IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Abdul-Ahad v. Challa,*
2025 BCSC 848

Date: 20250506
Docket: S209228
Registry: New Westminster

Between:

**Karam Abdul-Ahad, K. Jekki Pharmaceuticals Ltd.
and K&M Jekki Yogurt Ltd.**

Plaintiffs

And

**Dr. Lakshmikanth Challa, Dr. L. Challa Inc., Madhavi Challa
and New Pitt Meadows Medical Clinic Ltd.**

Defendants

And

C.J.A.D. Holdings Ltd.

Third Party

And

Karam Abdul-Ahad and K. Jekki Pharmaceuticals Ltd.

Defendants by way of Counterclaim

- and -

Docket: S245774
Registry: New Westminster

Between:

Madhavi Challa

Petitioner

And

**K. Jekki Pharmaceuticals Ltd., K&M Jekki Yogurt Ltd.
and Karam Abdul-Ahad**

Respondents

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Plaintiffs/Defendants by way of Counterclaim in NW S209228 and the Respondents in NW S245774:	D.H. Griffith L. Zhang, Articled Student
Counsel for the Defendants in NW S209228 and the Petitioner in NW S245774:	B. McLean J.L. Banks
Place and Dates of Trial:	Port Coquitlam, B.C. March 31, April 1-4 and 7, 2025
Place and Date of Judgment:	New Westminster, B.C. May 6, 2025

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I. Introduction

[1] Before the Court are two related proceedings that have been ordered to be tried together, with the evidence adduced in each deemed to be admitted into evidence in the other.

[2] The first is an action in which the plaintiffs, Karam Abdul-Ahad, K. Jekki Pharmaceuticals Ltd. (“KJPL”) and K&M Jekki Yogurt Ltd. (“KMJYL”), seek damages for the premature termination of a sublease of commercial premises where KJPL, as subtenant, was operating a pharmacy business.

[3] The second is a petition in which the petitioner, Madhavi Challa, a former minority shareholder in KJPL and one of the defendants in the action, seeks declaratory relief and damages against the plaintiffs for oppression under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*].

[4] For the reasons that follow, I have concluded that the action should be allowed in part and the petition dismissed.

II. Background Facts

A. Formation of the Partnership (2013-4)

[5] The dispute that gives rise to both proceedings began with a plan for three professionals to cooperate in setting up a medical clinic with an associated pharmacy.

[6] The individual plaintiff, Karam Abdul-Ahad, is a pharmacist. In the summer of 2013, he was employed as the manager of a pharmacy in Mission but aspired to go into business for himself. He was looking for an opportunity to operate his own pharmacy in conjunction with an established medical clinic. His plan was for the clinic to generate a steady flow of patients needing to fill prescriptions, in exchange for which the pharmacy would contribute to the clinic’s overhead costs, such as rent.

[7] He thought he had found what he was looking for when he met Dr. Kevin Sommi who was, at the time, operating a medical clinic through his company, Pitt

Meadows Medical Clinic, Inc. (“PMMC”), in the Meadow Vale Shopping Centre at 19150 Lougheed Highway in Pitt Meadows, along with a Dr. Darryl Jessop.

[8] PMMC’s lease at that location was due to expire in 2014. Dr. Sommi and Mr. Abdul-Ahad agreed to look for potential new premises together. They finally settled on new and larger premises a short distance away, at units 104/105, 107 and 108 – 19070 Lougheed Highway in Pitt Meadows, a total of 6,162 square feet (the “Premises”) at the time being used as a furniture store, but which, with some renovation, could accommodate an expanded clinic, a pharmacy and other ancillary businesses.

[9] As these discussions were taking place, Dr. Sommi hired another physician to assist him. The defendant, Dr. Lakshmikanth Challa had recently immigrated to Canada from the U.K. and began working with Dr. Sommi in June 2013. Dr. Challa liked the idea of joining Dr. Sommi because Dr. Sommi told him that he planned to retire in the near future, and Dr. Challa could inherit Dr. Sommi’s practice when that occurred.

[10] In September 2013, Dr. Sommi invited Dr. Challa to join him with Mr. Abdul-Ahad in setting up their fledgling partnership at the new location. After viewing the new premises and meeting Mr. Abdul-Ahad, Dr. Challa proposed a different kind of arrangement than the one Mr. Abdul-Ahad had had in mind.

[11] Dr. Challa’s idea was that the parties would enter into a profit-sharing arrangement whereby the two physicians’ wives (namely, Gillian Sommi and the defendant/petitioner, Madhavi Challa) would become minority shareholders in the pharmacy business. The wives, rather than the physicians, would have to own the shares because s. 5(1) of the *Pharmacy Operations and Drug Scheduling Act*, S.B.C. 2003, c. 77, prohibited physicians authorised to prescribe drugs from being direct or indirect owners of a pharmacy. To that end, they sought and obtained confirmation from the College of Physicians and Surgeons, the regulatory body that oversees such matters, that the proposed arrangement would not run afoul of that provision.

[12] With the parties in agreement on that revised plan, they went to a lawyer and had a series of contracts drawn, and executed, to formalise their arrangement, including the following:

a) an “Agreement to Pursue a Partnership in a Pharmacy located at 19070 Lougheed Highway, Pitt Meadows”, executed by Mr. Abdul-Ahad, Ms. Sommi and Ms. Challa on October 30, 2013;

b) a “Partnership Agreement” among Mr. Abdul-Ahad, Ms. Sommi and Ms. Challa, dated December 21, 2013, stipulating the terms on which the partnership would be carried on through a corporation, namely KJPL; and

c) a sublease, dated December 21, 2013 (the “Sublease”), pursuant to which the two physicians’ personal medical corporations, as landlord, leased to KJPL, as tenant, a part of unit 104/105 in the Premises comprising 1,550 square feet, known as unit 105A, that was to operate as a pharmacy.

[13] The main terms of the partnership were as follows:

a) the shares in KJPL were to be allotted 51% to Mr. Abdul-Ahad and 24.5% to each of Ms. Sommi and Ms. Challa (Mr. Abdul-Ahad’s shares were later transferred to KMJYL, a company owned by Mr. Abdul-Ahad and his wife);

b) each of the partners was to contribute to expenses in proportion to their shareholdings;

c) Ms. Sommi and Ms. Challa were to acquire a sublease for the pharmacy space with the same terms as the clinic’s head lease;

d) Mr. Abdul-Ahad was to be the sole director and manager of KJPL and to earn a salary of $55 per hour as well as a share of the profits;

e) profits were to be shared among the shareholders according to a prescribed formula;

f) Mr. Abdul-Ahad was to require the prior written consent of the other partners to bind the partnership to any liability in excess of $25,000; and

g) the original term of the partnership was to be five years, unless otherwise agreed, which term was to be renewable “at the option of the partners” (the duration and other parameters of any such renewal term were not stipulated).

[14] The owner of the Premises was C.J.A.D. Holdings Ltd. (“CJAD”). On December 25, 2013, Dr. Sommi and Dr. Challa caused their respective personal medical corporations, as tenants, to enter into a lease of the Premises with CJAD, as landlord (the “Head Lease”), for an initial term of five years beginning on January 1, 2014. The Head Lease had been prepared by CJAD in its standard form. Both Dr. Sommi and Dr. Challa provided personal guarantees.

[15] The Sublease was prepared by photocopying the Head Lease and substituting some of its terms (principally the parties, the demised space and the rent and other amounts payable) and covering others up with a piece of paper so that they did not appear in the photocopy. Most of the terms in the Head Lease were reproduced without alteration in the Sublease.

