IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Thomson v. A.R. Thomson Group,*
2024 BCSC 2303

Date: 20241217
Docket: S158569
Registry: Vancouver

Between:

Lisa Thomson, L.L.T. Holdings Inc. and 550934 B.C. Ltd.

Plaintiffs

And

A.R. Thomson Group

Defendant

- and -

Docket: S178585
Registry: Vancouver

Between:

Lisa Thomson, 550934 British Columbia Ltd. and L.L.T. Holdings Inc.

Plaintiffs

And

James Thomson as Executor of the Estate of Allan Thomson

Defendant

Before: The Honourable Madam Justice Watchuk

Reasons for Judgment

Counsel for the Plaintiffs: R.M. Morse
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(February 28, 2024 only)

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A. Jacobs

Place and Dates of Trial:	Vancouver, B.C. January 29–31, February 1–2, 5–9, 12–16, 26–28, and May 27–31, 2024
Place and Date of Judgment:	Vancouver, B.C. December 17, 2024

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I. OVERVIEW

[1] This case concerns a dispute amongst siblings of the Thomson family regarding the partnership, A.R. Thomson Group ("ARTG"), that was started by their father, Alan Roy Thomson ("Al"), who is now deceased. In brief, one of the siblings, Lisa Thomson ("Lisa"), alleges that her father agreed to reinstate her into the partnership with him and her siblings, James Thomson ("Jim"), Debra Knight ("Deb") (also now deceased), Gordon Thomson ("Gord"), and Todd Thomson ("Todd").

[2] ARTG is the defendant in this action, Vancouver Registry Action No. S158569 (the "Reinstatement Action"). Lisa, L.L.T. Holdings Inc. ("LLT"), and 550934 B.C. Ltd. ("934") are the plaintiffs in both the Reinstatement Action and Vancouver Registry Action No. S178585 (the "Fraud Action"), which are being tried together. In the Fraud Action, Al is the defendant, represented by Jim, his son and the executor of his estate. In other words, in both actions, Lisa, LLT, and 934 (collectively, "the plaintiffs"), bring claims against ARTG, whose partners are her siblings, Jim, Gord, and Todd (collectively, "the defendants"), and Al's Estate. All parties and participants are further described below.

[3] The members of the Thomson family, for ease of reference and without any disrespect intended, will be referred to by their first names.

[4] At the heart of the disputes is an alleged conversation between Al and Lisa on November 19, 2009. Lisa says that in this conversation, a binding oral contract was formed between her and Al, on behalf of ARTG, for her reinstatement into ARTG.

[5] ARTG says that, at most, Al communicated an intention or expectation that Lisa would be reinstated into the partnership at some point in the future, but that there was not an enforceable agreement between the parties. Rather, there was an agreement to agree.

[6] As a result, at issue is whether the alleged conversation between Al and Lisa in November 2009 is a contract for Lisa's reinstatement into the partnership.

[7] In order to resolve this issue, it is necessary to examine the events that led up to the conversation, the circumstances known at the time, the conversation itself, and relevant subsequent events. This includes the key documents and some of the numerous emails which are discussed below.

[8] For the reasons which follow, I have found that a contract was not formed in the conversation between Lisa and Al. The parties did not have the intention to contract, nor did they come to an agreement on all the essential terms of the reinstatement. From the perspective of an objective bystander, there was no binding agreement reached for Lisa's reinstatement as a partner of ARTG on November 19, 2009, or at any time thereafter.

[9] The Reinstatement Action will therefore be dismissed with costs. It is not necessary to decide the issues raised in the Fraud Action, brought in the alternative, which will also be dismissed with costs.

[10] The trial was bifurcated with only liability in issue: damages, if any, were to be determined at a subsequent hearing.

[11] Throughout the trial, the alleged conversation between Al and Lisa on November 19, 2009, was referred to as "the reinstatement agreement", but that phrase was not used between the parties until around 2014. In these Reasons, I will refer to it as "the conversation" or "the alleged reinstatement agreement". In my view, referring to the conversation as "an agreement" is not consistent with the findings in these Reasons and the term "alleged reinstatement agreement" acknowledges both the position taken by Lisa and the primary issue.

II. PEOPLE, PARTIES, AND THE THOMSON FAMILY

[12] Most of the facts are not in issue. In the following sections, I will set out the relevant facts and some of the evidence. Where a matter is contested, I will refer to it in this narrative and then address it in the Analysis section below.

[13] The witnesses called by the plaintiffs were Lisa and Barry Fraser. Mr. Fraser was counsel for ARTG at the relevant times. Jim, Gord, and Todd testified on behalf of the defendants. In referring to the evidence of the defendants collectively, it is the evidence of Jim, Gord and Todd to which I refer.

[14] Lisa's father, Al, is now deceased. He was married to Patricia Thomson ("Pat"). Al and Pat had five children, as noted, Jim, Deb (now deceased), Gordon, Lisa, and Todd. Lisa married Gordon Taylor ("Taylor") on April 25, 1987. They separated in April 2005. Al died on July 1, 2018. Deb died on October 20, 2020. Pat currently resides in a long-term care home.

[15] In 1967, Al and Ron Waters incorporated Custom Gaskets of Alberta Ltd. Custom Gaskets of Alberta Ltd. changed its name to McCormick-Thomson Ltd. in 1970. McCormick-Thomson Ltd. further changed its name to A.R. Thomson Ltd. ("ART") in 1977. ARTG was formed on November 1,1997, acquiring the business formerly carried on by ART.

[16] ARTG successfully carried on the business of the distribution and manufacture of a wide variety of products for fluid containment and control, which includes gaskets, valves, pumps, mixers, flexible metal hose and expansion joints, and specialized seals for the oil and gas industry. It had offices and facilities in British Columbia, Alberta, Saskatchewan, Ontario, and Nova Scotia. Over the years, products were added as the business expanded.

[17] At trial, Jim, Gord, and Todd provided background evidence regarding the management, operation, and history of ARTG, as well as the primary issue of the alleged reinstatement agreement. In order to describe ARTG's management, operation, and history I will refer to and rely upon their evidence unless it is noted to be in issue.

[18] Until his death, Al was ARTG's managing partner. After Al's death, Jim became the managing partner. Jim described the role of the managing partner as akin to a chief executive officer in a company—someone who had final say on the

day-to-day operations. Similarly, Todd described that role as akin to a chief operating officer and leadership position with signing authority on behalf of ARTG.

A. Corporate History of ARTG

[19] Much of the background regarding the formation of ARTG is uncontentious and forms part of the Agreed Statement of Facts. It is set out here in some detail for completeness.

[20] Between 1987 and 1995, each of Al, Pat, Jim, Gord, Todd, Deb, and Taylor were issued shares in ART. As of February 1, 1995, the number of ART shares held by each Thomson family member was as follows:

Al	1,174
Pat	956
Jim	297
Gord	83
Todd	294
Deb	83
Taylor	297
Other parties	616

Lisa did not hold shares in ART.

[21] At the time of its formation in 1997, the partners of ARTG were as follows:

a) 934, which held a 15% interest in the partnership;

b) 550926 British Columbia Ltd., which held a 15% interest in the partnership;

c) 550929 British Columbia Ltd., which held a 15% interest in the partnership;

d) 550931 British Columbia Ltd., which held a 15% interest in the partnership;

e) 550936 British Columbia Ltd., which held a 15% interest in the partnership;

f) ART, which held a 20% interest in the partnership; and

g) 477481 British Columbia Ltd., which held a 5% interest in the partnership.

[22] At the time of ARTG's formation:

a) The shares in 934 were owned by LLT and the shares of LLT were owned by Lisa and Taylor in equal proportion;

b) The shares in 550926 British Columbia Ltd. were owned by G.J.T. Holdings Inc. and the shares of G.J.T. Holdings Inc. were owned by Jim;

c) The shares in 550929 British Columbia Ltd. were owned by 730780 Alberta Ltd. and the shares of 730780 Alberta Ltd. were owned by Deb;

d) The shares in 550931 British Columbia Ltd were owned G.P.T. Holdings Inc. and the shares of G.P.T. Holdings Inc. were owned by Gord;

e) The shares in 550936 British Columbia Ltd were owned by T.N.R.T. Holdings Inc. and the shares of T.N.R.T. Holdings Inc. were owned by Todd;

f) The shares of ART were owned by Murrayville Holdings Ltd. and the shares of Murrayville Holdings Ltd. were owned by Al and Pat in equal proportion; and

g) The shares in 477481 British Columbia Ltd. were owned by 550920 ("920"). Each of LLT, G.J.T. Holdings Inc., 730780 Alberta Ltd., G.P.T. Holdings Inc., and T.N.R.T. Holdings Inc. held a 20% share interest in 920.

[23] Since Lisa and Taylor each personally owned 50% of the shares of LLT, Lisa, through her holding companies, had an indirect 7.5% partnership interest in ARTG. LLT also held 20% of the shares of 920. At trial, there was evidence regarding the history of Lisa's interest in ARTG.

[24] Jim testified that Lisa received an interest in ARTG because Taylor, who was an employee and previously held shares in ART, was her husband. Todd also suggested at trial that Lisa acquiring an interest in ARTG through 934 was connected to her being married to Taylor. Similarly, Gord's evidence was that Lisa acquiring an interest in ARTG had something to do with Taylor, as, unlike all the other partners' holding companies, 934 was split between the two of them.

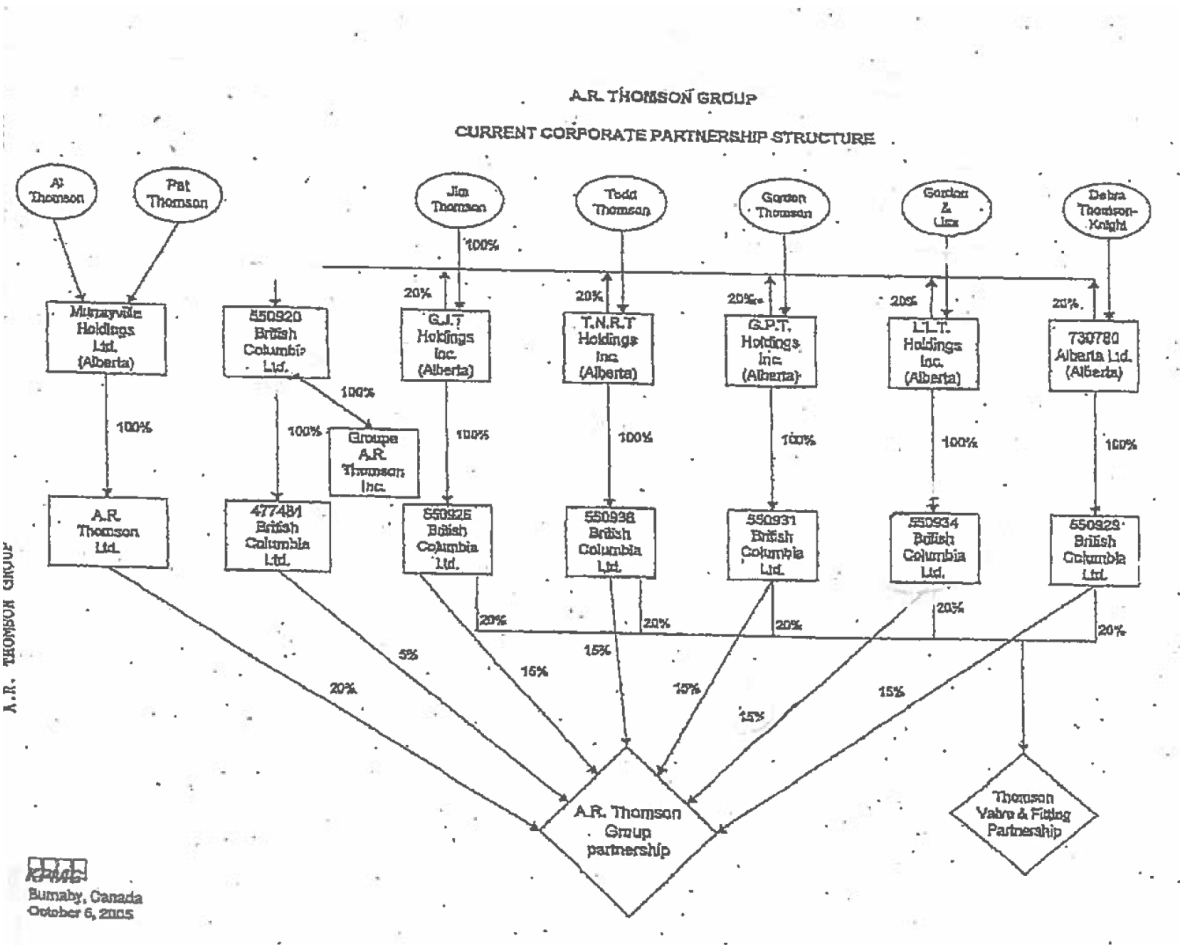
[25] The defendants also refer, at various times, to whether or how ARTG's partnership structure was a form of estate planning. This matter is not central. It

appears relatively possible that estate planning was one, although not the only or primary, reason for a partnership structure.

[26] Jim was not aware of Lisa participating in any discussions or meetings regarding the formation of ARTG in 1997. He confirmed that Lisa was present at the KPMG office to sign documents regarding the partnership, and that Taylor was also there.

[27] Lisa acknowledged that she did not have input into the business structure, nor the decision to form ARTG as a partnership as opposed to a corporation. She was not involved in the day-to-day operations at that time and had last worked in ART's office as a receptionist in 1988.

[28] To summarize diagrammatically, the corporate structure of the ARTG in 2005 was:



[29] 920 held an indirect 5% interest in ARTG, and was owned by the companies of Jim, Gordon, and Todd, as well as LLT. It is a holding company formed in 1997, managed by Jim, and does not have any employees. 920 owns two small distribution companies which sell products made by ARTG, but it has never paid a dividend and does not provide a salary to any of the Thomson siblings.

[30] There is also a partnership called Thomson Valve and Fitting ("TVF"), which was formed on January 1, 2001.

[31] At the time of its formation, each of the following corporations held a 20% partnership interest in TVF:

a) 934;

b) 550926 British Columbia Ltd.;

c) 550929 British Columbia Ltd.;

d) 550931 British Columbia Ltd.; and

e) 550936 British Columbia Ltd.

[32] The partners of TVF entered into a partnership agreement dated August 20, 2010.

III. DOCUMENTS

A. Partnership Agreement

[33] The partners of ARTG entered into a partnership agreement effective as of November 1, 1997. This partnership agreement was subsequently amended on September 20, 2002, February 29, 2004, and May 1, 2008. The version of the partnership agreement in place at the time that 934 was removed from ARTG was a further amended and restated version, dated as of September 19, 2008 (the "Partnership Agreement"). The Partnership Agreement was not signed by Lisa or any representative of 934; it was amended with 85% of the votes. An affidavit sworn by Al on September 8, 2011 sets out some of the history of ARTG and the Partnership Agreement.

[34] The relevant terms of the Partnership Agreement include:

a) Article 1.1, which includes definitions of “Managing Partner”, “Partner”, “Principal”, and “Special Resolution”. At all material times, Al was named as the Managing Partner of ARTG, 934 was named as a Partner, and Lisa was named as a Principal, as those terms were defined in the agreement. A special resolution required a 75% majority vote.

b) Article 4.1 and Schedule “A”, which set out the agreed quantum for the partners’ respective contributions. It was agreed by each of the parties that the companies owned by the siblings made the same contribution to ARTG.

c) Articles 7.1–7.4, which address the management of ARTG and provide that the managing partner is given a wide scope to manage both the affairs of the partnership and its business, with some enumerated exceptions. Article 7.2 sets out that the admission of a new partner requires the approval of existing partners by a special resolution. Jim gave evidence about this Article at trial, which is discussed in more detail below.

d) Article 7.6, which addresses the calling of meetings and mandates the calling of annual general meetings, as well as annual reporting from the managing partner.

e) Article 7.7, which addresses the management services provided by the partners and notes the roles to be carried out by each of the principals. Earlier versions of the agreement state that Lisa will be assisting her mother, while later amended versions of the agreement state that she will be assisting her father. Jim gave evidence about this Article at trial, which is discussed in more detail below.

f) Article 7.9, which addresses the ability of partners to vote on matters regarding ARTG.

g) Article 10.2, which states that if a partner is in default of the Partnership Agreement and does not properly cure this default after notice is given, the other partners may, by special resolution, require the defaulting partner to withdraw from the partnership. The withdrawal is deemed to occur 60 days after the passage of the special resolution.

h) Article 10.4, which states that a partner who has withdrawn from the partnership ceases to be a partner and will have no further interest in the partnership. Upon withdrawal of a partner, the partnership percentages of the continuing partners will automatically increase pro rata at the commencement of the next fiscal year, such that the aggregate partnership percentages will equal 100%.

i) Article 10.5, which states that upon withdrawal of a partner, and in full satisfaction of the former partner's partnership interest, the partnership will pay the former partner an amount determined by a formula (the "Buyout Formula") which is roughly equivalent to its percentage interest in ARTG multiplied by the average earnings for the previous five years.

j) Article 11.2, which is a non-competition provision.

[35] Lisa received a copy of the Partnership Agreement sometime between September 2008 and December 2009 during the course of her divorce proceedings with Taylor, but did not read the agreement at that time. While Lisa attempted to review the agreement in the fall of 2010, she found it confusing and difficult to understand.

[36] Jim described various provisions in the Partnership Agreement. He explained that section 7.2, which is titled "Major Decisions", applied to situations that would require a special majority, or 75% vote, of the partners to approve. For example, ARTG would not admit a new partner unless the special majority of current partners was agreeable. Thus, in cases where a Major Decision was needed, a special resolution would be passed. Typically, this would be done by presenting a resolution to the partner principals, who would have a discussion and, if in agreement, sign the resolution. By signing, they would confirm their agreement.

[37] Jim also confirmed that all partner principals would have received a copy of the Partnership Agreement when ARTG was formed in 1997, and that there were no prohibitions on the partners' ability to read it. This applied to all subsequent versions.

1. Adherence to Partnership Agreement

[38] This issue will be further addressed below in my analysis. The defendants say that Al required the Partnership Agreement to be followed strictly. The plaintiffs refute this position and say that it is not supported by the documentary evidence. In particular, the plaintiffs allege the following:

a) The partners did not properly follow the notice provisions in the Partnership Agreement for calling meetings. Lisa does not appear to have been given any notice of meetings occurring between 2006 and 2009

while 934 was a partner. Additionally, meetings between 2010 and 2012 were called on less than proper notice.

b) For a period of time, Al allegedly unilaterally agreed to not enforce the non-competition provision in the Partnership Agreement to allow Taylor to secure alternative employment.

c) ARTG failed to call meetings to approve the sale of its real property and backdated a resolution approving the sale of one of the Point Roberts properties after the fact.

d) Despite Article 7.7 (which recognized Lisa as providing assistance to the Managing Partner in various iterations of the Partnership Agreement), Lisa did not provide substantive services to ARTG for many years. Nonetheless, even after Taylor's resignation from ARTG, the other partners did not suggest 934 was in breach of the Partnership Agreement. Rather, the partners continued to acknowledge that the description of the "management services" provided by each member of the Thomson family set out in the Partnership Agreement was accurate (and they did so even as late as in 2010, long after Taylor had resigned).

[39] The defendants testified regarding Al's adherence to the Partnership Agreement. In summary, Jim described Al's approach to the Partnership Agreement as strict, and said that he was adamant that the Partnership Agreement not be deviated from. Todd described the Partnership Agreement as "like the Bible" and gave evidence that Al would often say that following the Partnership Agreement was critical for it to be worth anything. Similarly, Gord described the Partnership Agreement as "like the law", and recalled a particular instance of Al explaining to him that they must follow the Partnership Agreement because if it was not followed, it would lose its power.

2. Management Services and Roles in ARTG

[40] The defendants described the operation of Article 7.7 of the Partnership Agreement concerning Management Services. ARTG was a working partnership in which the partner principals were indirectly employed to provide services to ARTG, and then received an income allocation (the service amounts) from ARTG to their partner company for those services.

