CITATION**:** Badr v. 2305136 Ontario Inc., 2023 ONSC 2358
COURT FILE NO.: CV-13-00010312-00CL
CV-18-00606009-00CL
DATE: 20230417

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:	
ANTOINE CHAHINE BADR, ANTOINE CHAHINE BADR o/a MYANT CONSULTING, MYANT CONSULTING INC., and B.O.T. INTERNATIONAL INC Applicants	*Christopher Stanek, E. Patrick Shea and Alexandra Psellas*, for the Applicants
– and –	
2305136 ONTARIO INC., VIKEDA INTERNATIONAL LOGISTICS AND AUTOMOTIVE SUPPLY LTD., VIKEDA INDUSTRIES INC., VIKEDA VENTURES LTD., VIKEDA ENTERPRISES LTD., 2208824 ONTARIO INC., G.L.A.D. OPERATIONS INC., G.L.A.D. INTERNATIONAL INC., THE ESTATE OF VINCENT WONG BY ITS ESTATE TRUSTEE ARABELL KAREN LIM, KEN WONG, DANNY WONG, ALEX KUA, and KENNETH KING YU CHAN Respondents	*Julia Wilkes and Morgan McKenna*, for the Respondents 2305136 Ontario Inc. and The Estate of Vincent Wong *Chris E. Reed*, for the Added Parties, Guan Fend Qin and Du Hui Bi
	HEARD: June 13, 14, 15, 16, 17 and November 21, 2022 (with Written Closing Submissions provided prior to November 21, 2022)

KIMMEL J.

REASONS FOR DECISION
TRIAL OF FAIR VALUE AND OTHER DAMAGES ISSUES

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Procedural Context and Background

[1] This is the third installment of a continuing trial of issues arising from the orders and directions of Penny J. in *Badr v. 2305136 Ontario Inc.*, 2019 ONSC 4516, 98 B.L.R. (5th) 322 dated August 16, 2019 under court file no. CV-18-606009-00CL (the "August 2019 Endorsement") and *Badr v. 2305136 Ontario Inc.*, 2015 ONSC 4260, 46 B.L.R. (5th) 188 dated July 6, 2015 under court file no. CV-13-10312-00CL, aff'd 2016 ONSC 5039, 62 B.L.R. (5th) 90 (Div. Ct.) ("the July 2015 Endorsement").

[2] This proceeding will determine the amounts that the Estate of Vincent Wong (the "Wong Estate") must pay as a result of this court's previous findings that Vincent Wong oppressed the interests of Anthony Chahine Badr. To do so, the fair value of 2305136 Ontario Inc. ("2305") must be determined as at the specified valuation date of July 6, 2015 (the "Valuation Date"). This valuation will form the basis of the purchase price that the Wong Estate must pay to purchase Mr. Chahine's 50 percent interest in 2305, pursuant to the court's previous order (the "Fair Value Issue").

[3] To properly determine the purchase price, the following determinations must first be made: (i) the outstanding amount of Mr. Chahine's shareholder loan to 2305 (the "Chahine Shareholder Loan"), both at the Valuation Date and now and the amount of any financing fees payable to Mr. Chahine; and (ii) whether any financing fees have been paid to Mr. Chahine and the amount that remains outstanding. The determination of these amounts outstanding as at the Valuation Date will impact the fair value calculation. The determination of the amounts currently outstanding will impact the final order regarding any amounts that are to be paid to Mr. Chahine, and by whom (the "Shareholder Loan/Financing Fee Issue").

[4] The relevant findings, orders and directions contained in the first order of Penny J. dated July 6, 2015 (upheld by the Divisional Court) are as follows:

a. Mr. Chahine is a 50 percent shareholder of 2305.

b. Mr. Wong[1] shall purchase Mr. Chahine's 50 percent interest in 2305 at fair value as of July 6, 2015, to be fixed by further order of the court.

c. Mr. Chahine has an outstanding shareholder loan to 2305 of $2.8 million.

d. 2305 shall repay the $2.8 million shareholder loan owed to Mr. Chahine, the timing, amount, and manner to be fixed by further order of the court.

e. The sale of Mr. Chahine's shares shall close 30 days after the court fixes the fair value. The purchase price shall be paid in cash on closing. The repayment of the Chahine Shareholder Loan shall be as directed by the court following the approval hearing.

[1] Amounts previously ordered payable by Mr. Wong are now the responsibility of the Wong Estate since he passed away.

[5] In an August 16, 2019 endorsement, Penny J. made further findings, orders and directions, as follows:

a. Mr. Wong and Mr. Chahine each started with a shareholder loan account of $3.5 million.

b. As previously determined in the July 2015 Endorsement, certain payments (totaling $700,000) made to Mr. Chahine must be treated as a reduction to his shareholder loan account (from $3.5 million to $2.8 million).

c. Mr. Wong operated the business in such a way as to divert to himself or for his benefit at least $3.175 million from 2305. This amount ought to be treated as payments in reduction of his shareholder loan account.

d. A report from Mr. Sethi of KPMG filed by the Wong Estate concluded that Mr. Wong caused amounts of a "personal nature" to be paid out of 2305 totaling $3,175,335 while Mr. Chahine received a total of a further $287,700 plus $91,000 in HST paid in respect of the $700,000 payment previously accounted for.

e. However, Mr. Sethi's analysis of shareholder balances was limited to transactions in and out of 2305. A full accounting had not been done of possible benefits flowing directly from the GLAD Entities (defined below) to Mr. Wong or his companies.

f. Mr. Wong (and now, his Estate) must be held personally liable for the repayment of the Chahine Shareholder Loan. It was Mr. Wong who organized and conducted the affairs of these corporations to defeat Mr. Chahine's reasonable expectations in a manner that was oppressive.

g. The Wong Estate shall be liable for the immediate repayment of the Chahine Shareholder Loan to Mr. Chahine to the extent of $2,421,300 ($2.8 million, less $378,700). This amount shall be subject to re-consideration of such further amounts as may be owing in the context of the pending valuation hearing and further adjustments may be addressed in the context of the pending fair value hearing for 2305.

h. The existence of other shareholders in the "GLAD Entities", comprised of G.L.A.D. Operations Inc. ("GLAD Canada"), a wholly owned subsidiary of 2400764 Ontario Inc. ("2400") and Global Logistics & Distribution Holdings Inc. ("GLAD US"), and the extent and validity of their ownership stake, is relevant to the valuation of 2305. This is because the percentage of 2305's ownership interest in the GLAD Entities is 2305's only material asset.

i. Guan Fend Qin ("Guan") and Du Hui Bi ("Du"), who, collectively, claim to be directly or indirectly, 49 percent shareholders of the GLAD Entities, were invited to provide documentary evidence of their purported shareholdings and shareholder capital

> accounts and of the repayment or other accounting for the $882,000 in loans they are recorded to have received from 2305. The court warned them that, in the absence of direct evidence of their asserted claims (as opposed to hearsay evidence, including the triple hearsay evidence presented earlier), determinations adverse to their interests may be made in the next phase of these proceedings.

[6] In furtherance of Penny J.'s direction in the August 2019 Endorsement, Guan and Du were added as parties to this application (the "Added Parties"). They participated in this installment of the trial of issues pursuant to a consent order made at the outset of the trial, dated June 13, 2022. This allowed the court to make necessary findings about the validity and extent of their claimed 49 percent ownership interest in the GLAD Entities and their obligations to repay loans to 2305, given the impact that their rights and obligations could have on the Fair Value Issue. The issues that the Added Parties participated in, and the positions of all parties on those issues were, in accordance with the court's prior direction, outlined in the June 13, 2022 order.

[7] The specific sub-issues identified in respect of the Added Parties in the June 13, 2022 order were as follows:

a. Whether, as at the Valuation Date, Guan and Du either individually or collectively owned or were equitably entitled to own 49 percent of the issued and outstanding shares of (i) GLAD Canada, (ii) 2400, and/or (iii) GLAD US (the "Added-Party Shareholding Issue").

b. Whether, as at the Valuation Date, Guan and Du owed USD $882,000 to 2305 ($432,000 by Guan and $450,000 by Du), or some other amount (the alternative amount suggested by the Wong Estate and 2305 is CDN $81,082), or nothing at all (the "Added-Party Debt Issue").

[8] The trial proceeded on the basis of extensive pre-filed evidence contained in affidavits and transcripts of cross-examinations, read-ins (from discoveries, the evidence of Mr. Wong who died after the first installment of the trial, and other evidence in the record before Penny J.), and the *viva voce* testimony of seven witnesses, including;

a. Three experts:

   i. Alan Mak, now of BDO, who authored two reports dated May 27, 2022 and June 23, 2022 (called by the applicants); and

   ii. Harold Christopher Nobes, formerly of Duff & Phelps and now of Kroll, and Rohan Sethi of KPMG (called by the Wong Estate and 2305).

b. Four fact witnesses:

   i. Alex Kua, who was the secretary and bookkeeper of all of the GLAD Entities, 2305 and Mr. Wong's other companies, VIL and VII (as hereinafter defined)

for ten years until he retired in 2018 and through whom the accounting and bank records for these companies were admitted into the trial record as business records;

ii. Robert Bennett, who was a general manager of VIL and later of GLAD US;

iii. Kenneth Chan who is based in Toronto and began working for the GLAD Entities in 2012 after the VIL restructuring (defined below); and

iv. Du, one of the Added Parties who testified through an interpreter. The other Added Party, Guan, did not testify.