[16] CJAD’s consent was never formally sought for the Sublease but CJAD later became aware of it and did not object.

B. Opening of the Businesses and Subsequent Assignments (2014-6)

[17] Between January 1 and March 31, 2014, the Premises were renovated to convert them from a furniture store to a medical building. As contemplated by the Partnership Agreement, Ms. Challa contributed $54,000 to the cost of renovating and preparing the pharmacy space. Ms. Sommi went to work as full-time office manager at the clinic.

[18] The clinic and pharmacy opened for business on April 1, 2014. On that same day, Dr. Sommi and Dr. Challa caused their respective personal medical

corporations to assign the Head Lease to PMMC with the consent of CJAD, and PMMC entered into two additional subleases, these to an infusion clinic and a naturopath, allowing them to occupy units 107 and 108 in the Premises.

[19] On May 14, 2014, Dr. Challa incorporated the defendant, New Pitt Meadows Medical Clinic Ltd. ("NPMMC") and became its sole director, with him and Dr. Sommi as its two shareholders. On June 10, 2015, PMMC assigned its interest in the Head Lease to NPMMC, with the consent of CJAD. Around that time, the operation of the clinic also passed from PMMC to NPMMC. On February 29, 2016, Dr. Sommi transferred his shares in NPMMC to Dr. Challa.

[20] There was no formal assignment of the Sublease from the medical corporations to PMMC or from PMMC to NPMMC, but it is not disputed that NPMMC effectively became, with those assignments, both the tenant under the Head Lease and the landlord under the Sublease.

[21] Ms. Sommi continued to work at the clinic as an office manager until the spring of 2016, when Dr. Challa terminated her for what he believed to be her poor performance. The relationship between Dr. Sommi and Dr. Challa soured after that. Dr. Sommi himself continued to work at the clinic until September 2016. At that time, he left and relocated to the Ford Road Medical Clinic with one of the other physicians, Dr. Jessop. Mr. Abdul-Ahad agreed to set up a second pharmacy in association with that clinic, through a corporation called the Ford Pharmacy Limited ("FPL"). Mr. Abdul-Ahad owned 51% of the shares in FPL, while Ms. Sommi and Dr. Jessop's wife each owned 24.5% respectively.

C. The Termination of the Head Lease and Sublease (2017-8)

[22] Dr. Challa testified that he had been looking for some time to operate his own clinic in his own building, rather than continue renting. In late 2017, he set his sights on what he thought would be a suitable building located nearby at 12181 Harris Road, which had previously been occupied by a bank. He purchased and began renovating that property in early 2018.

[23] On March 28, 2018, Dr. Challa and Ms. Challa met with Marion Lane, a representative of CJAD, for the purpose of advising CJAD that NPMMC would not be renewing the Head Lease when the initial term expired one year later, on March 31, 2019. They provided Ms. Lane with post-dated cheques for the rent payable under the Head Lease for those remaining months of the initial term. They further advised her that they planned to move the clinic to the new location as of June 2018, although they intended to maintain at least some presence on the current site, along with their subtenants, until the end of the initial term. Finally, they asked Ms. Lane to keep all of that information confidential for the time being.

[24] The next day, March 29, 2018, Ms. Lane sent Dr. Challa and Ms. Challa an email to confirm what was discussed at the meeting and CJAD's expectations going forward. The email stated, in part, as follows:

> Thank you for the meeting yesterday, for confirming that New Pitt Meadows Medical Clinic Ltd will not be renewing their Lease, Unit #104, 107 & 108 19070 Lougheed Highway, Pitt Meadows, which expires March 31st 2019 and that your plans are to vacate the "medical clinic/doctor's office" portion of the premises as of May 31st 2018. You confirmed that New Pitt Meadows Medical Clinic Ltd will be operating out of their new premises June 1st 2018.
>
> We are in the process of reviewing your Lease Agreement (made on December 25th,2003 [*sic*], assigned to Pitt Meadows Medical Clinic on 1st of April 2014 and assigned again to New Pitt Meadows Medical Clinic Ltd as of 15th day of May 2014) with regards to the legal implications of you vacating the premises early, May 31st 2018. As per the Lease, the Tenant covenants and agrees with the Landlord "to occupy the Premises throughout the term of the lease and to operate and conduct its business in a reputable manner" found in Article V – Covenants of the Tenant, 5.01 i)
>
> …

[25] Ms. Lane followed up with a further email on April 9, 2018, this time copied to Dr. Sommi, which stated as follows:

> In follow, up to our meeting, March 28th 2018 and our email dated March 29th, 2018, (copy enclosed), with regards to your notice that the New Pitt Meadows Medical Clinic Ltd will not be renewing the Lease, Unit #104, 107 & 108 19070 Lougheed Highway, Pitt Meadows, which expires March 31st, 2019 and that your plans are to vacate the medical clinic/doctor's office portion of the premises as of May 31st 2018.
>
> The Landlord will be looking to the Tenant and Guarantors of the lease to fulfill the lease obligations to the end of the term, March 31st 2019, which

> includes, the payment of the rent for the remainder of the term, occupying the Premises throughout the term of the lease, leaving all fixtures, attached to the premises, (incl. cabinetry and sinks in each of the individual rooms) and alterations in place until such time as the Landlord notifies them in writing otherwise (we will notify you in due course of our election).
>
> As the other Guarantor of the Lease, Dr. Kevin Sommi has been copied on this letter so he is aware of his obligations.
>
> Since we are now aware that New Pitt Meadows Medical Clinic Ltd will not be renewing their lease, we will immediately begin the search for a Tenant for the premises for April 1st, 2019. This search process will include talking to realtors and other interested parties.

[26] After receiving that email, Dr. Sommi forwarded it to Ms. Sommi, who in turn forwarded it to Mr. Abdul-Ahad.

[27] In response to Ms. Lane's emails, Dr. Challa retained counsel on behalf of NPMMC, who wrote to Ms. Lane on April 10, 2018, stating as follows:

> We act for New Pitt Meadows Medical Clinic Ltd. ("our Client").
>
> Our Client entered into a Lease to rent the Premises from CJAD Holding Inc. ("Landlord") on or about December 2013 ("Lease"). As you state in your letter the term of the Lease terminates on March 31, 2019 ("Termination Date").
>
> We refer to your email to our Client dated March 29, 2018, as well as the Landlord's letter dated April 9, 2018, both pursuant to a meeting with our Client's representatives, Dr. and Mrs. Challa, on March 28, 2018.
>
> The aforementioned meeting was held for information purposes only and you were specifically requested to keep the subject matter of the meeting private and confidential, which you agreed to. Your undertaking notwithstanding, you have made the subject matter of the discussion known to third parties, and acted as if our Client has given some sort of notice pursuant to the Lease, or is in breach of the Lease in some manner, which entitles the Landlord to act.
>
> This could not be further from the truth. Our Client is the legal tenant of the Premises, and will remain as such, until the Termination Date. Until our Client fails to give written notice pursuant to its right to renew the Lease [16.01], 5 months prior to the Termination Date, our Client has the absolute contractual right to occupy the Premises and have quite [*sic*] and undisturbed occupation and use thereof.
>
> Our Client is not in breach of any term of the Lease. Any attempt to interfere with our Client's rights will be vehemently opposed.
>
> To clarify, our Client will remain in possession of the Premises until the Termination Date, and will give notice of its intent to renew the Lease, should it so choose.

