards the forum where the process is to be followed. The trustee argues that the defendant should be declared bankrupt, so that the distribution is subject to the rules of the *Bankruptcy and Insolvency act*. Alternatively, bankrupt or not, should a trustee be called to execute the plan together with the Provisional Administrator?

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[37] See document RCP-1.

4. ANALYSIS

A) WHO SHOULD PARTICIPATE IN THE DISTRIBUTION PLAN?

i) POSITION OF THE PARTIES

[61] The RCAP's modified proposal specifies that the funds are distributed to the Plexcoin investors, subject to payment, as long as they were acquired as part of the initial sale (IPO) and that they still have them today. Certain people are specifically excluded, including those that are owed sums below $250.

[62] For its part, the AMF takes no stance and defers to the Court.

[63] The SEC makes no statement regarding the Canadian assets. However, it indicates that it will agree to transfer the American funds to Quebec as long as these are returned solely to the Plexcoin investors.

[64] The Plexcoin committee supports the RCAP's decision, except regarding the exclusion of the debts below $250.

[65] The Committee of Lenders argues that two categories of creditors should be taken into consideration. On the one hand, those targeted by the Plan (the initial Plexcoin buyers). On the other hand, the lenders (including the 31 stakeholders) that funded the lending activities of Lacroix or of the three bankrupt companies. Alternatively, all the recognized creditors should benefit from the Plan.

[66] The trustee supports the ancillary approach of the lenders, namely to include all the creditors.

[67] Lastly, the tax authorities have no objection regarding the submitted Plan and do not request to be ranked if it is established that the funds belong to the Plexcoin investors.

[68] However they do not renounce participating in the sharing, in the event that the RCAP's position is rejected.

[69] Before specifically tackling the problem, the Court deems appropriate to discuss three subjects.

ii) ROLE AND POWERS OF THE PROVISIONAL ADMINISTRATOR

[70] The task of preparing a distribution plan falls on the Provisional Administrator following the judgement of September 12, 2019, granting the request initiated by the AMF. The Court thus grants additional powers to the RCAP, in the absence of opposition. The plan

must be presented to them for approval[38]. Until then, their powers are limited to taking possession of the bitcoins, the money and keeping them in an account[39].

[71] One might think, in light of the text of the request and the judgement, that the Plan cannot provide remittance to anyone other than the Plexcoin investors. Yet, that is not the case. There was never any question that the funds could not be remitted to anyone else. It is evident that, if these assets include an asset belong to another, that other party can assert his rights.

[72] That is supported by the fact that the third parties have never been consulted or notified of the AMF's request. Moreover, the latter took no position and made no representation regarding that subject. It left the matter in the hands of the Court.

[73] The wording of the procedures derives from the context. The RCAP is charged with recovering the assets and intervenes in the Plexcoin project. It is normal that it ensures that the investors of said project are protected and that they are sent what is owed to them. But that does not mean that all that is collected should automatically go to these investors. These It is the usual rules of law that decide this and not the mission or the powers granted to the Provisional Administrator. The method of distribution was neither discussed nor ordered in 2019, regarding both the beneficiaries and the sharing parameters.

iii) <u>BANKRUPTCY AND INSOLVENCY ACT</u>

[74] The lender creditors often made mention, after several months, of the possibility of a bankruptcy petition for Mr. Lacroix. No such request was served except as part of the ancillary challenge of the trustee, dated last August 26, 5 days before the start of the process. This option is raised under the pretext that the distribution plan will not necessarily settle the issue in a final matter.

[75] That said, the Court deems that Dominic Lacroix being declared bankrupt would not change anything in the analysis of this issue. If it is true that the provisions of the *Quebec Civil Code* and of the *Bankruptcy and Insolvency Act* do not always align[40], that is not the case with the legal principles discussed here. In other words, the response to the question would be the same under the umbrella of either regime. It is, however, under the perspective of the *Civil Code* that the case will be analyzed, as there is no bankruptcy file.