[9] There were 86 trial exhibits plus 7 lettered exhibits. Trial Exhibit 86 is a Statement of Agreed Facts, which is short and is reproduced below for ease of reference:

a. For the purposes of calculating the book value of 2305, the assets of 2305 include an amount of $691,000 representing an obligation owing by GLAD Canada to 2305;

b. The *en bloc* fair value of the GLAD Entities for the purpose of calculating the fair value of 2305 is $7,530,000;

c. On or about April 25, 2012, Mr. Wong advised Mr. Chahine that the Chinese investors were the wives of the Chairman and CEO of Hongtu and that these individuals were "nominating" their wives as shareholders of 2305 so that they could immigrate to the United States. Mr. Chahine relayed this information to Mr. Aycan, who prepared a diagram based on what Mr. Wong advised would be the shareholding structure. Mr. Chahine saw that the diagram indicated a possible structure in which the two Chinese investors would own 49 percent and that 2305 would own 51 percent of a company which would in turn own "G.L.A.D. Logistics Canada" and "G.L.A.D. US"; and

d. Mr. Chahine admits that Mr. Wong told him this information and that he passed it to Mr. Aycan. He then saw Mr. Aycan draw the diagram described. Mr. Chahine does not admit the truth of the contents of the information that Mr. Wong provided or that the diagram depicted any structure that was implemented.

[10] It is also agreed that, as of the Valuation Date, Mr. Wong was owed $420,000 in financing fees. The amount of financing fees owed to Mr. Chahine was not agreed upon and is to be determined as part of the Shareholder Loan/Financing Fee Issue.

[11] The parties were advised that they had to direct the court to any evidence in the extensive record that they considered to be relevant to the court's determination of the issues to be determined during this phase of the trial of issues.

Summary of Outcome

[12] The following conclusions are simple summaries of the otherwise complex accounting issues analyzed below:

a. As at the Valuation Date, Guan and Du indirectly and beneficially owned 49 percent of the GLAD Entities. 2305 indirectly and beneficially owned the remaining 51 percent;

b. The amount of the Chahine Shareholder Loan outstanding as at the Valuation Date was $2,524,800. The current balance owing under the Chahine Shareholder Loan, after adjusting for the sum of $2,421,300 that has been paid since the Valuation Date, is $103,500). Financing fees in the amount of $420,000 were owing and payable to Mr. Chahine by 2305 as at the Valuation Date and remain owing;

c. The fair value of 2305 as at the Valuation Date was $5,646,802;

d. The Wong Estate shall pay to Mr. Chahine the total sum of $3,346,901: $2,823,401 for his 50 percent interest in 2305; the balance of $103,500 that remains owing on the Chahine Shareholder Loan; and $420,000 for financing fees owing to him by 2305, within 30 days of the release of this decision; and

e. Having exchanged their Bills of Costs already, the parties shall try to reach an agreement on costs and advise the court of any agreement reached by May 15, 2023. If the parties are unable to reach an agreement on costs, they shall contact the Commercial List Scheduling Office to arrange a one hour case conference before me to address the issue of costs.

Factual Background

[13] The history of the relationship between Mr. Wong and Mr. Chahine is reviewed in the earlier decisions of Penny J. Relevant findings may be referred to herein as appropriate. Where raised, the court will determine if issue estoppel applies to any of the court's previous findings.

[14] While it is unnecessary to repeat all of the earlier findings, this factual background section summarizes some important context based on the earlier findings made in the July 2015 and August 2019 Endorsements.

[15] This dispute arises out of an arrangement that Mr. Wong and Mr. Chahine entered into over ten years ago (in or about December 2011) in the context of the restructuring of Mr. Wong's companies (the "VIL Restructuring").

[16] Mr. Wong and Mr. Chahine both had experience in the garment business. Before Mr. Chahine became involved in the GLAD Entities, Mr. Wong had invested with Mr. Chahine in Cotton Ginny. Despite their inability to turn that clothing business around, the two remained friends. Mr. Wong

asked for Mr. Chahine's help in around 2011 when his automotive supply and logistics business (carried on through Vikedia Industries Inc. ("VII") and Vikedia International Logistics and Automotive Supply Ltd. ("VIL")) was struggling financially. Mr. Chahine agreed to help Mr. Wong and became involved through 2305.

[17] Mr. Wong and Mr. Chahine were equal beneficial shareholders of 2305. That company was used as a vehicle through which to protect and preserve VIL/VII's business relationships with important suppliers in China and its most important customer, Chrysler, in the United States.

[18] Mr. Chahine spearheaded restructuring efforts that resulted in the recovery of $10 million. Mr. Wong and Mr. Chahine agreed that Mr. Wong was entitled to a priority payment of $3 million. The remaining $7 million would be divided equally between them. Penny J. found that there was an agreement that Mr. Wong and Mr. Chahine would each be paid $3.5 million in compensation for services rendered in the VIL Restructuring. Under that agreement, the two would each leave those funds in 2305 as a shareholder loan owing to each of them by 2305.

[19] Shareholder loan accounts were established in that amount for each of them. They also agreed that they would each be entitled to a monthly financing fee of $10,000.

[20] Mr. Wong controlled the financial and accounting records of the GLAD Entities, including 2305. He made adjustment entries to the financial records which are now difficult to understand, assess or justify. Mr. Wong ignored the separate corporate status of 2305, 2400 and the GLAD Entities. He caused money to flow freely among the GLAD Entities and between the GLAD Entities and his other companies.

[21] Mr. Wong and Mr. Chahine each received payments from 2305 in different amounts and at different times. Mr. Wong withdrew more funds from 2305 than Mr. Chahine did.

[22] Mr. Chahine's involvement with 2305 and the related GLAD Entities was terminated through a corporate restructuring orchestrated by Mr. Wong in 2012. Mr. Chahine stopped receiving payments and his shareholdings were diluted. The court found that Mr. Wong's conduct was oppressive, unfairly prejudicial to or unfairly disregarded Mr. Chahine's interests.

[23] Mr. Wong was ordered to pay Mr. Chahine the fair value of his 50 percent interest in 2305 as at the Valuation Date (a notional buy-out). The Wong Estate is now responsible to pay this amount to Mr. Chahine. The Wong Estate was also ordered to repay the remaining balance of the Chahine Shareholder Loan that is owing by 2305, as a result of Mr. Wong's oppressive conduct and having conducted the business and affairs of that company in a manner that has left it unable to satisfy its liabilities to Mr. Chahine.

The Added Parties

[24] 2305 holds an ownership interest in the GLAD Entities. The Added-Party Shareholding Issue will determine whether 2305 owns a 100 percent interest or a 51 percent interest in the GLAD Entities.

[25] The applicants confirmed at the trial that they do not dispute that the Added Parties owned 49 percent of 2286917 Ontario Inc ("228"), the former holding company of GLAD Canada, and therefore held an indirect 49 percent interest in GLAD Canada as at the Valuation Date. However, the applicants maintain that 228 transferred the shares of GLAD Canada to 2400 (the current parent company of GLAD Canada) in January 2014 as part of the subsequent re-organization by Mr. Wong. The Added Parties were not issued any shares in 2400 under this re-organization. Similarly, the Added Parties had a 49 percent interest in GLAD US LLC (a limited liability company that preceded GLAD US) but they were not issued any shares in GLAD US as part of the re-organization.

The Experts

[26] Aside from the issues involving the Added Parties, this trial was primarily a battle between experts over a number of sub-issues about the proper way of accounting for certain items that, in turn, impact both the Fair Value Issue and the Shareholder Loan/Financing Fee Issue.

[27] The experts are critical of each other in various respects, but primarily it is their different factual assumptions that account for their conflicting opinions and outcomes. The issues accounting for the significant differences between them are addressed individually in the analysis that follows, based on findings made in the course of that analysis. No one expert's analysis has been entirely adopted.

Issues to be Decided

[28] The identified issues are addressed in the following order:

a. The Shareholder Loan/Financing Fee Issue;

b. The Added Party Issues

    i. The Added-Party Shareholding Issue

    ii. The Added-Party Debt Issue

c. The Fair Value Issue; and

d. Final Accounting and Reconciliation of what, if any, amounts are payable to Chahine based on the above determinations, and by whom.

Analysis

What Amounts, if any, are Owing to Mr. Chahine by 2305 for his Shareholder Loan/Financing Fees and, if Owed, Who is Responsible to pay these Amounts?

Prior Reductions Provisionally Made to the Chahine Shareholder Loan Account Balance

[29] The accounting with respect to the Chahine Shareholder Loan begins with the finding in the July 2015 Endorsement that both Mr. Chahine and Mr. Wong started with a shareholder loan balance of $3.5 million.

[30] The court found that $700,000 in payments had been received by Mr. Chahine on account of partial repayments of the Chahine Shareholder Loan. Those payments reduced the Chahine Shareholder Loan balance to $2.8 million. This was determined in the July 2015 Endorsement and re-affirmed in the August 2019 Endorsement.

[31] In the August 2019 Endorsement, the court ordered the Wong Estate to pay the amount was acknowledged by the Wong Estate Expert, Mr. Sethi of KPMG, to be outstanding on the Chahine Shareholder Loan at that time.[2] The amount paid, $2,421,300, reflected further reductions to the balance owing totaling $378,700[3] that KPMG had identified as having been received by Mr. Chahine prior to the Valuation Date in partial repayment of the Chahine Shareholder Loan. These findings were made in the second application brought by Mr. Chahine in which he sought specific relief in relation to the repayment of the Chahine Shareholder Loan, including that the Wong Estate was jointly responsible with 2305 for its repayment.

[32] It is not disputed that Mr. Chahine has not received any payments since the Valuation Date, aside from the payment ordered under the August 2019 Endorsement.

[33] The August 2019 Endorsement acknowledged that Mr. Chahine had not had the opportunity to meaningfully analyze and respond to the KPMG analysis that led to the further deduction of $378,700 from the outstanding balance of the Chahine Shareholder Loan. That was one of the issues specifically deferred to this third phase of the trial of issues. The applicants now challenge the entirety of that $378,700 adjustment and claim this entire amount is still owing under the Chahine Shareholder Loan.

