IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mahanloo v. RTMA Enterprises Inc.,*
2024 BCSC 1928

Date: 20241015
Docket: S-216684
Registry: Vancouver

Between:

Abbas Mahanloo

Plaintiff

And:

RTMA Enterprises Inc. and Ali Golriz

Defendants

Before: The Honourable Justice K. Wolfe

Oral Reasons for Judgment

Counsel for the Plaintiff:	D.H. Griffith
Counsel for the Defendants (By Videoconference):	K. Seyedi M. Kandi
Place and Date of Hearing:	Vancouver, B.C. October 3-4, 2024
Place and Date of Judgment:	Vancouver, B.C. October 15, 2024

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Overview

[1] The defendants, RTMA Enterprises Inc. (“RTMA”) and Ali Golriz (“Mr. Golriz”) brought an application for summary trial seeking dismissal of the entirety of the claim for breach of contract and resulting damages. The defendants concede there were negotiations between the parties, but say a binding, enforceable agreement was never reached. Among other things, the defendants point to disagreement and uncertainty about the contractual terms and numerous conditions to the agreement that were never satisfied. The defendants say even if there was an oral agreement, the plaintiff has the burden to prove a breach of contract and that he has suffered damages, and he has not done so.

[2] The primary position of the plaintiff, Abbas Mahanloo (“Mr. Mahanloo”), is that the matter is not suitable for summary trial. Mr. Mahanloo says there are significant discrepancies and conflicts in the affidavit evidence and in the absence of other objective and admissible evidence, the Court will not be able to find the necessary facts or make the requisite credibility findings. In the alternative, Mr. Mahanloo says the parties had a binding oral agreement under which he was to purchase shares in RTMA and become a partner in a larger real estate development (the “Joint Venture”). He says the defendants breached that agreement, with the result that he has been deprived of the opportunity to benefit from the Joint Venture.

[3] The parties’ positions generally and their arguments about suitability in particular required them to delve in some detail into the facts and the voluminous affidavit materials. As a result, I determined it was appropriate to hear submissions both on the issue of suitability for summary trial and on the merits of Mr. Mahanloo’s claim. I heard those submissions over two days and reserved on both suitability and the merits.

[4] For the reasons that follow, and with some reluctance, I conclude this matter is not suitable for summary trial. The parties dispute the existence of the alleged oral agreement, its terms and why the plaintiff did not fulfill a key condition. There is no contemporaneous documentation that can assist with these factual disputes and the

evidence of the corroborating witnesses presents its own challenges. As a result, I am not able to find the facts necessary to decide this matter summarily and the defendants' application for summary trial is therefore dismissed.

Factual background and evidence

[5] Before summarizing the background, I wish to add a preliminary note. In the materials before me, the spelling of certain individuals' names was not consistent. I was advised during the hearings that this may be a function of the translation from Persian (Farsi) to English. In these reasons, I have elected to use the spelling in the affidavits provided by the individuals themselves. I mean no disrespect if those spellings are inaccurate.

[6] I will start with the facts that are uncontroversial. In August 2018, four companies entered into an agreement to form the Joint Venture and subsequently secured a $3.3 million loan from Canadian Western Bank ("CWB") to purchase five properties on Old Dollarton Road in North Vancouver for future real estate development (the "Project"). The original partners to the Joint Venture were Homa Pacific Holdings Ltd. ("Homa"), 1165692 B.C. Ltd. ("692"), 1166537 B.C. Ltd. ("537") and RTMA (collectively, the "Partners"). Homa and 692 each held a 35 percent stake in the Joint Venture, RTMA held a 20 percent stake and 537 held a 10 percent stake. Mr. Golriz is a director and shareholder of RTMA. The agreement for the Joint Venture prohibited each Partner from disposing of their interest without the consent of all other Partners.

[7] In October 2019, CWB extended the timeframe for full repayment of the loan to May 31, 2020. As development had not yet begun on the Project, and the Partners were having difficulty performing on their loan obligations, some of them, including RTMA, began considering options to either sell their shares in the Joint Venture or inject new financing into the Project to address the loan deadline.

[8] In the spring of 2020, Mr. Mahanloo and a friend of his, Mr. Farhad Farzady, engaged in discussions with some of the Partners about potentially purchasing shares and becoming part of the Joint Venture. Mr. Mahanloo and Mr. Farzady

made an offer to purchase 100 percent of RTMA's shares (which amounted to 20 percent of the Joint Venture) for $500,000. It is common ground, however, that in late June 2020, Mr. Farzady suffered a financial setback and was unable to complete that transaction.