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38 See allegation 26 of the Request of August 30, 2019 in document SI-19.

39 See document SI-22, art. 12.

40 For instance, regarding the conditions of reviewable transactions and actions free of any claim.

iv) CREDITORS' COMMON PLEDGE

[76] A debtor's assets are allocated to the execution of his obligations and make up the common pledge of his creditors. This foundation is announced in article 2644 of the *Quebec Civil Code*. It is in line with article 2 of that same Code, which stipulates:

> 2. Every person has assets.
>
> This latter can be the subject of a division or of an allocation, but only in the manner provided by the law.

[77] The goal of these provisions is to ensure the equality of a person's creditors in the absence of a valid surety bond or distinct patrimony. The sharing of assets of a person if performed on the pro rata basis of his ordinary debts, unless a creditor possesses a preference or a surety bond (under an agreement or the law) or if the assets are legally returned to another.

[78] No one invokes a status of secured creditor in this case. Therefore, we must ask if the funds belong to someone other than Lacroix or if there is some allocation in favor of someone else. If not, we must respect the principle of the creditors' common pledge.

[79] If the application of the rule can sometimes become complex, its basis is quite simple. Let us illustrate an example.

[80] Mr. Plexcoin is insolvent. He owes $100,000 to ten creditors. One of his creditors performs a seizure of his property. No assets that can be seized are found with the exception of three works of art. Painting "A" belong to his mother. She can take it because it belongs to her. Painting "B" is validly mortgaged in favor of one of the creditors. That debt takes priority over others regarding the value of that work. Painting "C" was purchased with the money lent by another of these creditors, but he does not have a surety bond. He has no preference and Painting "C" will be used to pay all the creditors' debts on a pro rata basis, even though its purchase was performed with the recent loan from one of these creditors. Mr. Plexcoin cannot unilaterally decide that Paining "C" should be given to the creditor that enabled its acquisition.

[81] These aspects being clarified, let us now see to whom the funds should be distributed.

v) FUNDS BLOCKED IN THE UNITED STATES

[82] The Distribution Plan includes assets blocked or seized in Quebec while others are held in American soil. The latter are under the control of the SEC, which has decreed their freezing.

[83] The United States District Court of New York delivered a judgement on October 1, 2019 regarding the assets seized in the United States[41]. This decision approves an agreement presented by the SEC which includes, among others, an injunction against Lacroix, the payment of nearly $5,000,000 as reimbursement on top of a fine of $1,000,000.

[84] The establishment of "*fair fund*"[42] is also provided, from which the frozen assets will be distributed to the victims (titled "Plexcorps fair fund"). The victims referred here are the Plexcoin investors.

[85] Furthermore, instead of proceeding to perform that distribution itself and in order to reduce the costs and avoid multiplying them, the SEC accepts to recommend the transfer to the Provisional Administrator. However, they impose a condition. The funds sent to the RCAP should only be given to the Plexcoin buyers[43], as defined in the proposed plan[44].

[86] According to Mr. Phaneuf's report, we are talking about approximately $1.4 million USD[45], which is the equivalent of about $2.2 million CAD, based on the exchange rate.

[87] The Court must follow through with that judgement for two reasons. Firstly, it certainly cannot reverse that American ruling and put its legality into question. It concerns the assets in the United States and the Court cannot go against the *fair fund* and the judgement that endorses it, all of it in compliance with the law of the state of New York[46]. Secondly, it would be deplorable that these assets would remain in the state of New York, subject to a distribution process to be defined. It would complicate everything, cause significant additional expenses and would be thumbing our nose at the work initiated by the RCAP and their knowledge of the file. The centralization is, without a doubt, preferable for everyone.

[88] Thus, both from a legal and sound management perspectives, there is room to decide that the American funds, once transferred to Quebec, will be the subject of a distribution among the Plexcoin investors following the modalities to be specified further on.