[34] The applicants maintain that the deductions made to the Chahine Shareholder Loan in KPMG's report tendered at the time of the August 2019 Endorsement should not have been characterized as shareholder loan repayments because:

[2] At the 2019 hearing, the Wong Estate had presented a KPMG report authored by Mr. Sethi that purported to estimate the amounts paid and what remained owing on the Chahine Shareholder Loan as at the Valuation Date; however, this report was not provided in time to allow the applicants to meaningfully analyze and respond to it. That led the court to make an order that the Wong Estate at least pay what this KPMG report acknowledged was owing, which was $2,421,300.
[3] $287,700 plus $91,000 in HST paid by 2305 in respect of a $700,000 earlier invoice from Mr. Chahine or his company.

a. $12,500 in costs awarded by the court and paid in 2016 could not have been a payment against the Chahine Shareholder Loan. The Wong Estate, that previously argued this amount was a payment against the loan, no longer takes this position.

b. $91,000 in HST that was remitted to the Canada Revenue Agency ("CRA") at the same time that Mr. Chahine was paid the $700,000 is a tax credit flow-through that was not received by Mr. Chahine, but was rather remitted to CRA and was or could be recovered by 2305 from the CRA;

c. A further $65,200 that was paid to Mr. Chahine's company, BOT, and treated as a partial repayment of the Chahine Shareholder Loan was, at the time of payment, properly characterized and accounted for as consulting fees payable to BOT, not repayment of the loan; and

d. $210,000 that was paid to BOT and treated as a partial repayment of his shareholder loan should have been characterized as a payment on account of pre-Valuation Date financing fees.

[35] The applicants maintain that none of the above amounts should have been applied to reduce the Chahine Shareholder Loan. Therefore, this disputed amount should be added back to the Chahine Shareholder Loan balance. They say KPMG made erroneous assumptions that improperly credited these amounts to the Chahine Shareholder Loan. As such, the equivalent sum of $378,700 remains outstanding and payable.

[36] The respondents defend KPMG's characterization of the amounts applied to the Chahine Shareholder Loan, aside from the $12,500 costs award. They further contend that the KPMG analysis arguably overstated the remaining balance of the Chahine Shareholder Loan by failing to identify and account for other amounts that Mr. Chahine had received.

What, if any, Findings in Respect of the Shareholder Loan Accounts are *Res Judicata*?

[37] Before revisiting the specific adjustments to the Chahine Shareholder Loan balance made by KPMG at the time of the August 2019 Endorsement (that were expressly left open for reconsideration), I will digress to deal conceptually with the competing arguments of *res judicata* that have been raised with respect to other aspects of the shareholder loan account balances.

[38] The respondents argue that the "further adjustments" to the Chahine Shareholder Loan balance contemplated by the August 2019 Endorsement could go either way. The August 2019 Endorsement uses both phrases: "further amounts" owing in respect of the Chahine Shareholder Loan, implying more amounts, not less and "further adjustments", which could be interpreted as upward or downward adjustments on the loan balance and is arguably ambiguous on this point. The Wong Estate effectively argues that none of the court's accounting adjustments to the starting shareholder loan balances of the $3.5 million made in the July 2015 Endorsement and August 2019 Endorsement were "final" and all remain open to re-adjustment at this phase of the trial of issues.

[39] The applicants maintain that there is no opportunity at this stage for the respondents to ask the court to revisit its prior findings about the Chahine Shareholder Loan balance made in the July 2015 Endorsement that were not challenged or overturned on appeal. Namely, that:

a. Both Mr. Wong and Mr. Chahine's shareholder loans to 2305 had an opening balance of $3.5 million; and

b. Mr. Chahine had received $700,000 bringing his loan balance down to $2.8 million.

[40] The $2.8 million Chahine Shareholder Loan balance was the starting point for the subsequent KPMG analysis. For the respondents to now contend that less was owing than what the Wong Estate paid following the August 2019 Endorsement would necessarily require the court to revisit these earlier findings, which the applicants say were made in a final decision that the Divisional Court upheld on appeal and that this issue is *res judicata*.

[41] There are three requirements for invoking the form of *res judicata* known as issue estoppel: (i) the same question has or could have been decided in a prior proceeding; (ii) the decision giving rise to estoppel is final; and (iii) the parties to the decision giving rise to estoppel are the same as the parties to the subsequent proceeding in which estoppel is claimed: see *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 25.

[42] The applicants argue that the July 2015 Endorsement finding that the Chahine Shareholder Loan balance was $2.8 million as at the Valuation Date is *res judicata*. For that reason, the respondents are estopped from re-opening that issue at this fair value trial because it was:

a. a final finding about the Chahine Shareholder Loan amount that was upheld (not challenged) on appeal in the Divisional Court;

b. a finding made in this very proceeding between these very same parties (or their privies, in the case of the Wong Estate that has stepped into the same position as Mr. Wong); and

c. re-affirmed in the August 2019 Endorsement.

[43] I consider the findings of the court about the priority payment to Mr. Wong of $3 million (off the top of the available $10 million) from which the court extrapolated the starting balance of Mr. Wong and Mr. Chahine's shareholder loans to be $3.5 million each to be final determinations that were bound up in the oppression remedy decision. It was Mr. Wong's conduct in disproportionately diverting funds out of 2305 to his benefit, measured against these benchmarks, and in having "restructured" Mr. Chahine out of his interest in 2305, that was found to be oppressive. These findings are *res judicata*.

[44] These are distinguishable from the earlier findings of the court about the amounts to be deducted from the Chahine Shareholder Loan balance. The August 2019 Endorsement specifically left open the possibility that the court might find that more remained owing under the Chahine

Shareholder Loan once the applicants had an opportunity to analyze the KPMG calculations. The August 2019 Endorsement was explicitly "subject to consideration of such *further amounts* as may be owing in the context of the still pending valuation hearing" and later allows that "*further adjustments* may be addressed in the context of the pending fair value hearing for 2305" (emphasis added). These points are not *res judicata* because the August 2019 Endorsement clearly left it open to applicants to challenge the calculations in the KPMG report.

[45] Since the parties agreed to bifurcate the valuation and damages issues from the determination of oppression, any findings about payments received on account of the shareholder loan balances made in the oppression remedy stage of the trial of issues were not "fundamental to the decision arrived at" or "necessarily bound up" with the determination of the issue in the prior proceeding for issue estoppel to apply: see *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, 145 O.R. (3d) 759, at para. 27, citing *Danyluk*, at paras. 24, 54.

[46] This matter proceeded by way of "trial by installment." While it may have been inefficient in hindsight, it was intended to allow for certain efficiencies depending on the outcome and findings at different stages. Conducting a trial in this way raises unique considerations for arguments of issue estoppel. The court must be guided by what happened at the previous two installments and what the endorsements contemplated and/or allowed for. If the amount of the Chahine Shareholder Loan balance owing had been considered to have been finally decided in the July 2015 Endorsement, there would have been no adjustment allowed for, even provisionally, in the August 2019 Endorsement. Nor would there be any further adjustment contemplated or permitted in the context of this further installment of the trial of issues.

[47] The fact that the August 2019 Endorsement entertained the idea that there might be a different amount owing on the Chahine Shareholder Loan than had been previously determined, and contemplated that there might be "further adjustments" in the context of this fair value trial, means that the earlier findings were not "final." The question of the quantum of the outstanding amount of the Chahine Shareholder Loan as of the Valuation Date (with regard to what has been repaid) is not *res judicata* and is open to further (now final) determination by the court.

[48] That said, no further payments to Mr. Chahine that might further reduce the Chahine Shareholder Loan balance, beyond those indicated in the KPMG report at the time of the August 2019 Endorsement and the previously accounted for $700,000, have been established by the Wong Estate.

Reconsideration of the $378,700 KPMG Reductions to the Chahine Shareholder Loan Account

[49] The details of all payments credited towards the Chahine Shareholder Loan had not been fully examined when Penny J. made his initial endorsements. They have now been fleshed out through additional evidence and expert reports. It is open to the court to now reconsider evidence that might not have been brought to the court's attention when those earlier rulings were made to determine whether the Chahine Shareholder Loan balance should be adjusted accordingly. I turn now then to consider how the disputed $378,700 should be accounted for.

(a) The $12,500 Costs Adjustment

[50] Starting first with the easy point, the respondents concede that $12,500 in costs paid in 2016 to the applicants was erroneously credited by KPMG towards a repayment of the Chahine Shareholder Loan. They agree that amount is still payable.

(b) The $91,000 HST Adjustment

[51] The $3.5 million opening shareholder loan balance was derived from the compensation that the court found Mr. Wong and Mr. Chahine were each entitled to for the successful VIL Restructuring. Both of their companies invoiced 2305 periodically and received payments that the court deducted from each of their respective shareholder loan balances. This appears to be how they accessed their "compensation."

[52] The $91,000 in HST paid by 2305 in respect of the $700,000 invoiced by BOT (which the court found reduced the Chahine Shareholder Loan from $3.5 to $2.8 million) should not, contrary to KPMG's assumption, be credited towards the Chahine Shareholder Loan account. Mr. Chahine says it was remitted to the CRA and was, or could have been, claimed back as a tax credit by 2305. It should be a neutral line item.

[53] I find the $91,000 deduction applied by KPMG to reduce the Chahine Shareholder Loan to have been improperly deducted and remains payable.

(c) The $62,500 BOT Invoice Adjustment

[54] Mr. Wong's shareholder account has been reduced to account for all amounts identified as having been paid to him or his companies. The record indicates that both Mr. Wong and Mr. Chahine invoiced 2305 for various fees through their companies as a way of removing funds from 2305. No principled justification was offered for treating this further $65,200 that BOT invoiced for "consulting fees" differently. I find that it was properly deducted by KPMG as a payment on account of the Chahine Shareholder Loan.

(d) The $210,000 Payment to BOT

[55] The applicants argue that the payment of $210,000 made to BOT and characterized by KPMG as partial Chahine Shareholder Loan repayments should be characterized as payments on account of the monthly financing fees that both sides agree Mr. Wong and Mr. Chahine were entitled to.