[41] Jim explained that Al structured the business this way because he wanted all partners working in business—he did not want them just to be investors. Todd gave similar evidence, stating that Al's philosophy was that you had to work if you wanted to be an owner—you could not just come collect a cheque while everyone else goes to work. Gord's evidence was that, although he did not pay much attention to early discussions of ARTG being a working partnership, he was aware that it was through services that the partner companies received income from ARTG.

[42] The partner principals of ARTG, until Taylor's resignation, were defined in the Partnership Agreement as being Al, Jim, Deb, Gord, Taylor, Lisa, and Todd.

[43] Partner principals were paid by ARTG in four ways:

1) Service amounts in exchange for management services (normally, this would provide the greatest amount of income);

2) Interest on capital accounts;

3) Allocation for rent or licences provided by partner companies; and

4) Retained earnings.

[44] If a partner principal was not working, they would not be entitled to receive service amounts.

a) Lisa

[45] In 2009, Lisa moved from Edmonton to Vancouver and commenced part-time work for ARTG in late 2010. She did some filing and special events planning as well as accounts payable, mainly to assist her sister and while her mother, Pat, was away. For this work, she earned $20 per hour.

[46] Lisa had last worked at ARTG during her teens and university years.

[47] In 2011, Lisa earned a total income of $3,115 from ARTG. At $20 per hour, this amounts to approximately 155 hours, or less than four weeks of full-time employment.

[48] In January 2012, Lisa ceased working for ARTG to focus her attention on writing and marketing her books. She earned minimal income from ARTG in 2012. Lisa explained this was because there was not much work to do, and she wanted to focus on promoting her book.

[49] Lisa continued to attend ARTG partnership meetings until October 2012.

[50] Since 2012 Lisa has primarily been self-employed as an author. She has self-published four books.

b) Taylor

[51] Taylor began working for ART in 1974, before his marriage to Lisa in 1987. He worked his way up, becoming sales manager and then vice president by the early 2000s. As vice president, Taylor was responsible for most of the branch operations and the sales team, managing over 50% of the business' resources and accounting for over 50% of the business' revenue. In 2006, after he and Lisa separated, Taylor resigned from ARTG. The ramifications of a legal action (defined as the "Taylor Action" in later part of these Reasons) following his resignation are central to this litigation, and are discussed in the remainder of these Reasons.

[52] Until his resignation, Taylor was responsible for overseeing at least two dozen people at ARTG. He negotiated accounts with major customers and suppliers. At trial, Jim described him as very valuable. Todd described Taylor as playing a very important role in the organization and acting as a mentor to many key people. Gord also described Taylor's significant involvement in senior management.

[53] From the formation of ARTG, Taylor provided these management services on behalf of 934. Until his resignation in 2006, Taylor attended all ARTG partnership meetings and made all partnership decisions on behalf of 934. In doing so, he acted as and was paid as a partner principal of ARTG through 934. Lisa did not work for ARTG until 2010.

[54] As a result, given ARTG's working partnership model, 934's services allocation—or paid service amounts—were based on Taylor's services on behalf of 934.

c) Other Thomson Family Roles

[55] Jim also described the roles played by the other members of the Thomson family in ARTG, with reference to Article 7.7 of the Partnership Agreement and the ARTG history:

a) Al was the Managing Partner and worked full-time in ARTG.

b) Pat worked every day and was responsible for accounts payable and some human resources.

c) Deb, who, although listed in the Partnership Agreement as having the same role as Lisa ("assisting managing partner"), provided very different services. For example, Deb looked after the accounting department, having worked her way up from a low clerical type position to administration manager for ARTG. Deb worked every day, except when on maternity leave.

d) Lisa was listed in the Partnership Agreement as assisting the Managing Partner. Jim and Todd were unaware of her providing any services up to 2008.

e) Gord and Todd are listed in the Partnership Agreement as sales and production management. Their work roles were full time as described by them: Todd described his work as devoting his life to ARTG; and Gord was available and on call 24/7.

f) Jim is listed as a member of the management committee. He worked full-time since 1980, and became president in 2004-2005. He became Managing Partner after Al's death.

B. Meeting Minutes and Agenda

1. Partnership Meetings

[56] The evidence is that, prior to 2010, ARTG held partnership meetings at least annually, and sometimes more frequently.

[57] Taylor attended these meetings on behalf of 934 before his separation from Lisa. Although it is unclear if Lisa attended any meetings during this period, this is not at issue.

[58] ARTG held partnership meetings on the following days between October 2010 and October 2012:

a) October 13, 2010;

b) November 13, 2010;

c) December 16, 2010;

d) December 30, 2010;

e) February 3, 2011;

f) September 1, 2011;

g) December 22, 2011;

h) April 10, 2012;

i) July 18, 2012; and

j) October 30, 2012.

[59] The discussions in these meetings, as reflected in the meeting minutes and agendas and testified to at trial, are outlined and discussed in detail below.

IV. EVENTS

A. Lisa and Taylor's Divorce

[60] Lisa and Taylor separated in April 2005. Lisa had left Taylor and reconnected with her high school boyfriend, Randy Wells ("Randy").

[61] This caused some difficulty with ARTG and its partners due to Taylor's continuing involvement in the business. As a result, Taylor resigned from ARTG in August 2006.

[62] Taylor and Lisa were involved in divorce proceedings in Alberta between 2006 and 2009. The relevance of those proceedings in this matter is discussed further below.

B. The Default Notice and the 934 Buyout

[63] In August 2006, Taylor put ARTG on notice that he intended to resign from the partnership due to his separation from Lisa. Jim advised Taylor that he was certainly valued and welcome to continue, and asked him to take some time to think about his resignation.

[64] Taylor ultimately resigned from ARTG. As a result, Jim and Gord took on some of Taylor's responsibilities and Todd took over some of the responsibilities that were previously held by Jim. Jim described Taylor's departure as quite a significant upset.

[65] In November 2007, Taylor, through a company called Hydroflex Solutions Ltd., acquired all of the shares in a company called Hydro-Flex (Alberta) Ltd. ("Hydro-Flex"), a company in competition with ARTG.

[66] Since Taylor continued to hold a partnership interest in ARTG through 934, Taylor's acquisition in a business in direct competition with ARTG put 934 in breach of the Partnership Agreement (the "breach").

[67] There is some evidence that Al, on behalf of ARTG, provided Taylor with a waiver of the non-competition provisions of the Partnership Agreement on certain conditions.

[68] On November 9, 2009, ARTG issued a default notice to 934, giving Taylor 60 days to cure the breach or 934 would be forced to withdraw as a partner (the "Default Notice").

[69] Jim, who was President of ARTG at this time, testified that, to rectify the breach, Taylor would have had to sell his interest in Hydro-Flex, the competing

business. He believed Taylor's curing the breach would have been in the best interests of ARTG.

[70] The defendants all stated that they were not aware of any steps Lisa could have taken to cure the breach.

[71] In the 60 days following the Default Notice being sent out, the breach was not cured. As a result, on February 18, 2010, the partners of ARTG passed a special resolution requiring 934 to withdraw from ARTG for the reasons set out in the Default Notice, which would become effective 60 days after the resolution was passed. The special resolution passed with 85 of 100 votes.

[72] As a result, on April 19, 2010, 60 days later, 934 was deemed to have withdrawn as a partner of ARTG pursuant to the special resolution.

[73] The amount paid by ARTG to 934 for its interest was $1,781,214.00. This amount was calculated by KPMG in accordance with the Partnership Agreement (the "Buyout Amount"). Half of that amount, or $890,607, was payable to each of Lisa and Taylor as a result of their 50% shareholdings in LLT, which owned 934.

1. Partners' expectations following the Default Notice

[74] While Jim gave evidence that he did not think about the effect of the withdrawal of 934 on Lisa, he did not believe the breach to be Lisa's fault and believed that the family had ways they could look after her. Jim said that, at the time, he did think about ways Lisa might be readmitted to the partnership, and expected the family could find some arrangement that would have been agreeable to all. The relationship between Lisa and the family was generally good at that time, and Jim was not aware of any reason that would prevent Lisa from rejoining the partnership.

[75] Todd testified that he did not recall a specific discussion about the effect the Default Notice would have on Lisa, and that while he knew it meant she would be removed from the partnership, the group felt that she would have an opportunity to return if that is what she wanted to do. Todd's evidence was that he did not have any

conversations with Al as to how they were going to keep Lisa in ARTG or reinstate her.

[76] Gord's evidence was that he thought he recalled some sort of discussion that the family would try to get Lisa back as a partner again around the time the Default Notice was sent out, but that he never heard anything about an agreement for Lisa to be reinstated as a partner.

C. The Alleged Reinstatement Agreement

[77] The alleged reinstatement agreement is the main issue in these proceedings. It occurred shortly after the Default Notice was issued to 934.

[78] During Lisa's direct examination she described the formation of the alleged reinstatement agreement. On November 19, 2009, a Thursday, she was at her family's property in Point Roberts, Washington (the "Point Roberts Property") with a couple of girlfriends. She was the first one up in the morning making coffee when Al arrived unannounced.

[79] Lisa testified about what was said in her conversation with Al that morning:

> Q And do you remember what happened the next day?
>
> A […] And he said you don't have to do anything. You're going -- your company is going to be fine. You're going to go back in as you always were at 15 per cent. So you don't have to worry. And I was, like, oh, I'm very relieved to hear that. And I said good.
>
> Q Did he say you had to do anything that you would go back in at 15 per cent? Were there any obligations on you?
>
> A Well, the first thing he said was to not take action on the 60 days. And the next thing was, you know, you'll be bought out, but you'll just use that money -- you'll buy back in with -- with your buyout funds. And I said, well, that -- yeah, that makes sense.
>
> […]
>
> Q Did he -- did you -- the two of you discuss what the timing of the reinstatement would be?
>
> A Yes. He said just -- just hang on. You know, we'll make sure that Taylor gets taken care of and he's -- he's bought out and gone and then we'll -- we'll get the reinstatement all set up.
>
> […]

Q […] I believe that what you said was that your father told you that you'd be reinstated for a 15 per cent interest in the partnership?

A Yes, that's correct.

Q Right. And what, if any, discussions did you have about the buy-in or the amount that you would have to pay to purchase that 15 per cent?

A The buyout funds would be used to buy back the -- so I'm not sure I'm explaining this right. So the full amount of my percentage of the buyout would go automatically back in to begin the buy-back in and the other half would be up to me and discussions of alone or partnership draws.

Q Okay. Thank you. I just want to make sure that -- I think I understand what you're saying. I just want to make sure the court understands as well. So in -- in November 2009 it was contemplated that 934 might be, I'll say expelled or forced, to withdraw from the partnership?

A Yes.

Q And -- and what -- and your father was suggesting to you that you could be reinstated. What was the price that you would have to -- that you would have to pay in order to be reinstated according to the discussion with your father in November of 2009?

A It would be the full amount of the buyout.

Q The buyout of -- the buyout from where?

A From the buyout of 550934. Those funds for the whole amount --

Q Okay.

A -- would be the price to go back in.

[80] In cross-examination Lisa testified as follows:

Q And you have claimed that in exchange for entering into the reinstatement agreement, your father allegedly asked you to do nothing to cure Taylor's breach; is that correct?

A Yes, he told me to -- he asked me if I got the letter. And then he said not to worry, you'll be -- your company will be whole again. We just have to take care of Taylor and don't worry about the cure period. Don't worry about the breach. Don't do anything.

[…]

Q During the conversation, your father said to you that he didn’t think there was anything you could do about Taylor’s competing. Did he not say that to you?

A […] I don't recall him saying there's nothing you can do. I just recall him saying don't do anything. That's what I recall very clearly.

[…]

Q And the nutshell of that discussion was that you should not worry about the termination notice as you would have an opportunity to buy back into the family business at a later date? Was that the nutshell of the conversation?

A Yes, he said don't worry about the default letter. Your company will go back in as whole as it was before. 15 percent.

Q But no price was discussed during this conversation, was it? How much money you would have to pay to buy back in?

A There was -- he said that the buy-out, I would buy back in for the buy-out price but there was no specific discussion about the how-to and I think my recollection that he -- under discovery that he said it would be from partnership draws. I think I was -- had not recollected exactly correctly because I think that conversation came just a bit later.

Q Ms. Thomson, I'm asking you about your conversation with your father in the kitchen November 20th, 2009.

A Right.

Q And so it wasn't decided what exact interest you would -- reacquire during that discussion, was it?

A Yes, he said that my company would be back in whole at 15 percent.

[…]

Q […] And I believe your evidence was that your company, which would have been 5509934, would have been made whole at 15 percent. Is that -- is that what your evidence was?

A Yes.

[…]

Q And so 934, you're saying, would have been made whole, would have got its 15 percent ownership interest back in the partnership; correct?

A Yes, that's correct.

Q And was it contemplated that at this time you would be 100 percent owner of L.L.T. or would you have still only been a 50 percent owner of L.L.T.?

A In the event of the reinstatement, I would be 100 percent owner of L.L.T.

Q And so we established earlier that you had an indirect 7.5 percent ownership in the partnership through your 50 percent ownership of L.L.T.; that's correct?

A Yes, my ex-husband and I each owned half of that company.

Q And so as part of this proposed reinstatement agreement, you're now going to acquire an additional 7.5 percent? Is that what you're stating?

A That's correct.

[…]

> Q Did you not think it important to iron out during this discussion how the other 7.5 percent would have been paid for?
>
> A At this juncture, no, I did not -- I did not think about -- contemplate that at that moment. That was something that was discussed at a later time.
>
> Q And were you not at all curious how this other 7.5 percent interest would have been acquired considering it would have been somewhere around $800,000?
>
> A At this meeting I was completely relieved with the discussion and reassured and comforted with the discussion and the terms that we discussed, the brief simple terms that we discussed and I trusted my father.
>
> I was not of the state of mind at that point to contemplate that question that you're asking to contemplate how the money would be raised, loaned, borrowed. I hadn't contemplated that at that particular meeting. That was a spontaneous meeting that my father came down specifically to talk to me about the letter. So that particular term was not in my state of mind at that point.
>
> Q And you weren't concerned that you were going to have to come up with another $800,000?"
>
> A No, it wasn't something that I was concerned about.
>
> […]
>
> Q Wasn't it just a very general conversation that -- whereby he reassured you you would have an opportunity to buy back in at a later date? Is that not a fair characterization of the discussion?
>
> A No, that's not fair, a fair characterization. He specifically said my company would be made whole, that I didn't have to worry, and I would be -- 550934 would be reinstated as a 15 percent owner and just don't worry about the default. Don't do anything about that.

[81] Lisa testified that she had no concerns regarding of Al's authority to enter into the alleged reinstatement agreement with her, given that Al was the family leader and made all the decisions in business and in family.

[82] Lisa confirmed that there was no discussion between her and her father at this time regarding:

a) how she would fund the purchase of the other 7.5% interest in ARTG, which would be approximately $800,000, per the above;

b) what services she would be required to provide to ARTG after being readmitted; or

c) whether she would have the right to vote on partnership issues.

[83] Lisa also confirmed that she did not follow up with Al in writing, by email or otherwise, to confirm the terms of the alleged reinstatement agreement. She never wrote to anyone else in the following years regarding the alleged reinstatement agreement and its terms.

[84] Prior to his death, Al testified on an examination for discovery in these proceedings on April 5, 2016. His evidence regarding the alleged reinstatement agreement was:

> Q Would you agree with me that she ...
>
> Had you made at that time any representations to her that after 934's interest in the partnership was terminated she would be readmitted to the partnership?
>
> A Yes.
>
> […]
>
> Q Would you agree with me that it's always been your intention to allow the plaintiff to resume participation in the partnership?
>
> A Yes.
>
> Q Would you agree that it's always been your intention to allow the plaintiff to regain an equity interest in the partnership?
>
> A Yes.
>
> Q Would you agree with me that you communicated these intentions to the plaintiff prior to 934's termination?
>
> A Probably.
>
> Q You have no reason to deny that you would have communicated those intentions to her?
>
> A No, I don't.
>
> […]
>
> Q During the Gordon Taylor litigation that we discussed briefly before the coffee break, you confirmed with the plaintiff that she would become a partner again once the litigation was concluded; is that correct?
>
> A That was the expectation, yes.
>
> Q Well, more than an expectation, sir. I'm suggesting that that was a representation made by you; is that correct?
>
> A I would have expected her to be reinstated.

> Q And you told her that?
>
> A Yes.
>
> […]
>
> Q I am just confirming your earlier evidence that in November of 2009 the representation to Lisa, to the plaintiff, was 934's interest is going to be terminated. And when that issue with Taylor is resolved, we'll readmit you back into the partnership on terms equivalent to the other partners, as the agreement then stood. That's what I understand you told me earlier was.
>
> A Yeah, I think that's fair to say. Yeah.

[85] The defendants strongly contest Lisa's evidence regarding the alleged reinstatement agreement. Some of the defendants' evidence to this effect is set out as follows.

1. Awareness of the Alleged Reinstatement Agreement

[86] Although Lisa said that she mentioned to her two friends that Al had stopped by the Point Roberts Property to speak with her, there is no evidence that she told them of the substance of the conversation. She did, however, confirm that she told Randy about the conversation she had with Al and her entry into the alleged reinstatement agreement. Neither of the two friends or Randy were called to verify any discussions with Lisa, from which the defendants say an adverse inference ought to be drawn.

[87] Jim gave evidence that he was not aware of any discussion in 2009 or 2010 between Al and Lisa regarding her potential reinstatement. Jim's evidence was that Al never mentioned this to him, and that he would have expected Al to have told him about those discussions if they had occurred. Jim testified, in the context of the family's expectations that there would be an agreement in the future, that it was advisable for Lisa not to talk about an agreement that did not yet exist:

> Q And are you aware of your father, Al, ever saying something along those lines to Lisa during the Taylor action, that she shouldn't mention any alleged reinstatement agreement?
>
> A What I recall is there was some mention of an agreement, and I think she was advised no, not to -- or not to talk about an agreement that doesn't exist.

> Q And are you aware of the discussion in or around 2009/2010 between your father and Lisa regarding a potential reinstatement?
>
> A I don't recall any discussions between them.
>
> Q And so did your father mention anything to you about any potential discussions he had with Lisa?
>
> A No.
>
> Q And if your father did have discussions with Lisa, would you have expected he would have told you about those discussions?
>
> A Yes.

[88] Jim also acknowledged that it was possible that he did not remember Al telling him of an agreement regarding Lisa's reinstatement.

[89] Todd's evidence was that Al did not tell him he had reached an agreement with Lisa that she would be reinstated. Todd testified that they all hoped Lisa would return, but that there was never any discussion about an agreement with her or any sort of detailed plan for reinstatement.

[90] Gord's evidence was that he never heard anything about an agreement in and around November 2009.

2. Terms and Conditions of the Alleged Reinstatement Agreement

[91] Additionally, Jim's evidence was that, for there to have been a reinstatement agreement, many terms and conditions would have had to have been resolved, including:

a) Lisa's contribution for her share of the partnership interest;

b) what % partnership interest Lisa would have;

c) what services Lisa was going to provide; and

d) dates and times these conditions would be confirmed.

[92] Jim also described some concern as to whether Lisa wanted to work with the other partners and "on what basis she would work with [them]". Jim also described the necessity of having Al's votes for a special resolution to reinstate Lisa to the partnership.

D. The Taylor Action and Settlement

[93] On January 12, 2010, Taylor commenced an action in BC Supreme Court (Vancouver Registry Action No. S100191) in the name of 934 and LLT, seeking, among other things, to cancel the Default Notice or, in the alternative, seeking an order that the Buyout Amount be calculated on a different basis (the "Taylor Action").

[94] ARTG, ART, TVF, and 920 (collectively, the "ARTG Defendants"), and Lisa were originally named as defendants in the Taylor Action.

[95] The ARTG Defendants and Lisa opposed the relief sought by Taylor in the Taylor Action. Counsel for Lisa was Richard Attisha, and Barry Fraser acted for the ARTG Defendants.

