

# Court of King's Bench of Alberta

**Citation: ONE Properties Holdings Corp v Turtle Bay Investments Ltd, 2025 ABKB 313**

**Date:** 20250523  
**Docket:** 2203 15134  
**Registry:** Edmonton

Between:

**ONE Properties Holdings Corp, ONE Properties Senior Management Corp,  
Durs (2013) Holdings Corp and Darren Durstling**

Applicants/Cross-Respondents

- and -

**Turtle Bay Investments Ltd and Thomas Eger**

Respondents/Cross-Applicants

**Corrected judgment:** A corrigendum was issued on May 23, 2025; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Memorandum of Decision  
of the  
Honourable Justice Douglas R. Mah**

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## A. Nature of the Application and Cross-Application

[1] The main legal question in this litigation is this: Does the exercise of an option to purchase shares by a majority shareholder effectively extinguish the minority shareholder's recourse to seek an oppression remedy by way of the arbitration clause in a unanimous shareholder agreement (USA)?

[2] The Applicants say the Option Agreement is determinative, the Notices to Arbitrate issued by the Respondents are invalid and that the only real issue between the parties is the value of the Respondents' shares. They further assert that the Option Agreement itself provides a binding valuation mechanism and if anything should be enforced, it should be the Option Agreement. The Applicants ask the Court for a declaration under s 47 of the *Arbitration Act* that the arbitrations are invalid because the underlying arbitration agreements are invalid or have ceased to exist or apply.

[3] The Respondents contend that the Applicants are guilty of a litany of oppressive actions that have prejudiced their interests and that they (the Applicants) should be held to account under the arbitration provisions in the two USAs. The Respondents further say that the Option Agreement is either unenforceable or its arbitration clause should be invoked to remedy attempts by the Applicants to block the Respondents' rights related to valuation under the Option Agreement. By way of cross-application, they ask the Court to direct that all of the Respondents' issues be directed to arbitration under three extant arbitration clauses.

[4] The valuation mechanism found in the Option Agreement requires optionor and optionee each to retain a certified business valuator (CBV) to conduct a valuation of the subject shares. The resulting purchase price is the mean of the two valuations. The Applicants' valuator has issued a report stating the shares have a nil value. The Respondents say they are incredulous. They have instructed their valuator not to complete its report and now ask the Court to step in and direct that arbitrations take place.

## B. Factual Background

### 1) The Parties

[5] The corporate Applicants, ONE Properties Senior Management Corp (OPSMC) and ONE Properties Holdings Corp (Holdings), are part of a group of related companies engaged in real estate acquisition, development and leasing in Alberta and elsewhere in Canada. The other corporate Applicant, Durs (2013) Holdings Corp (Durs Corp), is the holding company of the personal Applicant, Darren Durstling. Even though these parties are named as Respondents in a cross-application, for convenience, I will refer to them at all times as the Applicants.

[6] The Respondent, Thomas Eger, is a former long-time employee of OPSMC who retired in 2019. The other Respondent, Turtle Bay Investments Ltd (Turtle Bay), is Mr. Eger's holding company. Even though these parties have brought a cross-application, for convenience, I will refer to them at all times as the Respondents.

[7] Durs Corp (as to 30.3%), Turtle Bay (as to 24.24%) and two other holding companies owned by other OPSMC employees (as to 30.3% and 15.15% respectively) are the shareholders of OPSMC. OPSMC in turn (as to 33%) and Durs Corp (as to 67%) are the shareholders of Holdings. OPSMC has no assets other than the shares in Holdings. Holdings is the umbrella operating entity. A number of other related business entities collectively known as the ONE

Properties Group operate through or under Holdings. Therefore, the value of Turtle Bay's shares is completely derived from the value of the shares in OPSMC which in turn is completely derived from the value of the shares of Holdings. Where necessary, I will refer to the business of the ONE Properties Group as the "ONE Properties enterprise."