[56] Mr. Wong attributed all payments that the court found to have been paid by or on behalf of 2305 to him or his affiliates prior to the Valuation Date to have been on account of his shareholder loan account, not for the monthly financing fees. It is agreed that, as of the Valuation Date, Mr. Wong was owed the full $420,000 in financing fees.

[57] Mr. Chahine contends that just because Mr. Wong attributed the funds he received in this way, that does not mean that Mr. Chahine was not paid any of the monthly financing fees. Mr.

Chahine could have objected to this characterization by Mr. Wong and he did not. Mr. Chahine says that he had no obligation to challenge Mr. Wong's characterization of amounts received.

[58] Mr. Chahine points to evidence of some invoices from BOT for a few months in 2012 for "monthly service fees" in the amount of $10,000 that were issued by BOT to 2305. He insists that the invoices were paid for a time (before he was "restructured" out of the business in or about March 2013) and should be accounted for as such. There is also evidence of some invoices rendered by VII to 2305 for monthly management fees in the amount of $10,000 in the same time period (2012)

[59] The BOT invoices in evidence do not match the total amount of $210,000 said to have been paid to BOT and do not say that they are for the "financing fee." Further, a payment of $210,000 would have amounted to twenty-one months of financing fees, which does not correspond with the period in which Mr. Chahine was involved with 2305, between December 2011 and March 2013 . That is only seventeen months. I find the BOT invoices to be of little probative value on this point.

[60] Although referable to different time periods, I see no reason to treat this $210,000 differently than the $700,000 in fees invoiced by BOT and paid that the court has already credited against Chahine's Shareholder Loan account (that reduced it from $3.5 million to $2.8 million). There is logic to a consistent approach in the manner in which the past payments of invoices from BOT are characterized.

[61] Further, on a principled basis, there is also logic to a consistent approach being taken to the payment of financing fees to Mr. Wong and Mr. Chahine. No explanation has been proffered as to why Mr. Chahine would have received $210,000 in monthly financing fees prior to the Valuation Date, and Mr. Wong would have received none.

[62] While there is reference in the July 2015 Endorsement to monthly payments having been received by both Mr. Wong and Mr. Chahine as a financing fee on their shareholder loans to 2305 (in the context of the court's consideration about whether to accept Mr. Wong's evidence about whether past payments to Mr. Chahine should be characterized as loans to him), I do not consider there to have been any final findings made at that time that financing fees had actually been paid to either Mr. Wong or Mr. Chahine. No finding was made in that earlier endorsement as to the amount of financing fees paid. For reasons stated earlier in this decision, findings about the particular characterization of past payments received in the oppression remedy stage of the trial of issues were not "fundamental to the decision arrived at" or "necessarily bound up" with the determination of the issue in the prior proceeding for issue estoppel to apply: see *Catalyst*, at para. 27, citing *Danyluk*, at paras. 24, 54.

[63] I find the sum of $210,000 received by Mr. Chahine was properly characterized by KPMG as a partial repayment of the Chahine Shareholder Loan.[4]

[4] For reasons outlined later in this decision, the Wong Estate will be required to pay to Mr. Chahine the remaining balance of both the Chahine Shareholder Loan account and outstanding financing fees. In light of this, as I understand the accounting, whether these payments are characterized as repayment of the Chahine Shareholder Loan or payment on

(e) The Chahine Shareholder Loan Account Balance

[64] The proper further adjustments to the Chahine Shareholder Loan balance are thus:

a. $103,500 was wrongly attributed as having been previously paid on account of the Chahine Shareholder Loan when it had not been paid for such; and

b. $275,200 was properly accounted for as amounts previously repaid in respect of the Chahine Shareholder Loan and appropriately deducted from the amount paid by the Wong Estate following the August 2019 Endorsement.

[65] I find that the outstanding Chahine Shareholder Loan Balance of $2,524,800 ($2.8 million found to have been owing by Penny J. in the July 2015 Endorsement, less the further $275,200 now confirmed to have been previously repaid) should be added to 2305's balance sheet as a liability for purposes of determining the Fair Value of 2305 as at the Valuation Date.

[66] As between Mr. Chahine and the Wong Estate, Mr. Chahine is still owed a further sum of $103,500 on account of the Chahine Shareholder Loan balance owing as at the Valuation Date that was improperly deducted from the amount paid following the August 2019 Endorsement. The Wong Estate remains liable to pay that further amount.

What Amounts Remain Payable for Outstanding Financing Fees and Who is Responsible to Pay Chahine?

[67] There is no dispute that Mr. Chahine and Mr. Wong were each entitled to a $10,000 monthly financing fee.

[68] The amounts claimed by Mr. Chahine for unpaid financing fees are:

a. $210,000 up to the Valuation Date (based on the assertion in the previous section that $210,000 was paid to Mr. Chahine in financing fees rather than on account of the Chahine Shareholder Loan, which the court has not accepted); and

b. $490,000 from the Valuation Date until August 2019 when the Wong Estate was ordered to repay the remaining balance of the Chahine Shareholder Loan.

[69] The Wong Estate's position is that financing fees of $10,000 per month were owed to both Mr. Chahine and Mr. Wong, totaling $420,000, that were all outstanding as at the Valuation Date.

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account of monthly financing fees will not make any difference to the final outcome. Either way, the amounts paid pre-Valuation Date will serve to reduce recorded liabilities on the 2305 financial statement for purposes of the fair value calculation and the outstanding amounts will be ordered to be paid by the Wong Estate. Even if there is a difference in the tax treatment of the characterization of those payments, that would not be relevant to the outcome of this trial. In any event, I was not directed to any expert evidence about the tax implications of these characterizations, one way or the other.

The Wong Estate disputes that any financing fees were payable to Mr. Chahine after the Valuation Date.

[70] The applicants maintain that, while Mr. Wong may be owed $420,000, Mr. Chahine had been paid $210,000 in financing fees (through BOT) and was only owed $210,000 as of that date. I have already found that the $210,000 paid to Mr. Chahine prior to the Valuation Date should be characterized as partial payments on account of the Chahine Shareholder Loan rather than payments of financing fees.

[71] This means that the financing fees payable to Mr. Chahine as at the Valuation Date must be correspondingly increased to $420,000, the same as were owing to Mr. Wong as of the Valuation Date. This is in line with the consistent approach taken to financing fees described above.

[72] The Wong Estate contends that financing fees were only payable up to the Valuation Date and not thereafter. The applicants argue that the Valuation Date is an arbitrary date selected by the court to implement the oppression remedy notional buy-out of Mr. Chahine's interest in 2305; it does not impact the ongoing obligation to pay financing fees. I disagree. If there was a notional buy-out on the Valuation Date then the Chahine Shareholder Loan would be notionally repaid and extinguished on the same day, and the associated financing fees would no longer be payable. The obligation in respect of financing fees was not distinct and independent from Mr. Chahine's ownership and investment in 2305.

[73] I decline to award Mr. Chahine the claimed $490,000 in post-Valuation Date financing fees. The financing fees are related to the Chahine Shareholder Loan. The Chahine Shareholder Loan was notionally repaid as of the Valuation Date. From and after that date, the only amounts that might accrue due and payable to Mr. Chahine would be for pre-judgment interest on amounts that he was to be notionally paid on the Valuation Date. The parties did not make any submissions about pre-judgment interest.

[74] The Wong Estate suggests that GLAD Canada was responsible for paying the financing fees to Mr. Chahine and Mr. Wong. This is financing fee scenario B in the Kroll analysis. Kroll financing fee scenario A assumes 2305 was responsible for paying the financing fees to both Mr. Chahine and Mr. Wong, which is the position of the applicants.

[75] These scenarios developed by Kroll are based strictly on assumptions about the entity that will be held to be legally responsible for the payment of the financing fees to Mr. Wong and Mr. Chahine. The limited evidence on this point was more focused on cash flow issues than legal responsibility and was not probative given the court's finding that no financing fees have yet been paid by any entity. I was not directed to a sufficient evidentiary foundation to support a finding that GLAD Canada was responsible for the payment of financing fees.

[76] I have already found the financing fees to be related to the shareholder loans to 2305. As discussed earlier in this decision, no principled basis was suggested for separating the obligation to pay the financing fees from Mr. Wong and Mr. Chahine's ownership and investment in 2305. The

commercially reasonable and logical commercial conclusion is that the legal responsibility for the financing fees lies with the same entity that received the benefit of the shareholder loans from Mr. Wong and Mr. Chahine, which was 2305. I find that the obligation to pay the financing fees, associated with the shareholder loans of funds that were available for its use and benefit, was an obligation of 2305 as at the Valuation Date.

[77] Therefore, the outstanding financing fees, $420,000, payable to each of Mr. Wong and Mr. Chahine by 2305 should be added as a liability to 2305's balance sheet for the purposes of determining the fair value of 2305 as at the Valuation Date.

[78] In terms of the present responsibility for the payment of the still outstanding and unpaid financing fees to Mr. Chahine, the applicants argue that it would be unfair to require that Mr. Chahine look to 2305 for payment of the financing fees still owing, since Mr. Wong's wrongful and oppressive conduce (as found by Penny J.) has effectively rendered 2305 unable to pay any such amounts still owing. The applicants rely upon the August 2019 Endorsement and finding that the Wong Estate is responsible for the payment of the amounts still owing in respect of the Chahine Shareholder Loan to support the contention that the Wong Estate should also be held responsible for payment of any financing fees still owing to Mr. Chahine, because of Mr. Wong's conduct in diverting funds from 2305 that might have otherwise been available to satisfy amounts owing to Mr. Chahine.

[79] The Wong Estate argues that it should not be not responsible to pay the financing fees. It maintains that the August 2019 Endorsement only ordered that Mr. Wong (and by extension, the Wong Estate) was liable to pay the Chahine Shareholder Loan because Mr. Wong had made preferential payments to himself on account of his shareholder loan (and not on account of financing fees, since none have been paid). The position of the Wong Estate requires the court to accept the assertion that the financing fees are separate and distinct from the shareholder loans (a premise that has not been accepted, for reasons previously indicated).