> Our Client will not allow any interference with its contractual rights. It will most certainly not entertain any marketing and realtors prior to the contractually agreed time.
>
> Your email and the Landlord's letter are premature and are deemed of no force and effect. However, you have given formal notice to third parties, who have made it public, which has caused, and will continue to cause, our Client damages. Our Client reserves its rights in this regard against you as authorized representative of the landlord personally, and thru [*sic*] vicarious liability, against the Landlord.
>
> When our Client moves out of the Premises, it will, in adherence with the terms of the Lease, remove all trade fixtures related to the practice of medicine in British Columbia.
>
> It is demanded that any statement contrary to our Client's legal occupation of the Premises and contractual rights pursuant to the Lease be formally retracted, and proof thereof be provided to our Clients. In lieu of the aforementioned being done within 7 (seven) days, our Client will give the notice on your behalf.
>
> Govern yourself accordingly.

[28] CJAD's counsel responded by letter dated April 11, 2018, stating as follows:

> Further to our telephone discussion today, I confirm that I am the solicitor for CJAD Holdings Inc. and as such in receipt of a copy of your letter to CJAD dated April 10, 2018 relative to the above noted matter.
>
> As a result of various communications between our respective clients, the landlord understood that your client intended to vacate the premises prior to the expiry of the Lease and otherwise note [*sic*] adhere to its obligations pursuant to the Lease. Accordingly the landlord had a duty to mitigate and was considering options in that regard.
>
> As a result of your aforesaid letter and our telephone conversation, we confirm your client's intention to honor its lease obligations. Similarly, the landlord will continue to expect strict compliance.

[29] On May 2, 2018, Mr. Abdul-Ahad sent Ms. Lane an email attaching a photograph of a notice that an employee had found in the bathroom that the clinic shared with the pharmacy. The notice stated as follows:

> NOTICE
>
> We are excited to announce that New Pitt Meadows Medical Clinic Walk-in Clinic and Family Practice is MOVING into our spacious purpose built building in the first week of June 2018
>
> Our new location: 12181 Harris Road Pitt Meadows BC [next to Life labs across from Cheveron] [*sic*]
>
> We are very sorry for any inconvenience this may cause

> Thank you for your continuous support

[30] On May 4, 2018, NPMMC's counsel sent a letter to CJAD's counsel stating as follows:

> We refer to your letter of April 11, 2018, as well as our telephone discussion thereafter.
>
> It is our instruction to inform you that our Client is not going to exercise its option to renew its lease with your client. The lease will thus terminate on March 31, 2019 ("Termination Date").
>
> It is further our instruction that our Client will from approximately June 1, 2018 start transitioning its medical practice to its new premises. Our Client [w]ill post notices to this effect on the Premises.
>
> The transition may take some time and might be completed before the Termination Date. The aforementioned notwithstanding, it is our Client's intent to continue to pay the monthly rent until the Termination Date. To this effect your client should continue to present our Client's cheques in its possession for the monthly rent.
>
> To avoid any confusion and any interference with our Client's right to occupy the Premises up and until the Termination Date, our Client has the absolute contractual right to occupy the Premises and have quite [*sic*] and undisturbed occupation and use thereof. The fact that our Client is transitioning early has no effect on this right. Further, our Client's actions are not in breach of any term of the Lease, specifically the occupation requirement, as our Client will continue to occupy and, with its subtenants, will occupy a substantial portion of the Premises until the last day.
>
> Should your client wish to start marketing the Premises with the object of the new tenant occupying the Premises on April 1, 2019, kindly arrange viewing times with our Client by giving reasonable prior notice. Our Client would not be averse to be accommodating reasonable requests in this regard.

[31] On May 9, 2018, Mr. Abdul-Ahad sent an email to Dr. Challa stating as follows:

> Hi Dr Challa
>
> In light of the clinic moving out on the first week June and the clinic space will be unoccupied please give me access to the following so we can continue to keep our doors open for the remainder of the sublease. Please provide me with the following.
>
> 1.Alarm code to the clinic;
>
> 2.Keys to the back emergency exit door;
>
> 3.Keys to the mailbox.
>
> I hope you the best of luck in your new location, please let me know if the pharmacy or my self can help facilitate the move or can be of any help.

[32] Dr. Challa refused to provide the requested items.

[33] On June 11, 2018, Mr. Abdul-Ahad emailed Ms. Lane to advise that the clinic's last day of operation had been June 8, 2018 and attached photographs showing the clinic area vacant, with a sign posted outside stating, "Walk-in Clinic moved to 12181 Harris Road".

[34] On the following day, June 12, 2018, Mr. Abdul-Ahad sent Ms. Lane another email, this one stating as follows:

> Hi Marion
>
> I arrived this morning to the pharmacy to find that walls have been put up to completely block off the clinic. This further proves that the establishment is closed to all patients and is non operational with no intention of ever being operational.

[35] Attached to the email were photographs showing the barriers that had been erected to close off the clinic from the pharmacy. In his testimony at trial, Dr. Challa explained that this was done on the advice of the alarm company, because otherwise activity from the pharmacy would trigger the clinic's alarm.

[36] Over the next several days, Ms. Lane received similar emails from a patient of the clinic and from the naturopath, another one of NPMMC's subtenants.

[37] CJAD exercised its right of re-entry overnight on June 17/18, 2018. Dr. Challa learned of this when the alarm was triggered and the police called. CJAD packed the personal property left on the site into 12 boxes and later shipped them to NPMMC's lawyer.

[38] On June 18, 2018, Ms. Lane, on behalf of CJAD, sent Dr. Challa, on behalf of NPMMC, a letter formally terminating the Head Lease. The letter stated as follows:

> New Pitt Meadows Medical Clinic Ltd ("Tenant") entered into a Lease to rent the premises form [*sic*] CJAD Holdings Inc ("Landlord") on December 25th, 2013 ("Lease") for a term of five (5) years, from 1st day of April 2014 to March 31st, 2019 (the "Term").
>
> This letter serves as Notice that the above-mentioned Lease Agreement has been terminated and the Landlord has re-entered and taken possession of the premises due to breach and non-performance of covenants, due to the

> premises being vacant or unoccupied for five (5) days and due to the premises not been [*sic*] used for the purpose/use as outlined in the Lease Agreement by the Tenant.
>
> We refer to our letter dated April 9th, 2018, stating that the Landlord would be looking to the Tenant and Guarantors of the lease to fulfill the lease obligations to the end of the term, March 31st 2019, which not only includes, the payment of the rent for the remainder of the term but also occupying the Premises throughout the term of the lease according to the terms of the Lease.
>
> The Tenant vacated the General Practitioner Office and Drop-in-Clinic on Saturday June 9th, 2018 and has not operated in the premises since then. The General Practitioner Office and Drop-in-Clinic has now been closed/vacant, non-operational, for more than five (5) days and therefore the Tenant is in breach of their Lease Agreement. According to the Lease Agreement article 5.01, j) the Tenant covenants and agrees to occupy the Premises throughout the term of the lease and to operate and conduct its business in a reputable manner. According to the Lease Agreement, article 5.01, g) the premises is to be used as General Practitioner Office including Drop-in Clinic.
>
> According to Article 9.01 of the Lease the Landlord are within their rights to terminate the lease due to; the breach and non-performance of covenants, due to the premises being vacant or unoccupied for five (5) days and due to the premises not been used for the purpose/use as outlined in the Lease.
>
> According to Article 9.01 of the Lease, in such cases as listed above, the current month's rent together with the next three months next ensuing shall immediately become due and payable.
>
> Based on the above please process a payment in the amount of $36,104.37, the equivalent of three months' rent including GST, ($11,461.70 + $573.09 GST X 3).