[9] It is also common ground that after the collapse of the first set of negotiations, around July 2020, Mr. Mahanloo began negotiating on his own with RTMA and Mr. Golriz. It is not disputed that Mr. Mahanloo offered to purchase 50 percent of RTMA's shares (meaning 10 percent of the Joint Venture) for $250,000. The intention was that Mr. Golriz would also continue to be a director and shareholder of RTMA. It is agreed that on July 14, 2020, RTMA's solicitor, Ms. Olja Simic, wrote to CWB advising of RTMA's intention to sell 50 percent of its shares to Mr. Mahanloo, and seeking CWB's prior written consent to the proposed sale, as required by the terms of the loan's commitment letter. There is no dispute that the parties did not reduce any of their negotiations to written form.

[10] It is likewise agreed that Mr. Mahanloo never acquired any shares in RTMA, nor did he pay RTMA the $250,000 he had offered. RTMA and Mr. Mahanloo did not complete an agreement to transfer the shares and did not discuss or agree on the shares to be sold to Mr. Mahanloo. While the evidence before the Court indicates there was previously some confusion on Mr. Mahanloo's part, based on the submissions before me, it appears that Mr. Mahanloo may now accept RTMA did not end up selling any of its shares and remains a 20 percent Partner in the Joint Venture. Further, the defendants provided uncontradicted documentary evidence that in February 2021, the Partners and CWB entered into a forbearance agreement, which was extended further in March 2021 and remains in place. It is not disputed that Homa subsequently sold its shares and is no longer a Partner in the Joint Venture. It is also uncontroversial that the Project has not yet been redeveloped.

[11] Unfortunately, what happened between the parties' initial negotiations in July 2020 and the souring of their relationship in late 2020 through to early 2021 is the subject of significant conflicts in the evidence. The body of evidence consists of

serial responding affidavits from Mr. Mahanloo and Mr. Golriz, as well as supporting affidavits on each side from individuals who claim to have been involved in, or have some knowledge of, the parties' interactions. As detailed below, in addition to the conflicts between the evidence of the parties' themselves, there are issues with most if not all of the supporting affidavits on both sides. The Court was also provided with transcripts from the discoveries of Mr. Mahanloo and Mr. Golriz. There were no pre-hearing cross-examinations of other witnesses on their affidavits, nor did either side seek an order permitting cross-examination on affidavits as part of the summary trial.

[12] There is very little in the way of objective documentary evidence about the parties' negotiations. The agreement for the Joint Venture and certain documents from and correspondence with CWB are in evidence. The parties also appended to their affidavits translations of emails and text messages exchanged primarily between Mr. Mahanloo and Mr. Golriz. However, it is common ground that there were also multiple phone calls between the parties at critical junctures. Some of the most significant points of conflict with respect to the alleged existence of a binding oral agreement and its terms and conditions are said to have been addressed in those phone calls.

[13] For their part, the defendants say their negotiations with Mr. Mahanloo never went beyond an agreement to agree and can therefore not form the basis of a claim for breach of a valid and enforceable contract. The defendants admit Mr. Mahanloo made an offer to purchase RTMA shares, but say the offer was subject to certain conditions first being met. Since those four preconditions were not met, the defendants say the offer was not and could not have been accepted.

[14] First, the defendants say the offer was conditional on RTMA obtaining consent of all other Partners, as required under the terms of the Joint Venture, and that consent was not ultimately provided. Second, the defendants say it was a precondition that CWB provide a further extension on the loan. On August 11, 2020, CWB extended the deadline for repayment to September 30, 2020, but CWB did not provide a further extension and instead sent a demand letter in mid-December 2020.

Third, the defendants say it was a precondition that CWB authorize the sale of shares to Mr. Mahanloo, which in turn required him to become a guarantor for the $3.3 million existing loan. While CWB provided draft paperwork for that purpose, the defendants say that in a call with Mr. Golriz on August 12, 2020, Mr. Mahanloo advised he would not sign the necessary paperwork. Finally, the defendants say it was a precondition that Mr. Mahanloo and RTMA enter into an agreement about the specifics of the share purchase, which was never done.

[15] In addition to the preconditions, the defendants say there was insufficient certainty of terms and the parties' negotiations lacked the requisite meeting of the minds to result in a binding agreement. In this respect, they point primarily to evidence they say demonstrates Mr. Mahanloo's lack of understanding that, as a term of the agreement, he was to assume responsibility for RTMA's existing debt under the CWB loan. They also note Mr. Mahanloo ceased communications for a period of several months at a critical time between September and late November 2020. While they accept, and it is common ground, that Mr. Mahanloo suffered a family tragedy that required him to be in the United States for a period of time, the defendants say Mr. Mahanloo knew the Partners were facing intense pressure during that time because the CWB loan was due September 30, 2020. The defendants say Mr. Mahanloo's conduct in failing to check in while away, or indeed for five or six weeks after his return, was inconsistent with the behaviour of a person who had a contract with RTMA.