[80] In the August 2019 Endorsement, the court ordered that *Mr. Wong (and therefore the Wong Estate) was responsible for payments in relation to the shareholder loan owed by 2305 to Mr. Chahine* on the basis of his role in the decisions about diverting funds and withholding payments; Mr. Wong determined who got paid what and when.

[81] I find the financing fees to be related to the shareholder loans owed by 2305 and to, therefore, be payments in relation to the Chahine Shareholder Loan that the Wong Estate is jointly, with 2305, liable to pay to Mr. Chahine.

The Added Party Issues

<u>The Added-Party Debt Issue</u>

[82] This issue requires the court to determine whether the Added Parties were loaned funds by 2305 to make their investments in the GLAD Entities and, if so, whether they have repaid those loans.

[83] The basic framework for the Added Parties' purchase of shares in 228 was that they were each to provide half of the purchase price for their shares up front in cash (USD $432,000 by Guan and $450,000 by Du, for a total of $882,000). They were each to receive a loan of an equal amount to fund the balance of the cost of their shares. The Wong Estate, 2305 and the Added Parties all maintain that any loans advanced to the Added Parties were either repaid by distributions that they were entitled to from the GLAD Entities or that the loan amounts were proportionately reduced.

[84] Du testified about, and provided documentary proof of, the funds she advanced to purchase her shares. Du testified to a shareholders' agreement dated in 2012 for the GLAD Entity in which they originally invested, 228 (the "228 Shareholders' Agreement") that reflects loans made by 2305 to both Du and Guan. On its face, the 228 Shareholders' Agreement establishes that the loans to Du and Guan came from 2305. The 228 Shareholders' Agreement contemplated that the loans to the Added Parties were to be repaid from the profits that they expected to receive from their investments. Du was not asked very much about this agreement, but she did identify her signature on it.

[85] Mr. Kenneth Chan testified to his understanding that the 228 shareholder loans would be repaid through distributions from the GLAD Entities (either to 2305 directly, or to the Chinese investors who would in turn redirect those payments to 2305). According to Mr. Chan, some payments were earmarked for this purpose even though the accounting for these loans in 2305's books and records did not address these loans at all. Mr. Chan's evidence of his general understanding of the arrangement from an accounting point of view corroborates the conclusion that the loans came from 2305 for the share purchases by the Added Parties.

[86] Despite this agreement, Du claims that it was Mr. Wong who loaned her the money, not 2305. Du was unfamiliar with the corporate structure and specific transactions. However, there is no contemporaneous evidence to support Du's understanding that Mr. Wong loaned her the money. It is very possible, given her lack of understanding of the corporate structure and transactions, that she considered funds loaned to her by 2305 to have come from Mr. Wong, the person with whom she was dealing.

[87] Guan did not testify; no explanation was offered for her absence. Du testified that Guan, like Du, paid part cash and took a loan for the balance of the purchase price for her shares, on the same understanding that the loan would be repaid through future corporate distributions, and that Du eventually acquired Guan's shares and they are all held on the same basis by the same person now. There was no evidence about what happened to Guan's loan payable to 2305 at the time of the share transfer. There was certainly no suggestion or evidence that it was forgiven, only an inference that her loan would have been treated in the same way as Du's.

[88] The Added Parties advanced a parallel, but seemingly inconsistent, argument. They argued that the applicants have not met their onus to prove that the Added Parties were actually loaned the funds as indicated in the 228 Shareholders' Agreement. This is based on the suggestion that the 228 Shareholders' Agreement should be read as only speaking to an intention that funds be loaned, not the fact that the loan was made. This assertion is not persuasive. Du's own evidence establishes that she provided half of the purchase monies for her shares in 228 and that she understood that the loans

for the balance of the purchase price would be repaid from distributions. This affirmative evidence is inconsistent with the contention that the loans were not made.

[89] The Added Parties also contend that the 228 Shareholders' Agreement was not strictly adhered to in other respects. They say that 2305 has not proven that it invested the funds as it was supposed to. They contend that the statement in the 228 Shareholders' Agreement that 2305 had contributed $3.1 million is not proof that in fact this contribution was made, and the court should instead rely upon the after-the-fact attempts to account for funds advanced totaling only $1,796,268. This was suggested to be grounds for proportionately reducing any amounts that would otherwise have been payable by the Added Parties under their shareholder loans (to $1,725,981). This argument is theoretical reconstruction dependent upon unsupported assumptions and speculation.

[90] Having considered the actual evidence, I find that 2305 loaned the Added Parties a total of $882,000 in 2012 at the time of their initial investments in 228. This finding is based on Du's testimony about the amounts that she provided in cash (with documentary support), her identification of the 228 Shareholders' Agreement, her acknowledgment that balance owing to make up the stated purchase price for the shares was to be funded by way of a loan, and the fact that it is acknowledged by both the applicants and the respondents that the Added Parties initially had a 49 percent interest in 228 and GLAD US LLC. The proportionate shareholdings and source of the loan having been from 2305 is also corroborated by the evidence of Mr. Chan's general understanding after the fact.

[91] The Wong Estate primarily relies on the position, based on an interpretation of Mr. Chan's evidence from an affidavit he swore much earlier in these proceedings, that the loans for the Added Parties' share purchases were, in fact, repaid. Du also testified in general terms, that she was unaware of any balance that remained owing on the loan she received for her share purchase. Her understanding (not based on any specific distribution or supporting document) was that profit distributions were applied to reduce her loan payable. This evidence from both Mr. Chan and Du was very general and non-specific.

[92] In an effort to prove that the Added Parties repaid their loans to 2305, forensic accounting work has been done through an *ex post facto* review of banking records and attempt to reconcile them with Mr. Chan's prior evidence. This, the Wong Estate claims, now corroborates these loan repayments. The Wong Estate suggests that this analysis supports a finding that nothing is owing, or at most only CDN $81,082 remains outstanding, on the loans from 2305 to the Added Parties. I do not find this evidence to be persuasive or sufficient to establish, on a balance of probabilities, that historic amounts that were transferred to 2305 from the GLAD Entities should now be recharacterized as repayments of the loans made by 2305 to the Added Parties for the purchase of their shares.

[93] There is no reliable or contemporaneous evidence to establish that those loans by 2305 to Du and Guan were repaid. Experts and some witnesses tracked down payments in and out of 2305 over a limited time period, which they now say also can be relied upon to demonstrate that payments were made on account of these loans. This tracing exercise is not complete or sufficiently tied to the loans to the Added Parties.

[94] For the court to now find that those loans were repaid would require a leap of faith and a fair bit of speculation and inference, which I am unable to tether to any corroborative concrete evidence. It requires inferences about the purpose of payments between the GLAD Entities and 2305 and gap filling that is not supported by the contemporaneous records and accounting. I am unable, based on this, to find on a balance of probabilities that the loans that Du and Guan received for the remainder of the purchase price for their shares in the GLAD Entities had been repaid as of the Valuation Date.

[95] I find that these outstanding loans payable by Du and Guan of $882,000 should be added as an asset to 2305's book value for purposes of determining the fair value of 2305 as at the Valuation Date.

[96] Du raises an argument that the loan claim by 2305 is statute barred under the *Limitations Act 2002*, S.O. 2002, c. 23 Sch.B. According to the 228 Shareholders' Agreement, these were demand loans. For the limitation period to have started to run would require there to have been a demand on the loan by 2305 more than two years prior to the Valuation Date. There is no evidence of such demand ever having been made.

[97] No relief was requested, and no order is made, regarding the obligation of the Added Parties to repay the outstanding loan balance owing to 2305 today.

The Added-Party Shareholding Issue

[98] The applicants concede that the Added Parties initially acquired a 49 percent interest in 228. Du also testified about funds advanced to acquire an interest in GLAD US LLC. The tax returns of that company reflect both Guan and Du as having an equity interest in it. There can be no serious dispute that the Added Parties held a 49 percent interest in the original GLAD Entities through their initial investments, and that 2305 held the remaining 51 percent interest. Guan did not need to testify for the court to be satisfied of this, having regard to the testimony of other witnesses and contemporaneous documents.

[99] In 2013, GLAD US LLC transferred its business to GLAD US. In 2014, 228 transferred the shares it held in GLAD Canada to 2400. Guan and Du did not subscribe for shares in either GLAD US or 2400. Share subscriptions in 2400 were prepared for Guan and Du, but there is no evidence that they were ever signed; nor is there any evidence of them subscribing for or being issued shares in GLAD US.

[100] The applicants argue that because all of the formal share transfers and subscriptions were not finalized and corporate records were not fully and formally updated to reflect the continuing 49 percent interest of the Added Parties in the GLAD Entities, that they never became shareholders of 2400 or GLAD US and their interests were simply wiped out in the subsequent restructuring by Mr. Wong. Specifically, the applicants postulate as follows in their closing submissions:

> It is more than plausible that Wong had "reorganized" Guan and Du out of the GLAD business by the Valuation Date…Wong and his brothers determined that they wanted Chahine, as a non-family member, out of the GLAD business. It is entirely plausible

> that they reached the same conclusion concerning Guan and Du. The difference is that Guan and Du do not appear to have taken issue with being reorganized out of 2400 and GLAD US.

[101] The applicants argue that the court should draw adverse inferences from the failure of the Added Parties to call Ken Wong (the lawyer who drafted the resolution, subscriptions and other corporate documents) and Robert Kligerman (the lawyer who drafted documents that Kua testified about), as well as Guan's failure to testify, all to the effect that the evidence of these individuals would not have supported the claim by the Added Parties of a 49 percent interest in the relevant GLAD Entities as of the Valuation Date.

[102] The applicants' case is not assisted by adverse inferences. Even if made, they cannot overcome the equities upon which the ownership interest of the Added Parties in the GLAD Entities can and should be decided for purposes of the determination of the issues in this third phase of the damages trial; the very same equities that preserved Mr. Chahine's equitable interest in 2305 in the court's earlier decisions.