[39] The termination of the Head Lease had the effect of terminating the subleases, including the Sublease. By letter dated June 20, 2018, Ms. Lane gave Mr. Abdul-Ahad formal notice of the termination of the Sublease as well.

D. KJPL's Lease of Unit 104/105 and the Return of PMMC (2018-present)

[40] For Mr. Abdul-Ahad, the news of the clinic's imminent departure, received without prior warning in April 2018, was particularly problematic. He was unsure of what to do because, in his view, his business depended on the clinic continuing to operate where it was. He asked Dr. Challa if he could bring the pharmacy to the new location when the clinic moved there, or failing that, if he could take over the Head Lease from NPMMC. Dr. Challa refused both requests.

[41] Next, he contacted a realtor in an effort to find alternate space nearby. He spoke to Ms. Lane, who told him that, as far as CJAD was concerned, until NPMMC breached the Head Lease, there was nothing CJAD could do about the situation. She added that if that happens, CJAD would be amenable to having KJPL take over the Head Lease.

[42] After the termination of the Head Lease and the Sublease, Mr. Abdul-Ahad expressed interest in continuing to rent the pharmacy space (unit 105A) directly from CJAD, but Ms. Lane told him that CJAD would not be interested in such an arrangement because the clinic and pharmacy spaces shared a common washroom and entrance, so they would have to be rented out together.

[43] Ultimately, Mr. Abdul-Ahad elected to cause KJPL to enter into a new lease directly with CJAD as of July 1, 2018 for both spaces. With the extra square footage leased, KJPL's monthly rent obligation rose commensurately.

[44] In order to replace the flow of patients looking to fill prescriptions at the pharmacy, Mr. Abdul-Ahad approached Dr. Sommi and invited him to return to the clinic, which he eventually agreed to do, along with two other physicians. To encourage them to come, KJPL took on the burden of paying for a refurbishing of the clinic space, acquiring basic equipment and supplies for the clinic, and paying PMMC's share of the rent (allocated at 60% of the rent payable to CJAD for both spaces, although the actual ratio by square footage was 36.4%/63.6%). These payments were consistently recorded in the accounting records of both companies as a loan from KJPL to PMMC, although Mr. Abdul-Ahad testified at trial that they were actually intended as subsidies to induce PMMC to return and operate in the clinic space, and there was never any prospect of repayment. He also testified that KJPL is now in the process of writing off those loans.

[45] On December 17, 2019, Mr. Abdul-Ahad, on behalf of KJPL, as landlord, and Ms. Sommi, on behalf "Pitt River Medical Centre", as tenant, signed a sublease whereby the new clinic sublet the clinic space from KJPL for $1 in base rent per month. Mr. Abdul-Ahad testified at trial that this sublease was created and signed

only because his insurer required it. He also testified that the name of the clinic reverted to PMMC due to Dr. Challa's objection to the use of that other name.

[46] In any event, once the businesses had stabilised in early 2019, Mr. Abdul-Ahad increased his own salary from $55 per hour, the amount contemplated in the Partnership Agreement, to $65.

[47] Ms. Challa was never consulted about these new arrangements with PMMC or the $10 increase in Mr. Abdul-Ahad's salary.

[48] On November 23, 2018, the plaintiffs offered, through counsel, to settle the plaintiffs' claims on the basis that, among other things, the defendants would pay a portion of the amount claimed and Ms. Challa would relinquish her shares in KJPL and withdraw from the partnership. The offer was rejected.

[49] On or about May 15, 2019, the parties jointly retained an independent accounting firm to quantify the value of KJPL's shares and the damages asserted in the action. Ms. Challa learned of the arrangements with PMMC and the increase in Mr. Abdul-Ahad's salary by reading the resulting report.

[50] In the end, Ms. Challa continued to hold her shares until December 2022, when KMJYL purchased them, along with those of Ms. Sommi, leaving KMJYL as the sole shareholder in KJPL. The parties have since agreed that the price that Ms. Challa received for her shares at that time ($101,675) did not account for either:

a) the value of any debt owing to KJPL from PMMC; or

b) the amount that Mr. Abdul-Ahad might have to repay KJPL for having increased his compensation above his entitlement under the Partnership Agreement.

E. Litigation History

[51] This action was commenced on December 11, 2018, originally with Mr. Abdul-Ahad and KJPL named as plaintiffs, and Dr. Challa, Ms. Challa and

Dr. Challa's personal medical corporation as defendants (the other current plaintiff, KMJYL, and the other current defendant, NPMMC, were both added later).

[52] The original defendants filed a counterclaim against the plaintiffs on January 3, 2019 and a third-party notice against CJAD, Dr. Sommi's personal medical corporation, Dr. Sommi and Ms. Sommi on April 9, 2019. The counterclaim and third-party claims have all since been discontinued. The petition was filed on August 24, 2022.

[53] By a consent order made on January 23, 2025, the petition was referred to the trial list and ordered to be heard concurrently and tried together with the action, with the evidence in each to be adduced in both as if they were consolidated.

[54] The pleadings have undergone several rounds of amendments, most recently in February and March 2025. As a result of those amendments and the closing submissions made at trial, both proceedings have been simplified and the issues narrowed to those described herein.

III. Discussion

A. The Action

i. Claims and Defences

[55] The plaintiffs advance causes of action in both contract and tort. In particular, they plead that Dr. Challa and NPMMC, by causing CJAD to terminate the Head Lease and the Sublease, deprived KJPL of its contractual rights under the Sublease, which should have lasted through the initial term and two five-year renewal terms, to March 31, 2029. They seek damages measured as the difference between the rent that KJPL was forced to pay CJAD and the rent that would have been payable under the Sublease, as well as the other "subsidies" that KJPL provided to PMMC to induce PMMC to return to the clinic. No cause of action is pleaded against the two other named defendants, namely, Dr. L. Challa Inc. and Ms. Challa.

[56] Finally, the plaintiffs have agreed to reduce their claim for damages attributable to the period when Ms. Challa was a shareholder by 24.5%, to reflect her shareholding during that period.

[57] The defendants have raised two main defences to those claims, as follows:

a) NPMMC did nothing to justify CJAD's termination of the Head Lease, which was therefore wrongful; and

b) the claim is barred by a "hold harmless" clause in the Sublease.

[58] In addition, the defendants argue that even if liability is established, the plaintiffs are not entitled to the damages claimed because:

a) PMMC was responsible for paying its own rent and other operational expenses and any such amounts that KJPL may have paid on PMMC's behalf were loans that PMMC must repay;

b) the damages claimed were not reasonably foreseeable;

c) to the extent that KJPL had to subsidize a new clinic operator, that was an expense that KJPL would have had to pay sooner or later at the conclusion of the Sublease in any event;

d) the quantum of damages claimed is unsupported by expert evidence showing that the non-arm's-length payments from KJPL to PMMC were fair and reasonable; and

e) NPMMC had no obligation to renew the Head Lease after the expiry of the initial term on March 31, 2019, particularly when KJPL never gave NPMMC notice of its intention to renew the Sublease beyond its initial term.

ii. Did NPMMC breach the Sublease by giving CJAD cause to terminate the Head Lease?