[16] Mr. Mahanloo tells a different story. He alleges the parties reached a binding oral agreement the terms of which provided that he would purchase 50 percent of RTMA's shares for $250,000, granting him a 10 percent stake in the Joint Venture. He says it was a term of the oral agreement that once he became a shareholder, RTMA would attempt to sell its stake in the Joint Venture.

[17] Mr. Mahanloo understood the Partners to the Joint Venture would need to provide their consent to his becoming involved, but he maintains he was working closely with several of them through the summer of 2020 on refinancing options and

none of them indicated any opposition to him becoming involved. Next, while it is not clear exactly what Mr. Mahanloo understood he was taking on with respect to the CWB loan (he uses different terms in different places in the evidence), he admits there was paperwork he was supposed to sign for CWB and maintains he was prepared to do so. He says he did not sign because Mr. Golriz advised there were errors in the first version he was sent, and he was to await a revised version. There is some contemporaneous documentary evidence, in the form of a text message from Mr. Golriz, that supports the need for revised paperwork to be sent. Mr. Mahanloo denies that he ever refused to sign the paperwork, in the phone call with Mr. Golriz or otherwise. It is common ground that revised paperwork was never sent to him.

[18] Mr. Mahanloo says the oral agreement did not require him to be responsible for any of RTMA's existing debt or that of the other Partners, but did require him to be responsible for RTMA's future debt. While he acknowledges the need for a share purchase agreement, he appears to consider that a separate but related transaction, not a precondition to the oral agreement. Mr. Mahanloo says that while he was away, he remained reachable, and it was the defendants who initially kept him updated into September (consistent with conduct of persons who believed themselves to have a contract), and then subsequently failed to contact him further. He suggests the change is because they had already decided not to honour the oral agreement with him, and were instead pursuing a different option. Mr. Mahanloo does not explain why he did not reach out sooner on his return.

[19] In support of his position that the defendants admitted they breached the oral agreement, Mr. Mahanloo relies, among other things, on an email he received on January 13, 2021 from Mr. Mehdi Olia. Mr. Olia is a friend of Mr. Golriz and his parents, a guarantor under the agreement for the Joint Venture and the father of one of 692's shareholders. In August 2021, Mr. Olia provided an affidavit in support of the defendants in this matter. Mr. Olia deposes to having been involved in various capacities in the Joint Venture and to having spoken and met with Mr. Mahanloo, but does not mention the January 2021 email he sent to Mr. Mahanloo. Mr. Mahanloo

attaches a translation of the email from Persian (Farsi) to English to his third affidavit. In the email to Mr. Mahanloo, Mr. Olia apologizes "if we failed to fulfil the expectations" and states "[a]bout your case, we'll accept whatever you offer without any complaints. Kindly accept our apology. We hope one day we can compensate for this."

Procedural History

[20] Mr. Mahanloo filed his original notice of civil claim on July 20, 2021, alleging RTMA and Mr. Golriz breached the alleged oral agreement under which he was to purchase shares in RTMA and become a party to the Joint Venture. The original claim sought a finding that the defendants breached the contract, an award of $100,000 (based on an assumed difference in the value of RTMA shares in July 2020 versus when Mr. Mahanloo believed them to have been sold in fall 2020), damages for Mr. Mahanloo's loss of opportunity to invest elsewhere and legal costs. At the time of filing the claim, Mr. Mahanloo was self-represented.

[21] In September 2021, the defendants filed an application to strike the claim under Rule 9-5 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*SCCR*]. On February 3, 2022, Justice Douglas adjourned the application to strike generally by consent and permitted Mr. Mahanloo to amend his pleadings but ordered that the amended claim be limited to a claim for breach of contract. Justice Douglas also ordered certain hearsay passages in the original affidavit materials to be struck, and awarded the defendants their costs of the application up to the date of the hearing. In February 2022, with the assistance of his current counsel, Mr. Mahanloo filed a significantly revised amended notice of civil claim. The amended pleading continues to reference the $100,000 figure from the original claim, but in terms of relief sought, advances a blanket and unspecified claim for damages for breach of contract. The amended claim also seeks an accounting of the profits of RTMA, a certificate of pending litigation and costs.

[22] In February 2024, the defendants filed an application for summary judgment under Rule 9-6, seeking to strike the entirety of the claim. On April 4, 2024,

Associate Judge Bilawich dismissed that application as not suitable for summary judgment and awarded Mr. Mahanloo his costs. Counsel for the defendants says the Court did not hear substantive submissions on the matter and admits he ought to have filed an application for summary trial. As a result, the defendants refiled their materials in July 2024, this time seeking summary trial under Rule 9-7. They also filed additional affidavits. Mr. Mahanloo filed a response but chose not to file any additional affidavit material for purposes of this application.