[96] On March 8, 2011, Justice N. Smith ordered that the Taylor Action be stayed until Taylor applied for and obtained leave to continue the proceeding as a derivative action.

[97] Taylor then applied for leave, which Lisa opposed. She took the position that the Partnership Agreement was binding on 934, that Taylor's competition was a breach of this agreement, and that ARTG had thus rightfully required 934 to withdraw from the partnership. Overall, Lisa argued that 934 had been treated fairly in the withdrawal.

[98] On September 10, 2012, Justice Holmes, as she then was, issued her reasons for judgment in the Taylor Action, referred to as *550934 British Columbia Ltd. v. A.R. Thomson Group* and indexed as 2012 BCSC 1332. Justice Holmes granted leave to Taylor to continue the Taylor Action as a derivative action and to file an amended notice of civil claim in the Taylor Action on behalf of 934 against ARTG, ART, and TVF (the "Leave Order"), as she found there was an arguable case that the termination of 934 was in breach of the Partnership Agreement.

[99] In allowing Taylor to access 934's funds to pursue the derivative action, Holmes J. provided Lisa with options as to how she wished to proceed in respect of her interest in 934:

> [146] It follows that Mr. Taylor should have access to 550934's funds to pursue the action. In my view, it is for Ms. Thomson herself to determine whether she wishes to take up Mr. Taylor's suggestion that she insulate her 50% share of 550934's funds and not participate in the potential risks and benefits of the action. If Ms. Thomson determines within 30 days of these reasons to take up Mr. Taylor's suggestion, the necessary terms may form part of the Court's order. If she does not indicate a wish to do so, within 30 days of these reasons, the order will include no further terms about the use, as between Ms. Thomson and Mr. Taylor, of 550934's funds.
>
> [Emphasis added.]

[100] On October 9, 2012, the ARTG Defendants and Jim filed a notice of appeal in respect of the Leave Order. Lisa did not.

[101] The parties to the Taylor Action later agreed to settle the Taylor Action pursuant to an agreement dated May 31, 2013 (the "Settlement Agreement"). As a result of the Settlement Agreement, a consent order was entered on June 24, 2013, dismissing the Taylor Action as if the matter had been decided on its merits.

[102] One of the provisions of the Settlement Agreement was that 920 acquired Taylor's shares in LLT, and then sold them back to LLT for the same cost—which meant that Lisa, through LLT, paid approximately $575,000 for the shares. This left Lisa as the sole common shareholder of LLT. Although LLT no longer held a partnership interest in ARTG, it still held a 20% interest in 920. This has been the subject of other litigation proceedings described below.

E. Services Provided by Lisa to ARTG

[103] Lisa testified that the relationship with her family was good in 2010, 2011, and up to the beginning of 2012.

[104] As set out above, Lisa commenced part-time work for ARTG in late 2010. She mainly did accounts payable for a rate of $20 per hour to assist in the absence of her

mother. In 2011, she worked approximately 155 hours for ARTG at this rate, which amounts to less than four weeks of full-time employment.

[105] As noted, in January 2012, Lisa ceased working for ARTG to focus her attention on writing and marketing her book. She thus earned minimal income from ARTG in 2012.

[106] Lisa continued to attend ARTG partnership meetings until October of 2012.

[107] Lisa was included in meetings so that she could learn how things worked and how the business functioned. Jim testified that the partners were hoping for her reinstatement, but they had to determine if she wanted to work at ARTG, got along with other partner principals, and had the same outlook on the business as the other partners—that is, that being a partner of ARTG was not about collecting dividends, but, instead, was about working in the business and towards achieving common goals.

[108] During Lisa's period of working in the office in these years, Jim testified that it became apparent she was not interested in the work and did not want to work for ARTG.

[109] Todd testified that Al wanted to see Lisa working with ARTG, as Lisa was his favorite in many ways, and he took extra time to try and get her involved. Todd also confirmed that at this time, and up to the beginning of 2012, the relationship between Lisa and the family was fairly good—although he remembers that, at some point, Deb began to make some comments about Lisa's availability and the fact that she was not coming into the office.

[110] There was also some friction between Lisa and Todd around this time. Lisa was concerned that her decisions regarding the interior design of the offices were over-ridden by Todd. Lisa also alleged, and Todd strenuously denied, his making inappropriate comments to Lisa while she was working in the office. He explained that he asked about her wearing makeup out of a genuine concern for her wellbeing, as he had noticed a significant change in her behavior.

[111] The import of Lisa not wanting to work for ARTG was its effect on any potential reinstatement, as the partners would have had to agree to an amendment to Article 7.7 of the Partnership Agreement to accommodate her wishes—that is, to accommodate a partner who would not work for or provide services to ARTG. In 2013 and 2014 there were discussions about possible work that Lisa could do for ARTG. Lisa did not return to work for ARTG and such an amendment was not agreed upon.

F. The Fire and Breakdown in Thomson Family Relationships

[112] On July 13, 2012, there was a fire in Lisa's apartment building, following which she and Randy went to the Point Roberts Property to stay for a few days. Lisa said she advised her mother and Deb of this, but that she did not correspond with any of her other family members to tell them about the fire or where she would be staying. Communication, or the lack thereof, between the family after the fire was the commencement of deteriorating family relationships with Lisa.

[113] Todd's evidence was that he was away at the time the fire occurred, and when he found out about it, there did not seem to be much urgency since he knew that Lisa and Randy were okay. He said that the first conversation he had with Lisa and Randy about the fire was at Al's birthday that summer, and that at that point, Randy seemed to indicate that it was not serious.

1. Summer 2012 – Point Roberts Property

[114] Following the fire, there were issues between Lisa and Gord and Todd regarding Lisa's staying at the Point Roberts Property.

[115] The Point Roberts Property initially consisted of two residences on the waterfront in Point Roberts, Washington. The first was a small cottage, and the second was a home designed and built by Al originally as his project, with interests later acquired by his children. Allocating the use of the new home was a topic discussed at the April 10, 2012 partners meeting. Lisa and Todd were to arrange

and oversee a booking schedule to provide for sharing time at the Point Roberts Property.

[116] Gord's evidence was that he found out about the fire when, shortly before his booked time to stay at the Point Roberts Property, he called Lisa to make sure she was not planning on being there. Gord told her that he was unsure how many of his children or grandchildren were coming down, but that he would check. A couple of days later, Gord called Lisa to tell her that not all of his children were coming, so there would be space for her to continue staying there. At that time, Lisa said she had already booked a hotel, although Lisa did join Gord for dinner one night and stayed over at the property.

[117] On July 30, 2012, Lisa and Todd had an email exchange whereby Todd advised Lisa that he would be going down to the Point Roberts Property between August 3 and approximately August 9, 2012 with his then girlfriend, as he had the property booked through the family's booking system. Lisa responded and advised that she and Randy would be above the garage and out of their way. In response, Todd stated:

> I'm a little confused. Just to be clear, Tammy and I really enjoy spending time with you and Randy and we're always pleased to have dinner with you. But I thought the way we were handling the point now was that each partner basically books their own personal use of it.

[118] On August 2, 2012, Todd and Lisa had a further email exchange, summarized as follows:

> Lisa: "Our place we were getting into is now unavailable. It's up to you if you still want to come down or if you want to cancel your plans…",
>
> Todd responds, in part: "You also chose not to communicate clearly with any of us about your predicament or your plans."
>
> Lisa: "First off Landlord Todd…[t]he deal for the condo we were supposed to move into tomorrow fell through otherwise we would've been able to accommodate your selfish need for the whole 6000 square feet".

[119] Following this exchange, Lisa testified that she was very hurt and that she packed up, left, and drove downtown to stay at a hotel.

[120] On August 2, 2010, the day before Todd was scheduled to arrive at the Point Roberts Property, Al wrote Lisa with an invitation to stay with them:

> Lisa & Randy,
>
> Sorry to hear about your accommodation plans going awry. Please come stay with us, we have plenty of room and would be delighted to have you.

[121] Lisa responded the following day and stated, “I really appreciate your offer but we will be fine at the Point temporarily”. Lisa acknowledged that she knew at this stage that she was able to go stay with her father and mother.

2. August 30, 2012 – The 99% Article

[122] On August 30, 2012, Lisa published an article titled, “When you are the 99% in a 1% Family” (the “99% Article”) on a website titled, “Life as a Human”. It was published in “The Online Magazine for Evolving Minds”, which is a public webpage.

[123] In this article, Lisa described her family in a negative manner. She wrote that she was homeless after the fire and that the bare minimum support you would expect from a family was not forthcoming. She stated that she was asked to leave the Point Roberts Property and was asked to find other living arrangements. She described her family as insensitive. Lisa was hurt by her family, a sentiment repeated in subsequent emails. She wrote that, although her family was successful in business, they were failing in family values.

[124] During her direct examination, in regard to the conflict over the Point Roberts Property, Lisa stated, “the requests, whether they were a direct request or not for me to leave […] made me feel as though I was a squatter”.

[125] The 99% Article did not mention the invitation she received from her father to come stay with him and her mother.

[126] When questioned during cross examination about writing that she was homeless, Lisa agreed that, by the time the article was published, she knew she could have stayed with her parents or one of her friends who had reached out. However, she did not mention these offers in the article.

[127] While Lisa initially stated that she “foolishly” did not think that her family was going to read the article, she also confirmed that she promoted the article on her Twitter account and confirmed that Monique, an ARTG employee, followed her on Twitter.

[128] Lisa agreed that, at the time of publishing the 99% Article, she still intended to proceed with the alleged reinstatement agreement. Despite this, she agreed with the statement made in the 99% Article that ARTG was not for her as a career, and she acknowledged that she knew there were no non-working partners at ARTG.

[129] Lisa also agreed that stating her family was “insensitive” and “failing in family values” would not help, as she knew it would be upsetting to her family if they saw it. They did see it. Jim, Gord, and Todd all gave evidence that they were hurt and shocked by the 99% Article and, that in their minds, it was untrue.

3. November 10, 2012 – Lisa’s Email to the Thomson Family

[130] Following the partnership meeting on October 30, 2012, when the 99% Article was discussed, on November 10, 2012 Lisa emailed a letter to her family outlining her honest concerns.

[131] In this letter dated November 9, 2012, Lisa stated that the discussion at the partnership meeting regarding her reinstatement went badly. She further stated that “it seems ridiculous to me that I would have to spell out why I want to be reinstated”, after which she states, “obviously, the reason I would like to continue my partnership is to retain dividends when they are available”. She also said that Deb had lied about the circumstances surrounding her departure from ARTG in January of 2012.

[132] In conclusion, Lisa stated:

> I would like to know immediately whether I will be reinstated into the partnership and if so on what terms so I can respond accordingly. Whether Taylor continues on his path to sue the Group is irrelevant to answering the question.

[133] During her direct examination, Lisa stated that she sent this letter because she wanted the security of knowing that the alleged reinstatement agreement "was going to happen immediately".

[134] In relation to her comment in the letter regarding "and on what terms", Lisa testified that this was in relation to the financing and purchase of the additional 7.5%. She testified she would need to obtain a full 15% interest in ARTG.

[135] In cross-examination, Lisa agreed that there was no mention in this letter of the alleged reinstatement agreement or her discussion with her father in the November 19, 2009 conversation.

[136] In relation to her question about "whether [she] will be reinstated in the partnership," Lisa testified on cross-examination that the discussion of her reinstatement was paused during the Taylor Action, and that is why the terms had not been completely formalized. She also reiterated that the terms of the alleged reinstatement agreement were that she would receive a 15% interest, that she would buy back in for what "it" was bought out for, and that in exchange, she was not to cure the breach. As she said, "[t]hose were the terms".

[137] On cross-examination, Lisa was asked to explain the following statement:

> Whether Taylor continues on his path to sue the Group is irrelevant to answering the question.

[138] With regard to the timing, Lisa answered in the affirmative to the question of whether she was asking for the alleged reinstatement agreement "to happen before the Taylor Action is concluded", and stated that she wanted confirmation that "the reinstatement agreement is going to go ahead as per the understanding of the 15%".

[139] Lisa testified that, to be reinstated, she knew she would need to be able to work together with the other partners and be on speaking terms with them. She also agreed that, to be a partner, she would need a strong relationship with her family, and that she would not have done anything intentionally to harm that relationship.

[140] The partners discussed the letter and responded to Lisa. In an email to Al dated November 19, 2012, Lisa wrote: “I have recently asked for a reinstatement into the partnership ….”, and set out a list of the “facts of the situation today” which included “b) there is doubt on behalf of the partners as to whether I will return as an owner”.

4. E-mails – November 21, 2012 and Following

[141] The defendants submit that, in her November 21, 2012 email, Lisa repudiated the alleged reinstatement agreement.

[142] On November 21, 2012, Lisa—after engaging in a heated email exchange with Al, and cc’ing the Defendants and Deb—concludes by stating:

> Note to my siblings: It is very clear none of the partners (you) want me back in the company as a partner. If you all did, then you would have said so by now. I guess the next thing will be “Lisa is too mentally unstable to be an owner with us”. I will take my buy out and re-invest it wisely. A meeting or vote won’t be necessary. I wish you all continued success.

[143] Al responded to some of Lisa’s other concerns with an email signed: Love, Dad.

[144] During her direct examination, Lisa testified that her email was “a knee jerk reaction” and was “very temporary” before she came to her senses. However, on cross-examination, Lisa nonetheless agreed that, at this stage, she had decided she did not want to proceed with the alleged reinstatement to rejoin the partnership.

[145] Lisa repeated this sentiment on two following occasions. On November 22, 2012, in response to an email from Glenn Roberts (an ARTG employee) regarding the ARTG Christmas party, Lisa stated she was no longer a partner and will not be reinstated, so she will not be attending any more ARTG functions.

[146] Two months later, on January 8, 2013 Lisa and Jim had an email exchange regarding the use of dividends to pay for the other half of LLT so that Lisa “can buy all my 15% back as agreed at the partners meeting in November, 2010”.

[147] On January 25, 2013, Jim emailed Lisa to advise that ARTG had reached a tentative deal with Taylor and, as a result, the arrangement cleared the way for 934's reinstatement, "if desired". In response, Lisa wrote:

> As for the other issues of 550934 re-instatement, I will get back to you on that at a later date.

[148] During her direct examination, Lisa testified that she was replying to Jim and "basically saying […] we will discuss the reinstatement at a future time as a separate" issue.

[149] Lisa testified that, following the January exchange with Jim, they met on a "few occasions" in February and/or March of 2013, where they talked about the family relationship and Jim advised her that she should not rule out her interest in ARTG. Jim also advised in an email that the partners were going to discuss possible changes to the Partnership Agreement relative to the provision of services.

[150] However, on April 11, 2013, Lisa and Jim had the following email exchange:

> Jim
>
> I won't be going back in to the Company.
>
> Lisa

[151] In response, Jim states:

> For now I will take your comment to mean not wanting to reinvest your share of the Partnership proceeds paid/due to 550934 back into ARTG?

[152] Lisa responded saying:

> Like I said I will not be going back in as a partner or an investor (as you all refer to me now). That means I will be proceeding with the buyout and not investing funds back into the partnership.

[153] In his response, Jim wrote:

> My advice, though you haven't asked, is that you try to separate the business and personal perspectives…. Any way I'm no expert but seem to be doing my share of mediating.

[154] In the final line, Jim said:

> Ultimately if your desire is to move on businesswise then you can do that but it still requires that steps be taken to move investments from one place to another efficiently.

[155] During her direct examination, Lisa testified that she sent the above emails as she was frustrated that there were delays. In cross-examination, she confirmed that these emails meant she would not be buying back in and that, even if there was a reinstatement agreement, she was not willing to proceed with it at that time.

[156] Jim's evidence to this effect was that he thought Lisa had changed her mind and no longer wanted to be a partner or work with her family.

[157] Similarly, Todd believed that Lisa was done with the family, and there was no obligation on Lisa to be reinstated. He stated that around this time, his position on Lisa's potential reinstatement changed from day to day—while sometimes he thought they could agree, there were other times when he thought it would not work.

[158] Gord stated he thought Lisa did not have any more patience for reinstatement and was ready to go and do something else.

[159] After the October 30, 2012 partnership meeting, Lisa said that it was unhealthy to continue seeing or speaking with her father, and that she needed to take some time to take care of herself. She nonetheless agreed that she was still being invited to family events up to around November of 2013, including an invitation to a family Christmas, which she declined to attend.

[160] While Lisa acknowledged that she knew she had to fix the relationship with her family before she could be reinstated, at one point she refused to continue participating in any counselling with her father. There was also a time when Al did not want to attend further counselling with Lisa.

[161] Jim accepted Lisa may no longer want to be a partner. His evidence was that he continued the conversation with Lisa at this time despite being told she was not interested because he knew that Al would have liked to have reconciled.

[162] Then on May 15, 2013, Lisa emailed Jim suggesting that they “meet over lunch just you and I to discuss how my continuing as an owner would work”.

[163] The emails regarding how a reinstatement could be done, including by way of dividends, continued. On July 18, 2013, Lisa wrote to Jim regarding a GIC investment: “Since I’m not taking a buyout and am currently remaining in at the 50% ownership of LLT...”.

[164] On July 27, 2013, Jim wrote to Lisa and concluded with: “I know how to return the LLT equity owned by 550920 back to you but I can’t reinstate 550934 without your and the others willingness”. Lisa replied the next day and thanked Jim for all the mediation he had been doing. She referred to the partnership as their inheritance.

[165] Amongst other topics discussed in the emails, including therapy and the Partnership Agreement, in December 2013, Jim responded as follows to the ongoing emails from Lisa regarding matters including her view of the shares as an inheritance that Al had given them:

> … He didn’t really give it to us. He permitted us to acquire it. We contributed capital to the Partnership through our Partnercos. In some cases we incurred debt to do this and over time repaid the debt from share of earnings. The Partnership Agreement is very important. It defines and protects our interest as partners. It provides that Partners must contribute to the Partnership. … The services are provided by the Partner principle. In your case it was Gordon [Taylor]. …

[166] Emails continued with parallel discussions of family relationships and the ARTG business. On January 30, 2014, Jim wrote to Lisa responding to her question of “when will the group be making good on the ‘intention’ to reinstate me”, saying:

> Reinstatement in ARTG Partnership is conditional on acceptance by Partner Principals of your desire to work in harmony with the existing partner principles to beneficial goals for the Partnership. Not likely until relationships are mended and we can all agree with an accommodation to provide what you have asked for in terms of working relationship and earnings.

[167] After some months, and further emails, on July 17, 2014, Lisa wrote to Jim to say that Mr. Attisha would be contacting him regarding the new partnerco, and stating: “Next step would be the reinstatement terms being set”. Later that morning,

after Jim's reply, Lisa wrote: "If you want a door mat for a Partner just let me know and I will put my head in the sand with my hand out".

[168] On July 22, 2014, Lisa refers to her "…possible reinstatement as a full voting partner", and also references an agreement by a vote at the November 2010 partnership meeting.

[169] The partners continued their efforts, and on September 9, 2014 Jim said to Lisa in an email: "… You know we have been working on your wishes in good faith but this type of communication will certainly set you back. … I thought we were making good headway but I guess I'm wrong".

[170] Lisa wrote on November 6, 2014, asking for "an answer today if I am to be reinstated as a full voting partner". She refers to "promises made". Later, on January 26, 2015, in an email to Al, Lisa says that reinstatement was promised since 2010. In these emails as well, there is no reference to the alleged reinstatement agreement.

[171] February 26, 2015 is one of the last emails in evidence. Lisa advises Jim that she will not be signing a revised Partnership Agreement for 920.

V. KEY REFERENCES TO THE ALLEGED REINSTATEMENT AGREEMENT

[172] In this section, I will refer to the events outlined above with references to key documents.

A. Partnership Meetings

[173] Between 2010 and 2012, Lisa attended several ARTG partnership meetings. The evidence that was given in respect of these partnership meetings is summarized below.

[174] Lisa's role at these meetings is not clear. Jim described Lisa's role as primarily "a guest". Todd described Lisa as more of "an observer", and believed she was attending to help orient herself with the day-to-day business decisions, get

experience, and take an interest in the business. Gord stated that Lisa was there "to come and just get a taste of things and learn a little bit about what we're doing".