[89] We could argue that the costs incurred up to this day, in Quebec, should be taken into account before any distribution of the American funds takes place. Yet, that would be ignoring that significant payments have no doubt been incurred by the SEC.

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41 See document R-20.

42 In accordance with the Sarbanes-Oxley Act of 2002, section 308 (a) 15 USC.

43 See document R-22, the SEC's letter of January 2, 2020, and document R-23, the letter from the SEC's attorneys.

44 Including or not the debts below $250, as they have specified during the pleadings.

45 See document R-26, p. 18.

46 See articles 3107 and 3108 of the *Quebec Civil Code*.

vi) FUNDS BLOCKED IN QUEBEC

[90] Having disposed of the treatment to be given to the assets blocked in the United States, we must now see to whom those in Quebec should be distributed to. We are talking about:

- Cryptocurrency transferred to the RCAP and converted into Canadian currencies ($4,441,964);
- Recovered debt from Groupe Giroux Maconnex inc. ($2,247);
- Sale of computer and mining equipment ($65,000);
- Interest income ($83,578);
- Balance of the RBC account of Sabrina Paradis-Royer ($1,121,226 USD and $265,395 CDN);
- Any other cryptocurrency that could be recovered.

[91] We should specify right away that we need to subtract the cost of all the provisional administration fees, as well as the future ones (nearly $2,000,000 in total) from these amounts. We will this distribute around $4,300,000.

viii) PAYMENT PERFORMED BY LACROIX AND PARADIS-ROYER

[92] According to the RCAP and the Plexcoin committee, Lacroix and Paradis-Royer renounced their property and any claim on these assets as a partial payment of what can be reclaimed by these investors for the initial purchase of the new cryptocurrency. That is their first argument.

[93] The committee of lenders and the trustee challenge this justification. The other parties defer to the decision of the Court.

[94] What about this allegation of payment? It rests on the declaration made by the attorneys of Lacroix and Paradis-Royer during a hearing held on July 24, 2019, before the TAMF[47]. They acknowledged that the funds originated from the Plexcoin project and have renounced all their rights to these sums (with the exception of a possible residual) and accepted that they be distributed to the Plexcoin investors, all under the RCAP's management. In short, there was a payment to the Plexcoin investors with these same assets, through the RCAP.

[95] It was a payment in compliance with article 1557 of the Quebec Civil Code. The only thing left to do is send all of it to the creditors in question. They also argue for transfer in lieu of payment, pursuant to article 1799 of the same Code. The two payment conditions will thus

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[47] See document R-1, pp. 5, 15, 16. "… *Mr. Lacroix will renounce all the money in certain accounts in order to have it transferred to a third party for the purpose of reimbursement*…".

be fulfilled, namely the transfer of the thing and the desire to execute their obligation.

[96] The argument is simple, but not convincing. Just because they have acknowledged their debts and which to repay them, it does not mean that Lacroix and Paradis-Royer can dictate to whom the assets will be given. The reason is simple. These assets were seized and are under the control of the Court. Yet, the Court never authorized such a payment in 2019. The decision belongs to the Court. That is why the Plan is presented before it. We cannot tie their hands by a unilateral decision emanating from the debtors, which have no authority to make such a decision in this case[48].

[97] Would the Plexcoin committee have the same argument if the choice had been to refund the lender creditors via the RCAP? To ask the question is to answer it.

[98] Thus, that argument does not support the claim from the Provisional Administrator. Besides the fact that it was acknowledged, this payment would possibly be subjected to a request free of any claim[49] or to a request for transaction reviewable in the event of a declaration of bankruptcy.

[99] In short, Lacroix and his partner could renounce those rights. They have done so[50]. However, they are not allowed to impose the allocation of the assets to the creditors of their choosing.

viii) ALLOCATION OF THE PATRIMONY OF ASSETS

[100] As we have seen, all people possess a patrimony of assets that can be divided or allocated, but only in the ways provided by the law. Thus, "in general, all the assets of a person's patrimony are the common pledge of their creditors"[51].