[23] Mr. Mahanloo appropriately concedes the materials before me do not contain any evidence of the damages he has allegedly suffered. In his response to the summary trial application, and again in the hearing before me, Mr. Mahanloo submitted that if the Court were to find a contract existed and that it was breached, the issue of damages should be referred to the Registrar for an inquiry. Mr. Mahanloo suggests that for purposes of the inquiry, he could then obtain a business valuation to assess the value of RTMA's shares at the relevant points in time. There are several problems with this approach. Given my conclusion about suitability, I will not address them in detail, but I do wish to make three brief comments.

[24] First, as discussed further below, all parties to a summary trial application are required to put their best foot forward. As the plaintiff, Mr. Mahanloo had an obligation to provide the evidence necessary to prove all aspects of his claim and he did not do so. Second, Mr. Mahanloo's failure to provide any evidence about his alleged damages means the Court did not have much information about the "amount involved" when considering suitability for summary trial. Third, I am not confident an inquiry to the Registrar would be appropriate in this instance, where the party with the onus to prove damages failed to provide any evidence on which a Court could first conclude there was (or was at least likely to be) loss warranting damages. The parameters of such an inquiry appear to be outside the proper role of the Registrar.

Issues

[25] The threshold question before the Court is whether this matter is suitable for summary trial. To determine suitability, the Court must consider if it can find the facts necessary to decide the merits of the breach of contract claim, namely:

a) Was there a binding oral agreement, and if so what were its terms?

b) If there was a binding agreement, has Mr. Mahanloo proven a breach?

c) If the agreement was breached, has Mr. Mahanloo proven he suffered damages?

[26] The focus of my analysis is on the facts necessary to find the first issue, as there must be an agreement before any of the other issues become relevant. There is also the issue of costs of the summary trial application.

Analysis

Threshold issue: suitability for summary trial

The legal framework

[27] The parties agree on the applicable legal framework. On the hearing of a summary trial application, Rule 9-7(15) of the *SCCR* provides the Court discretion to grant judgment either on an issue or generally unless the Court is unable, on the whole of the evidence, to find the facts necessary to decide the issues, or the Court is of the opinion that it would be unjust to decide the issues. The Court may also award costs.

[28] Rule 9-7(11)(b) confirms the Court's discretion to dismiss a summary trial application on grounds that: i) the issues raised are not suitable for summary disposition; or ii) the summary trial application will not assist the efficient resolution of the proceeding.

[29] The parties agree that suitability for summary trial necessarily depends on the facts and legal issues of each case, and that the basic principles set out in

Inspiration Management Ltd. v. McDermid St. Lawrence Ltd. (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (BC CA) continue to govern. The Court cannot grant judgment on a summary trial application where, based on the materials before it, the Court is unable to find the facts necessary to decide the issues, or where the Court is of the opinion that it would be unjust to decide the matter summarily. These two points are often dealt with together: *MacKenzie Delta Industrial Ltd. v. North American Enterprises Ltd.*, 2019 BCSC 1980 [*MacKenzie Delta*] at para. 14 and cases cited therein.

[30] The Court's decision on suitability involves an exercise of discretion: *Gill v. Gill*, 2022 BCCA 264 at para. 56, citing *Gichuru v. Pallai*, 2013 BCCA 60 at para. 34. As reflected in the object of the *SCCR* (set out in Rule 1-3), the underlying consideration is the need to ensure the fair and just adjudication of the issues in a manner proportionate to the case at hand: *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502 at para. 48.

[31] With respect to finding the necessary facts, a conflict in the evidence is not necessarily fatal to a summary trial application, however *Inspiration Management* and other cases caution that a judge should not decide issues of fact or law solely on the basis of conflicting affidavits: *Cory v. Cory*, 2016 BCCA 409 at para. 10; *Morin* at para. 56; *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485 at paras. 58-60. Where there is other admissible evidence which corroborates or contradicts one side's affidavits, it may be possible for the Court to find the necessary facts despite a conflict in the evidence: *Greater Vancouver Water District* at paras. 59-60. That said, "where there is a clear conflict in sworn evidence on a central issue in the case, and where credibility is key, it may constitute reversible error for the court to make findings of fact without the benefit of seeing the parties testify in person": *MacKenzie Delta* at para. 15, citing *Morin* at paras. 56-58.

[32] In deciding if it would be unjust to decide the matter summarily, the relevant factors for a Court to consider include, but are not limited to: the amount involved, the complexity of the matters, urgency, prejudice by reason of delay, the cost of a

conventional trial in relation to the amount involved, the course of proceedings, the time of the summary trial, whether credibility is a critical factor and whether the summary trial will create unnecessary complexity or result in litigation in slices: *Gichuru* at paras. 30-31. This list is not a checklist but provides a good indication of the factors that typically concern the Court: *Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83 at para. 28.