[59] It is not seriously disputed that, at least during the initial term, Dr. Challa and NPMMC had an implied duty to maintain the Head Lease in good standing so that NPMMC could fulfill its obligations to KJPL under the Sublease. The interpretation of the Sublease, including the question of whether such a term should be implied, must be informed by the context in which the Sublease was entered into and the purpose it was intended to serve. That context includes, first and foremost, the formation of a partnership with the object of opening a medical clinic with an adjunct pharmacy that would receive a steady stream of patients looking to fill prescriptions issued at the clinic. In exchange for that steady stream of potential customers for the pharmacy, the physicians were to receive, through their spouses, a share of the pharmacy's profits.

[60] What is disputed is whether that implied term was breached. The defendants' first argument is that there was no breach of the Head Lease to justify its termination. I disagree.

[61] There are several terms in the Head Lease that, when read in combination, required NPMMC to occupy and operate the clinic, as a clinic, continuously.

[62] I begin with s. 5.01, which listed the following among the covenants of NPMMC as tenant:

> …
>
> g) That the Premises may be used only for the purpose of a General Practitioner Office including Drop-in Clinic with Full Service Pharmacy; in compliance with the bylaws of the municipality in which the Leased Premises is located ("the City") and shall not be used for any other purpose without the Landlord's prior written consent as required under the Lease. It is the Tenant's sole obligation and responsibility to ensure its use complies with the City's zoning. The Tenant shall be granted the exclusive use of a Medical clinic & Pharmacy only (excluding Chiropractor & physiotherapy) within the building. In the event that the Tenant sublets to an Ophthalmologist, Optometrist or another specialized medical practitioner, with Landlords prior written consent, such consent to not be unreasonably withheld, the Landlord is in agreement to not lease or permit subletting to a similar medical service within the building during the period of sublet.

> ...
>
> i) To occupy the Premises throughout the term of the lease and to operate and conduct its business in a reputable manner …
>
> [Emphasis added.]

[63] Section 9.01 dealt with CJAD's right to re-enter in the event of a breach, and stated as follows:

> If and whenever the rents hereby reserved or any part thereof shall be in arrears or unpaid, when the same ought to have been paid, although no formal demands shall have been made therefore, or in case there be default or breach or non-performance of any of the covenants or agreements (other than for the payment of rent and other monies) herein contained on the part of the Tenant or if the Premises is vacated or become vacant or remain unoccupied for five (5) days or are not used for the purpose specified then, and in such cases the current month's rent together with the rent for the next three months next ensuing shall immediately become due and payable and it shall be lawful for the Landlord at any time thereafter without notice and any form of legal process whatever at its option, to cancel and annul this lease forthwith and re-enter the Premises and the same to have again, repossess and enjoy as of its former estate, anything herein contained to the contrary or in any statute or law to the contrary notwithstanding; and no acceptance of rent subsequent to any default or breach other than by non-payment of rent, and no condoning, excusing or overlooking by the Landlord on previous occasions of any breach or default similar to that for which re-entry is made shall be taken to operate as a waiver of this condition or in any way to defeat or affect the rights of the Landlord hereunder, and the Tenant hereby waives all claims for damage or loss of any of the Tenant's property caused by the Landlord in re-entering and taking possession of the Premises: and no action taken by the Landlord in pursuance of this proviso whether under what are generally known as summary proceedings or otherwise shall be deemed to absolve, relieve or discharge the Tenant from liability hereunder, and this proviso shall extend and apply to all covenants whether positive or negative.
>
> [Emphasis added.]

[64] Those terms distinguish this case from *Foresight Projects Ltd. v. Tyee Plaza Development Inc.*, 2003 BCCA 117, upon which the defendants rely for the proposition that a continuous operation covenant is a commercially onerous term that must, if it is to be enforceable, be clearly expressed. In that case, the landlord had argued, unsuccessfully, that such a term was to be implied by the court. In this case, however, a covenant to occupy the Premises continuously is expressly set out in s. 5.01(i). There was no such term in the lease at issue in *Foresight Projects*.

[65] The defendants also rely on *Four Top Hospitality Group Ltd. v. Olde Towne Developments Ltd.*, 2024 BCSC 2279, in arguing that CJAD failed to provide adequate notice of the default and to give NPMMC a reasonable opportunity to cure before re-entering and terminating. However, the default clause upon which the landlord was relying in that case stated that the landlord could take remedial action:

> [i]f at any time … the Tenant fails to perform or observe any other covenant or term of this Lease and such default shall continue for fifteen (15) days after notice thereof has been given by the Landlord to the Tenant …

[66] In this case, CJAD was empowered under s. 9.01 of the Head Lease to re-enter and terminate in the event of a default of this kind "without notice and any form of legal process whatever at its option." In any event, after Dr. Challa advised Ms. Lane of his future plans for the clinic at the meeting on March 28, 2018, Ms. Lane, and later CJAD's counsel, placed him and NPMMC on notice that CJAD would consider his proposed course of action, which he later carried out, to be a breach of the Head Lease that would not be tolerated.

[67] As a result of NPMMC's move to the new location, the clinic space at the Premises was left essentially vacant and had ceased to function as a clinic as of June 9, 2018. The manner in which the beds and other medical equipment were removed and physical barriers were installed to close off the clinic space from the pharmacy suggests that, contrary to Dr. Challa's and Ms. Challa's testimony at trial, they had no intention of reopening the clinic after vacating it on June 9, 2018. In any event, even if they had intended to resume some operations at the clinic at some point thereafter, the existence of such a plan would not have sufficed to meet NPMMC's obligations under the Head Lease, given the period of vacancy that had already occurred and was ongoing by the time of the re-entry and termination.

[68] Nor was it sufficient for NPMMC to rely on its subtenants' ongoing occupation and use of their respective spaces to meet NPMMC's obligations under the Head Lease, which included a requirement that the Premises be used by NPMMC at all times as a "General Practitioner Office including Drop-in Clinic".

[69] For those reasons, I have concluded that by vacating the clinic space and ceasing to use it as a walk-in medical clinic for at least five consecutive days, Dr. Challa caused NPMMC to breach the terms of the Head Lease, justifying CJAD in re-entering and terminating the Head Lease and the Sublease as and when it did.

iii. Are the plaintiffs' claims barred by the "hold harmless" clause?

[70] The defendants' second argument is that s. 10.01 of the Sublease provides a "complete answer" to the plaintiffs' claims.

[71] That clause takes the form of an incomplete reproduction and splicing of two separate sections in the Head Lease, namely ss. 10.01 and 10.02.

[72] The original version of those terms in the Head Lease stated as follows:

> **10.01 Landlord's Protection Against Claims**
>
> The Landlord shall not be liable and the Tenant hereby covenants and agrees to indemnify and save harmless the Landlord of and from all claims and demands of any and every nature whatsoever by the Tenant or any other person located on the Premises arising out of the following:
>
> a) Loss or damage to any property of the Tenant or any other person located on the Premises from time to time in any way occurring other than as a consequence of a breach of any obligation of the Landlord hereunder;
>
> b) Damage or injury, including injury resulting in death, to persons or property on the Premises from time to time in any way occurring, other than as a consequence of a breach of any obligation of the Landlord hereunder;
>
> c) Any business carried on in the Premises either by the Tenant, any subtenant, or otherwise.
>
> **10.02 Landlord Unable to Perform**
>
> Whenever and to the extent that the Landlord shall be unable to fulfill or shall be delayed or restricted in the fulfillment of any obligation hereunder in respect of the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material goods, equipment, service utility, or labour required to enable it to fulfill such obligation or by reason of any strike or lockout of any statute, law, or order-in-council, or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administration, comptroller, or board of any governmental department or officer or other authority or by reason of any other cause beyond its control whether of the foregoing character or not the Landlord shall be relieved from the fulfillment of such obligation until such time as the Landlord is able to fulfill his obligations under this clause and the Tenant shall not be entitled to compensation for any loss, inconvenience, nuisance or discomfort thereby occasioned during

> the period in which the Landlord is unable to fulfill his obligations under this clause.