[101] The Provisional Administrator, like the Plexcoin committee, argued in favor of an allocation of the fund's assets to the cryptocurrency investors. Hence the invoked precedent. Several arguments were made to support that claim. The Court separated them into three approaches that will be discussed below.

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48 Article 1556 of the *Quebec Civil Code* stipulates: "To validly pay, one must have a right to what is owed, authorizing them to provide it as payment. Jean-Louis BAUDOUIN and Pierre Gabriel JOBIN, *The obligations*, 6th ed., Cowansville, Yvon Blais Edition, 2005 write: "*The one who pays (solvens) and the one who receives the payment (*accipiens*) must justify their respective capacity to give and receive*". The McGilton judgment (*trustee of*), 2006 QCCA 1561, which the RCAP quotes, must be distinguished from the present case because the solvens had full capacity to transfer the sums. See also: *Entreprises Bigknowledge inc. (trustee of)*, 2008 QCCA 1613, paragraph 35, where the Court mentions that the circumstances of a deposit or payment should be evaluated on a case by case basis.

49 In accordance with the articles 1631 et seq. of the *Quebec Civil Code*.

50 That renunciation is repeated, with no indication of payment, by commitment 7, attached to the judgment of July 30, 2020, document R-24.

51 *Bank of Nova Scotia* vs. *Thibault*, [2004] 1 R.C.S. 758.

- ***"Through the money option"***

[102] Mr. Phaneuf testifies that the funds assets, with the possible exception of the recovered debt of $2,247, originating from the sale of the Plexcoin cryptocurrency. The funds essentially encompass several counterparties received from the buyers. This is what the evidence shows, in the absence of indications to the contrary. The Plexcoin committee goes farther than that. It argues that its members are the sole proprietors of the assets.

[103] If these assets are made up of money and cryptocurrency accumulated by the Plexcoin investors' counterparties, that does not mean that they have remained the proprietors. On the contrary, they have purchased or exchanged Plexcoins and have made a payment in cash or in various cryptocurrency. The transactions are completed and these counterparties have changed hands. If that was not the case, the investors would have been able to file a complaint. Just because the transactions could possibly be contested and deemed illegal does not mean that they automatically become void and should all be refunded. On one hand, no request for invalidity was made. Furthermore, we do not have the identity of the parties or information regarding them, due to the anonymity of the transactions. Thirdly, performing refunds as mentioned above, to conciliate and restitute what was paid by thousands of buyers, is unthinkable.

[104] The "money" option, even if verified, cannot be a justified preference in this case. The assets are combined. Cryptocurrencies were received and transformed (for instance, from ether to bitcoins) or money was used to acquire those bitcoins. The mining equipment (resold) originated from the reception of bitcoins.

[105] It is important to remember that the assets received during the IPO were not held in trust or as deposits. They were sent to Lacroix, who used them as he saw fit. They entered his patrimony. Moreover, he deposited a significant amount into his partners' account.

[106] There are no resale rights that the investors can claim in this case.

[107] Moreover, if that is the case, we must expand the exercise to the limit and determine which acquirer (individually or collectively) has the rights over which assets.

[108] If chosen, that argument would henceforth enable an ordinary creditor to enquire about the use of what he has remitted to his debtor and to potentially claim its return. Thus, the last non-secured lender of an insolvent debtor would urgently seek to lay his hands on the balance of an account, believing this is where the money option is logically leading us to. This is not the rule of law, which has the effect of penalizing a creditor that remitted nothing. For instance, a victim of a medical error or a tax authority.

[109] In the present situation, the money option cannot serve as basis to a privileged claim for the Plexcoin investors.

[110] Finally, while it may superficially seem like it was demonstrated, the transfer of the assets between the two business sectors is perhaps not as airtight as Lacroix would have like it to appear. His partner and him hold accounts a bit everywhere and confuse the assets, at least up to a certain degree.