[33] In *Greater Vancouver Water District*, Justice Griffin (then of this Court) referred to the Supreme Court of Canada's comments in *Hryniak v. Mauldin*, 2014 SCC 7, for the principle that a summary process need not replicate a full trial in order to achieve a fair and just adjudication of the issues. In *Hryniak,* the Court held:

> [50] … It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.
>
> [Emphasis added.]

[34] Where the conflicts in the affidavits are sufficiently narrow, it may be open to the Court on a summary trial application to order cross-examination on the affidavits so that the conflicts can be resolved. In *Inspiration Management*, the British Columbia Court of Appeal held the chambers judge ought to have ordered cross-examination rather than dismissing the summary trial application (at 217; see also 215-216). The jurisprudence suggests the Court should not shy away from determining a matter by way of summary trial if the evidence that can be made available to the Court will permit the Court to find the facts necessary for a fair and just adjudication on the merits. However, it remains the case that not every matter is suitable for determination on a summary trial: *J.N. v. Aitken Estate*, 2014 BCSC 419 at para. 35, citing *Hryniak* at para. 50.

[35] Finally, it is trite law that all parties to an action must come to a summary trial hearing prepared to prove their claim or their defence, regardless of which party files the application, as the Court may grant judgment in favour of any party: *Gichuru* at para. 32. It is no answer for a respondent to a summary trial to fail to take pre-trial

steps or fail to put their best foot forward, and then claim a trial is necessary to fairly adjudicate a proceeding. The respondent to a summary trial application – whether plaintiff or defendant – does not have a "veto" with respect to the procedure: *Brown v. Douglas*, 2011 BCCA 521 at paras. 29-30.

The legal issues

[36] Mr. Mahanloo's claim alleges breach of an oral agreement and damages resulting, effectively, from a loss of opportunity. The defendants dispute the parties had a binding agreement. Absent an agreement, there is no legal basis for Mr. Mahanloo's claim. As a result, the central issue for determination is whether the parties entered into a binding oral agreement, and if so, on what terms.

[37] The legal test for the existence of a binding agreement – whether oral or written – is well-settled. In addition to the essential requirements for contract formation (i.e. offer, acceptance and consideration), to establish the existence of a binding contract, a plaintiff must establish two things: i) a meeting of the minds or *consensus ad idem*; and ii) sufficient certainty and agreement as to the essential terms of the contract: *Concord Pacific Acquisitions Inc. v. Oei*, 2019 BCSC 1190 [*Concord Pacific*] at para. 311, citing *UBS Securities Canada, Inc. v. Sands Brothers Canada Ltd.*, 2009 ONCA 328 at para. 47; aff'd 2022 BCCA 16. See also *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 [*Ethiopian Orthodox*] at paras. 35-36.

[38] The party seeking to assert the existence of a binding agreement bears the burden of proving, on a balance of probabilities, that there was the requisite *consensus ad idem*: *Salminen v. Garvie*, 2011 BCSC 339 at para. 26. The test is objective: *Ethiopian Orthodox*, at para. 37. In *Rudyak v. Bekturova*, 2018 BCCA 414, at para. 23, the Court of Appeal cited its earlier decision in *Berthin v. Berthin*, 2016 BCCA 104, at para. 46, leave to appeal to SCC ref'd, 37338 (9 March 2017), for the applicable test:

> [46] The test, of course, is <u>not what the parties subjectively intended</u> but "whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of

> such contract": see G.H.L. Fridman, *The Law of Contract in Canada* (6th ed, 2011) at 15. As stated by Mr. Justice Williams in *Salminen v. Garvie*, 2011 BCSC 339:
>
> > The test for determining *consensus ad idem* at the time of contract formation is objective: it is "whether the parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract"; it is "whether a reasonable... [person] in the situation of that party would have believed and understood that the other party was consenting to the identical term": *Fridman*, *supra*, p. 15 [further citations omitted]. The actual state of mind and personal knowledge or understanding of the promisor are not relevant in this inquiry: [citations omitted]. In short, if a reasonable person would find that the parties were in agreement as to a contract and its terms, then a contract would exist at common law: *Witzke (Guardian ad litem of) v. Dalgliesh*, [1995] B.C.J. No. 403 (QL), 1995 CarswellBC 1822 at para. 59 (S.C. Chambers)… [At para. 27].
>
> [Emphasis added.]

[39] To assess if a contract exists, the Court will often consider not just the words allegedly used, but also evidence of conduct before and subsequent to the alleged agreement, as well as evidence of any conversations between the parties, and any other documentation that might support or contradict the meeting of the minds necessary for contract formation: *Salminen* at para. 28; *Voitchovsky v. Gibson,* 2022 BCCA 428 at paras. 32-34; *Ethiopian Orthodox* at paras. 37-38.

[40] With respect to agreement on the essential terms, in principle, the essential terms are those terms the parties must agree to before a binding contract can be created. In practice, the essential terms in an agreement will depend on the nature of the transaction and the context in which the agreement was made: *Concord Pacific*, at para. 341.