## 2) The Agreements

[8] The USA in place for the shareholders of OPSMC (dated October 1, 2013) provides that:

- any dispute arising from or in relation to the agreement shall be settled by arbitration; and
- Durs Corp could, at its option, purchase the shares of a corporate shareholder upon the happening of certain events (i.e., insolvency or dissolution of the corporate shareholder, termination for cause of the individual, termination of the individual's employment for a reason other than just cause, death of the individual and the like).

[9] On August 1, 2016, in an Amending Agreement to the OPSMC USA, the following was added as an event that could trigger Durs Corp's option to purchase under the OPSMC USA:

... or on the full retirement of such Shareholder or Principal of a Corporate Shareholder from active employment in an industry which, in the sole opinion of the President of WAM (RE) or the then current employer, competes with the business of the Corporation in the purchase, sale, leasing or development of real estate in Canada.

[10] WAM (RE) is the predecessor of Holdings.

[11] The USA in place for Holdings (dated September 30, 2013), names OPSMC and its employees whose holding companies are shareholders of OPSMC as parties, although neither those employees nor their holding companies directly themselves own shares in Holdings. The Holdings USA also contains:

- An arbitration clause identical to that of the OPSMC USA; and
- A provision that Mr. Eger was to be appointed and remain an officer and director of Holdings for so long as Durs Corp controls Holdings.

[12] On October 31, 2014, Mr. Eger, Durs Corp and Turtle Bay entered into a separate Option Agreement for the purchase of Turtle Bay's shares, providing:

- Durs Corp a continuing option to acquire all of Mr. Eger's shares in Turtle Bay at fair market value (FMV);
- The mechanism for determining FMV; and
- An arbitration clause.

[13] As noted, the valuation mechanism provides that FMV is determined by each side retaining a CBV who respectively values the shares "having regard to past and present financial performance and future financial prospects determined as of the date that the option is exercised" and taking the mean of the two valuations.

### 3) Undisputed Chronology of Events

[14] Mr. Eger retired from OPSMC on December 31, 2019. With reference to the retirement event added to the OPSMC USA by the Amending Agreement, there is no evidence in the record that Mr. Eger went to work for a competitor subsequent to his date of retirement.

[15] It is noted that Mr. Eger apparently was never formally appointed as an officer and director of Holdings. Throughout these proceedings, he has relied on the Holdings USA as conferring those statuses upon him. He does not recall seeing or signing any corporate documents that would make him a director and officer.

[16] There is no resignation letter in evidence nor letter emanating from OPSMC confirming his resignation. While his employment was certainly over, Mr. Eger says he believed, post-retirement, that he was still a director and officer of OPSMC. Ms. Anderson, OPSMC's CFO, said that Mr. Eger retired from *everything* that had to do with OPSMC and Holdings, and had no further involvement in any of the businesses. Of course, Turtle Bay did retain its shareholding in OPSMC.

[17] Mr. Eger felt that his retirement from OPSMC was an event that triggered the option in the OPSMC USA (as amended) and discussed a buyout with Mr. Durstling. He had previously provided Mr. Durstling with a valuation based on his (Mr. Eger's) own calculations. Mr. Durstling was not receptive, and the option expired 90 days following Mr. Eger's retirement.<sup>1</sup>

[18] Around March 21, 2021, Mr. Eger had counsel issue a "draft" Notice to Arbitrate seeking to compel these Applicants to buy his shares and alleging oppression on a number of fronts. He says sending the Notice to Arbitrate in draft was a good faith attempt to start negotiations under the arbitration provisions of the two USAs. By way of response, the Applicants prepared and forwarded an Arbitration Agreement in draft. However, it was never signed, commented upon or agreed to by Mr. Eger or acted upon by either party.

[19] On May 21, 2021, Durs Corp exercised its option under the Option Agreement to purchase the Turtle Bay shares by sending out its Notice to Exercise to Mr. Eger and Turtle Bay. The parties embarked upon the valuation process contemplated in the agreement. The Applicants retained Mr. Webster at Deloitte LLP as its CBV and Mr. Eger retained Mr. Lacasse at Grant Thornton LLP. ONE Properties management created a Data Room so that both CBVs could have access to pertinent documents and information.