[73] In the version reproduced in the Sublease, sub-paragraphs (a) to (c) in s. 10.01 have been removed and the first paragraph ends in mid-sentence, after the word “following” (indeed, the bottom half of the word “following” is itself cut out). What appears next is the language that had appeared as s. 10.02 in the Head Lease, but without the new section number or heading.

[74] I agree with the plaintiffs that the resulting clause, whatever it may mean, cannot possibly operate to bar the plaintiffs’ claims in this action. In particular, it cannot have been the intention of the parties to excuse NPMMC from any liability of any kind, without qualification. The effect of such an interpretation would be to strip KJPL of any rights or recourses at all under the Sublease. Further, such an interpretation would render the second half of the provision, taken from s. 10.02 in the Head Lease, entirely superfluous.

[75] Clauses that have the effect of excusing a landlord from liability are to be narrowly construed: *Agnew-Surpass v. Cummer-Yonge*, [1976] 2 S.C.R. 221. In this case, the more plausible interpretation of the provision is that the parties merely intended to limit NPMMC’s potential liability to KJPL in situations where NPMMC is unable to perform its obligations as landlord for one or more of the reasons set out in s. 10.02 of the Head Lease, none of which are applicable here.

[76] In summary, I am not persuaded that s. 10.01 of the Sublease provides a defence to any of the claims advanced by the plaintiffs in the action.

iv. What are KJPL’s damages?

[77] Having concluded that Dr. Challa and NPMMC are liable to KJPL in contract and tort, I turn next to the question of the damages payable.

[78] Where, as here, a plaintiff is to be compensated for the premature termination of a lease, the proper measure of damages is the amount that will restore the

plaintiff to the position it would have been in had the lease agreement been performed: *Dasham Carriers Inc. v. Gerlach*, 2013 ONCA 707, at para. 10.

[79] The plaintiffs have calculated their damages by adding the rent differential and PMMC "subsidies", yielding a gross award of $873,909.27, and then reducing that sum to account for Ms. Challa's 24.5% interest while she was a shareholder, yielding a net claim of $806,123.15.

[80] Their entitlement to that amount turns on the following three questions:

a) was NPMMC required to exercise its renewal rights under the Head Lease in order to give KJPL the right to remain in occupation under the Sublease through to March 31, 2029 if it chose to do so;

b) what is the correct characterization of the payments KJPL made for the credit of PMMC (i.e., were they a loan that is expected to be repaid or a non-refundable subsidy that KJPL had to provide in order to mitigate its damages); and

c) were those and the other damages claimed a reasonably foreseeable consequence of the premature termination of the Sublease?

[81] Turning first to the question of whether NPMMC was required to exercise its renewal rights under the Head Lease, I have already found that the Sublease contained an implied term requiring NPMMC to maintain the Head Lease in good standing so that NPMMC could fulfill its obligations to KJPL under the Sublease, at least during the initial term. However, it does not necessarily follow that NPMMC was also required to exercise its two successive renewal rights at KJPL's option.

[82] The provisions granting renewal rights under the Head Lease and the Sublease are identical, and state as follows:

> ARTICLE XVI – RENEWAL
>
> 16.01 The Tenant, not being [in] default hereunder, shall have the option to renew this lease for two (2) successive period[s] of five (5) years each provided that the Tenant gives notice of its exercise of its renewal

> option in writing to the Landlord at least six (6) months prior to the expiration of the then current term. In the event of such option being exercised, all of the terms and conditions and covenants of this lease except as to rent payable, Landlords Work, Fixturing Period, Tenant Improvement Allowance or other incentives given to the tenant during the initial term and save for this option to renew shall be binding on the parties hereto during any such renewal period. If such option is exercised, the rent payable shall be fixed by mutual agreement and failing such agreement shall be a fair rental fixed by arbitration in accordance with provisions of the Arbitration Act of the Province of British Columbia, but not less that the rental of the preceding term. At the commencement of each renewal period, the Tenant's Security Deposit shall be increased to the amount of the revised monthly rent.

[83] The defendants have raised a number of issues with the plaintiffs' claim for damages based on KJPL's alleged right to two successive renewals pursuant to that provision.

[84] The first, not pressed by the defendants in closing argument, is whether the renewal clauses are even enforceable at all, as opposed to unenforceable "agreements to agree". In that regard, I accept that the provisions are enforceable because they fall into the third category described by Lambert J.A., writing for the majority, in *Empress Towers Ltd. v. Bank of Nova Scotia* (1990), 50 B.C.L.R. (2d) 126, 1990 CanLII 2207 (C.A.), when he summarised the governing law in this area as follows:

> The law is generally to the same effect in England. It is discussed by Mr. Justice Megarry in *Brown v. Gould*, [1972] 1 Ch. 53, where three categories of options are analyzed. The first category is where the rent is simply "to be agreed". Usually such a clause cannot be enforced. The second category is where the rent is to be established by a stated formula but no machinery is provided for applying the formula to produce the rental rate. Often the courts will supply the machinery. The third category is where the formula is set out but is defective and the machinery is provided for applying the formula to produce the rental rate. In those cases the machinery may be used to cure the defect in the formula. What is evident from a consideration of all three categories is that the courts will try, wherever possible, to give the proper legal effect to any clause that the parties understood and intended was to have legal effect.

[85] A second argument advanced by the defendants is that, as a matter of law, a sublessor can defeat a sublessee's right to renew by simply electing not to renew the head lease. The defendants rely on *Anthem Heritage Hill Ltd. v. Just One Stop*

Ltd., 2006 ABQB 113, for that proposition. However, the outcome in that case turned on the specific wording of the renewal clause in the sublease, which expressly made the sublessee's renewal right contingent on the sublessor's election to renew the head lease. No such term is present here.

[86] A closer parallel to this case can be found in the decision of this court in *Duhigh Holdings Ltd. v. 24 Hour Entertainment et al*., 2004 BCSC 1689, which concerned the fate of a sublease for a video store granted by a franchisor to a franchisee.

[87] In that case, Kelleher J. had occasion to consider the contractual obligation of the sublessor/franchisor to renew the head lease if the sublessee/franchisee exercised its right to renew the sublease. In answer to that question, he accepted the general proposition urged upon him by counsel for the sublessee to the effect that, "if the sublessee properly exercises the option to renew the sublease, there is an implied term that the sublessor will exercise its option to renew the head lease" (at para. 78).

[88] As it happened, however, the sublessee had missed the deadline for the provision of such notice by seven months, which was found to be fatal to its claim. In explaining his conclusion in that regard, Kelleher J. stated as follows:

> [101] If Duhigh [the sublessee] had properly exercised the option to renew the sublease before June 1999, the lessee, 24 Hour Entertainment, would have been required to exercise its option to renew the head lease. That is the combined effect of the sublease and the franchise agreement. But in the absence of notice to renew from the sublessee, one cannot fault 24 Hour Entertainment for not exercising its option to renew the head lease. Doing so could result in leasing the premises although the sublessee was not bound to renew.