[41] While the interpretation of oral contracts turns on the same essential principles, "the credibility of witnesses will be particularly important and differing versions of events will increase the difficulty of establishing that an enforceable bargain was made": *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.,* 2009 BCSC 1303 [*Le Soleil*] at para. 328.

The parties' positions on suitability

[42] The defendants say this matter is suitable for summary trial. They submit the matter is not complex, many of the facts are not in dispute and where there are conflicts, the Court can resolve them by reference to the documents and the evidence of corroborating witnesses. The defendants say a conventional trial could not provide the Court with any additional evidence relevant to determining the issues as it is clear Mr. Mahanloo did not sign documents to finalize his role with CWB and did not sign a share transfer agreement to become a shareholder of RTMA. Further, the defendants say there is some urgency as the claim has been hanging over their heads since 2021 and impedes their ability to move forward with development of the Project. For the same reasons, and noting that a four to five day trial could likely not be scheduled before late 2025, the defendants say they would be prejudiced by the delay if the matter is not determined summarily on this application. Finally, with respect to the amount involved in comparison to the cost of a conventional trial, the defendants say that, in the absence of evidence from Mr. Mahanloo about damages, they have only the estimate of between $100,000-200,000 set out in the amended claim. On that basis, the defendants say requiring a full trial is not proportionate in the circumstances.

[43] Mr. Mahanloo says the matter is not suitable for summary trial. He points primarily to the evidentiary conflicts about whether the parties had an enforceable oral agreement and if so, what its terms were. Mr. Mahanloo says the Court must assess the parties' credibility to find the facts necessary to decide both of those issues, and in this case, that will require *viva voce* evidence, including cross-examination. Mr. Mahanloo says that while this matter is now more than three years old, if the defendants had proceeded with a conventional trial rather than their multiple attempts to have the claim dismissed on some form of summary basis, the trial could have been heard by now. Accordingly, he says any prejudice from delay is as a result of the defendants' litigation choices.

Determination of suitability

[44] Applying the legal principles set out above to the matter before me, I conclude this case is not suitable for determination by way of summary trial as I am unable to find the facts necessary to decide the issues. At its core, the case involves an alleged oral agreement under which Mr. Mahanloo was to purchase shares in RTMA. However, there is a factual dispute about whether the parties did, in fact, enter into a binding oral contract at all. The defendants say that as the requisite "meeting of the minds" on essential terms did not occur, and certain preconditions were not met, there was no binding contract that can be enforced. This is a factual dispute on the central issue in this case. As set out below, I am not able to resolve that factual dispute on the record before me.

[45] Mr. Mahanloo asserts the contract was formed in July 2020 when the defendants accepted his offer to purchase RTMA shares for $250,000 and took steps to involve him in the CWB loan. He admits there were additional steps that were supposed to occur after the contract was formed, but says he remained willing and able to perform those requirements and the defendants conducted themselves as if there was an agreement by updating and consulting him. He says it was the defendants who subsequently failed to meet their obligations, including by not communicating with him or providing him the revised CWB paperwork to sign.

[46] Mr. Mahanloo relies primarily on his own affidavit evidence, including email and text messages he exchanged with Mr. Golriz and others, the July 14, 2020 communication from RTMA's solicitor to CWB advising that RTMA was "prepared to accept" Mr. Mahanloo's offer, and the apology from Mr. Olia (which he says is conduct consistent with the existence of an agreement that was not honoured). He also relies on two affidavits provided by Mr. Farzady in which Mr. Farzady deposes he "was involved" in the parties' negotiations and "witnessed" RTMA's acceptance. Mr. Mahanloo's second affidavit attaches the transcript from Mr. Golriz's discovery, but during submissions, counsel only briefly referenced one exchange in that transcript where Mr. Golriz confirmed he did not send Mr. Mahanloo any revised paperwork to sign. This fact itself does not appear controversial, whereas there is a

live dispute about why the revised paperwork was not sent. I note as well that Mr. Golriz's discovery evidence would generally only be admissible against RTMA and him, rather than being available to support the defendants: *Le Soleil* at para. 47.

[47] The defendants dispute there was an oral agreement between the parties at all. As set out above, they say the parties' negotiations never crystallized into an enforceable agreement because there was no requisite meeting of the minds or agreement about the essential terms, and in any event, there were multiple pre-conditions to the agreement that were not fulfilled. The defendants say this means no binding contract was formed.