[20] By February 4, 2022, Mr. Eger had received a high-level opinion from Grant Thornton that the overall One Properties enterprise was in a "\$74 million hole," meaning the Turtle Bay shares have no value. On February 24, 2022, Deloitte produced a written report in which it concluded that the shares have nil or nominal value.

[21] As of the date of hearing, Grant Thornton has not produced a written report. There has been a continuing dispute that the Applicants have denied Mr. Eger and his CBV access to the Data Room and have omitted relevant documents.

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<sup>1</sup> Articles 5.3 and 5.4 of the OPSMC USA, read together, stipulate that the option expires if it is not exercised within 90 days of the triggering event.

[22] On May 17, 2022, Mr. Eger caused his counsel to issue three further Notices to Arbitrate, one relating to each of the two USAs and the Option Agreement. It is these Notices to Arbitrate that are the subject of this application and cross-application.

### C. Mr. Eger's Allegations

[23] As the basis for claims of oppression in the two Notices to Arbitrate issued under the arbitration provisions of the OPSMC and Holdings USAs, Mr. Eger alleges:

- Breaches of the governance expectations established by the USAs, notably the failure to appoint Mr. Eger as a Director and Officer of Holdings, the failure to hold directors and shareholder meetings (with rare exception), and the failure to consult with Mr. Eger on important transactions such as the Omnibus Agreement with Alberta Investment Management Corporation (AIMCo);
- Breaches of financial disclosure and reporting expectations established by the USAs, notably the failure to provide quarterly and annual financial to shareholders and the failure to disclose terms and profits from various projects;
- Failure to make promised profit distributions to shareholders; and
- Failing to disclose the details of the buyouts of two former shareholders.

[24] Mr. Eger feels that both the spirit and the letter of the Senior Management Reorganization Term Sheet signed in 2013, in which shareholders made certain monetary concessions, and the OPSMC USA itself, have been violated since he has not received what he considers his due in profit distributions. He contends that he was coerced into buying two condo units in the SKY Residences (a ONE Properties project) in downtown Edmonton, taking on financial obligations. He also believes Mr. Durstling has abused his corporate position for personal benefit.

[25] Further, Mr. Eger is aggrieved that Mr. Durstling did not exercise the option to purchase the Turtle Bay shares per the OPSMC USA upon Mr. Eger's retirement, at a time when Mr. Eger had provided a valuation of those shares of \$7.1 million.

[26] Mr. Eger's complaint in the Notice to Arbitrate arising from the Option Agreement is that Durs Corp has failed to place all pertinent information in the Data Room and has denied access to Mr. Eger and his CBV.

### D. Positions of the Parties

[27] The parties agree that oppression claims may be the subject of arbitration. They do not agree on much else.

[28] The Applicants argue:

- With respect to questions of law, the Courts ultimately have the power to decide if arbitration is proper or valid: *Dell Computers Corp v Union des Consommateurs*, 2007 SCC 34 at para 84.
- Limitation periods apply to arbitration: *EPCOR Power LP v Petrobank Energy and Resources Ltd*, 2010 ABQB 463 at para 41, aff'd 2010 ABCA 378, *Suncor*

*Energy Products Inc v Howe-Baker Engineers Ltd*, 2010 ABQB 310 at paras 25-27, and *Babcock & Wilcox Canada Ltd v Agrium Inc*, 2003 ABQB 1004 at para 12. The matters which Mr. Eger wishes to arbitrate are barred by limitations. Further, or in the alternative, Mr. Eger's oppression claims are barred by lack of timeliness: *Jaska v Jaska*, [1996] MJ No 579, 1996 CanLII 2926 (MBCA) at p 10; *Carr v Cheng*, [2007] BCJ No 2511, 2007 BCSC 1693 at para 46 and *Hughes v Tallman (Bob) Investments Inc*, 2005 MBCA 16 at paras 12 & 24 citing *Seidel v Kerr*, [2004] 1 WWR 53, 2003 ABCA 267 at para 441.