[175] Lisa took the meeting minutes and circulated them. She stated that she felt able to participate while also being aware of her father's role.

[176] The minutes and the emails in this time period indicate that the family members were optimistic and continued to have an expectation that Lisa would be reinstated into the partnership. They continued to discuss the terms necessary for such an agreement and to work toward them.

1. October 13, 2010 Meeting Minutes

[177] On October 13, 2010, Lisa attended her first ARTG partnership meeting. She recorded the meeting minutes. The first topics discussed were a follow-up from the Sauder School of Business weekend workshop attended by the partners, and a review of the Partnership Agreement.

[178] Lisa states that there was vote at this meeting whereby Al asked if everyone was agreeable to Lisa and 934 being reinstated. She testified that Al then went around the room and each of the partners raised their hand to signify they were agreeable to Lisa and 934 being reinstated to the full 15% partnership interest. This is described by Lisa as a ratification of the alleged reinstatement agreement.

[179] Under the heading "550934" in the meeting minutes, the second point is:

> Question: Whether Lisa wants to take equity from 550934 to create a new Hold Co.? If so should it be worth 7½% or 15%?

The meeting minutes next state:

> All agreed Lisa should have access to the 15% but will then buy out [Taylor's] share of 7½%.

[180] Lisa testified that the timing of her reinstatement was also discussed as being dependent on the Taylor Action being resolved, which is also reflected in the minutes.

[181] During her cross-examination, Lisa confirmed that the language in the minutes was accurate, as she was the one taking them and would have accurately recorded what was said. However, Lisa testified that she did not think to include the raising of hands in the meeting minutes.

[182] Although Lisa claims that the alleged reinstatement agreement was ratified at this meeting, she confirmed that there was no direct discussion about the alleged reinstatement agreement—including no discussion about her alleged conversation with Al at the Point Roberts Property on November 19, 2009.

[183] Additionally, Lisa confirmed under cross-examination that there was no discussion at this meeting regarding:

a) the price for 934's reinstatement;

b) how the purchase of the additional 7.5% would be funded;

c) the timing of reinstatement; or

d) what partnership services she would be required to provided.

[184] She further confirmed that there was no special resolution passed at this meeting regarding the alleged reinstatement agreement.

[185] Following the meeting, Lisa emailed the draft meeting minutes to the partners, asking if anything was misinterpreted or incorrect. She did not receive any comments or corrections in response.

[186] Jim's evidence about this meeting was that Al gave everyone a copy of the Partnership Agreement because he wanted everyone to read and understand it. Jim described the discussion of "550934" as a discussion of strategy for the anticipated reinstatement of 934.

[187] Todd's testimony was that the family had discussed, in general terms, the possibility of Lisa's reinstatement. Everyone expected and hoped that Lisa would return, but there were a lot of questions.

[188] In response to the note in the minutes stating that "all agreed Lisa would have access […]":

a) Todd confirmed that the sentiment amongst the partners was that they hoped there would be an opportunity for Lisa to buy back in to the partnership. Although the mechanism was uncertain, there was a general attitude that they would figure it out; and

b) Jim explained this meant that Lisa might potentially have access to the 15% interest that LLT had owned. This was consistent with there being an expectation or intention for Lisa's future reinstatement.

[189] Todd and Jim both testified that there was no vote held at the meeting. Jim explained that if there had been a vote, there would typically have been a notation of who made the motion, what specific question was asked, and how each partner principal voted. Todd stated "for certain" there was no formal discussion about any agreement that had been reached with Lisa or any commitment Al had made regarding her reinstatement.

[190] Gord was absent from this October 13, 2010 partnership meeting. Despite Lisa's suggestions that Todd never attended meetings with Gord, Todd testified that they would have both been in attendance unless they were travelling. Jim confirmed that this was likely why Gord was absent, which is also consistent with Gord's evidence that he was away on ARTG business. The minutes reflect that he had called in but reception did not receive his call.

[191] Todd identified certain questions about the terms of Lisa's potential future reinstatement, which included whether she would have a 7.5% or 15% interest, and what services she would provide as follows:

> Q And what terms, if any, did you understand would need to be reached for there to be an agreement for Lisa to buy back into the partnership?
>
> A What terms? Well, obviously the -- I mentioned yesterday the foundation of our partnership was our partnership agreement, and in that agreement there were several terms and sections that dealt with a partner's, you know, eligibility and so on, and that of course was understood that that was something that would have had to be met. Also Jim had mentioned at different times the disparity in what was the buyout at one date and then what would a buy-in be at another date based on a calculation. So there was that discrepancy, perhaps,

> that he was concerned about. There's -- a partnership requires, you know, service amounts to be -- or service -- services to be provided by the partner principal. That was in question because I didn't think Lisa had been committed to that. It didn't seem to us that there was an interest in it. There's the concern or question about 934 having 15 percent, but Lisa actually -- Lisa's portion of that being 7 and a half and whether that was -- what basis or how that would be handled, how it would be funded. How would we -- how would that be -- how would that be handled? Those things were all unknowns.

[192] The plaintiffs claim that the alleged vote at this meeting constituted a ratification of the alleged reinstatement agreement and was in fact a special resolution of ARTG. However, Gord was absent from the meeting, and testified that if any important decisions were made at a meeting he was not present for, he would have expected the other partners to have discussed it with him before anything was done or decided on. He had no recollection of this occurring in respect of the October 2010 meeting.

2. November 13, 2010 Meeting Minutes

[193] Lisa attended the ARTG partnership meeting on November 13, 2010 and took the meeting minutes. Under cross-examination, Lisa confirmed that the minutes were accurate and complete. She stated that she was not working for ARTG at the time, and her role was uncertain.

[194] The first topic was “Partner Goals”. Todd, Gord, Deb, Jim, and Al discussed their goals for the next five to ten years.

[195] The meeting minutes note “Discussion 550934”, which Lisa described as a further discussion about creating a new holding company for 934’s eventual reinstatement. It is noted that Mr. Fraser “thought Al should ask Lisa if she plans on working at ARTG”. Lisa was “unsure of her role right now but not opposed and would like to help out if needed”.

[196] Lisa stated that she did not bring up the alleged reinstatement agreement, nor her conversation with Al on November 19, 2009 at this meeting. Further, she confirmed that there was no discussion about the price for 934’s alleged

reinstatement, the source of funding, or her potential partnership services. She also confirmed that no special resolution was passed regarding the reinstatement.

[197] Jim gave evidence that the discussion of 934 at this meeting was about the subjects or elements that would need to be resolved if there was to be an agreement to reinstate Lisa. In response to a question of what terms had been agreed upon at this stage regarding 934's reinstatement, Jim responded, "None that I recall. None".

[198] Todd's evidence was consistent with Jim's. He added that, for there to have been an agreement about 934's reinstatement, he would have expected a document to have been created outlining the terms, and that the partners would be asked to review and approve it.

[199] Gord's evidence was consistent with that of his brothers, stating that he recalled the conversation at the meeting being about the "possibilities of Lisa buying back in". When asked whether he knew what percentage Lisa might obtain if reinstated, Gord's stated:

> I recall – I would have remembered if there was a discussion about whether it was 15 or 7.5 or what the percentage would be. If there was discussion on it I would know because I was very – I was curious about how is this going to work because she only has half her money and so I was – all this going on about having, you know, an issue with her coming in and we didn't but I was waiting to see how was this going to work. And I never saw – it never came up. We never got those terms and conditions. So there was no agreement because I didn't – you need terms and conditions before you sign some kind of a deal, contract, so […]

[200] Following the meeting, Lisa emailed the draft meeting minutes to the other partners. No comments or corrections were received.

3. December 16, 2010 Meeting Minutes

[201] Lisa attended the next ARTG partnership meeting on December 16, 2010, and took the meeting minutes, which she testified were complete and accurate.

[202] The minutes contain a heading titled "Share Buyout for 550934". Lisa testified that this was a further discussion about tax planning, whether there would be a new

holding company, and how 934 would pay for the additional 7.5%. She testified that this was the first time the partners talked about taking money from partner accounts to accommodate some of the costs of the additional 7.5% at 3% interest. However, she also acknowledged (in part):

> […] everything is kind of just discussion at this point as far as the actual structure […] And still waiting for the Taylor action to conclude before finalizing.

[203] Under cross-examination, Lisa's evidence changed, and she agreed that there was no discussion at this meeting regarding the percentage she would potentially acquire. She also agreed that there was no discussion about the alleged reinstatement agreement or any discussion with Al in 2009. However, Lisa testified that the partners knew about the alleged reinstatement agreement because it was an "implied agreement". Lisa agreed that she did not recall ever talking to her brothers about the alleged reinstatement agreement that she had entered into with Al.

4. December 30, 2010 Meeting Minutes

[204] Lisa recorded the minutes from the December 30, 2010 ARTG partnership meeting and confirmed that they were accurate and complete.

[205] During direct examination, Lisa was questioned about the section of the meeting minutes that stated "[t]here's assurance from the other partners that she will be able to buy back in". Lisa testified that there was "reassurance" from the other partners that the alleged reinstatement agreement would happen, but the decision was to wait until after the Taylor Action was over.

[206] Under cross-examination, Lisa claimed that she did not require further assurance, and that this language was likely in reference to the alleged vote from the previous meeting. There is no mention of the vote in these meeting minutes. Lisa further confirmed that there was no direct discussion about the alleged reinstatement agreement during the meeting, nor a discussion about any conversation with Al in 2009.

[207] In addition, Lisa confirmed that there was no discussion at this meeting regarding:

a) the percentage interest that she would acquire;

b) how her reinstatement to ARTG at 15% would be funded;

c) the timing of reinstatement; or

d) what partnership services she would be required to provide.

She further confirmed that there was no special resolution passed at this meeting regarding the alleged reinstatement agreement.

[208] Jim's evidence was that, at this point, ARTG wanted to hold off on the activities that would be required for reinstatement while the Taylor Action was pending, and that the specifics of the reinstatement were still uncertain—including what Lisa's partnership percentage was going to be, what services might be provided, what the capital contribution would look like, and how it would be funded.

[209] With respect to the note that "there is assurance from other partners[…]", Jim explained that this meant that the option for reinstatement, however unspecified, was there. He stated that, at that time, they felt Lisa had the opportunity to be reinstated and hoped that it would happen, it just had to be more detailed. Todd gave similar evidence, and stated that there was an expectation that Lisa would have an opportunity to buy back in.

[210] Following the meeting, Lisa emailed the draft meeting minutes to the other partners. In response, she did not receive any comments or corrections.

5. February 3, 2011 Meeting Minutes

[211] This was the next partnership meeting Lisa attended. The meeting minutes were drafted by her, and she testified that they accurately reflected what was discussed at the meeting.

[212] During her cross-examination, Lisa confirmed that there was no mention or discussion at this meeting regarding the alleged reinstatement agreement, nor any mention of the conversation between her and Al on November 19, 2009. She further confirmed that no special resolution was passed.

[213] Following this meeting, Lisa emailed the draft meeting minutes to the other partners. No comments or corrections were received.

6. September 1, 2011 Meeting Minutes

[214] During Lisa's direct examination, she testified regarding the meeting minutes from the September 1, 2011 ARTG partnership meeting. She confirmed that there was no discussion about the alleged reinstatement agreement at this meeting, and that no special resolution was passed.

[215] Following the meeting, Lisa emailed the draft meeting minutes to the other partners. She did not receive any comments or corrections in response.

7. December 22, 2011 Meeting Minutes

[216] Lisa acknowledged that she recorded the minutes from the December 22, 2011 partnership meeting, and that they were accurate and complete.

[217] She further confirmed that there was no mention of the alleged reinstatement agreement at this meeting, or her alleged conversation with her father on November 19, 2009. She also confirmed no special resolution was passed.

[218] Following the meeting, Lisa emailed the draft meeting minutes to the other partners. In response, she did not receive any comments or corrections.

8. April 10, 2012 Meeting Minutes

[219] Lisa did not attend this meeting as she was on vacation. She testified that read the meeting minutes and was not aware that there was any discussion about the alleged reinstatement agreement, nor any related special resolution, at this meeting.

9. July 18, 2012 Meeting Minutes

[220] During her direct examination, Lisa testified that she raised the July 13 fire at her apartment with her family at this partnership meeting.

[221] Lisa confirmed that the meeting minutes are accurate, and that that there was no mention of the alleged reinstatement agreement at this meeting, nor a special resolution passed.

[222] Throughout the meeting minutes, there is no record of Al mentioning an agreement that he had made with Lisa on November 19, 2009 or at all. In general, with regard to the meeting discussions, Gord was adamant that Al never mentioned any such agreement as "it wouldn't be an agreement without [the other partners]".

10. October 30, 2012 Partnership Meeting Agenda

[223] The October 30, 2012 partnership meeting was the last ARTG partnership meeting that Lisa attended. She testified that there were no meeting minutes prepared for this meeting, but that she attended this meeting and the meeting's agenda was accurate. The agenda for the meeting states, in part:

> New Discussion items:
> Lisa's request for Partners agreement to reinstatement.

[224] Lisa testified that there was a discussion at this meeting regarding the 99% Article and that she apologized for the article. She further testified that her father was very angry with her about not appealing the decision of Justice Holmes in the Taylor Action, and told her that she had made a deal with the devil. She stated that while Al was upset about the 99% Article, he was more upset about her failing to appeal the decision in the Taylor Action. She agreed she may have yelled that the article was true.

[225] The defendants' evidence was that Lisa did not apologize for the 99% Article at this meeting, at least not in any meaningful way.

[226] Ultimately, Lisa could not recall if she made any efforts to take down the article or to write the website to take down the article.

[227] During cross-examination, Lisa admitted that there was no mention of the alleged reinstatement agreement at this meeting, and that she doubts they discussed it. She further confirmed that no special resolution was passed.

B. Lisa's September 11, 2012 Email

[228] On September 11, 2012, Lisa emailed Jim about the Taylor Action, following Justice Holmes' decision that allowed Taylor to pursue a derivative action on behalf of 934 and gave Lisa 30 days to decide whether she wished to participate.

[229] In this email, Lisa proposes three options to Jim. Under two of these options, Lisa seeks a guaranteed reinstatement into the partnership. The options from the email are as follows:

> 1. If I remove myself from Taylor's action and take my $750,000 from the buyout, will I be able to immediately buy back in as a 15% owner of the company and start to receive some financial benefits as a partner or will Dad continue to represent the partnership agreement as a "working partnership only"? (I don't recall reading anything in the partnership agreement referencing that). I realize I would need to come up with another $750,000 for the other 7.5% in order to receive the full 15% stake.
>
> 2. If I remove myself from the action, Gordon I believe would now own 100% of 550934 which in turn he could then potentially end up owning 15% of the ART Group if he were successful at trial (based on his claim that the company was unlawfully terminated from the partnership). That scenario would create a situation where the other partners, having to give up another 15% of profits, may not want any further dilution from me. How would that be handled?
>
> 3. If I stayed in the law suit with Taylor and he succeeds, we would minimize our losses by only having to deal with him at 7.5% instead of a 15% valuation. However, if I were to do this for the partnership I risk losing all my money if Taylor was unsuccessful so I would need to be guaranteed reinstatement into the partnership as well as all legal financial losses absorbed by all the partners (as should be the case for my costs associated with both the Stay and Derivative applications).
>
> [Emphasis added.]

[230] Nowhere in this email is there any reference to the alleged reinstatement agreement, nor any reference to the additional 7.5% being paid out of partnership

draws or from a loan from ARTG at 3% interest. Lisa testified, however, that the reinstatement agreement was "alive and well and binding" at the time of this email.

[231] In cross-examination on option 1, Lisa agreed that she knew she needed to come up with money for the additional 7.5%, and that she thought it would be from a bank loan. In relation to her inquiry about whether Al would continue to represent the partnership as a 'working partnership only'", Lisa confirmed that her father must have said to her that ARTG is a working partnership only, and that you must be working at ARTG to be a partner.

[232] When asked why she was seeking a guaranteed reinstatement into ARTG if she already had an agreement in place, Lisa responded that this was because the alleged reinstatement agreement was not yet in writing, and that a "written agreement would be a guarantee of the reinstatement agreement". She stated that she merely sought to confirm the original agreement, which she alleged already existed, had been voted on, and was agreed to by the partners. She further stated that her question seeking guaranteed reinstatement was to clarify the timing—that is, whether it would happen "immediately". She testified that she felt insecure and concerned about some of the family dynamics and relationships, which further motivated her to want the agreement "reiterate[d]" in writing.

[233] When asked why she did not mention the existence of the alleged reinstatement agreement in these emails, Lisa stated that this was because its existence was already understood and had been discussed at partner meetings. She stated that there was "no need to continuously reference a meeting with [her] father".

[234] In her written submissions, Lisa also explains that she wanted written confirmation of the alleged reinstatement agreement because it had been entered into several years prior, and her relationships with certain members of her family (in particular, her father and Todd) were deteriorating.

[235] Lisa closed the email by stating "Jim, let me know your thoughts but we will need a written agreement covering the details of whatever scenario given anything

ever happening to you". During cross-examination, Lisa acknowledged the importance of getting something in writing with respect to these options. She further explained that "when I used the word guarantee I see a written agreement as a solid guarantee". She also agreed that she did not think to write Al in the years following the entry into the alleged reinstatement agreement to confirm the agreement or her understanding of it.

[236] Overall, Lisa denied that this email was an attempt to enter into an agreement with ARTG with respect to her reinstatement, stating that she was only "laying out the details of the reinstatement agreement that had already been discussed at meetings".

[237] Jim responded to the email, telling Lisa not to worry about reinstatement as she would "always have an opportunity to be a partner". He noted "[t]erms and funding to be determined", but that the other partners had "funded [their] ownership in the past through earnings of the business".

[238] As discussed in a previous section, this was followed by numerous emails back and forth between Lisa and Jim on the topic of her reinstatement.

C. Richard Attisha's September 24, 2012 Letter

[239] Mr. Attisha was Lisa's lawyer in the Taylor Action. On September 24, 2012, Mr. Attisha sent Mr. Fraser, the lawyer for ARTG in that matter, a letter putting forward similar options as were outlined in Lisa's September 11, 2012 email:

> Ms. Thomson will choose option (a) if she is provided with assurances from ARTG that it will not seek indemnification… together with a guarantee that she will be reinstated as a partner either through 550934 following the settlement or adjudication of its action against ARTG […]

[240] Lisa testified that the letter was correct and that she had read it at the time. Similar to her September 11, 2012 email, Lisa again testified that Mr. Attisha's letter was simply a request that the existing alleged reinstatement agreement be put into writing as a guarantee. She said she was becoming concerned that her family would not honour the existing reinstatement agreement, which further prompted her to

seek a written version—especially if she was going to take on the risk of carrying on with the Taylor Action.

[241] Mr. Attisha's letter also included the following statement, referring to the proposal of the 50% interest investment:

> In exchange for the above, Ms. Thomson will reinvest the 50% of 550934's interest she receives from ARTG […] (so long as she maintains a 15% interest in the partnership)

[242] Lisa denied that this request was made because she did not yet have an agreement in place. She confirmed that this scenario contemplated her reinvesting her 50% of the buyout to obtain a 15% interest, but stated that this was part of the original alleged reinstatement agreement. However, she also testified that there were discussions at various partnership meetings about how to finance the additional 7.5%, and that she would ultimately need to source this financing. She agreed that this was not addressed in the letter, and that "perhaps this should have laid out more detail".

[243] When asked to confirm that the letter was then incorrect and incomplete, Lisa testified that "[i]t's in reference to the original agreement, which was that 934 would have – be reinstated for the full 15% [...]", and that "I think that initially that would just be the first step".

[244] In his letter, Mr. Attisha wrote (in part):

> I understand that Jim Thomson has suggested in emails to my client that she would "always have an opportunity to be a partner."… While this is somewhat comforting to Ms. Thomson, she would like certainty that she will be reinstated as a partner following the resolution of the claims being brought by Mr. Taylor […]

[245] Lisa, during her cross-examination, said that she did have certainty when it came to the alleged reinstatement agreement, and that she just wanted to "confirm that certainty". She further states that, "this is a follow up and confirmation of the earlier certainty and agreement that was made".