[111] Let us not forget that Lelièvre, the trustee, in concert with the AMF, sought to continue the lending activities in order to recover what was owed to Micro-Prêts and FinaOne. His request for partial unfreezing, before the TAMF, was not granted. In its decision of April 24, 2018, the TAMF brought particular attention to "*the confusion of the patrimonies in their activities, the profile of the entire corporate structure as well as the interrelations of the respondent companies and the respondents*"[52]. In a subsequent judgment of May 24, 2018, where it issued additional freezing orders regarding all of Lacroix's operations, including the cryptocurrency business, the TAMF wrote:

> [141] The testimony of the investigator has brought to light that, despite that seizure of his companies, respondent Lacroix continued to collect certain debts owed to his companies through his accounts in Tangerine and in the CIBC.
>
> [142] In short, according to the presented evidence, all the patrimonies of the companies to which respondent Lacroix is related and those of the respondents Dominic Lacroix and Sabrina Paradis-Royer would be, in these circumstances, completely combined in one single patrimony.
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> [143] In the opinion of the Court, the implemented corporate structure was nothing more than a smokescreen that they attempted to exploit for their personal advantage and gain, with no concern for the orders issued against them by both the present Court and the Superior Court that issued the orders of seizure for these companies.[53]
>
> [Underlining by the Court]

- ***By setting up a trust benefiting the investors***

[112] Is there a trust in favor of the Plexcoin investors? According to our Civil Code, the trust is created as follows:

> **1260.** The trust originates from an act through which one person, the constituent, transfers assets from his patrimony to another patrimony constituted by him, allocated for a particular purpose and which a trustee, by accepting this role, undertakes to hold an administer.

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52 See document SI-12, paragraph 151.

53 *Autorités des marchés financiers vs. Lacroix*, 2018 QCTMF 53, p. 34.

[113] It can be established by contract, will, judgment or by the law[54]. The identified trust's patrimony constitutes a patrimony of autonomous allocation, distinct from the constituent's, the trustee's or the beneficiary's[55]. No specific form or language conditions are required[56].

[114] In the RCAP's opinion, the criteria for the formation of a trust are gathered in this case. It goes back to July 2019, when Lacroix and his partner declared that they renounced the assets in favor of the Plexcoin investors, all of it subject to the administration of Mr. Phaneuf.

[115] That thesis collides with the same difficulty as that of the payment. If they do not have the capacity to pay, the constituents cannot create a trust. The Court reiterates what it previously wrote on that subject.

[116] An idea was expressed that this trust resulted from a judgment of the Superior Court. That is going very far in the interpretation of the decisions issued in that case. In any case, a judgment cannot establish a trustee unless the law authorizes it[57]. There is no authorization to that effect in this case. The only known legal permission arises from article 591 C.c.Q., regarding the payment of child support[58].

[117] Therefore, there is no trust patrimony limiting the distribution of the Quebec assets to the sole Plexcoin investors. This, however, does invalidate the renouncement of the assets, reiterated last July during the final arguments. It is well evident, to the eyes of the undersigned, that neither Lacroix nor Paradis-Royer claim a right or an interest in the frozen and seized assets, not even a potential and utopian residual. It is also indisputable that the assets in Paradis-Royer's account in the Royal Bank of Canada originated from the financial operations of her partner. The couple accepts that their creditors should be reimbursed. That does not mean that they get to choose the recipients.

[118] The comments of the minister of Justice, during the adoption of the new article 2 of the Quebec Civil Code, are meaningful in that regard:

> It [article 2] recognizes nevertheless the possibility for division within the patrimony or an allocation of certain assets that make up said patrimony, but only in the manner provided by the law. That last condition is meant to prevent communications and frauds that could result from a division or an allocation of the creditors' pledge that would have been left to single will of a debtor.[59]
>
> [Underlining by the Court]

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54 See article 1262 of the *Quebec Civil Code*.