[48] The defendants rely on five affidavits provided by Mr. Golriz which set out the defendants' position about the essential terms and the four preconditions to any contract. Mr. Golriz also responds to Mr. Mahanloo's affidavits. The defendants also rely on an affidavit from Mr. Golriz's brother (who attended a meeting with Mr. Mahanloo and Mr. Olia), the previously-mentioned affidavit of Mr. Olia, and two further affidavits from the sole directors and shareholders of each of 692 and 537 which have virtually identical language on the issue of the Partners' consent. As noted, the defendants have provided various corporate documents in relation to the Joint Venture and RTMA itself, documents and correspondence involving CWB, most of the same emails and texts Mr. Mahanloo relies on and Mr. Mahanloo's examination for discovery transcript.

[49] There is no dispute about Mr. Mahanloo's offer to purchase 50 percent of RTMA's shares for $250,000, and thereby become involved in the Joint Venture through RTMA. Beyond those basic agreed elements, the affidavit evidence from Mr. Mahanloo and Mr. Golriz contains direct, head-on conflicts on multiple critical components going to the central issue of whether there was a contract. This means credibility is likely a material issue. The evidentiary conflicts include:

a) the extent to which there were additional terms and/or preconditions to the contract, and what they were;

b) the proposed nature of Mr. Mahanloo's role with respect to the CWB loan (and Mr. Mahanloo's understanding of that role);

c) if Mr. Mahanloo advised Mr. Golriz that he would not sign the CWB loan documents;

d) if the Partners opposed RTMA's proposed agreement with Mr. Mahanloo and would not provide their consent (there is undisputed factual evidence that the Partners did not provide their consent, but that is different from whether they opposed Mr. Mahanloo's involvement and would not consent);

e) why Mr. Mahanloo did not make contact with Mr. Golriz until well over a month after his return from the United States (i.e. did he "walk away" as the defendants allege or was he waiting for an update, as he asserts); and

f) why the defendants treated Mr. Mahanloo as if he was still involved after he allegedly refused to sign the CWB paperwork (and related to question of the defendants' conduct, why Mr. Olia apologized).

[50] Where there are conflicts in the affidavit evidence on an application for summary trial, "there must be documentary evidence, evidence of independent witnesses or undisputed evidence that undermines the affidavit of one of the parties on critical issues or some other basis for preferring one affidavit over another" before the Court will be able to resolve the conflicts: *Brisette v. Cactus Club Cabaret Ltd.,* 2017 BCCA 200 at para. 27, citing *Cory* at para. 10. The body of evidence as a whole may permit the Court to assess credibility or otherwise resolve the conflicts.

[51] The defendants urged the Court to use documentary evidence, alleged concessions in Mr. Mahanloo's discovery transcript and the evidence of the other affiants as a basis on which to prefer Mr. Golriz's evidence where there are conflicts. To a lesser extent, Mr. Mahanloo advances a similar argument in support of his position on the merits. I will briefly address each category of other evidence in turn.

[52] With respect to documents, the corporate documents and correspondence and documents from CWB do not assist in determining the foundational issue of whether the parties formed a contract. The email from Ms. Simic confirms the basic agreed elements outlined above and that there was further paperwork to be completed. None of that is controversial. The CWB loan documents may have provided some insight into the proposed nature of Mr. Mahanloo's role, but their usefulness is diminished by the undisputed text evidence from Mr. Golriz that the first version of those documents, which is the version before the Court, contained errors and was to be replaced by a revised version. There is no evidence of the nature of the errors and no revised version was provided.

[53] There is also no contemporaneous documentary evidence, for example, that confirms the "terms" or "preconditions" to the agreement specifically as set out in either of Mr. Mahanloo or Mr. Golriz's affidavits. Further, the emails and texts, while contemporaneous, often reference phone calls or in person meetings that occurred between the messages. There do not appear to be any contemporaneous records of those conversations. One of the key disputed facts – namely, whether Mr. Mahanloo indicated he would not sign the CWB paperwork – is alleged to have occurred in a phone call between Mr. Mahanloo and Mr. Golriz alone.

[54] With respect to Mr. Mahanloo's discovery transcript, I agree with counsel for Mr. Mahanloo that many of the exchanges on which the defendants' counsel sought to rely are examples of counsel putting legal arguments or positions to Mr. Mahanloo which he in turn disagrees with, rather than factual concessions. The defendants emphasized Mr. Mahanloo's reference to a "cultural" agreement as evidence there was no binding contract. However, elsewhere in the transcript Mr. Mahanloo clearly asserts there was a binding oral contract. He also explains his statement from his discoveries about a cultural agreement in his third affidavit.

[55] Turning to the affidavit evidence of other witnesses, without meaning any disrespect, none of the witnesses who provided affidavits for the defendants (or for Mr. Mahanloo for that matter) could be considered truly independent. They are all

connected in some fashion to the Joint Venture or to Mr. Mahanloo or Mr. Golriz personally. This is perhaps not surprising in this context, but it means they are not disinterested. Further, as I discussed with both counsel during the hearing, there are problems with some of the evidence sought to be adduced through these affiants.