[103] The irony of the applicants' position on this point is not lost on the court. Similar and reasonably contemporaneous corporate restructuring steps that the court found to have been oppressive to Mr. Chahine's interests in 2305 similarly resulted in share subscriptions and certificates not being issued in favour of the Added Parties in any of the GLAD Entities that were owned by 2305 as at the Valuation Date. The applicants want to reverse the oppressive effects of Mr. Wong's actions on themselves, while allowing those effects on the Added Parties to remain, rendering 2305 to be the sole legal and beneficial owner of GLAD Canada (valued at $3,313,000 as of the Valuation Date[5]) and GLAD US (valued at $4,217,000 as of the Valuation Date), rather than just a 51 percent owner, effectively wiping out the 49 percent interest of the Added Parties.

[104] The applicants argue that the Added Parties have not demonstrated through testimony or their actions an expectation that they were continuing equitable and beneficial shareholders in the relevant GLAD Entities (now 2400 and GLAD US) or that their reasonable expectations to be continuing 49 percent shareholders were defeated by Mr. Wong's oppressive conduct.

[105] Conversely, there was no evidence proffered to suggest that the Added Parties had been bought out or had agreed to give up their shares, or that their loans from 2305 were forgiven in this restructuring process. The evidence (and findings, contended for by the applicants) about their continuing shareholder loans payable to 2305 was, in fact, to the contrary. In addition to Du, Messrs. Kua, Chan and Bennett each testified to the continued recognition of the 49 percent ownership interest that the Added Parties had in the underlaying GLAD Entities owned by 2305, at least up until the Valuation Date, which is all that matters for purposes of this case

[5] The experts appear to concur that the agreed value of $7.53 million of the GLAD Entities should be broken down as between GLAD Canada and GLAD US based on 44% earnings for GLAD Canada and 56% earnings for GLAD US. On this basis, GLAD Canada represents $3.313 million and GLAD US represents the remaining $4.217 million.

[106] Mr. Wong (and now the Wong Estate) were ordered to buy out Mr. Chahine's equitable and beneficial interest in 2305 under the equitable oppression remedy. The equities favouring Mr. Chahine do not favour him obtaining a windfall in the valuation exercise by the court allowing the same pattern of oppressive conduct (the purported restructuring by Mr. Wong to "squeeze out" non-family members, like Mr. Chahine and the Added Parties) to increase 2305's pre-existing ownership interest in the GLAD Entities from 51 percent to 100 percent for purposes of determining the price for Mr. Chahine's buy-out.

[107] There is nothing whatsoever unfair to the applicants about the continued recognition of the Added Parties' 49 percent equitable interests (even if not formally legally established in the corporate records) in the GLAD Entities owned by 2305, in the same way that Mr. Chahine's 50 percent equitable interest in 2305 has continued to be recognized, for purposes of this proceeding. It would be a windfall to Mr. Chahine if his interests were to be recognized and the interests of the Added Parties were not, especially when the loans payable by the Added Parties in respect of these very same equity investments have been found to be payable and appropriately included as an asset of 2305's on the Valuation Date. The Added Parties loans and equity interests should not be separated and treated differently.

[108] I find that the Added Parties, whether together or through Du alone after having acquired Guan's interest, owned a 49 percent beneficial interest in the GLAD Entities owned by 2305 as at the Valuation Date.

[109] The Fair Value of 2305 as at the Valuation Date will thus be determined on the basis of a 51 percent rather than a 100 percent ownership interest held by 2305 in the GLAD Entities.

What was the Fair Value of 2305 on the Valuation Date?

[110] The competing expert analyses have produced the following assessments of 2305's fair value as at the Valuation Date:

a. BDO (Alan Mak): $10,380,598 (high) or $4,663,066 (low), assuming 100 percent ownership of GLAD Entities (but subject to adjustment to reflect a 51 percent ownership in GLAD Entities if the court so rules).

b. Duff & Phelps (Christopher Nobes): nil.

[111] The majority of the differences in the experts' analyses are a function of their factual assumptions rather than attributable to differences in opinion on matters of accounting expertise.

[112] The applicants have identified a series of (largely factual) questions to be answered that account for most of the differences between the experts. The Wong Estate has its own list of points of dispute, but most can be folded into the applicants' questions. Some points of dispute have already been considered under the Shareholder Loan/Financing Fee Issue and the Added Party Issues.

[113] I will review and provide my rulings on the identified points of dispute in the accounting analysis, in turn.

Adjusted Book Value of 2305

[114] The determination of the book value of 2305 as at the Valuation Date begins with a baseline book value of $1,129,839.[6] Both sides agree that further adjustments would need to be made to determine the adjusted book value of 2305 as at the Valuation Date; however, they disagree about the specific amounts of these further adjustments and about whether certain "off-book" items should have been reflected on the 2305 balance sheet, and if so, the amounts of those "off-book" adjustments.

(i) Was there an Overpayment by 2305 to VIL?

[115] The first adjustment deals with what the applicants claim was an overpayment by 2305 to Mr. Wong's company, VII, for the debt and security that 2305 purchased under an assignment agreement made in November 2011 (the "Assignment Agreement"). The specified price to be paid under that agreement was $1 million, initially satisfied by way of a USD $1 million promissory note given by 2305 to VII. The purchased debt included an assignment of USD $2.6 million receivable owing by VIL to VII. In or about October 2012, 2305 paid USD $2.6 million to VII to satisfy the debt it owed to VII. The applicants argue that there was an overpayment of USD $1.6 million ($2.081 million CDN) that should be treated as an off book asset of 2305.

[116] Conversely, the Wong Estate argues that the entirety of the $2.6 million USD was part of the CDN $3 million "priority payment" that Mr. Wong was entitled to. Therefore, 2305 still owes VII the $1 million payable under the Assignment Agreement, or, at the very least, if the $2.6 million was on account of the Assignment Agreement there was no overpayment because the parties agreed to amend the Assignment Agreement to require 2305 to pay the higher amount that was paid. In this regard, the Wong Estate relies upon an amending agreement dated December 5, 2011 that purports to increase the purchase price to USD $2.6 million (the "Amending Agreement").

[117] The applicants challenge the authenticity and validity of this Amending Agreement. It was only produced after the first phase of this trial had already commenced, was not in the minute book, Kua was not aware of its existence, and it was signed by Mr. Wong's brother who purported to be the president of 2305 at a time when Mr. Chahine was the president. Notably, the court found in the July 2015 Endorsement that Mr. Chahine was the president of 2305 from December 5, 2011 until at least March 6 or sometime in June 2012.

[118] It is suggested by the Wong Estate that this is a reasonable amendment because the amount corresponds with the amount of the receivable being purchased. This is circular, speculative and unsupported. Receivables are often purchased at a discount because of concerns about collection.

[6] This baseline number is derived from the BDO approach, with certain adjustments made to reflect earlier criticisms to the BDO starting number. This does not take into account further adjustments that would have to be made if either of the contribution scenarios postulated by Kroll were to be accepted and applied. These contribution scenarios are discussed at the end of this section of the decision.

Conversely, contemporaneous emails referred to in Mr. Wong's read-in testimony refer to a USD $1 million purchase for the USD $2.6 million receivable. Contemporaneous documents in the first half of 2012 prepared by 2305's accountant refer to the price or consideration as being $1 million. Further, Mr. Wong's early litigation position was consistent with the 2305 debt owing to VII under the Assignment Agreement having been $1 million, not $2.6 million. These call into question the authenticity of the Amending Agreement and I am unable to accept it as authentic or proven on a balance of probabilities.

[119] I find that the agreed price to be paid under the Assignment Agreement was $1 million, as stated in that agreement and consistent with the other contemporaneous documents and positions (noted above). There is no evidence that any amended or higher amount was agreed to and there are no contemporaneous documents to suggest that was the case, aside from the challenged Amending Agreement.

[120] In response to the primary position of the Wong Estate on this point, which is that the entirety of the $2.6 million was part of the CDN $3 million "priority payment" that Mr. Wong was entitled to, the applicants argue that this is foreclosed by earlier findings made in this proceeding. Specifically, that Mr. Wong would have already received the $3 million priority payment when he and Mr. Chahine agreed to divide up the $7 million "surplus" equally and created their respective shareholder loan accounts. Thus, a later payment of $2.6 million made in the fall of 2012 could not be attributed to that $3 million priority payment that was made at the outset of the arrangement when the surplus funds were divided between Mr. Wong's and Mr. Chahine's shareholder loan accounts.

[121] Whether there was a direct finding that the $3 million priority payment had already been received by Mr. Wong, or that finding is implied, the most reasonable conclusion based on the totality of the evidence is that Mr. Wong took that surplus priority payment of $3 million up front.

[122] Therefore, I find that the payment of $2.6 million by 2305 to VII made approximately one year later in October 2012 included an overpayment of $1.6 million (beyond the $1 million that was payable under the Assignment Agreement). That amount must be accounted for as an off book asset for purposes of determining the fair value of 2305 as at the Valuation Date. According to BDO, the Canadian equivalent of this is $2,081,985. That should be added to 2305's value as of the Valuation Date to account for this overpayment that Mr. Wong had the benefit of through his interest in VII at the time.

(ii) What was the Balance of Mr. Wong's Shareholder Loan to 2305?

[123] The second adjustment relates to the amount of the Mr. Wong's shareholder loan as of the Valuation Date.

[124] Mr. Chahine and Mr. Wong's shareholder loans started off being $3.5 million each, representing their respective entitlements to the total $7 million in surplus recoveries after deducting the $3 million in priority payments that they agreed Mr. Wong was entitled to. The court's findings as to the opening balances and initial payments have been found earlier in this decision to be *res*

judicata. What was left open was the accounting for what had been paid, if there was further admissible evidence that might cause the court to revisit the amounts that each of them had received, and adjust their shareholder loan account balances accordingly.