[89] In this case, I am satisfied that KJPL, had it had the opportunity to do so, would have exercised its right to renew the Sublease. A strong indication of this lies in the fact that KJPL has remained in the same space to this day, but at much greater cost. Nevertheless, the defendants argue that KJPL, like the sublessee in *Duhigh Holdings*, never gave NPMMC the requisite notice of its intention to renew

the Sublease, so as to engage its right to renew. The difficulty I have with that submission is that KJPL should have had until the end of September 2018 (six months prior to the end of the initial term) to give that notice, but the Sublease had already been terminated over three months before then, thereby ruling out any prospect of a renewal. Mr. Abdul-Ahad cannot be faulted for having failed to provide an earlier notice to renew in circumstances where Dr. Challa had already advised CJAD a year before of his intention not to renew the Head Lease and indeed to vacate even before the expiry of the initial term.

[90] As in *Duhigh Holdings*, the relationship between the parties went beyond that of landlord and tenant. Like the sublessee *in Dunigh Holdings*, KJPL also had a separate business relationship with its sublessor – indeed, in this case, that relationship had many attributes of a true partnership. In both cases, the sublessees depended on the sublessors for their businesses to thrive, for reasons that went beyond their need to have the use of the demised premises. Both had made significant capital expenditures to set up their businesses on those premises, in the expectation of a long-term commitment from their sublessors. These factors also weigh in favour of recognising an implied term requiring NPMMC to renew the Head Lease as needed to give effect to KJPL's renewal rights in the Sublease.

[91] I have therefore concluded that KJPL's damages should be calculated with reference to the two renewal terms.

[92] I turn next to the second question raised in connection with the damages claim, namely, the correct characterisation of the payments made by KJPL for the benefit of PMMC.

[93] The defendants argue that these should be treated as a loan, because that is how both KJPL and PMMC characterised them in their accounting records and tax returns. They note that during the pandemic, both companies applied successfully for government grants on that basis under the Canadian Emergency Rent Subsidy programme.

[94] However, I accept Mr. Abdul-Ahad's evidence that the "loans" were merely a bookkeeping fiction created by KJPL's and PMMC's accountants, admittedly with his acquiescence, and that he is now in the process of writing them off, given that there is no prospect of repayment. There is contemporaneous documentary evidence to support Mr. Abdul-Ahad's version of events in the form of his emails to his accountants advising them of the true state of affairs. There is also the sublease that he and Ms. Sommi signed on December 17, 2019, indicating that PMMC was to pay a nominal rent of $1 for its use of the clinic space, rather than the 60% attributed to it in the accounting records.

[95] In addition, I have difficulty accepting the defendants' premise that PMMC would have been prepared to return to the clinic on the same terms as before, without any further incentive beyond a temporary deferment of its rent obligations. Dr. Challa himself was not prepared to continue with that original arrangement on his own for very long after Dr. Sommi's departure in late 2016. The situation had become even less appealing after the termination of the Head Lease and the Sublease. In their place, a different tenancy regime had been arranged directly between CJAD and KJPL, without the involvement of either of the physicians. Moreover, the Partnership Agreement, including its profit-sharing provisions, had, by its own terms, expired or would soon expire, and in any event, could no longer be considered binding on the parties in light of what had occurred. I am satisfied that in these changed circumstances, an additional incentive was needed to induce PMMC to return.

[96] Mr. Abdul-Ahad testified that there was an expectation in the industry that a pharmacist wishing to benefit from an association with a medical clinic would contribute significantly to the clinic's overhead expenses, particularly rent. The defendants challenged Mr. Abdul-Ahad on this point. They urge me to reject that testimony as self-serving and unsupported by expert opinion evidence. They point to examples where no such subsidy is paid, such as the pharmacy in which Ms. Challa is currently invested, which is associated with Dr. Challa's new clinic.

[97] However, there is other evidence before me, accepted by both sides, supporting Mr. Abdul-Ahad's version of events. The parties have agreed, in the agreed statement of facts entered into evidence at trial, that when the parties began their discussions that were to lead to the formation of the partnership, Mr. Abdul-Ahad was not alone in proposing a subsidy of that kind. After describing Dr. Challa's partnership alternative, which the parties ultimately adopted, the agreed statement of facts adds the following information, at para. 17:

> This partnership idea was pitched to the multiple pharmacists interviewed, who turned it down, including, initially, Mr. Abdul-Ahad. The pharmacists interviewed wanted to pay their own rent and a portion of PMMC's rent.

[98] This serves as strong evidentiary support for Mr. Abdul-Ahad's testimony as to the existence of the industry norm that he described. I pause to note that the value to the pharmacist of such an association does not derive from any "guarantee" by the clinic physicians that their patients will actually fill their prescriptions at the associated pharmacy. The agreed statement of facts is also clear that no such guarantees were provided in this case. Rather, the value of the association for the pharmacy derives from the common-sense inference that patients will simply be more likely to fill their prescriptions at the first pharmacy they encounter as they leave the clinic.

[99] In summary, I am satisfied that the payments in issue were made as a subsidy, for the purpose of inducing PMMC to return to the clinic and thereby mitigate KJPL's damages, rather than as a loan. That does not necessarily mean, however, that those payments were, in their entirety, reasonably made, which brings me to the third question raised on the issue of damages.

[100] In that regard, I agree with the defendants that, as a matter of law, KJPL should only be compensated for costs *reasonably incurred* in mitigating its damages. In *Van Hartevelt v. Grewal*, 2012 BCSC 658, Savage J., then of this court, in refusing to grant the plaintiff the full amount spent in mitigating his damages (in that case, privately funded medical treatment), summarised the applicable law in this area as follows:

> [88] A plaintiff is under a duty to mitigate his damages: see *Janaik v. Ippolito*, [1985] 1 S.C.R. 146, *Antoniali v. Massey*, 2008 BCSC 1085, and *Loveys v. Fleetham*, 2012 BCSC 358. Although many of the cases on mitigation arise in the context of a contest over whether by following medical advice an injured person could have recovered sooner, similar considerations apply in considering whether an injured person can recover the extra costs incurred by eschewing the services of persons providing services under publicly funded programs. The threshold question in such cases must be whether there is sufficient reason to incur the expense.
>
> [89] In *Darbishire v. Warran* [1963], 3 All E.R. 310 (C.A.) at p. 315 Lord Pearson discussed the "true nature" of the duty to mitigate thus:
>
> > [It] is important to appreciate the true nature of the so-called "duty to mitigate the loss" or "duty to minimize damage." The plaintiff is not under any actual obligation to adopt the cheaper method: if he wishes to adopt the more expensive method, he is at liberty to do so and by doing so he commits no wrong against the defendant or anyone else. The true meaning is that the plaintiff is not entitled to charge the defendant by way of damages with any greater sum tha[n] that which he reasonably needs to expend for the purpose of making good the loss. In short, he is fully entitled to be as extravagant as he pleases, but not at the expense of the defendant.
>
> [Emphasis added.]

[101] In this case, I am satisfied that the KJPL did not act reasonably in offering to pay all, or nearly all, of PMMC's rent and ancillary expenses on its behalf.

[102] Although I have accepted that KJPL had to offer a substantial incentive to entice PMMC or another clinic operator to move into the clinic space, there is no evidentiary support for the proposition that KJPL needed to provide PMMC with an entirely rent-free accommodation. The industry norm for which I have found evidentiary support in the agreed statement of facts speaks only of a *contribution* by the pharmacy to the clinic's rent, not a complete indemnity. In the case of PMMC, moreover, the need for such an incentive would have been less pressing in view of the fact that Ms. Sommi continued to be a shareholder in KJPL at the time, which would allow Dr. Sommi to benefit indirectly in that manner as well from the success of the pharmacy.