- Mr. Eger should not be allowed to back out of the Option Agreement because he doesn't like the purchase price. The oppression remedy is not a means by which commercial agreements negotiated at arms length by sophisticated parties can be rewritten to accord with a Court's after-the-fact assessment of what is "just and equitable" in the circumstances. Nor should the Court to rewrite contracts or to relieve a party to a contract of the consequences of an improvident agreement: *JSM Corp (Ontario) Ltd v Brick Furniture Warehouse et al*, 2008 ONCA 183, per Doherty J at para 60-62, *Jedfro Investments (USA) Ltd v Jacyk*, 2007 SCC 55 per McLachlin J. at para 34.
- It is an abuse of process for a minority shareholder to seek an oppression remedy where the majority has made an offer to purchase the minority's shares at FMV and, moreover, where the parties have, by contract, established a means by which the FMV of the shares is to be fixed: *Re a Company (No. 006834 of 1988), Ex Parte Kremer*, [1989] BCLC 365 per Hoffman at 367, *Re Boswell and Co (Steels) Ltd*, [1989] 5 BCC 145, per Moffitt J (Ch Div) at 150-151, *Re Belfield Furnishings Ltd; Isaacs v Belfield Furnishings Ltd*, [2006] 2 BCLC 411 at para 38.
- There is nothing uncertain about the Option Agreement. A party acts in bad faith if it refuses to comply with the terms of an Option Agreement: *1785192 Ontario Inc v Ontario H Limited Partnership*, 2024 ONCA 775 at para 50 & *Jones v Quinn*, 2024 ONCA 315 at para 78.
- Mr. Eger cannot argue in this application that the Option Agreement is not enforceable because that relief and its grounds were not properly set out in compliance with *Rule* 6.3.
- Mr. Eger's efforts to force arbitration under the two USAs are nothing more than an attempt to strong-arm or coerce the Applicants into paying him something for shares that have ultimately turned out to have no value.

[29] The Respondents argue:

- The competence-competence principle stands for the proposition that any challenge to an arbitrator's jurisdiction should presumptively be resolved by the arbitrator at first instance, as arbitrators "can find facts as well as courts can": *Dow Chemical Canada ULC v Nova Chemicals Corporation*, 2023 ABCA 343 at paras 19-20; *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2023 ABKB 215 at paras 67-72, 92-9; *Canada (Director of Investigation and*

*Research) v Southam Inc*, 1997 CanLII 385 (SCC) at para 35. The matters here involve fact-finding and are best left to an arbitrator.

- The Applicants' invocation of the notion of abuse of process is inapplicable as it relies on English law. The cases involve the UK *Companies Act*, and do not involve USAs or arbitration.
- The limitation period for oppression claims begins to run when the oppressive conduct terminates, or the last act occurs. Even if some portion of the oppression claims might be barred by an expired limitation period, the entire oppression claim would not be defeated because the limitation period simply defines the period during which a remedy would be awarded: *Fernandes v Jennings Capital Inc*, 2016 ABQB 594 at paras 84-86 & *Seidel v Kerr*, 2003 ABCA 267 at paras 42-55. Here, the acts complained of are of a continuing nature. Hence, no limitation period is exceeded.
- Where arbitration clauses appear in a contract, arbitration is a condition precedent to any litigation: *Babcock & Wilcox Canada Ltd v Agrium Inc*, 2005 ABCA 82 at para 12 & *2329716 Alberta Ltd v Jagroop Randhawa*, 2023 ABKB 297 at para 43.
- Oppression claims are arbitrable if they are founded on the rights and obligations created by a unanimous shareholders agreement, as in this case: *Fernandes* at para 57. The matters complained of fall within arbitrable subject-matter.
- Since the Applicants have refused to attorn to the arbitration clauses found in the USAs, the Court should order them to respond to the Notices to Arbitrate: *Axia Supernet Ltd v Bell West Inc*, 2003 ABQB 195 at para 22.
- The Option Agreement is any event invalid as it is missing essential terms: *Mitsui & Co. (Canada) Ltd v Royal Bank of Canada*, [1995] 2 SCR 187 at para 26 and *Caleron Properties Ltd v North Calgary Community Church*, 2004 ABCA 357 at paras 12 and 22.