[246] When asked regarding the terms of the alleged reinstatement agreement, Lisa confirmed that her "understanding is at this stage the terms were not completely firm because they were pending tax advice. And I also understood that and was told that my father would decide on the terms".

[247] Lisa agreed there is no mention in the letter regarding her November 19, 2009 conversation with Al or that she had already entered into the alleged reinstatement agreement. Rather, Mr. Attisha's letter only referred to assurances from Jim that Lisa would "always have the opportunity to be a partner".

[248] Jim's interpretation of Mr. Attisha's letter was that he "on Lisa's behalf, was asking for an agreement, as opposed to general discussions, as had occurred up to this time".

[249] When asked what he understood the proposal in Mr. Attisha's letter to mean, Jim stated that Lisa "would invest her 50% of the Buyout Amount back in the ARTG partnership for her capital contribution, so long as she maintained 15% interest, but the amount would – would not – those two figures would – are contradictory":

> Q And why do you say that?
>
> A Well, because 50 percent of 550934's interest would have been 7 and a half percent, not 15 percent.
>
> Q And so would ARTG have agreed to that?
>
> A No.
>
> Q Was that in mind with the previous discussions that you had been having regarding Lisa's potential reinstatement?
>
> A No, not that I recall.

[250] The phrasing of Mr. Attisha's letter is consistent with earlier correspondence between Mr. Attisha and Lisa on August 31, 2010, in which Lisa says that a contemplated split of 934 would "possibly entail my buying back in". When asked about her use of the word "possibly" during cross-examination, Lisa described this as "probably not the best choice of words" and what she meant was that she was "fully planning to buy back in".

D. Affidavits of Lisa

[251] Two affidavits sworn by Lisa in 2011 are in issue. The defendants submit that they should be treated as prior inconsistent statements.

1. The Matrimonial Proceedings

[252] While the Taylor Action was proceeding, Lisa was also engaged in proceedings with Taylor arising out of their divorce filed in Alberta (the "Matrimonial Proceedings").

[253] In the course of the Matrimonial Proceedings, Lisa filed a Petition in the BC Supreme Court under Vancouver Registry Action No. E110482, seeking to vary the amount of spousal support she was receiving from Taylor following a trial and appeal in Alberta. In support of the Matrimonial Proceedings, Lisa swore an affidavit on February 15, 2011, stating in paragraph 12 that:

> It is my intention that once Gordon's civil suit against me has concluded I will seek approval from the AR Thomson Group to buy back into my family's business. Should the Partnership agree to my request, my entire share equaling roughly $900,000 would be earmarked solely for that purpose.
>
> [Emphasis added.]

[254] Lisa testified that she gave an earlier draft of this affidavit to Al in early to mid-January at his request, as he had told her that Mr. Fraser would like to review it. She testified that when Al returned the documents a week later, he said that Mr. Fraser wished to change the language in one paragraph—specifically, adding the words "seek approval" and "should the partnership agree to my request". Lisa testified that Mr. Fraser had not made any handwritten notes on the affidavit.

[255] Lisa no longer had the earlier draft of this affidavit, as she found it too confusing to have too many versions of one document saved on her computer. Her evidence was that she could remember the exact words that had been added to her draft.

[256] Lisa said that she did not think Mr. Fraser's requested changes were consequential. She understood the changes were recommended based on the

optics of dealing with the Taylor Action. She thought they were perhaps referring to a formality required from the partnership, such as the passing of a special resolution. She stated that she felt confident that the approval for her reinstatement was already sought, and that she trusted the advice of her father and Mr. Fraser that this addition to the affidavit was in reference to a further required formality.

[257] During cross-examination, Lisa confirmed she had read this affidavit before it was sworn, and that everything contained within was correct and complete. Lisa further confirmed her earlier evidence that Mr. Fraser, through Al, had counselled her to add the language that she would "seek approval", as they were concerned that Lisa's original language may have harmed their defence of the Taylor Action.

[258] However, when asked repeatedly during cross-examination, Lisa admitted that she would likely need to seek approval to buy back in, but that this approval referred to formalities. That was a request she intended to make following the conclusion of the Taylor Action.

[259] Lisa further qualified some of her other responses with the belief that the approval and vote were formalities and would go through. When asked if it was possible that the partners may not agree to the request, Lisa stated she had not considered that, agreed it was possible, but "felt confident" that they would pass a resolution. She further confirmed that she knew that the passing of the resolution would require at least 75% of the partners to agree to her request, but that she didn't doubt that they would agree at the time she swore her affidavit.

[260] In the result, Lisa did confirm during her testimony that she knew, as of the date of swearing this affidavit, that the alleged reinstatement agreement was subject to approval from the other partners.

2. The Taylor Action

[261] In the Taylor Action, Taylor argued that Lisa was not acting in the best interests of 934, as Lisa had no interest in seeing the Taylor Action proceed since

she had an agreement that she would be allowed to repurchase her interest in ARTG.

[262] In response, in paragraph 23 of her third affidavit filed in the Taylor Action on October 12, 2011, Lisa states:

> I also do not understand how Taylor can state in his affidavits that I was in a conflict of interest. I have at all times acted in good faith and in the best interest of 550934 and he has not provided any evidence to the contrary. I am in the same position as Taylor in that both of us have an equal interest in 550934 and an equal financial incentive to maximize the value of the company.
>
> [Emphasis added.]

[263] At trial, Lisa testified that Al told her that Mr. Fraser advised that he did not want her to specifically mention the alleged reinstatement agreement during the Taylor Action.

[264] Lisa was also questioned about paragraph 23 above—particularly, how she could be in the same position as Taylor if the alleged reinstatement agreement existed. She responded that her and Taylor were in the same position in that they were both being bought out through 934 and thus had the same incentive to maximize the value of that company—not that they both had an agreement to be reinstated to ARTG. She acknowledged that they were not in the same position personally.

[265] Lisa further stated that her and Taylor had different ideas as to what would best realize that incentive, as she did not agree that a lawsuit was the best course of action due to the risks involved. Essentially, she did not believe the Taylor Action would succeed—which is why she thought opposing it was in the best interest of 934 and LLT. She was concerned the Taylor Action would deplete the assets of 934. She acknowledged that she would not have opposed the Taylor Action if she in fact thought it was in the best interests of LLT and 934, that she would not have supported ARTG in such a case, and that she was not blindly supporting ARTG in its position.

[266] On cross-examination, Lisa was pressed on why she would want to maximize the value of 934's buyout when this would then mean a higher value for the additional 7.5% she would need to fund as part of the alleged reinstatement agreement. In response, Lisa stated that she understood the Buyout Formula to be binding, and that she believed this was a better way to realize 934's value than through a lawsuit.

3. Evidence of Barry Fraser

[267] Mr. Barry Fraser was called as a witness by the plaintiffs. He is a lawyer in Vancouver, called to the Bar in 1978, and his firm represented the defendants in these proceedings, as well as the ARTG Defendants in the Taylor Action. He was not authorized to waive privilege in his testimony.

[268] Mr. Fraser testified that he has never represented Lisa, nor has he ever offered her legal advice.

[269] At an early point in the direct examination of Mr. Fraser, counsel for the plaintiffs sought leave to examine him by the use of leading questions pursuant to Rule 12-5(29) of the *Supreme Court Civil Rules*. Leave was denied and the evidence-in-chief proceeded in the usual manner.

[270] As noted, Lisa was represented by Mr. Attisha in the Taylor Action. Mr. Fraser and Mr. Attisha communicated in their collaborative defence of the Taylor Action, which commenced in January 2010. Many of the questions asked of Mr. Fraser at trial were with regard to his formulation of the strategy for the ARTG defendants in the Taylor Action, including the communications between the two law offices and the drafting of affidavits.

[271] As counsel for ARTG, Mr. Fraser also dealt with internal ARTG matters and copied Lisa on some of those emails to other partners of ARTG.

[272] Mr. Fraser was examined with regard to any input from him or his office into Lisa's affidavits filed in both the Matrimonial Proceedings (February 15, 2011) and in the Taylor Action (October 12, 2011).

[273] In the context of Lisa's evidence that her father asked her to amend paragraph 12 of her February 15, 2011 affidavit filed in the Matrimonial Proceedings based on Mr. Fraser's advice to him, Mr. Fraser was asked whether he provided Al any advice or recommendation that Lisa amend that paragraph. He responded: "No".

[274] Mr. Fraser also confirmed that he never had any discussions with Lisa at any time. He did not talk to Lisa about any changes to her affidavits.

[275] When Mr. Fraser was examined with regard to input from his office into paragraph 23 of Lisa's October 12, 2011 affidavit filed in the Taylor Action, he described the process of materials being sent to and from the two law offices. He testified that his office did not draft paragraph 23. With regard to the suggestion that he had recommended that Lisa not mention the alleged reinstatement agreement in an affidavit, he testified that he was "never told that there was a reinstatement agreement, and I certainly never told Richard Attisha not to mention an agreement I hadn't been told about". This evidence is objected to by the plaintiffs on the basis of privilege. I will address this argument in my analysis.

[276] Mr. Fraser testified that the only discussion he had with Mr. Attisha about the topic of Lisa being reinstated to ARTG was after he received Mr. Attisha's letter with the proposals in September 2011.

[277] Mr. Fraser also described a lunch with Lisa in January 2015. He discussed with her the importance of repairing her relationships with her parents and siblings. He did not give any legal advice to Lisa.

VI. LITIGATION HISTORY

A. The Reinstatement Action

[278] The original notice of civil claim for this action was filed by Lisa on October 16, 2015, and ARTG's original response to civil claim was filed on November 17, 2015. On May 25, 2016, ARTG amended its response and pleaded the alternative position that, in the event that Al had told Lisa that she would be reinstated, Al did not have the authority to bind ARTG in light of the terms of the Partnership Agreement.

[279] In light of this amendment, Lisa applied to the court on January 30, 2017 to amend her notice of civil claim. She sought to add 934 and LLT as plaintiffs, as well as to add Al as a defendant in his personal capacity. Regarding the latter, and in response to ARTG's amendment, Lisa sought to add claims against Al for fraudulently or negligently misrepresenting his authority to make the alleged reinstatement agreement.

[280] Lisa also sought to add a claim that there was a binding agreement between her and Al that 934's partnership interest in ARTG would continue to exist instead of being terminated, and was to be held in trust for her until the Taylor Action was finished.

[281] ARTG opposed the application, submitting that the proposed amendments constituted an abuse of process. Specifically, ARTG submitted that Lisa's claim in trust was contradictory and irreconcilable with the evidence she had entered in the Taylor Action and the Matrimonial Proceedings—largely relying on the affidavits referenced above.

[282] While allowing the addition of 934 and LLT as plaintiffs, Master Baker agreed with the defendants and dismissed the "main" proposed amendments as an abuse of process: *Thomson v. A.R. Thomson Group,* 2017 BCSC 1414 at para. 25. Master Baker held that, in the Taylor Action and the Matrimonial Proceedings, Lisa had taken the position that ARTG had validly and fully compensated 934 for its interest in

the partnership. As a result, Master Baker found that Lisa could not now plead that 934's interest had continued to exist and was held in trust. He also dismissed Lisa's proposed amendments to add Al as a defendant, as well as the related claims of misrepresentation.

[283] Lisa appealed Master Baker's dismissal in August 2017. On that appeal, Justice Fleming, as she then was, held that Master Baker was "correct in deciding that the proposed amendments 'were in the main' an abuse of process'", due to Lisa's depositions in previous proceedings that were "entirely inconsistent" with the proposed amendments: *Thomson v. A.R. Thomson Group,* 2018 BCSC 322 at para. 54. In addition, Fleming J. agreed that the proposed inclusion of claims for fraudulent and negligent misrepresentation constituted an abuse of process.

[284] In June 2022, ARTG applied to strike Lisa's claim in the current action as an abuse of process, based largely on the arguments put forward in defence of the above amendment proceedings: that Lisa "knowingly gave evidence fundamentally at odds with her central claim in this case" in the Taylor Action and the Matrimonial Proceedings: *Thomson v. A.R. Thomson Group,* 2023 BCSC 1498 [*Thomson 2023*] at para. 2. Justice Coval dismissed the application, finding that ARTG had not established an abuse of process.

[285] Justice Coval relied on an "extensive explanatory affidavit" from Lisa that was not before Fleming J., finding that this evidence adequately supported the merits of her claim and prevented ARTG from establishing her "knowing advancement of irreconcilably contrary positions": *Thomson 2023* at paras. 35–36. While acknowledging the seemingly contradictory statements made by Lisa in the Taylor Action and Matrimonial Proceedings, Coval J. found that these proceedings dealt with "complex question[s] of mixed fact and law", and that Lisa's statements fell short of "knowingly taking an irreconcilable or diametrically opposed position" to the current proceeding: *Thomson 2023* at paras. 39, 43–44. Additionally, Coval J. found that there were important additional reasons for not striking the claim in the interests

of justice, including that the alleged inconsistencies did "not give rise to unfairness to ARTG in these proceedings": *Thomson 2023* at para. 49.

[286] On July 27, 2023, Lisa amended her notice of civil claim pursuant to R. 6-1(1)(b)(i) of the *Rules*. This included the permitted addition of LLT and 934 as plaintiffs, pursuant to Master Baker's order, as well as changes to the pleadings regarding the alleged reinstatement agreement (which are reproduced in the Analysis section below). On March 20, 2024, the plaintiffs further amended the notice of civil claim, which now stands as the most recent version of the plaintiffs' pleadings in this action.

[287] The trial of the Reinstatement Action (heard together with the Fraud Action) took place over 23 days in January, February and May, 2024. The trial was bifurcated with only liability in issue: damages, if any, were to be determined at a subsequent hearing.

[288] Although the plaintiffs originally sought specific performance of the alleged reinstatement agreement in each iteration of their notice of civil claim, they advised the Court during submissions that they would only be seeking damages.

B. The Fraud Action

[289] On September 13, 2017, in response to the unsuccessful application to add Al as a defendant to the Reinstatement Action, Lisa commenced the Fraud Action within the BC Supreme Court. In the Fraud Action, Lisa alleges that, if Al did not have the authority to enter into the alleged Reinstatement Agreement, then he negligently or fraudulently misrepresented that he did have such authority.

[290] In response, Al pleads the same defence raised by ARTG in response to the Reinstatement Action, and further pleads that there was no confirmation or ratification of the alleged reinstatement agreement by the family. As a result, he submits that the pleadings fail to set out the material facts required for a binding agreement—particularly consideration, when the contract would be performed, who would provide the 15% interest to Lisa, and how Lisa was to pay for such interest.

[291] With respect to the claims of negligent or fraudulent misrepresentation, Al pleads that he did not make the alleged representation and, in the alternative, if he did make such a representation, that he did not owe a duty of care, did not intend for Lisa to rely on the alleged representation, and that Lisa did not, in fact, rely on the alleged representation to her detriment.

[292] The Fraud Action was heard concurrently with the Reinstatement Action in this trial.

C. Other Thomson Family Actions

[293] On October 16, 2017, Lisa filed a petition (LLT Holdings Inc. and Lisa Thomson v. 550920 B.C. Ltd., Vancouver Registry No. S179597) against 920 seeking a declaration that the affairs of 920 had been conducted in a manner that is oppressive to her, and that her shares in 920 be valued and purchased.

[294] In January 2023, the petition was heard, and the parties resolved the matter by entering into a consent order. Under the terms of the consent order, 920 was to redeem the common shares registered in the name of LLT at an appraised value. At trial in the current proceeding, Lisa testified that, as a result of her interest in LLT, she is set to receive over $5,000,000 for this redemption—which includes the shares she purchased from Taylor for $575,000 under the terms of the Settlement Agreement.

[295] On March 9, 2017, Lisa filed a petition against Al and ARTG, seeking a declaration that she was the sole beneficial owner of property in Delta, BC by way of an enforceable trust.

[296] On January 18, 2024, the parties entered into a consent order that the petition be converted into an action. Since then, various applications have been filed, including Lisa’s successful June 2024 application to add her brothers, her mother, Pat, and the estate of her sister, Deb, as defendants. Justice Kent heard the matter in October 2024 and released his reasons for judgment (indexed as 2024 BCSC 2039) on November 8, 2024. Lisa’s claim for declarations and damages that would

reflect 100% ownership of the property was dismissed. However, Kent J. found that Lisa was entitled to a 20% share of the proceeds from the property's sale, alongside her siblings.

[297] Lisa is the defendant in two ongoing actions. On July 10, 2020, Jim and Debra, acting under a power of attorney for Pat, commenced Supreme Court of British Columbia Vancouver Registry action no. S-206859 seeking to enforce Pat's Point Roberts Promissory Note against Lisa.

[298] On July 10, 2020, Jim and Debra, as executors for Al's estate, commenced Supreme Court of British Columbia Vancouver Registry action no. S-206860 seeking to enforce Al's Point Roberts Promissory Note against Lisa.

VII. THE LAW

[299] This case turns on whether the alleged Reinstatement Agreement between Lisa and Al (on behalf of ARTG) constitutes an enforceable contract, or merely an "agreement to agree". To determine this issue, I must consider several fundamental principles of contract law.

A. Intention to Create Legal Relations

[300] A contract is formed where there is "an offer by one party accepted by the other with the intention of creating a legal relationship, and supported by consideration": *Ethiopian Orthodox Tewahedo Church of St. Mary Cathedral v. Aga*, 2021 SCC 22 [*Ethiopian Orthodox*] at para. 35. The party seeking to rely on the contract has the burden of proving that the contract was formed, on a balance of probabilities: *Clifford v. Flores,* 2004 BCSC 358 at para. 40.

[301] The test for determining whether the parties in question had an intention to create legal relations is objective. It does not depend on what the parties subjectively had in mind, but instead asks "whether their conduct was such that a reasonable person would conclude that they intended to be bound": *Ethiopian Orthodox* at para. 37. The following oft-cited passage by G.H.L. Fridman in *The Law of Contract in Canada,* 5th ed. (Toronto: Thomson Carswell, 2006) offers further guidance:

> Constantly reiterated in the judgments is the idea that the test of agreement for legal purposes 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. The law is not concerned with the parties' intentions but with their manifested intentions. It is not whether or not what an individual party believed or understood was the meaning of what the other party said or did that is the criterion of the agreement; it is whether a reasonable man in the situation of that party would have believed and understood that the other party was consenting to the identical terms.
>
> [Emphasis added.]

[302] In determining whether this test has been met, a court is "not confined to the four corners of the alleged contract", but may also consider surrounding circumstances and the material facts: *Leemhuis v. Kardash Plumbing Ltd.,* 2020 BCCA 99 at para. 17. These may include the nature of the relationship among the parties and the underlying business context: *Ethiopian Orthodox* at para. 38; *Hucul v. GN Ventures Ltd.,* 2022 BCSC 144 at para. 138. In particular, a court may consider how the parties' conduct leading up to and following the alleged contract formation would appear to a reasonable person: *Oswald v. Start Up SRL,* 2021 BCCA 352 at para. 33. For example, and while not determinative, the presence of subsequent negotiations and alteration of terms may suggest that a definitive contract was never formed: *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.,* 2009 BCSC 1303 [*Le Soleil*] at para. 334; *Salminen v. Garvie,* 2011 BCSC 339 at para. 28.

[303] The fundamental requirements of contract formation apply equally to oral contracts, and an agreement does not need to be reduced to a formal, signed document for a court to find it binding on the parties: *Latif v. Nair,* 2024 BCSC 398 at para. 21; *Timberwolf Log Trading Co. Ltd*. *v. Columbia National Investments Ltd.,* 2011 BCSC 864 at para. 72. Additionally, and as set out by Justice Dickson, as she then was, in *Le Soleil,* determining whether the parties intended to create legal relations in an oral contract involves the same principles of interpretation, with a particular focus on the credibility of witnesses:

> [328] […] If the alleged agreement has not been reduced to writing, the Court must consider what the parties said and did and assess objectively whether, in context, their words and actions establish an intention to be

> bound: *Periscan Financial Services Inc., supra; Leong & Associates, supra.* The genesis and aim of the transaction is an aspect of the relevant context for consideration: *Canada Square Corporation, supra.* 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: *Anchorage Management Services Ltd. v. 465404 B.C. Inc.*, 1999 CarswellBC 2947 (B.C. C.A.).
>
> [Emphasis added.]