55 See article 1261 of the *Quebec Civil Code*.

56 *Groupe Sutton Royal inc (trustee of)*, 2015, QCCA 1069, paragraph 91 and 100.

57 See article 1262 of the *Quebec Civil Code*.

58 Valérie BOUCHER, "Trust", Jurisclasseur Quebec, coll. "Civil law", *Assets and publicity of the rights*, fasc. 20, Montreal, LexisNexis Canada, on July 1, 2012.

- ***Through the situation resulting from the AMF's intervention***

[119] This third avenue was not presented in a developed manner. It was, however, mentioned in the general framework of the discussion.

[120] Thus, in its argument plan, the Provisional Administrator refers to the mandate that was entrusted to him and to the objectives sought by the AMF, including those of protection of the public, control of unauthorized transactions, seizure of the cryptocurrency and compensation of the victims.

[121] There is no doubt that the AMF has intervened in this case with the goal of protecting the public and to prevent financial practices deemed illegal, abusive and even fraudulent.

[122] It faces a new and relatively unknown reality. That of the cryptocurrency. It must contend with anonymous, online transactions. But it is not on that matter that its first intervention bears on. The AMF worried about a limited public offering, without a license or prospects. It was interested in the money lending activities of Micro-Prêts, FinaOne and DL Innov.

[123] It was later that the second component was added, that of the Plexcoins. It was before the technical complexity and the absence of collaboration, despite the orders, that the AMF decided to request the assistance of a Provisional Administrator[60]. The Superior Court agreed with the request. Thus, the entrance of the RCPA onto the stage and the events already reported above.

[124] Of course, the RCAP focused on the objective of its nomination, including the sale and the transactions of cryptocurrency. It performed its role well, contributed to the halting of the new cases and managed to recover the assets.

[125] That does not mean that what was retraced will automatically return to the Plexcoin investors. That is not what was agreed, decided or imposed. We wanted, above all else, to "stop" the machine and recover that which was in the process of becoming squandered and diverted.

[126] The investigation enabled us to highlight the existence of two commercial ventures. These are certainly distinct from one another, but with a common denominator named Lacroix and a few close allies.

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59 MINISTRY OF JUSTICE, *Comments of the minister of justice. Quebec Civil Code. A movement for society*, T. 1, Publications du Québec, 1993, art. 2.

60 Pursuant to articles 19.1 et seq. of the *Financial sector management act*, RLRQ, c. E-6.1.

[127] At the start, the frozen or seized assets were not necessarily meant, in their totality, for the Plexcoin investors. This is evidenced by the fact that the RCAP took possession of Bitcoins in July 2018 (converted into dollars with the Court's authorization) and that it argued that a year later, on July 2019, these assets would have been paid or returned to the investors. There is no claim that everything that the RCAP located fully belonged to the Plexcoin buyers.

[128] The powers of the Provisional Administrator were intended to be of a conservatory nature. They do not grant him neither ownership nor the right to use what he has recovered. The same goes for the additional powers that were subsequently granted to him. He was asked to prepare a Distribution Plan for the investors or, it goes without saying, to anyone that could claim a right to the assets. It would be incongruous that a non-notified third party that is not a part of the procedures should be deprived from pleading their case and defend their rights when the plan is proposed. That is exactly what was done in this case.

IX) CONCLUSIONS

[129] The expansion of the plan's beneficiaries, according to the RCAP, enabled third parties to take possession of the assets that were no longer a part of the patrimony of Lacroix and Paradis-Royer due to having been paid and/or allocated to the reimbursement of the Plexcoin investors[61].

[130] The Court is not in agreement regarding the funds located in Quebec. Those should be shared between all the creditors, as there was no valid payment or allocation of patrimony.

[131] Thus, both the lenders and the Plexcoin investors and other non-secured creditors will have the right of participating in the distribution. It will be up to each creditor to demonstrate that they have a valid and enforceable debt against Dominic Lacroix. The claims of Dominic Lacroix, Sabrina Paradis-Royer and Yan Ouellet will be excluded, as well as those of any person connected to them.