[103] I have no evidence before me as to the extent of the subsidy that could reasonably have been foreseen to be required in the event of a premature termination of the Sublease. In the absence of such a benchmark, I have concluded that a 50% subsidy, mid-way between the parties' respective positions, would have been reasonably foreseeable. Taking that adjustment into account, I am awarding KJPL half of the amount claimed, or $403,061.56.

B. The Petition

i. Claims and Defences

[104] In the petition, Ms. Challa seeks declaratory and monetary relief under s. 227 of the *BCA*. In particular, she complains that, after the termination of the Sublease and while she was still a minority shareholder, the respondents acted unfairly and against her legitimate expectations by causing KJPL to do the following, without consulting with her:

a) increasing Mr. Abdul-Ahad's salary from $55 to $65/hr and otherwise allowing him to take a larger share of the profits than was contemplated under the Partnership Agreement; and

b) granting a series of loans to PMMC to cover its expenses, primarily rent, and then failing to take the necessary steps to have the loans repaid, with interest, and the resulting income distributed to the shareholders as a dividend.

[105] To remedy that oppressive conduct, she seeks damages totalling $147,696, which is said to be the sum of the following amounts:

a) the difference between what Mr. Abdul-Ahad was entitled to be paid under the Partnership Agreement and what he was actually paid between September 30, 2019 and September 30, 2022, a total of $266,314.62, of which her 24.5% share while she was still a shareholder, is $66,358.19;

b) her 24.5% share during that period of the amount loaned to PMMC ($324,574), for a total of $79,520.63; and

c) her share of the interest that should have been paid on that loan while she was still a shareholder, a total of $1,817.12.

[106] The respondents argue that no such relief should be granted. They say in particular that, to the extent that Ms. Challa had the expectations grounding her claim, they were not reasonable in the circumstances and the respondents' conduct was not oppressive. If the Court finds that she is entitled to relief on those grounds, then the respondents also take issue with the manner in which Ms. Challa has calculated her damages.

ii. Applicable Legal Principles

[107] Section 227 states in relevant part as follows:

> …
>
> (2) A shareholder may apply to the court for an order under this section on the ground
>
> > (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
> >
> > (b)that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.
>
> (3) On an application under this section, the court may, with a view to remedying or bringing to an end the matters complained of and subject to subsection (4) of this section, make any interim or final order it considers appropriate, including an order
>
> > …
> >
> > (j) varying or setting aside a transaction to which the company is a party and directing any party to the transaction to compensate any other party to the transaction,
> >
> > …
> >
> > (m) directing the company … to compensate an aggrieved person,

…

[108] The principles to be applied in the application of that provision were conveniently summarised by Savage J.A., writing for the Court in *Jaguar Financial Corporation v. Alternative Earth Resources Inc.*, 2016 BCCA 193, as follows:

> [112] To be entitled to relief under the oppression remedy a petitioner must show that it held a reasonable expectation with respect to the conduct of the affairs of the company, and that the reasonable expectation was disappointed by conduct that was oppressive or unfairly prejudicial. The reasonable expectation must be assessed on an objective and contextual basis: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 62, 68.
>
> [113] The reasonable expectations of the shareholders are assessed in a two-stage process. First, the subjective expectations of the complainant must be established. Second, an objective analysis of the complainant's expectations must be conducted to determine whether the expectations were reasonable.
>
> [114] When analysing decisions of directors, the court applies the business judgment rule: that is, deference should be accorded to business decisions of directors taken in good faith in the performance of their duties. Directors owe their duty to the corporation, not to the shareholders, and the reasonable expectation of shareholders is simply that the directors act in the best interest of the corporation.
>
> [115] In considering proof of a claimant's reasonable expectations, the Supreme Court of Canada in *BCE* distils from the cases the following factors which form its analytical framework: general commercial practice, the nature of the corporation, the relationship between the parties, past practice, steps the claimant could have taken to protect itself, representations and agreements, and the fair resolution of conflicting interests between corporate stakeholders.

iii. Did Ms. Challa have a reasonable expectation that Mr. Abdul-Ahad's compensation would remain as set out in the Partnership Agreement even after the termination of the Sublease?

[109] Ms. Challa's first claim is based on her expectation that Mr. Abdul-Ahad's compensation would remain as set out in the Partnership Agreement for as long as she remained a shareholder.

[110] I agree with the respondents that her expectation in that regard was not a reasonable one. As I indicated above, the Partnership Agreement was no longer in effect by the time that Mr. Abdul-Ahad came to be compensated in the manner that is the subject of Ms. Challa's complaint. It had ceased to bind the parties by that

time, partly because it had expired by its own terms after five years, but mainly because Dr. Challa had deprived KJPL of a large part of the consideration flowing to it from the arrangement, namely, the Sublease and associated clinic operations providing the steady flow of patients in need of having their prescriptions filled.

[111] It was Dr. Challa's idea to enter into a profit-sharing partnership in the first place. The parties pursued that arrangement instead of Mr. Abdul-Ahad's initial plan to have the pharmacy subsidize the clinic by paying some of its rent. As a result of the termination of the Head Lease and the Sublease, however, KJPL was required to subsidize the clinic's rent after all. He (and Ms. Challa) could not reasonably expect to have it both ways. In particular, Ms. Challa can have had no reasonable expectation, after those events occurred, to continue sharing in the pharmacy's profits in the manner, and at the level, contemplated by the Partnership Agreement, as if nothing had changed. Everything had changed.

[112] There was no evidence that the compensation paid to Mr. Abdul-Ahad after the termination of the Sublease was unreasonable as measured by any other standard, and Ms. Challa has not asserted as much.

iv. Did Ms. Challa have a reasonable expectation that the monies advanced for the benefit of PMMC would be repaid with interest and shared with her by way of a dividend?

[113] Ms. Challa's second claim is based on her expectation that KJPL would not pay subsidies to PMMC, but would instead lend it the money, take steps to recover it with interest and then pay her her share of it by way of an associated dividend.

[114] For similar reasons, I do not find that expectation to be a reasonable one either.

[115] First, I have already found that the payments in question were never intended as a loan. Even if they were, Ms. Challa is really seeking to require KJPL to compel PMMC to repay the monies advanced for its benefit, which is a claim more in the nature of a derivative action than an oppression claim: *Jaguar*; *Rea v. Wildeboer*, 2015 ONCA 373. Moreover, in advancing such a claim, Ms. Challa is really seeking

relief against PMMC, which was not named as a respondent to the petition and is therefore not before the Court.

[116] Second, although I have also found that KJPL paid more than it needed to in subsidies for the benefit of PMMC, that is not conduct that was oppressive to Ms. Challa. Mr. Abdul-Ahad had to cope with a difficult predicament that Dr. Challa had created for him by breaching the terms of their partnership. KJPL made those payments in an effort to mitigate its damages. I have already reduced the damages payable by the defendants to account for that overpayment. It would be a misuse of the oppression remedy to reduce them further by requiring KJPL to pay even more of that subsidy, which KJPL is still out of pocket, to Ms. Challa.

IV. Summary and Conclusion

[117] KJPL is entitled to judgment in the action against Dr. Challa and NPMMC in the amount of $403,061.56.

[118] Having found none of the expectations grounding Ms. Challa's oppression claim to be reasonable, I am dismissing the petition.

[119] The parties may arrange a supplemental hearing before me if they are unable to agree on the appropriate order as to costs in light of my decision.

"Milman J."