[56] On a summary trial application, affidavits must be restricted to facts (not opinion and argument) and must be based on personal knowledge rather than on information and belief: *Dawson v. Bell*, 2015 BCSC 2579 at paras. 12-13. The affidavits provided to the Court on this application contain one or more instances of hearsay (including multi-levels of hearsay), opinion, statements of belief, argument and/or statements about asserted “knowledge” without the affiant indicating how they know those things.

[57] For example, one affiant states that he “knew” Mr. Mahanloo had clearly refused to sign the CWB paperwork. There is no indication how the affiant acquired that knowledge. Others make statements about what Mr. Mahanloo was “concerned” about, without explaining how they came to know Mr. Mahanloo’s state of mind. On Mr. Mahanloo’s side, there are similar frailties with the evidence of the affiant who deposes they witnessed RTMA’s acceptance. The affiant does not make clear the nature of their involvement and on what basis they assert RTMA “accepted” Mr. Mahanloo’s offer. In raising these concerns, I mean no disrespect to any of the affiants. They may well be able to explain or provide further information to address these concerns, through *viva voce* testimony at trial or another pre-trial procedure, but that evidence was simply not before the Court on this application.

[58] The totality of the admissible evidence does not assist in either resolving the evidentiary conflicts or determining if an objective and reasonable bystander would conclude the parties had a binding contract. Given that many of the parties’ interactions were oral rather than in writing, this is arguably a case where “issues of who said what to whom and when are of significance”, such that credibility assessments will be a material factor and a summary trial may not be appropriate: *Bank of Montreal v. Fraser*, 2013 BCSC 2328 at paras. 29-31, citing *Cotton v.*

Welsby (1991), 59 B.C.L.R. (2d) 366 (B.C. C.A.). In such circumstances, the courts have repeatedly found it difficult to find the necessary facts and have also found it unjust to decide the issues without allowing for cross-examination: *Greater Vancouver Water District* at para. 61, citing *Mayer v. Mayer*, 2012 BCCA 77 at paras. 78-83. As in *Morin*, the conflicts here are not "relatively minor"; they go to "substantive differences as to what was done and said" (*Morin* at para. 57). In my view, there are similarities between this case and some of what led the Court of Appeal in *Morin* to remit the matter to a full trial:

> [58] In my respectful view, this was not a case like that envisioned in *Inspiration Management*, where a debtor's testimony simply cannot stand in the face of documents he or she has signed. A clear conflict existed in the testimony of the parties on both sides on the central issue of the case, and there were few "documents" to assist in resolving it. As far as "non-parties" were concerned… their evidence was arguably not disinterested. Thus credibility was key.

[59] As there is no satisfactory basis on which I can resolve the evidentiary conflicts and find the facts necessary to decide the issues of fact and law, I conclude somewhat reluctantly that this matter is not suitable for determination by way of summary trial.

[60] While that conclusion means it is not strictly necessary for me to consider if it would be just to decide the issues summarily, I am also satisfied that it would not be just to do so. Although the defendants raised concerns about urgency and prejudice from delay in light of the likely availability of trial dates, some of that delay has resulted from their strategic litigation choices. The legal issues are not overly complex, but their determination is made more complex by the fact that this is an alleged oral agreement where credibility will be important and where the documentary evidence does not provide much assistance. In this particular context, I consider that cross-examination on affidavits alone would be less preferable and would likely not be more cost efficient in any event, given the need for the parties to take the Court through numerous affidavits. In the absence of evidence of alleged damages, it is difficult to consider the amount involved, but the estimate of

$100,000-200,000 only appears to be one possible category of damages alleged to arise from the lost opportunity, so the sums at stake are likely not insignificant.

[61] On the whole, and while the summary trial would have represented some time savings over the estimate of a four to five day conventional trial, in my view it would also be unjust to determine this matter on a summary basis, including because it would deprive the parties and the Court of the opportunity to test credibility on key issues going to the heart of the claim.

Conclusion and costs

[62] For the reasons above, I have concluded this matter is not appropriate for determination by way of summary trial. Given this decision, I have attempted not to comment on the merits of the parties' arguments for or against a particular factual or legal conclusion. Further, in setting out facts in these reasons, I have not made any final findings of fact; the facts will need to be proven at trial.

[63] Accordingly, the defendants' application for summary trial is dismissed. The claim will need to be scheduled for a full trial absent some form of resolution.

[64] With respect to costs, while the defendants have been unsuccessful on this application, in my view, Mr. Mahanloo's approach to this application, in the face of his obligation to put his best foot forward (including his litigation choices not to provide responding or updated affidavits, and not to provide any evidence of alleged damages), contributed to the Court's inability to find the necessary facts. In the circumstances, I consider it appropriate for each party to bear their own costs of this application.

"K. Wolfe J."