B. Certainty of Terms and Agreements to Agree

[304] An enforceable contract, whether oral or written, also requires consensus between the parties on all the essential terms of the alleged agreement, and these terms must be sufficiently certain: *Oswald* at paras. 34, 39. Our Court of Appeal in *Berthin v. Berthin,* 2016 BCCA 104, expanded as follows, noting the court's reluctance in finding contracts void for uncertainty:

> [47] Of course, the terms in question must be enforceable — i.e., must have a definite as opposed to uncertain meaning such that a court can order either for damages or for specific performance in the event of breach. There is no doubt that courts will "lean heavily against finding contracts void for uncertainty" (*Copperart Pty. Ltd. v. Bayside Developments Pty. Ltd*. (1996) 16 W.A.R. 396 (S.C., Full Court) at 399, quoted in S.M. Waddams, *The Law of Contracts* (5th ed., 2005), 42 at fn.128). Thus Madam Justice D. Smith stated in *Frolick v. Frolick*, [2007 BCSC 84]:
>
> > An effective agreement requires a meeting of the minds of the parties. An enforceable contract requires a consensus between the parties on all of the essential terms of their agreement. It is the responsibility of the parties, not the court, to clearly express those essential terms so "that their meaning can be determined with a reasonable degree of certainty": *Scammell and Nephew Ltd. v. Outston*, [1941] A.C. 251.
> >
> > If the parties fail to reach a meeting of the minds on the essential terms of their agreement, or fail to express themselves in such a fashion that the meaning of the terms they agreed upon cannot be reasonably divined by the court, then the agreement will fail for lack of certainty. However, the requirement of certainty of the terms is always balanced with the reality of transactional negotiations. Parties may intentionally leave gaps in the terms of an agreement to provide for future or mutually satisfactory accommodations. In those circumstances, the court should not apply the doctrine of certainty so rigidly so that the intentions of the parties to create a binding agreement are thwarted.
> >
> > […]
>
> [Emphasis in original.]

[305] As helpfully articulated by Justice Marzari in *Hucul,* the assessment of consensus and certainty of terms is closely related to that of the parties' intentions—and thus, in turn, whether a contract or merely an agreement to agree was formed:

> [139] The issue of whether the parties intended to form an enforceable contract and what is evidenced by their conduct is often entangled with the issue of whether there is certainty in the essential terms of an alleged contract. Courts cannot enforce an alleged contract if its terms are unclear. Where the terms are vague, ambiguous, or incomplete, it cannot be said that the parties came to a meeting of the minds: *Le Soleil* at para. 339. While it is not necessary for every conceivable matter to be resolved to create an enforceable contract, the law does not recognize a contractual "agreement to agree": *Le Soleil* at para. 330.
>
> [140] The overarching question in the certainty of terms analysis is whether the parties have agreed on all matters that are "vital or fundamental" to the arrangement or whether they intended to defer legal obligations until a final agreement has been reached: *Le Soleil* at para. 330. What constitutes an "essential term" is fact specific and is not readily addressed in the authorities: *Vancouver Canucks Limited Partnership v. Canon Canada Inc*, 2013 BCSC 866 at para. 188.
>
> [Emphasis added.]

[306] As set out above, the common law has long held that agreements to agree are unenforceable. In *Leong & Associates v. Watt et al.*, 2003 BCSC 1885 [*Leong*], Justice Sigurdson canvassed the leading authorities to this effect:

> [82] In *May & Butcher Ltd. v. R.* (1929), [1934] 2 K.B. 17 (U.K. H.L.), Lord Buckmaster stated:
>
> > . . . [A]n agreement between two parties to enter into an agreement by which some critical part of the contract matter is left to be determined is no contract at all.
>
> [83] However, as noted in *Hillas & Co. v. Arcos Ltd.*, [1932] All E.R. Rep. 494 (U.K. H.L.), it is a matter of construction whether the parties intended to make a binding contract or simply a basis for future agreement. Lord Tomlin said at 499:
>
> > . . . and the problem for a court of construction must always be so to balance matters that, without violation of essential principle, the dealings of men may as far as possible be treated as effective, and that the law may not incur the reproach of being the destroyer of bargains.
>
> In *Hillas, supra*, the Court held that the language of what was written, interpreted in light of the previous course of dealing between the parties, was sufficient to show an intention to be bound and was not merely to provide a basis for future agreement.

> [84] In *The Law of Contract*, 4th ed. (Scarborough, Ontario: Carswell, 1999) at 67, Fridman describes the distinction this way: "Instances of an agreement to agree must be differentiated from others where there is a possibility that the parties may have reached a final agreement, even though some additional formality is envisaged".
>
> [85] An agreement is not unenforceable simply because it is oral and further documents are contemplated. […]
>
> [Emphasis added.]

[307] Additionally, courts often rely on the Ontario Court of Appeal's decision in *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 79 D.L.R. (4th) 97, 1991 CanLII 2734 (O.N.C.A.), when determining whether an alleged contract is enforceable or merely an agreement to agree:

> [20] As a matter of normal business practice, parties planning to make a formal written document the expression of their agreement, necessarily discuss and negotiate the proposed terms of the agreement before they enter into it. They frequently agree upon all of the terms to be incorporated into the intended written document before it is prepared. Their agreement may be expressed orally or by way of memorandum, by exchange of correspondence, or other informal writings. The parties may "contract to make a contract", that is to say, they may bind themselves to execute at a future date a formal written agreement containing specific terms and conditions. When they agree on all of the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon become binding, they will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.
>
> [21] However, when the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are to be deferred until a formal contract has been approved and executed, the original or preliminary agreement cannot constitute an enforceable contract. In other words, in such circumstances the "contract to make a contract" is not a contract at all. The execution of the contemplated formal document is not intended only as a solemn record or memorial of an already complete and binding contract but is essential to the formation of the contract itself. […] [Citations omitted.]
>
> [Emphasis added.]

[308] Taken together, these authorities confirm that, for a contract to be enforceable, the essential terms must be both agreed to and sufficiently certain. Without this requisite *consensus ad idem*, the parties will merely have agreed to agree, and be left without legal recourse. The overarching question is whether "the parties reached an agreement on all matters that are vital to that agreement or whether, instead, they merely intended to defer legal obligation until a final agreement has been reached": *Latif* at para. 31.

[309] What terms are essential—that is, vital or fundamental to the agreement—is a fact-specific inquiry, and depends on the type of contract and the nature and purpose of the transaction: *Ko v. Hillview Holmes Ltd.,* 2012 ABCA 245 at para. 91; *Concord Pacific Acquisitions Inc. v. Oei,* 2022 BCCA 16 at paras. 38–41. While there is a general rule of thumb that clarity on the parties, property, and price is sufficient for an enforceable contract to be found, the question ultimately depends on the context of the agreement and may go beyond these three fundamental terms: *Ko* at paras. 83–84; *Latif* at paras. 35–46.

[310] Case law supports the proposition that agreements between family members are subject to the law of contract, and that they require a particularly high degree of term-certainty. In *Suen v. Suen*, 2013 BCCA 313, the Court of Appeal held the following:

> [43] Communications in the family context are often no more than statements of intent or wishes. For a promise, in that context, to rise to the level of a binding enforceable contract there must be strict proof of the terms of the bargain including: the parties, the property, and the consideration. See *McKenzie v. Walsh* (1920), 1920 CanLII 72 (SCC), 61 S.C.R. 312, and *Ross v. Ross,* 1957 CanLII 132 (ON CA), [1958] O.R. 49, 11 D.L.R. (2d) 561 (O.N.C.A.).
>
> [Emphasis added.]

[311] Finally, it is important to note Justice Jean Côté's comment in *Ko* where he noted the BC courts' "reluctance to find a contract void for uncertainty": at para. 118. While there is an element of truth to this proposition, Justice Jenkins in *Lu v. 421688 B.C. Ltd.,* 2020 BCSC 93, clarified that "the principle that the court should not

construct unexpected terms remains the same": at para. 142. The BC Court of Appeal in *Concord*, quoting the trial judge's reasons at length, articulated the same:

> [38] I interpolate here that this is exactly the principle that Concord contends the judge did not apply properly. He continues:
>
> > [332] The foregoing passage from *Marquest* has been relied on numerous times: see *Hoban* at para. 47 and *Langley* at para. 39. See also G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed. (Toronto: Thomson Reuters, 2011) [Fridman's *Contract*] at 21.
> >
> > [333] It is also clear that British Columbia courts are more likely than the courts of other provinces to give legal effect to agreements reached through negotiation and discussion: *Langley* at para. 38; M*iller v. Jellybean Park International Inc.*, 2013 BCSC 1237at para. 67 and *Brule v. Rutledge*, 2015 BCCA 25at para. 45.
> >
> > [334] But no amount of believing that a contract exists will cause that to be so if the initial "agreement" made by the parties lacks one or more essential terms or if that initial "agreement", properly construed, contemplates that the agreement of the parties is not effective until some further formal agreement is signed.
> >
> > […]
> >
> > [339] I have focused on the first component of this framework. Absent agreement on the essential terms of a contract, no contract can exist. Though a court will make "every effort" to find meaning in a contract, it is not open to a court to create a contract for the parties. This has been so for a long time: *Kelly v. Watson*, [1921] 61 S.C.R. 482 at 490; *Murphy v. McSorley*, [1929] S.C.R. 542 at 546. It remains true today: *Langley* at para. 40.
> >
> > [340] In addressing the absence of an essential term in an agreement, I am not speaking of the "informality" of a written document, *UBS* at para. 73, or of "inelegant drafting": *Hoban* at para. 47. Nor am I addressing issues of uncertainty or ambiguity. In such circumstances the courts will, as I have said, strive to give meaning to the agreement the parties have made: see *CCIL* at 66–71.
> >
> > [341] Instead, I am addressing those "fundamental" terms of a contract that the parties must agree to before a binding contract can be created. What constitutes an "essential" term in an agreement will depend on both the nature of the agreement and the circumstances of the case. In *United Gulf Developments Ltd. v. Iskandar*, 2008 NSCA 71, Cromwell J.A., as he then was, said: "Determining what terms are "essential" in a particular case is . . .. more difficult than stating the principle. The sort of terms that are considered essential varies with the nature of the transaction and the context in which the agreement was made (para. 71): see also *Nordlund Family Retreat Inc. v. Plominski*, 2014 ONCA 444at paras. 57–58 and *Ko v. Hillview Homes Ltd.*, 2012 ABCA 245 at para. 91.
>
> [Emphasis in original.]

[312] In sum, for parties to be contractually bound, there must be a "manifest meting of the minds"—one that is expressed outwardly in a manner that indicates "both an intention to be bound and reasonably certain mutually agreed terms". The key question is whether an agreement has been reached on all essential terms, regardless of whether the contract is oral or in writing: *Le Soleil* at paras. 322–23.

[313] If the plaintiff is unable to discharge the burden of proof in establishing that a contract was formed, the court may find that the parties merely made an unenforceable agreement to agree—particularly if it objectively appears that the parties intended to defer their legal obligations to one another: *Le Soleil* at para. 330.

VIII. CREDIBILITY

[314] Lisa is the only living witness to the conversation in which the alleged reinstatement agreement was made, making credibility an important finding. As such, I will review some of the general principles on the law of credibility before addressing the substance of Lisa's evidence of the making of the alleged reinstatement agreement and the events and discussions in the years following.

[315] The difference between reliability and credibility is trite law. While reliability primarily concerns the accuracy of a witness' testimony, credibility focuses on the honesty of that witness and their overall trustworthiness in providing evidence. A witness who is credible may not be reliable, as they may have an honest but mistaken recollection of the events in question. However, the opposite cannot be true—"a witness who does not tell the truth is not providing reliable evidence": *Anderson v. Liang,* 2024 BCSC 838 at para. 5.

[316] In an oft-cited passage from *Bradshaw v. Stenner,* 2010 BCSC 1398, aff'd 2012 BCCS 296, Justice Dillon expands on what a credibility assessment entails:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence

> harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); [[*Faryna*] *v. Chorny*, [1952] 2 D.L.R. [354] (B.C.C.A.)] [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time ([*Faryna*] at para. 356).

[317] Other factors have been held to negatively impact a witness' credibility, including a failure to produce relevant documents, explanations that defy business logic or common sense, and longwinded, argumentative question responses: *Bradshaw* at para. 188; *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.,* 2019 BCSC 739 at para. 92. While a series of inconsistencies or inconsistent statements may also affect a witness' credibility, Justice McDonald in *Virk v. Singh,* 2020 BCSC 225 cautioned that this does not necessarily lead to a blanket lack of credibility:

> [67] […] The credibility of a witness who has made prior inconsistent statements under oath must be assessed cautiously. However, the fact that a witness has previously lied, even under oath, does not mean that she lacks credibility in all respects, or that her evidence is necessarily unreliable: *R. v. Hurst*, 2019 BCSC 307 (B.C. S.C.) at para. 16 and *Dong v. Hofer*, 2018 BCSC 77 (B.C. S.C.) at para. 28.
>
> [68] In some circumstances, the court may require the existence of credible confirmatory evidence before relying on the account of a witness who has made prior inconsistent statements: *Judge v. Judge*, 2015 BCSC 1764 (B.C. S.C.) at para. 298.
>
> [Emphasis added.]

[318] In *Faryna v. Chorny,* [1952] 2 D.L.R. 354 (B.C.C.A.) at 357, 1951 CanLII 252, Justice O'Halloran provided further helpful guidance for judges in assessing witness credibility when faced with conflicting evidence:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of a story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in

> those conditions. Only thus can a court satisfactorily appraise the testimony of a quick minded, experienced and confident witness, and of those shrewd persons adept in the half lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again, a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say I believe him because I judge him to be telling the truth, is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.
>
> [Emphasis added.]

[319] As a result, in a case such as this where there is conflicting evidence on key issues, "the court must decide whose version of events is most reliable in order to decide the issues. The credibility of the witnesses must be tested against those facts that are not seriously in dispute, and with the preponderance of the evidence and the probabilities surrounding the events": *Clifford* at para. 39.

[320] When determining the existence of an alleged oral contract, as in this case, "[t]he 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* at para. 328.

A. Assessments of Credibility

[321] I commence with a description of Al from the evidence of four of his children. It is not necessary or possible to assess his credibility, as his evidence is solely from the examination for discovery transcript. However, his presence was felt during trial as the person who started the successful business that ARTG has become, as a father, and as the Managing Partner of ARTG through the years from 2005 to 2015 as described in the documentary and testamentary evidence at the trial.

[322] Lisa described her relationship with Al when she was growing up as being close, changing somewhat as she got older. In her description, her father was strict, hard-working and proud of his family.

[323] Todd, Jim, and Gord had similar descriptions. Their father was hard-working, honest, fair and firm in his beliefs. He gave them all a tremendous opportunity. Jim said that Al was his father and mentor and good friend; he is missed.

[324] Lisa testified for six days in total, in a calm manner throughout. In direct examination, she attempted to respond to the questions, and fairly said when she did not recall a document or event.

[325] However, in many responses, especially in cross-examination, Lisa's evidence did not make sense or was inconsistent with the documents and with other witnesses' evidence which I accept. I address the significant credibility issues arising from her two affidavits below.

[326] An example of the internal inconsistency is Lisa's testimony that the partners raised their hands in a vote during the October 13, 2010 ARTG partnership meeting. That was not what she wrote in the minutes of the meeting.

[327] Similarly, in the context of the ARTG business and ongoing discussions about the terms to be incorporated in any future agreement for her reinstatement, Lisa had only one viewpoint and did not acknowledge other possible interpretations. For example, her explanations of the passage in the affidavit filed in the Matrimonial Proceedings regarding her knowledge of the requirement for approval from the other partners are an example of the pattern of equivocation and obfuscation she often used when asked a question to which the answer would harm her case. After many questions in cross-examination, Lisa ultimately agreed that yes, she did know that she needed approval of the other partners. In many other instances throughout cross-examination, her answers were also not responsive to the questions.

[328] Unfortunately, in being so committed to her present position that her father had made an agreement with her that she would be reinstated as a partner, Lisa, whether intentionally or unintentionally, could not answer many of the questions without having her goal at the forefront, rather than providing an accurate account of the circumstances being asked.

[329] This submission of the defendants is consistent with my observations of Lisa's testimony:

> Ultimately, the 99% Article, and Lisa's defense of it as being accurate in terms of how the events made her feel, despite being forced to acknowledge that the words she attributes to her family were often not said, is indicative of Lisa's approach to the issues in this case more broadly: for Lisa, all of the conversations she recounts and all documents are about the alleged reinstatement agreement, when pressed on the fact that they do not mention same, Lisa falls back on her feelings or her (at times strained) interpretation. In other words, Lisa recounts the events at issue as she subjectively experienced them (at times with the benefit of hindsight), and then seeks to cast her subjective experience on to her family.

[330] Pervasive throughout Lisa's evidence are inconsistencies and attempts to explain away documents, emails, and conversations by describing them inaccurately, such as Mr. Attisha's letter, and on occasion, attributing to them characteristics and meanings which resemble fiction—for example the vote taken by a show of hands at a partnership meeting. Lisa is so convinced of the correctness of her re-creation of the past 15 years of the family history that she follows her belief without reference to common sense or any other plain meaning of words or events.

[331] In the result, I do not find Lisa to be a credible or reliable witness.

[332] Jim, Gordon and Todd, as brothers in the Thomson family and as the current partners in ARTG, did not testify as a monolith, but rather by each individually responding to questions reflecting their personal experiences and insights regarding the events in evidence.

[333] The evidence of Jim, Gord, and Todd differs due to their different roles in ARTG and in the family. Jim, as eldest, described himself as the peacemaker during the years from mid-2012 to 2015, when matters with Lisa were more difficult after the apartment fire and the 99% Article. As president of ARTG, Jim had a more detailed knowledge of the corporate operation throughout. In his testimony, Jim was forthright, thoughtful, and plain-spoken, often providing one-word answers to questions in both direct and cross-examination.

[334] Gord is the middle brother. He had a very close relationship with Deb and his brothers, and vacationed together when Deb was alive. In his testimony, Gord was clear and concise, and testified in an open manner.

[335] In the Thomson family, Todd was the youngest. As a child, he had the closest relationship with Lisa. He was likely the most hurt by Lisa's writing the 99% Article. He, however, testified throughout with compassion and concern for his sister, all the while consistently describing the evolution of his business decisions about the terms regarding Lisa's re-admission to the partnership.

[336] Gord and Todd both candidly discussed their process of learning, through counselling, how to maintain a good relationship as brothers while also creating a good relationship as business partners despite having busy work and family schedules.

[337] I find the personal defendants all to be credible and reliable witnesses. They were thoughtful witnesses who were intent, focused, fair, and considered in their testimony involving numerous documents and events, as well as their family, over many years. Their evidence was consistent with the documents and emails. I accept and rely upon their evidence, with only one exception in one specific area.

[338] As will be discussed below, the one area in which I find that Jim, Gord, and Todd were not entirely objectively accurate was in the description of the Partnership Agreement—specifically, it being like the "Bible". Although certain parts were followed strictly, such as major decisions and the working partnership provision, there were areas where it was not followed. I take their answers as unintentional omissions, having not turned their minds to matters such as the calling of meetings.

[339] Mr. Fraser's evidence was entirely credible and reliable. He testified in the most professional manner, responding to all questions calmly and clearly as befits his many years at the Bar. Without hesitation, I accept and rely upon his evidence in its entirety.