[125] Thus, I do not accept the suggestion by KPMG on behalf of the Wong Estate that Mr. Wong's shareholder loan balance was higher to begin with. This suggestion comes from an assumption that Mr. Wong's priority payment "might be" $3.2 million rather than $3 million, and the suggestion that Mr. Wong only received $2.8 million, leaving $382,592 unaccounted for in the priority payments that KPMG conveniently now adds to Mr. Wong's shareholder loan balance.

[126] The amount of the priority payment entitlement is *res judicata,* for reasons indicated earlier in this decision. The court has already found that entitlement was $3 million. The evidence before the court at the time of the July 2015 Endorsement was that Mr. Wong believed he had almost fully recovered his "priority" payment of $3 million by December 2011. The premise of KPMG's analysis that Mr. Wong was owed more and paid less than this is not open to reconsideration.

[127] However, the August 2019 Endorsement left open the amounts to be applied towards shareholder loan repayments; that is not *res judicata*. The KPMG 2022 report (submitted by the Wong Estate and 2305) calculates Mr. Wong's shareholder loan balance to be $2,422,915. This amount is based on deemed shareholder advances of $1,459,678, but it includes the added shareholder loan amount of $382,592 that I have determined improper.

[128] The BDO report (submitted by the applicants) calculates the balance of Mr. Wong's shareholder loan account to be $2,040,322 ($3.5 million less deemed shareholder advances of $1,459,678). The applicants take this one step further and invite the court to conclude that nothing was owing to Mr. Wong as at the Valuation Date on the basis that the court could infer that he in fact improperly took far more than the accountants have been able to identify. However, I consider that to be too far into the realm of speculation.

[129] In the table provided by the applicants during closing submissions, Mr. Wong's shareholder loan amount is indicated to be $2,027,823. I have been unable to reconcile this with the BDO report (their expert) amount of $2,040,322, but I expect there is an explanation that I have overlooked; in any event, the difference is immaterial. For purposes of the calculations in this decision, I have assumed there is a reason for the lower number on the chart provided during closing submissions and I will use the lower number on the valuation chart to indicate that Mr. Wong's shareholder loan balance owing as of the Valuation date was $2,027,823. If that is in error, the math can be easily adjusted.

(iii) What was the Balance of the Chahine Shareholder Loan to 2305?

[130] The third adjustment relates to the remaining balance outstanding on the Chahine Shareholder Loan, which is subject to various alleged repayments. As discussed earlier in this decision, the outstanding Chahine Shareholder Loan Balance is $2,524,800 ($2.8 million found to have been owing

in the July 2015 Endorsement, less the further $275,200 now confirmed to have been previously repaid). This amount remained owing under the Chahine Shareholder Loan as at the Valuation Date.

[131] While ultimately the entirety of this debt must be paid to Mr. Chahine by the Wong Estate (of which now $103,500 on account of the Chahine Shareholder Loan balance remains owing because it was improperly deducted from the amount paid following the August 2019 Endorsement), for the purposes of determining the fair value of 2305 as of the Valuation Date, the entire outstanding Chahine Shareholder Loan balance calculated above as at the Valuation Date should be reflected as a liability on 2305's on the valuation chart.

(iv) What Remains Payable to Mr. Chahine for Outstanding Financing Fees?

[132] The fourth adjustment relates to the remaining balance owing on account of financing fees to Mr. Chahine. As discussed earlier in this decision, Mr. Chahine is owed $420,000 in financing fees, as is Mr. Wong. This translates into a $840,000 liability on the books of 2305 for the purposes determining of the fair value of 2305 as of the Valuation Date.

[133] While I have found that the Wong Estate is responsible now for the payment of Mr. Chahine's financing fees of $420,000 (for the same reasons that the Wong Estate was ordered to repay the outstanding balance of the Chahine Shareholder Loan as detailed in the August 2019 Endorsement), the entire amount of the outstanding financing fees owing by 2305 to both Mr. Wong and Mr. Chahine should be reflected as a liability on 2305's balance sheet as at the Valuation Date.

(v) What Remains Payable by the Added Parties to 2305?

[134] The fifth adjustment to the 2305 balance sheet is for the amounts that have been found to be owing by the Added Parties to 2305 earlier in this decision. Since none of the amounts proven to have been loaned to them for their share purchases (comprising their 49 percent interest in the GLAD Entities) have been demonstrated to have been repaid as at the Valuation Date, the entire original aggregate loan balance of $882,000 should be reflected as an asset on 2305's balance sheet as of the Valuation Date.

(vi) Are there Offshore Assets that Have not been Accounted for on 2305's Balance Sheet?

[135] The sixth adjustment is in respect of the $1.3 million of "offshore" funds that were identified and recognized by the court to have been moved "offshore" to be out of the reach of creditors in the event of VIL's collapse. The applicants suggest that there should be an upward adjustment in the book value of 2305 to account for this $1.3 million that was found to have been paid offshore in the July 2015 Endorsement based on Mr. Wong's testimony, which finding was not challenged by Mr. Wong on appeal.

[136] Penny J. found at paragraph 25 of the July 2015 Endorsement that:

> 2305 also had security over an additional line of VIL's business, auto parts logistics, which had accounts receivable of about $3.3 million and over $1.3 million which Mr.

> Wong had previously sent offshore in hopes of preserving these funds from creditors in the event of VIL's collapse. All of these amounts taken together totaled about $10 million and significantly exceeded the $2.6 million secured loan Mr. Wong had hoped to retain out of the VIL disaster.

[137] It is now suggested that Mr. Wong's reference to "offshore" funds was an imprecise way of characterizing the movement of funds out of 2305 to put them out of the reach of his creditors (perhaps better described as "off-book" rather than "off-shore").

[138] The Wong Estate now contends that 2305 never had any unaccounted for "offshore" funds and that these were mischaracterized as such. The court is being asked to revisit this finding with the benefit of the more detailed review by KPMG of the banking and other records of 2305 that have since been produced with additional information provided by Kua. The Wong Estate contends, based on the testimony of Kua at trial, verified by KPMG from the available records, that certain funds were paid to various parties (including various of Mr. Wong's affiliated companies and Chahine's company, BOT) totaling $1.034 million (not $1.3 million), and that all but $195,765 was eventually paid back (or accounted for as partial repayments of shareholder loans or applied towards other legitimate obligations of 2305) before the transfer of assets to 2305, and thus would have already been received and accounted for in the corporate records as at the Valuation Date.

[139] The Wong Estate concedes that the remaining balance of $195,765 is owing to 2305 and is a proper balance sheet adjustment, but that this is all that remains of the previously mischaracterized "offshore" (better characterized as "off-book") funds.

[140] This is an example of something that could have been further fleshed out based on the additional review and analysis of the records since the original trial of issues, and could fall within the purview of adjustments that were contemplated. I do not consider the observations made by Penny J. in paragraph 25 of the July 2015 decision, or elsewhere, to be *res judicata* on the question of accounting adjustments that he specifically contemplated might later need to be made.

[141] However, the Wong Estate has the onus of proving that the original evidence of Wong, accepted by the court, was in error. The Wong Estate has tried to do this by having Kua attempt to identify what Mr. Wong was referring to when he referred to the "off-shore" funds. In so doing, Kua identifies six transactions involving payments made prior to September 2011 to other companies (none of them "offshore") totaling $1.034 million which he apparently cannot account for. KPMG is then asked to review the corporate bank and accounting records in an attempt to trace what happened to these funds for the period from November 1 to December 7, 2011. KPMG extended its review back to September 1, 2011 and identified during that period monies paid to some of the same entities that mathematically adds up to an amount that is $195,765 less than the originally unaccounted for $1.034 million.

[142] The inference the court is being asked to draw is that these six transactions were what Mr. Wong was referring to when he testified that $1.3 million was moved offshore and that the other payments shown to have been made by the corporate banking and financial records re-patriated those

funds. I am unable to draw those inferences from the evidence that was presented about these transactions and payments. The fact that they occurred and that mathematically they add up to amounts that are close to, but not exactly the same, as the amount that Mr. Wong testified about in roughly the time frame that one might assume the transactions would have occurred is not a sufficient foundation for the inferences that would have to be made to ground a finding now that is different than what the court concluded in the July 2015 Endorsement based on Mr. Wong's testimony.

[143] I find that it is equally plausible that Mr. Wong's testimony was accurate and that he did move $1.3 million offshore and that none of the transactions that Kua and KPMG were looking at (involving domestic, not foreign entities) have anything whatsoever to do with the $1.3 million offshore funds.

[144] The descriptions of the transactions and amounts do not match up that closely with Mr. Wong's original description. They are not sufficiently "coincidental" or particularized to displace the original testimony and finding of the court based upon it. The Wong Estate has fallen short of proof on a balance of probabilities that the "offshore," amount of $1.3 million had been repaid by the Valuation Date.

[145] BDO did not undertake its own accounting review, but rather relied upon the number specified in the July 2015 Endorsement. Given that the court had already made a finding and the Wong Estate's position depended on proving otherwise, there was no need for BDO to undertake its own analysis to prove that which had already been found.

[146] I find that the appropriate adjustment for amounts diverted by Mr. Wong in September 2011, which he admits were diverted to avoid creditors, is the $1.3 million that he originally testified about.

[147] The applicants argued that the $195,765 that KPMG has now identified through its further review of the banking and accounting records to be unaccounted for should be added as a further "off-book" amount to the 2305 book value. The inference for such a conclusion is no stronger when suggested in favour of the applicants than when suggested against them. The evidence about these transactions and repayments is insufficient for any inferences to be drawn either way.

[148] Therefore, the inclusion of that additional line item adjustment of $1.3 million in offshore funds to the 2305 book value as at the Valuation Date is appropriate to reflect "off-book" amounts that had not been repaid or otherwise accounted for as at that date.

(vii) What Percentage Interest did 2305 have in the GLAD Entities?

[149] For the reasons indicated earlier in this decision, if have found that 2305 held a 51 percent interest in the GLAD Entities.