[132] We must implement a simple and efficient claim mechanism. For this purpose, we can take inspiration from the methods applied in the collective past actions. This mechanism must include a tight timetable and be presented to Court.

[133] The undersigned is aware that the percentage of recovery of the debts could turn out to be low and disappointing. It is not, however, a reason to favor a category of creditors to the detriment of the others.

[134] While that changes nothing in the legal solution, we must acknowledge that most of Lacroix's creditors have voluntarily chosen to invest or lend under risky and suspicious conditions. The AMF's interventions have probably limited the number as well as the amount of losses.

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[61] See the argument plan, paragraph 69.

B) Should the debts inferior to $250 be excluded?

[135] The RCAP suggests that debts below $250 be excluded or replaced with a distribution of less than $50. It explains this limit due to the costs associated with the management, which would not justify an investment of so much for so little. We remind that we have catalogued 9846 portfolio addresses where the investment in Plexcoins is less than $250.

[136] The Court understands this economic argument very well. However, it sees no legal basis it can use to grant this request. How to explain to the one claiming $200 that he is not eligible while another who is owed $300 is? Is it because only the largest creditors should be compensated? The law makes no such distinctions and it is not up to the judges to supplement it. Moreover, the attorney of the Plexcoin committee objects to this discrimination.

[137] It should be noted that the RCAP's attorneys have not presented or mentioned anything to support their position to any case law or doctrinal authority. The Court refuses to exclude the smallest creditors.

C) The bankruptcy proceedings

[138] In his challenge of August 28, 2020, the trustee concluded that it should be declared that Dominic Lacroix is bankrupt following a transfer of assets to the benefit of all his creditors. He also requested that he or another trustee be appointed for that purpose and that the provisional administration be terminated. He abandoned that latter conclusion during the hearing and instead proposed a common administration of Mr. Phaneuf and the trustee. Alternatively, the plan should not be binding to the trustee.

[139] The Court does not intend to agree with these requests. While the defendant appears to be clearly insolvent, the present discussion is not about his declaration of bankruptcy. Furthermore, the formalities provided in the *Bankruptcy and Insolvency Act* have not been followed, both in terms of prior issue and deadline[62]. There was no notification to the debtor.

[140] In addition, a potential bankruptcy, a changing of administrator or a common management would not strictly add anything. They would complicate the progress of things and, surely, increase the already significant costs. The Court sees no grounds nor value added from this. It has no intention of implementing expensive and useless obstacles to the processing of the entirety of this case.

[141] The ongoing process under the umbrella of the Provisional Administrator, supervised by the undersigned judge, will continue with the objective of distributing the funds as soon as possible.

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62 See article 43 of the *Bankruptcy and Insolvency Act*, as well as articles 69 and 70 of the *General bankruptcy and insolvency rules*.

[142] Plenty of work has been conducted so far. It is not convenient, nor rational, nor legal to change the direction. We must instead ensure a quick and efficient finalization. On that subject, the Court would like to congratulate and thank the various intervening parties that have enabled a hybrid hearing (virtual and with physical presence), marked by the respect and professionalism of each of them.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

[143] **DECLARE** that the frozen assets in the United States should be the subject of a distribution among the creditor investors defined in clause 1.1.13 of the Distribution Plan of November 4, 2019, including those whose debt is inferior to $250;

[144] **DECLARE** that the frozen assets in Quebec should be the subject of a distribution among the creditors of Dominic Lacroix, including those whose debt is inferior to $250;

[145] **REJECT** the other conclusions sought by either of the parties:

[146] **ORDER** the Provisional Administrator to clarify the Distribution Plan and the applicable mechanism and present to the Court for authorization, as soon as possible;

[147] **WITHOUT INCURRING legal fees.**

[Signature]
DANIEL DUMAIS, J.C.S.

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