IX. ANALYSIS

[340] In making the following findings of facts, I have assessed the evidence of each of the witnesses as discussed in my findings of credibility above. In brief, where the evidence differs, I rely upon the evidence of Jim, Gord, and Todd, and

Mr. Fraser rather than upon the evidence of Lisa. I have found that Lisa, in her testimony, was so committed to the result she seeks that she did not, or could not, address any other interpretation of the long history of this matter or her actions.

[341] The parties agree on the law regarding the formation of contracts, although they strongly disagree on its application to the facts of this case. In numerous cases over many years, the fundamental principles have been restated:

a) there must be an intention to contract;

b) the essential terms must be agreed to by the parties;

c) the essential terms must be sufficiently certain;

d) whether the requirements of a binding contract are met must be determined from the perspective of an objective reasonable bystander, not the subjective intentions of the parties; and

e) the determination is contextual and must take into account all material facts, including the communications between the parties and the conduct of the parties both before and after the agreement is made.

See: *Oswald* at para. 34.

[342] In this case, I find that Al and Lisa reached only an agreement to agree. They shared an intention and expectation that Lisa would be reinstated as a partner of ARTG. They did not, however, have an intention to contract, nor come to the necessary meeting of the minds on all the essential terms required to make a binding contract for Lisa's reinstatement.

[343] In finding that there was not a binding contract formed between Lisa and Al on behalf of ARTG, I have been mindful of the law as stated by Lord Tomlin in 1932, which sets the task of a court:

> […] to balance matters that, without violation of essential principle, the dealings of men may as far as possible be treated as effective, and the law may not incur the reproach of being the destroyer of bargains.

See: *Leong* at para. 83, citing *Hillas & Co. v. Arcos Ltd.*, [1932] All E.R. Rep. 494 (U.K. H.L.). This guiding principle was further stated by Dickson J. in *Le Soleil* at para. 321:

> Courts strive to uphold contractual obligations solemnly and freely undertaken. They do not, however, impose them upon parties who have not reached agreement on all essential terms […]

[344] I have also been mindful of events and circumstances after 2009 that could be consistent with there having been a contract reached between Al and Lisa for Lisa's reinstatement in addition to their consistency with an expectation of her future reinstatement. For example, on June 29, 2010, Lisa signed two promissory notes in favour of her parents, with the intention of repayment from ARTG earnings. Lisa was involved in the ARTG partners' attendance at the Sauder School of Business course on family businesses in 2010 and 2011. Lisa also attended partnership meetings between 2010 and 2012 and took the minutes, as well as worked in the ARTG office for short periods. Jim described her as having "future wealth" at ARTG. While these examples demonstrate that Lisa had some degree of involvement in ARTG after 2009, they are not persuasive in the context of the totality of the evidence, which I find clearly indicates that the parties did not reach a binding agreement for Lisa's reinstatement—Al and Lisa did not have an intention to contract, nor did they reach agreement on all the essential terms.

[345] The burden of proving that a binding contract had been made between Al and Lisa rests on the plaintiffs. The following discussion sets out the substance of the evidence of the documents, events, and circumstances that establish that this burden has not been discharged. I have started with a discussion about what was said between Al and Lisa on November 19, 2009, followed by a discussion of the events leading up to and following this alleged agreement.

[346] In this discussion, I will not refer to all the oral testimony that was delivered over the 18 days of evidence, nor all the emails entered in numerous books of exhibits, as that is not the role of the court. Much of the oral and documentary evidence covers the same events or time periods in the partnership or family history,

and can thus be described by topics or themes—such as the partnership meetings, or the deterioration of the family relationships from mid-2012 after the fire and the 99% Article.

A. The Alleged Reinstatement Agreement

[347] It is first necessary to determine if there was a conversation between Al and Lisa on November 19, 2009 at the Point Roberts Property. Although the defendants disagree, I find that it is more likely than not that there was a conversation on or about that date. In the context of events at the time, it makes sense that Al, who knew that Lisa was there with her friends, would go to the Point Roberts Property to reassure his daughter that the family would take care of her no matter the result of the Default Notice issued to 934 recently (on November 9, 2009). Further, in Al's examination for discovery, he agreed that he had talked to Lisa about her being reinstated—although notably, he was not asked about the date or place of that conversation or conversations.

[348] The allegations regarding the substance of the conversation between Al and Lisa are, however, somewhat unclear. The pleadings regarding the conversation are inconsistent, as is Lisa's evidence at trial.

1. Lisa's Evidence at Trial

[349] Lisa's evidence is that during the November 19, 2009 conversation in Point Roberts, Al said words to the effect of:

- Your company is going to be fine, whole again. You're going to go back in at 15%;
- Don't take any action on curing 934's breach within the 60 days;
- You'll buy back in with your buyout funds (to which Lisa replied that that made sense); and
- Hang on until Taylor is bought out and gone and then the reinstatement will be set up.

[350] Lisa testified that she was relieved, reassured, and comforted with the discussion and the “brief simple terms that we discussed”. She trusted her father, and agreed to co-operate by doing nothing in the 60-day period set out in the Default Notice.

[351] On what was said by Al, Lisa’s evidence is therefore mostly clear: that Lisa would be reinstated as a partner of ARTG; that the date would be when matters with Taylor were finalized; that Lisa would have the same 15% interest in ARTG as previously held by 934, through LLT; and that she would use her buyout funds to buy back into ARTG. Lisa agreed to these terms; there was no negotiation.

[352] However, the meaning of what Al said with regard to the price, percentage or property, as well as the corresponding funding of Lisa’s future interest, is not clear.

[353] If I accept Lisa’s evidence that Al promised Lisa a 15% interest in ARTG, it is more than likely that the price for that 15% was intended to be the same as the buyout price for 934’s interest. That amount was not known at that time as it was subject to the process set out in the Partnership Agreement.

[354] Even if the price was sufficiently clear, the funding—and thus the corresponding property—was not. 934’s buyout would only provide Lisa with funds equivalent to a 7.5% interest, as 934’s 15% interest was split between her and Taylor. Was Lisa to use this 7.5% to begin the buyback? Or would she be buying a 15% interest in ARTG with only the funds from her 7.5%?

[355] Lisa understood it to be the former. She only had a 7.5% interest in ARTG, not a 15% interest. She would only receive half of 934’s total buyout funds, approximately $750,000, and would need to raise the other half of the funds, another $750,000. She therefore could not agree to pay for a 15% interest from her buyout funds when she was only receiving funds for 7.5%. She acknowledged this in her evidence:

> […] the full amount of my percentage of the buyout would go automatically back in <u>to begin</u> the buy-back in and the other half would be up to me and discussions of alone or partnership draws.

[Emphasis added.]

[356] Lisa acknowledged that there was no discussion about how the remainder of the reinstatement would be financed or funded—her recollection was that the conversation about funding the reinstatement through partnership draws came later. On her own evidence, she was not "of the state of mind at that point to contemplate […] how the money would be raised, loaned, borrowed", nor was she concerned with how she was going to have to come up with another $750,000 at the time of her conversation with Al.

[357] Al appears to have had this conversation with Lisa about her potential reinstatement without dealing with the fact that Lisa only owned a 7.5% interest in ARTG. His comment regarding making Lisa's company "whole" is accurate to the extent that LLT, through 934, owned 15% of ARTG. But for Lisa to buy back into ARTG with her buyout funds would only amount to one half of the understood price. Clearly Al was not representing that Lisa could buy 15% of ARTG for one half of the price paid as a buyout of 934. Al, in his conversation to comfort and reassure his daughter, did not address the business reality that Lisa obtaining 15% of ARTG would not come about as a straight swap of her half of the buyout funds (for her 7.5% in 934) for a 15% share in the partnership. Lisa always had to come up with the second half of the funds if she was to have a 15% interest in ARTG. Al did not discuss how this discrepancy would be addressed, nor did he address the corresponding necessity of funding or financing.

2. Pleadings

[358] The lack of clarity continues in the plaintiffs' pleadings. The first amended notice of civil claim was filed on July 7, 2023. The "Reinstatement Agreement" section pleads as follows, with track changes emulated to indicate the amendments from the October 16, 2015 notice of civil claim. These same changes stand in the further amended notice of civil claim filed in March 2024:

> 16. Immediately after notice ARTG's intention to terminate 934's partnership share was provided, about November 20, 2009, Al Thomson, on behalf of ARTG, spoke with Lisa~~on behalf of the partners of ARTG.~~

17. During that conversation, Al Thomson assured Lisa that the proposed removal of 934 from ARTG would not harm her in the long-term, and urged Lisa not to oppose the termination of 934's partnership interest~~share.~~ Al Thomson offered, and Lisa agreed that, if 934's partnership interest~~share~~ in ARTG was withdrawn~~terminated,~~ following Taylor's final removal from ownership of ARTG:

    a. ATRG would sell to Lisa a replacement partnership interest~~stake~~ in ARTG, to be held either through 934, or a different corporate vessel, to restore her interest in ARTG to the same quantum as if 934's partnership interest~~stake~~ had not been withdrawn~~terminated~~; and in exchange,

    b. Lisa would pay through her corporate nominee, as purchase price for that replacement partnership interest~~stake~~, the same price that ARTG paid to terminate 934's corresponding interest~~stake~~.

    (the "Reinstatement Agreement")

18. In other words, the Reinstatement Agreement provided that Lisa would give back what ARTG paid to her and get back the partnership interest in ARTG that~~what~~ 934 had lost.

19. Al, on behalf of ARTG, and Lisa, in her personal capacity and on behalf of 934 and LLT, entered into the Reinstatement Agreement as a binding agreement.~~, with the express contemplation that Lisa would rely upon the Reinstatement Agreement in respect of the proposed expulsion of 934 from ARTG and the anticipated conflict with Taylor. Reasonably relying upon the Reinstatement Agreement, Lisa:~~

    ~~a. Took no steps to avert the expulsion of 934 from ARTG; and~~

    ~~b. Took no steps to seek indemnification from Mr. Taylor for the losses that 934 would suffer as a result of that expulsion.~~

[359] In para. 18, it is pleaded that "[i]n other words, the Reinstatement Agreement provided that Lisa would give back what ARTG paid to her and get back the partnership interest in ARTG that 934 had lost". This is a mismatch—Lisa, it is pleaded, would buy back in with the funds she received for 7.5%, and would in turn receive the 15% that 934 had lost. This could not have been the term of any agreement that Al would have entered into. Indeed, it is not the agreement Lisa thought she had entered into—she thought that the funds for her 7.5% were to only begin the process of the buyback.

[360] I, therefore, find that Al did not intend to enter into a binding agreement with Lisa during their conversation in Point Roberts on November 19, 2009, as the essential terms of this alleged agreement were incomplete and unclear. As noted in the review of the case law, particularly in *Ko*, *Concord,* and *Latif,* what terms are essential in a contract depends on the nature and purpose of the transaction, and may go beyond parties, property, and price. The question turns on whether the parties agreed to all vital terms to that particular agreement. This was recently summarized by this Court in *Ai Kang Yi Yuan Enterprises Corp. v. 1098586 Ltd*., 2022 BCSC 1416:

> [262] What constitutes an "essential" term in an agreement will depend on both the nature of the agreement and the circumstances of the case: *Concord Pacific BCSC* at para. 341; *United Gulf Developments Ltd. v. Iskanda*r, 2008 NSCA 71 at para. 14. The key question to answer in analysing certainty of terms is whether the parties have agreed on all matters that are “vital or fundamental” to the arrangement, or whether they intended to defer legal obligations until a final agreement has been reached. What constitutes an essential term is fact specific. Different types of contracts may have different essential terms, though price is generally considered essential in most contractual contexts.

[361] It is clear that Al and Lisa never came to a consensus on how the discrepancy between Lisa’s previously-held 7.5% interest in ARTG (through 934) and her alleged future 15% interest would be resolved. As this is vital to the nature of the agreement—that is, Lisa’s ability to be reinstated—I find that the financing of the other 7.5% required to fund Lisa’s reinstatement was an essential term of any possible agreement through which Lisa would come to have a 15% interest in ARTG. Without that financing, Lisa had no ability to acquire the 15% interest. This is consistent with the decision in *Boyd v. McDermott,* 2007 BCSC 1793, in which Justice Morrison discussed the importance of financing as an essential term in business transactions:

> [70] Suitable financing arrangements were never reached. They were never agreed upon. There was never a contract in writing, nor was there ever a verbal contract reached between the parties on all material terms. <u>There can hardly be a more material term to a contract of purchase and sale of a business than an unambiguous agreement or clear understanding as to terms of the financing arrangements.</u>
>
> [Emphasis added.]

[362] The later ongoing discussions regarding the percentage that Lisa would own and the financing for the second 7.5% are indicative of the necessity of that term. If Lisa only had the funds from 7.5%, it was possible that she would in the future own a 7.5% share in ARTG. Those discussions are referred to below, such as in the October 13, 2010 minutes. The property to be purchased, whether 7.5% or 15% of ARTG, was related to the funds available to Lisa, and the funds for the additional 7.5% were necessary in order to purchase the 15%. As held in *Leong,* the method through which an individual's share interest is to be determined may be an essential term. Here, I find that it is an essential term.

[363] Further, there was no discussion between Al and Lisa regarding Lisa's provision of services to ARTG, whether she would have a right to vote when reinstated, or how she would go about informing or seeking approval of the other partners for her reinstatement. I find that the provision of services was also an essential term that was not included in the conversation at Point Roberts. The requirement for partners to provide services had always been the business practice of ARTG and was reflected in the Partnership Agreement—which also provided a process for admission of a new partner by 75% vote.

[364] In other words, Al never acknowledged that 934's buyout would result in Lisa having funds to purchase only a 7.5% and, thus, never discussed with her how the additional 7.5% buy-in would be funded. He also never discussed the basis on which Lisa would be reinstated—that being the approval mechanisms and services to be provided—even though there is evidence of the importance of these terms in the operation of ARTG (for example, through the Partnership Agreement and use of service payments).

[365] As a result, the substance of this discussion was as Al described in his examination for discovery—a communication about his expectation and intention that Lisa would be reinstated into ARTG as a partner in the future. This is not equivalent to an intention to create a binding contract, particularly when essential terms remain outstanding: see *Leong* at paras. 118–41. Similar to Sigurdson J.'s

decision in *Leong,* I find that there was no objective intention to create legal relations between Al and Lisa, in part due to the lack of certain terms. An objective bystander would view Al's expectation and intention of Lisa's future reinstatement as those of a concerned father, reassuring his daughter that she would be taken care of in light of 934's buyout. Lisa was relieved, as her father had intended.

[366] I am mindful of the law regarding the interpretation of contractual issues in a family business context. "The nature of the relationship of the parties and the interests at stake may be relevant to the existence of an intention to create legal relations", including between family members: *Ethiopian Orthodox* at para. 38. Further, in *Suen*, our Court of Appeal opined on the heightened importance of certain terms in familial contracts:

> [43] Communications in the family context are often no more than statements of intent or wishes. For a promise, in that context, to rise to the level of a binding enforceable contract there must be strict proof of the terms of the bargain including: the parties, the property, and the consideration. See *McKenzie v. Walsh* (1920), 1920 CanLII 72 (SCC), 61 S.C.R. 312, and *Ross v. Ross,* 1957 CanLII 132 (ON CA), [1958] O.R. 49, 11 D.L.R. (2d) 561 (O.N.C.A.).
>
> [Emphasis added.]

[367] In regard to agreements between family members, the plaintiffs rely on the following passage from *Safarik v. Ocean Fisheries Ltd.* (1995), 12 B.C.L.R. (3d) 342 (C.A.), 1995 CanLII 6269 in their submission that lack of a written agreement between Lisa and Al does not demonstrate there was no contract:

> [100] Family companies are very different from non-family companies. They are different because, usually when a young man joins his father in the business, he does so trusting his father to do right by him and the father intends to do right. Thus no contracts are drawn up. It is not unusual for differences to arise as they did here, not because either father or son is dishonourable but because each sees the world through different eyes.

[368] While I am alive to the principle that binding contracts may be made orally, and lack of written evidence is not determinative, particularly in family settings, I note that the case before me concerns more than simply a lack of written agreement. Rather, this case involves an alleged agreement that was not only oral, but never

explicitly mentioned again by the party relying on its existence, nor anyone who may have been impacted by it—including during conversations directly relevant to the subject matter of that agreement.

[369] I, therefore, find that the conversation between Al and Lisa was a communication in the family context, which was no more than a statement of intent or wishes that Lisa one day be reinstated to ARTG. It does not rise to the level of a binding, enforceable contract.

B. Context of Events and Facts

[370] Although the facts are largely not in issue, Lisa explains them in order to prove that a binding contract had been formed, while the defendants submit that the inconsistencies in the explanations, individually and cumulatively, lead to a different result. I will review some of the communications and events chronologically in the overall context to further set out my reasons for the finding that a binding agreement was never reached between Al and Lisa.

1. Operation of the Partnership Agreement

[371] Prior to dealing with the events, I will address the operation of the Partnership Agreement. The plaintiffs say that it was not followed; the defendants describe it as being like the Bible. The truth is somewhere in between.

[372] The defendants submit that it would be a term of any reinstatement of Lisa that there be compliance with the “working partner” principle embodied in the Partnership Agreement. I understand Lisa’s submission to be that because there was not adherence to the Partnership Agreement, the necessity for such a term would not be consistent with ARTG’s business practice.

[373] There is evidence to support some of the examples submitted by the plaintiffs (above at paragraph 43). There was some flexibility—for example, in delaying issuing the Default Notice as negotiations continued with Taylor. There was also some non-compliance—for example, in issuing notices of meetings. With regard to

the allegations regarding the process of the sale of real estate, the evidence is not clear.

[374] With the possible exception of the one sale of real estate, there is no evidence that the Partnership Agreement provisions regarding the requirement for a 75% vote for Major Decisions was not followed. The admission of a new partner is defined as a Major Decision. In addition, there was a strong philosophical and business presence embodied in the Partnership Agreement representing Al's operation of and his vision for ARTG. There was no wavering from those principles without serious discussion and consideration. Working partners" was one of, if not the most important of, those principles.

[375] Such serious discussion and consideration was afforded the ongoing question of the terms of Lisa's reinstatement, and whether she could be a non-working partner. As illustrated in the emails of April 10 and 11, 2013, Jim wrote to Lisa to let her know that the partners were going to discuss possible amendments to the ARTG Partnership Agreement relative to the provision of services by Partnerco Principles.

[376] As matters continued between Lisa and the defendants, the Partnership Agreement was not amended.

2. Prior to November 19, 2009

[377] I will now first deal with the events prior to November 19, 2009 as the context for the conversation between Al and Lisa. The ARTG partnership was formed in 1997 when it acquired the business formerly carried on by ART. Al, who had started the business, was the managing partner of ARTG. Unlike the share ownership in ART, the siblings (except for Lisa, who held shares with Taylor) held equal 15% partnership interests in ARTG through various holding companies. Lisa's interest was held with Taylor through two holding companies—LLT and 934. 934 held a 15% interest in ARTG, and the shares of 934 were owned by LLT. Lisa and Taylor jointly and equally owned LLT. In other words, Lisa owned half of LLT, which owned 934, which owned 15% of ARTG. As a result, Lisa indirectly owned 7.5% of ARTG.

[378] Taylor had been an employee of ART since 1974 and subsequently became a vice president of ARTG with extensive responsibilities. Taylor had held shares in ART; Lisa did not. During their marriage, Taylor was actively involved in the management of ARTG and attended partnership meetings, making the partnership decisions on behalf of 934. Lisa did not work for ARTG during her marriage to Taylor, and there is no evidence that Lisa attended any partnership meetings, likely held annually, prior to 2010.

[379] 934's income from ARTG was based on Taylor's services. The Partnership Agreement required that the partners provide services to ARTG, and the partner principals were paid by ARTG for service amounts based on the services they provided. This was the primary method of payment to the partner principals, and thus to 934 from ARTG.

[380] The event which began the sequence of events leading to this litigation is the 2005 separation of Lisa and Taylor, followed by their divorce two years later.

[381] While Taylor continued working for ARTG for about a year after the separation, he resigned from ARTG in 2006. In 2007, he acquired all the shares in another company, Hydro-Flex, which was a breach of the ARTG Partnership Agreement's non-compete provision. Initially, Al, on behalf of ARTG, did not pursue the breach.