(viii) Should Either of the Kroll Contribution Scenarios be Adopted?

[150] The Wong Estate's expert (Mr. Nobes, at Kroll) postulates two "contribution" scenarios that would further reduce the book value of 2305 as at the Valuation Date, if adopted. These involve the

re-characterization of the historic accounting for 2305's investment in the GLAD Entities and the reconstruction of various transactions following the investment. These scenarios were not initially proposed in the report prepared by Mr. Nobes in 2017. He explains that they were conceived in conjunction with investigations about the loans from 2305 to the Added Parties that were not adverted to in his previous work.[7]

[151] Under contribution scenario A, a part ($965,829) of the loan historically recorded on 2305's financial statements to GLAD Canada would be re-characterized as equity held by 2305 in that company. That is then proportionally compared to the amounts found to have been actually advanced by the Added Parties at the time of their purchase of shares in the GLAD Entities, and with some minor accounting adjustments, is said to account for their respective 51/49 percent shareholdings.

[152] Contribution scenario B is more complicated. It involves re-characterizing the entire original 2305 loan to the GLAD Entities of $1,759,999 as equity, includes the $882,000 amount loaned by 2305 to the Added Parties as an asset of 2305, but assumes that it was entirely repaid by "dividends" or other amounts received by 2305 from GLAD Canada or other GLAD Entities (an assumption that the court has not accepted, as discussed earlier in these reasons). Contribution scenario B would require the loan historically recorded from 2305 to GLAD Canada to be re-characterized on both 2305 and GLAD Canada's financial statements.

[153] As I understand the math, Kroll's calculations of the fair value to be included for 2305's 51 percent interest in the GLAD Entities based on these different contribution scenarios ranges from $3,235,436 (contribution scenario A) to $3,663,836 (contribution scenario B), whereas the 51 percent fair value of 2305's interest in the GLAD Entities under the BDO approach is $3,840,300.

[154] The Kroll contribution scenarios also lead to other differences in the follow-on adjustments to the book value of 2305 because of assumptions about, among other things and by way of example, the level of required investments by 2305 and the Added Parties in the GLAD Entities, the ensuing amount of the purchase price differential that 2305 had to cover for the Added Parties by way of loan, and the repayment of those loan amounts.

[155] I am unable to accept and adopt the Kroll contribution scenarios in my determination of the fair value of 2305 as at the Valuation Date. They both would require an artificial reconstruction of accounting and other transactions based on loose math, arbitrary time periods and assumptions that have not been proven on the evidence and that do no align with the actual cash flows and accounting records. The lack of accounting records and support for these contribution scenarios is detailed in the BDO updated analysis and report.

[156] I do not foreclose the possibility that the historic accounting records for 2305 are not accurate and that there were other investments and transactions that were not appropriately characterized or

[7] Insofar as these contribution scenarios build upon the attempts to establish that the loans from 2305 to the Added Parties were less than what is reflected in the 228 Shareholders' Agreement and/or were repaid prior to the Valuation Date, these aspects of the contribution scenarios are supported by the Added Parties, but have also been previously addressed and rejected for reasons indicated earlier in this decision.

accounted for. However, as this court has previously found in the August 2019 Endorsement, Mr. Wong made adjustment entries to the financial records of the GLAD Entities which are now difficult to understand, assess or justify. As a result, he (and now the Wong Estate) will bear the consequences of the poorly kept accounting records that may not be possible to reconcile. The court is not going to make unsupported inferences and fill in gaps to reconstruct the historic transactions and events to make up for Mr. Wong's failings and/or wrongdoing.

[157] Based on the agreed *en bloc* value of the relevant GLAD Entities (GLAD Canada and GLAD US Inc.) as at the Valuation Date of $7,530,000, 51 percent ($3,840,300) should be included on 2305's balance sheet on account of its interest in the GLAD Entities as of the Valuation Date, consistent with the approach taken by the applicant's expert BDO.

Final Accounting and Reconciliation of Any Amounts Payable by the Wong Estate to Chahine

[158] The claims of the applicants and those of Mr. Chahine are not differentiated for the most part. It appears, based on the prior endorsements in this matter, that it is Mr. Chahine personally whose claims remain to be determined at this third phase of the application. The applicants and Mr. Chahine have been referred to interchangeably throughout this decision. If there is any basis on which the final judgment should differentiate who should be paid the specific amounts found to be owing, that will have to be addressed at a case conference to be arranged by counsel. Based on the applicants' submissions, they are currently directed to be paid to Mr. Chahine.

[159] The Wong Estate is responsible to pay Mr. Chahine:

a. The remaining outstanding balance of the Chahine Shareholder Loan ($2.8 million less the interim payment of $2,421,300 less the $275,200 now confirmed to have been previously repaid, leaving a balance owing of $103,500); and

b. The entirety of the financing fees payable to Mr. Chahine as at the Valuation Date, in the amount of $420,000.

[160] Further, the Wong Estate shall further pay to Chahine his 50 percent share of the fair value of 2305, as of the Valuation Date, taking into account the adjustments indicated above, as follows:

a. $1,129,839 starting book value of 2305;

b. Additions/adjustments to book value:

    i. $2,081,985 (Canadian equivalent of $1.6 million USD overpayment by 2305 to VII under Assignment Agreement);

    ii. $1,300,000 (in off-book amounts that had not been repaid or otherwise accounted for);

    iii. $691,000 owing by GLAD Canada (not disputed);

iv. $432,000 loan to Guan (assumed by Du);

v. $450,000 loan to Du;

According to BDO, these loans are in USD. The Canadian equivalent is $882,000 x 1.2634= $1,114,301.

Sub-total: $5,187,286

c. Subtractions/adjustments to book value:

i. $2,027,823 outstanding balance owing on Mr. Wong's shareholder loan to 2305;

ii. $2,524,800 outstanding balance owing on the Chahine Shareholder Loan to 2305;

iii. $420,000 outstanding financing fees owing to Mr. Wong; and

iv. $420,000 outstanding financing fees owing to Mr. Chahine.

Sub-total: $5,392,623

d. Plus $3,840,300 representing 2305's 51 percent interest in the GLAD Entities

Total fair value of 2305 as at the Valuation Date: $4,764,802

Mr. Chahine's 50 percent interest: $2,382,401

[161] The total amount payable by the Wong Estate to Mr. Chahine is:

a. $103,500 (balance due on Chahine Shareholder Loan)

b. $420,000 (financing fees payable to Chahine)

c. $2,382,401 (buy-out of 50 percent interest in 2305)

TOTAL: $2,905,901

[162] In accordance with the prior direction of Penny J., this payment shall be made within 30 days of the release of this decision.

[163] It is possible that mathematical errors have been made in my effort to reconcile and determine the final accounting of all adjustments based on the findings made. If that is the case, the parties may request a case conference with me before the final form of order is settled so that mathematical errors and calculations can be corrected.

[164] It is not clear whether there is a claim being made for pre-judgment interest on amounts notionally payable from and after the Valuation Date to the date of payment. If claimed, and if any party is contending for pre-judgment interest to be calculated at a rate other than the applicable *Courts of Justice Act* rate, or if there is a dispute about whether it is payable and if so, the amount to be paid, the parties may arrange a case conference through the Commercial List Scheduling Office to seek further directions regarding the calculation of interest at any other rate.

Costs and Final Disposition

[165] It is my understanding that the costs of the two previous installments of this trial of issues have already been determined. There was no time during closing arguments for meaningful cost submissions.

[166] In the applicants' reply closing submissions they requested that the court award them their partial indemnity costs of $536,026.82 if they are successful.

[167] The Wong Estate asks for an award of its partial indemnity costs and disbursements in the amount of $772,970.38.

[168] Du's partial indemnity costs are indicated to be $68,215.79 (substantial indemnity costs are $102,127.08 and full indemnity are $113,431.60). She asks that the applicants be ordered to pay her costs if the applicants do not succeed in their position that 2305 is the 100 percent owner of 2305, or if they do not succeed in attributing any material amount owing by Guan and Du to 2305 as at the Valuation Date.

[169] It may not be entirely straightforward to determine who won or lost given the nature of the issues and their resolution. There may be other considerations relevant to the question of costs that the court has not yet been made aware of.

[170] With the benefit of the result and whatever dialogue may have occurred, the parties are encouraged to try to reach an agreement on costs. If they are unable to do so by May 15, 2023, a one hour case conference may be scheduled before me through the Commercial List Scheduling Office to address the issue of costs. Cost submissions of no more than three pages double spaced (not including attached bills of costs and any relevant communications about settlement) may be served, filed and uploaded into CaseLines two days prior to the scheduled case conference. The court will not entertain lengthy cost submissions.

[171] This decision and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out. Any party may take out a formal order by following the procedure under r. 59 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Kimmel J.

Released: April 17, 2023

CITATION: Badr v. 2305136 Ontario Inc., 2023 ONSC 2358
COURT FILE NO.: CV-13-00010312-00CL
CV-18-00606009-00CL
DATE: 20230417

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ANTOINE CHAHINE BADR, ANTOINE CHAHINE BADR o/a MYANT CONSULTING, MYANT CONSULTING INC., and B.O.T. INTERNATIONAL INC

Applicants

– and –

2305136 ONTARIO INC., VIKEDA INTERNATIONAL LOGISTICS AND AUTOMOTIVE SUPPLY LTD. VIKEDA INDUSTRIES INC., VIKEDA VENTURES LTD., VIKEDA ENTERPRISES LTD., 2208824 ONTARIO INC., G.L.A.D. OPERATIONS INC., G.L.A.D. INTERNATIONAL INC., THE ESTATE OF VINCENT WONG by its Estate Trustee ARABELL KAREN LIM, KEN WONG, DANNY WONG, ALEX KUA, and KENNETH KING YU CHAN

Respondents

REASONS FOR DECISION

TRIAL OF FAIR VALUE AND OTHER DAMAGES ISSUES

Kimmel J.

Released: April 17, 2023