[382] Later, on November 9, 2009, ARTG issued the Default Notice to Taylor. The Default Notice gave Taylor 60 days to cure the breach or 934 would be forced to withdraw as a partner.

[383] As well, in 2009, Lisa's and Taylor's divorce and appeal had been finalized. Lisa moved from Edmonton, where she and Taylor and their children had lived, to Tsawwassen, BC, near the family's vacation home at Point Roberts. Relationships between Lisa and her siblings and parents were generally good.

[384] In November 2009, after ARTG issued the Default Notice contemplating 934's withdrawal, it was possible that Taylor would be required to withdraw as a partner of

ARTG. If 934 withdrew, it would cease to own 15% of ARTG, and Lisa would no longer own her indirect 7.5% interest in ARTG.

[385] The Default Notice led to the alleged reinstatement agreement. It also led to litigation between Taylor, 934, LLT, 520, and ARTG.

[386] Against this background, Al reassured his daughter that no matter what occurred with Taylor and 934, she would be taken care of. I have found as a fact that his conversation with her was an agreement to agree on Lisa being reinstated as a partner in ARTG at some point in the future.

[387] To cure the breach, Taylor would have had to sell his interest in Hydroflex, the competing business. It is unlikely that Lisa could have done anything to cure the breach. Indeed, in an email to Lisa in January 2015, Al wrote to Lisa regarding her comment that he had asked her not to compel Taylor into rectifying the breach, saying: “I asked you no such thing. How on earth would you compel him to uncompete?”

[388] The breach was not cured. On February 18, 2010, ARTG passed a special resolution with 85 of 100 votes to withdraw 934 from the partnership. Sixty days later, on April 19, 2010, 934 was deemed to have withdrawn from ARTG.

[389] As Jim testified, he did not believe the breach to be Lisa’s fault, and believed the family had ways they could look after her. The effect of 934’s withdrawal on Lisa was acknowledged by all the defendants. On their evidence and the transcript of Al’s examination for discovery, I find that there was a shared intention and expectation in the family that Lisa would have an opportunity to return to the partnership if that was what she wanted to do. However, due to insufficient evidence of specific conversations in this time period, I reject as speculation the submission that Al discussed his conversation with Lisa on November 19, 2009 with his other children prior to going to Point Roberts to speak with Lisa.

[390] On January 12, 2010, Taylor commenced the Taylor Action seeking to cancel the Default Notice. That litigation proceeded and will be referred to again below. It

forms a backdrop to this case and, at times creates circumstances and events relevant in this case, such as Mr. Attisha's letter and one of Lisa's affidavits.

3. April 2010 to July 13, 2012

[391] The next time period commences in April 2010, when 934 was no longer a partner in ARTG.

[392] In autumn 2010, Lisa and the partners attended a Sauder School of Business weekend workshop on family businesses. It was a productive weekend. Lisa and some of the partners went to a subsequent workshop in March, 2011.

[393] As well, in autumn 2010, Lisa attended the first of ten partnership meetings. The evidence regarding those meetings is set out above. I will not repeat it all, but rather highlight that although Lisa submits that the meetings' discussions were often about an existing reinstatement agreement, it is more accurate to read the minutes as discussions about the family's shared expectation and intention for Lisa to one day be reinstated. It is clear that throughout these meetings, there was not any recognition that Al and Lisa had entered into a binding agreement in November 2009 or at all. It is also clear that there was no consensus on terms of an agreement for Lisa's reinstatement, but instead a common intention to find terms agreeable to all parties. I repeat here that Lisa acknowledged in cross-examination that she never wrote to her father or to anyone else to confirm the making of or terms of the alleged reinstatement agreement.

[394] In particular, Lisa relies on the October 13, 2010 partnership meeting for an alleged ratification of the alleged reinstatement agreement. Lisa testified that she recalled that Al went around the room and each of the partners raised their hand to signify that they were agreeable to Lisa and 934 being reinstated to the full 15% partnership interest. However, in the minutes from this meeting, taken accurately by Lisa, there is no mention of a vote, but rather first a question of which percentage Lisa would be able to buy, and then a notation that: "All agreed Lisa should have access to the 15% but will then buy out GT's share of 7½%". There was no record of the motion, the question asked, nor how each partner voted. Lisa's testimony that

there was a vote by show of hands is inconsistent with the minutes which she herself took. Her testimony that she did not think to include the show of hands is not credible. I therefore find that there was no vote at this meeting.

[395] Since I have found that there had not been an agreement reached, it is not necessary to determine whether it was ratified at this meeting. In addition, however, the evidence of the meeting on its own does not indicate a ratification, nor an acknowledgment of any agreement.

[396] Lisa also confirmed that there was no discussion regarding the November 19, 2009 conversation with Al at this meeting. It is inherently inconsistent to suggest that an agreement was ratified without mention of the very agreement that is being ratified. Further, there was no agreement apparent on the face of the minutes. There was a question whether any equity taken by Lisa would be worth 7.5% or 15%, and when it was agreed to be 15%, a note was made that it was subject to tax advice as to how that would be done. There was no discussion about the terms necessary for a reinstatement with regard to the price, the funding for the additional 7.5%, or the services she would be required to provide.

[397] Gord, who was not present at the October 13, 2010 meeting, did not recall receiving any information from the other partners about an important matter being decided. In addition to my finding based on Lisa's inconsistent evidence, I also accept the evidence of Jim and Todd that there was not a vote taken at this meeting. Their evidence is also consistent with the minutes of the meeting. The circumstances are therefore not capable of being interpreted as a ratification of the alleged reinstatement agreement.

[398] In the minutes of the November 13, 2010 partnership meeting, under the heading of "Discussion 550934", there is an entry stating: "Barry [Fraser] thought Al should ask Lisa if she plans on working at ARTG". This indicates that the issue of Lisa providing services to ARTG in accordance with the Partnership Agreement was outstanding. In later emails, Lisa referred to a vote at the November, 2010 partnership meeting. There is no evidence of any vote at that meeting.

[399] At the December 16, 2010 Partnership Meeting, the minutes—taken accurately by Lisa—reflect a discussion about Taylor's buyout, and Lisa's best course of action regarding incorporation of a holding company. Lisa acknowledged that that timing was dependent on the conclusion of the Taylor Action.

[400] The minutes of the December 30, 2010 meeting include a reference to "assurance from other partners that [Lisa] will be able to buy back in", under the heading "Share Buyout for 550934". Lisa testified that this was likely in reference to the alleged vote at the October meeting, which I have found above did not occur. Reassurance from ARTG is consistent with the expectation of the partners that Lisa would be reinstated. Again, there is nothing indicative of an agreement having been reached between Lisa and Al.

[401] The next meetings were on February 3, 2011, September 1, 2011, December 22, 2011, and April 10, 2012. There is no reference to the alleged reinstatement agreement at any of these meetings.

[402] During this time, the emails amongst the parties and others discuss various matters including the payout to Lisa and banking arrangements for 934. The Taylor Action was the subject of much of the written communication with the parties all working together with their lawyers to determine how best to proceed.

[403] The lack of reference to the alleged reinstatement agreement at the partnership meetings is consistent with my finding that this was an agreement to agree.

a) Lisa's Affidavits

[404] In this time period, Lisa also swore two affidavits. The defendants submit that these affidavits—being the affidavit filed on February 15, 2011 in the Matrimonial Proceedings and the affidavit filed on October 12, 2011 in the Taylor Action—are prior inconsistent statements which should be accepted for the truth of their contents, as they are sworn statements by a party to the action and Lisa's explanations for them at trial were inadequate. In particular, the defendants submit

that the following statements ought to be accepted as admissions for the truth of their content:

a) From paragraph 12 of Lisa's February 15, 2011 affidavit in the Matrimonial Proceedings: It is my intention that once Gordon's civil suit against me has concluded I will seek approval from the AR Thomson Group to buy back into my family's business. Should the Partnership agree to my request, my entire share equaling roughly $900,000 would be earmarked solely for that purpose.

b) From paragraph 23 of Lisa's October 12, 2011 affidavit in the Taylor Action: I also do not understand how Taylor can state in his affidavits that I was in a conflict of interest. I have at all times acted in good faith and in the best interest of 550934 and he has not provided any evidence to the contrary. I am in the same position as Taylor in that both of us have an equal interest in 550934 and an equal financial incentive to maximize the value of the company.

[405] Additionally, the defendants submit that Lisa's general statements to the effect that the Taylor Action was not in the best interests of 934 should be admitted for their truth.

[406] Regarding Lisa's October 12, 2011 affidavit in the Taylor Action, her explanation for the inconsistency at paragraph 23 is, on its own, somewhat believable in the specific context of the Taylor Action at that time.

[407] However, the inconsistency in the Matrimonial Proceedings affidavit is a striking contradiction to her testimony at trial. In the affidavit she references "seeking approval" from the partnership "to buy back in" with no reference to the alleged reinstatement agreement which she seeks to enforce as a contractual right to buy back in. I reject her evidence that Al told her that Mr. Fraser told him to tell Lisa to make these changes to her affidavit. I accept Mr. Fraser's evidence entirely. Further, any conversations of Lisa with Al in this regard are not a credible explanation for swearing an affidavit under oath that she now disavows.

[408] Further, Lisa's statement under oath in February 2011 regarding seeking approval in the future is in direct contradiction to her evidence that there had already

been a vote, granting approval, at the October 2010 partnership meeting, or her later references to a vote at the November 2010 partnership meeting.

[409] It is not, therefore, necessary to make determinations on the admissibility of Lisa's prior inconsistent statements for their truth. It is sufficient to find that Lisa, by swearing evidence under oath (particularly the affidavit in the Matrimonial Proceedings) that is inconsistent with her evidence in this trial and which has not been satisfactorily explained, has entirely undermined her credibility.

[410] As noted above, the plaintiffs object to Mr. Fraser's testimony that he "certainly never told Richard Attisha not to mention an agreement [he] hadn't been told about". It is also not necessary to decide whether this testimony contains solicitor-client privileged information. I accept the evidence as evidence of facts: Mr. Fraser did not tell Mr. Attisha not to mention an agreement. The agreement referred to is one that Mr. Fraser had not been told about.

4. July 13, 2012 to October 30, 2012

[411] The fire at Lisa's apartment building that occurred on July 13, 2012 was a turning point in the relationships between Lisa and her family.

[412] At the July 18, 2012 partnership meeting, there was no mention of the alleged reinstatement agreement. Although not recorded in the minutes, Lisa raised the matter of the fire at her apartment building. By all accounts, this meeting did not go well, and Lisa was left with hurt feelings at her family's lack of sympathy for her circumstances after the fire.

[413] This was the beginning of the deterioration of the Thomson family relationships. Although there was extensive evidence at trial describing the number of ways in which relationships deteriorated, I will reference only briefly the disputes over time allocation for use of the Point Roberts family property, the 99% Article and the other articles.

[414] In the emails regarding use of the Point Roberts Property, there are disagreements and misunderstandings between Lisa and each of Todd and Gord. Todd and Lisa had been delegated to keep a calendar system. Lisa became unhappy with its operation and challenged Todd. In an email dated April 24, 2012 she wrote to Todd stating: “Tame [sic] it easy! Everyone will get their time for fuck sake. I have a better idea you take it over”. Upon a disagreement about whether Lisa would be staying at the Point Roberts Property after the fire, Lisa referred to Todd as “Landlord Todd” in emails they exchanged.

[415] The disagreements intensified after the fire.

[416] That dissention led to the 99% Article, which Lisa published on August 30, 2012 on a little-known website—but which she also referred to in a post on then-Twitter. Her family members became aware of the article. Each of the defendants described the significant degree in which they and their parents had been hurt by the article and Lisa’s allegations about their family.

[417] Against this background, in September 2012, the decision of Holmes, J. in the Taylor Action was released. Both Lisa and her lawyer, Mr. Attisha, wrote to the defendants seeking to guarantee Lisa’s reinstatement to ARTG.

[418] Lisa’s September 11, 2012 email set out her options for participating in the Taylor Action, two of which included a sought guarantee for reinstatement into ARTG. In seeking this guarantee, Lisa’s email has no reference to the alleged reinstatement agreement from almost three years earlier in November 2009. Nor is there a reference to other previously discussed ways of raising the funds for the additional 7.5% buy-in, such as partnership draws or a 3% interest loan from ARTG. At this time, there had still been nothing in writing from Lisa to Al referring to the alleged reinstatement agreement or setting out its terms.

[419] Mr. Attisha’s letter was written to Mr. Fraser, the ARTG lawyer in the Taylor Action. Similar to Lisa’s September 11, 2012 email, this letter discusses Lisa’s options for participation in the Taylor Action. Mr. Attisha’s letter also seeks a

guarantee that Lisa will be reinstated as a 15% partner, in exchange for which she will reinvest her 50% of 934's buyout funds into ARTG—which, as discussed above, could not have been a term of the alleged reinstatement agreement.

[420] Lisa, in cross-examination on this correspondence, was inconsistent and unconvincing. She testified that this was a term of the alleged reinstatement agreement, and that using 50% of 934's buyout funds was only a first step in funding the full 15% reinstatement. When questioned as to whether Mr. Attisha's letter was incomplete and incorrect, Lisa again equivocated. There was not an answer that created any consistency between the letter and Lisa's position on the alleged reinstatement agreement.

[421] At the opening of the trial, there was an application for disclosure of Mr. Attisha's file brought by ARTG, and opposed by Lisa on the basis of solicitor-client privilege. The application was dismissed. Mr. Attisha did not testify in the trial.

[422] On the face of Mr. Attisha's letter, and on the evidence of Mr. Fraser describing generally the co-operation and communication between himself and Mr. Attisha in defending the Taylor Action on behalf of Lisa and the ARTG Defendants, I conclude that Mr. Attisha's letter is an accurate record of Mr. Attisha's understanding and instructions. The plain meaning of the letter is clear—he did not refer to an existing enforceable contract for Lisa's reinstatement, and a guarantee was being sought. It makes sense that if there was a binding agreement, it would have been asserted. I reject Lisa's attempts to contort her evidence to the contents of the letter as written.

[423] The October 30, 2012 Partnership Meeting was the last partnership meeting that Lisa attended. There are no minutes of the meeting, but on the Agenda was "Lisa's request for Partners agreement to reinstatement".

[424] At this meeting, there was also a discussion regarding the 99% Article which Lisa testified she apologized for. The defendants did not recall that this was a meaningful apology. Al was upset with Lisa for not appealing the decision in the

Taylor Action, and the meeting deteriorated. There was no mention of the alleged reinstatement agreement.

5. After October 30, 2012

[425] On May 31, 2013, the Taylor Action was settled, thus triggering the timing for Lisa's reinstatement that had been discussed in the alleged reinstatement agreement.

[426] In order to mend the family relationships that had deteriorated in large part due to the 99% Article and disputes over the Point Roberts Property, a counsellor was retained in 2013. Lisa had some meetings with him, as did Al, but matters between Lisa and her father and her siblings, particularly Todd, remained unresolved.

[427] Lisa published other articles in which her family was negatively portrayed. "Scapegoating in Families" was a more general reference to family dynamics, but "My Sister is a Living Ghost "described the relationship with Deb as being dead. There was also an article about narcissist fathers, "Oil and Water: Narcissist Fathers & Imperfect Daughters" mostly describing Taylor's relationship with their daughter.

[428] In this time period, Lisa sent emails that the defendants rely upon as a repudiation of any agreement. Since I have found that there was not an agreement reached in November, 2009 or at any time, it is not necessary to decide whether there was a repudiation. There was no agreement to repudiate.

[429] The emails after October, 2012 had parallel threads, both with regard to the uncertainty of the possible reinstatement to ARTG, and the family relationships. While at one point the defendants indicated that it was necessary that the relationships be mended, that did not become a term of any reinstatement. They did make progress on possible amendments to the working partner term, by discussing amendments to the Partnership Agreement, but the amendments did not proceed and that term remained as an essential term.

[430] Mr. Fraser had lunch with Lisa in early 2015 to encourage her to mend the relationships. There is no evidence that the reconciliation occurred. This action was commenced in 2015.

[431] It is notable that throughout, and particularly in these emails after the family relationships had deteriorated, Lisa does not ever assert that she reached a binding agreement with her father in November 2009. As it became less likely that there would be an agreement with the partners, this would have been the time for her to do so had such an agreement existed.

[432] This is in striking contrast with Lisa being very bold and direct with her family about other matters. For example, in emails to Todd she told him to “put his big boy pants on”, and asked him if he was a “businessman or a child”. She wrote to Deb with allegations of Deb’s behaviour while drinking alcohol to excess. In 2012, before and after the fire at her apartment, she strenuously asserted her right to occupy the Point Roberts Property. She wrote and published articles portraying her family members in negative terms.

[433] The conduct of Lisa after the conversation with her father about the alleged reinstatement agreement in November 2009 leads to the inexorable conclusion that Lisa understood that conversation in the same way as Al; it was reassurance by a concerned parent that his daughter would be taken care of. Her reinstatement as a partner of ARTG was his intention and expectation. It was also Lisa’s intention and expectation, and she trusted her father in that process. All parties hoped that it would come to fruition. None of the parties made a contract that it would.

[434] That Lisa now states that she believes the November, 2009 conversation was a binding contract does not make it so.

[435] There are matters which do not require determination. The defendants claim that the Fraud Action was statute-barred, as it was brought after the expiration of the six-year limitation period prescribed by the former *Limitation Act,* R.S.B.C 1996, c. 266. Given that I am dismissing the Fraud Action based on my finding that there

was not a binding agreement between Lisa and Al, I do not need to address this submission.

[436] In addition, it is not necessary to decide whether there was consideration for any alleged agreement.

X. CONCLUSION

[437] In outlining the evidence above, I have considered the testimony and submissions of Lisa with regard to each event or document. In maintaining that there was a binding agreement for her reinstatement to ARTG, she has attempted to explain or justify each inconsistency. With regard to some of the explanations, such as her third affidavit filed in the Taylor Action on October 12, 2011, it is possible that, on their own, they may have little significance. However, with the numerous and significant inconsistencies taken together, the conclusion is inescapable that, from November 2009, the members of the Thomson family—that is, Al, Lisa, Jim, Gord, Deb, and Todd—expected or intended Lisa to be a partner in ARTG, but that a binding agreement for her reinstatement was not entered into.

[438] Further, the terms necessary for any reinstatement agreement to be reached were not included in the alleged reinstatement agreement. I have found that financing, the manner by which Lisa would pay for the other 7.5%, was an essential term. Also essential was Lisa being part of the working partnership, and thus providing services to ARTG. Although Al and the other partners on occasion did not comply strictly with all the terms of the Partnership Agreement, the articles regarding partners' provision of services was strictly followed and a fundamental operating premise of the ARTG business. The partners' approval was required.

[439] As a result, the alleged reinstatement agreement lacked consensus on and clarity of several essential terms, including how Lisa would finance her reinstatement, how this reinstatement would be approved, and what services Lisa would provide to comply with ARTG's working partnership model. Even more fundamental, Lisa's submission on what Al offered and she agreed to is unclear. It

was not possible, as Lisa herself agreed, that she could pay the amount of her 7.5% interest for a 15% interest.

[440] In the result, I find that there was no intention to create a contract in the conversation between Al and Lisa at Point Roberts in November 2009. While I have found that there was a shared intention within the family that Lisa would one day be reinstated, this is not the same as the requisite objective intention that must be present for a legally binding agreement to be found between two parties.

[441] I, therefore, find that the discussion between Al and Lisa in November 2009 was an agreement to agree. No binding contract for Lisa's reinstatement into the partnership was formed then, or at any time.

[442] The Reinstatement Action is, therefore, dismissed with costs on Scale B.

[443] It follows that the Fraud Action brought in the alternative is also dismissed with costs on Scale B.

XI. COSTS

[444] If any party seeks a different costs result, they should, within 30 days of the date of these Reasons, write to Supreme Court Scheduling to seek that a judge be assigned, following my retirement, to deal with any costs issues.

"*The Honourable Madam Justice Watchuk*"