[30] It is clear that s 47(2) of the *Arbitration Act* empowers the Court to declare that an arbitration is invalid because either the underlying arbitration agreement is invalid or has ceased to exist, or the arbitration agreement does not apply to the matter in dispute.

### E. The *Dell Computer* Exception

[31] The debate here is whether the question placed before me is a question of law that involves at most, minimal and non-essential fact-finding based on the record, or on the other hand is a question of mixed fact and law. The importance of this debate stems from the Supreme Court of Canada's decision in *Dell Computer* which sets out a general rule of judicial deference, as well as an exception to this general rule. Deschamps J for the majority says at paras 84 – 86:

First of all, I would lay down a general rule that in any case involving an arbitration clause, a challenge to the arbitrator's jurisdiction must be resolved first by the arbitrator. A court should depart from the rule of systematic referral to arbitration only if the challenge to the arbitrator's jurisdiction is based solely on a question of law. This exception is justified by the courts' expertise in resolving

such questions, by the fact that the court is the forum to which the parties apply first when requesting referral and by the rule that an arbitrator's decision regarding his or her jurisdiction can be reviewed by a court. It allows a legal argument relating to the arbitrator's jurisdiction to be resolved once and for all, and also allows the parties to avoid duplication of a strictly legal debate. In addition, the danger that a party will obstruct the process by manipulating procedural rules will be reduced, since the court must not, in ruling on the arbitrator's jurisdiction, consider the facts leading to the application of the arbitration clause.

If the challenge requires the production and review of factual evidence, the court should normally refer the case to arbitration, as arbitrators have, for this purpose, the same resources and expertise as courts. Where questions of mixed law and fact are concerned, the court hearing the referral application must refer the case to arbitration unless the questions of fact require only superficial consideration of the documentary evidence in the record.

Before departing from the general rule of referral, the court must be satisfied that the challenge to the arbitrator's jurisdiction is not a delaying tactic and that it will not unduly impair the conduct of the arbitration proceeding. This means that even when considering one of the exceptions, the court might decide that to allow the arbitrator to rule first on his or her competence would be best for the arbitration process.

[32] In interpreting this passage, the Court of Appeal stated in *Epcor Power* at para 20:

It is apparent from the language employed by the Supreme Court of Canada that the discretion available to not refer a matter to arbitration is circumscribed, and applies to narrow circumstances: only on a pure question of law alone that can readily be resolved on superficial material and will expeditiously dispose of the entire dispute between the parties. Even if the court can resolve an issue itself, it may still choose not to do so and instead refer the matter to arbitration.

[33] See also Wittman, CJC in *Alberta Medical Association v Alberta*, 2012 ABQB 113 at para 26 who says that the “superficiality” relates to the nature of the evidence not the intensity of the Court’s factual analysis.

[34] The very existence of an arbitration right is also a proper question for the Court to answer at the threshold stage: *Autoweld Systems Limited v CRC-Evans Pipeline International Inc.*, 2009 ABCA 366 at para 2; *The Plan Group v Bell Canada*, 2009 ONCA 548 at para 82 & *Suncor Energy* at para 21.

[35] Mr. Eger says that the Court should not interfere with arbitrations beyond the limited oversight granted under the *Arbitration Act* and respect the competence of arbitrators, since arbitrators can find facts as well as Courts can. However, as *Dell Computer* instructs, the Court has equal competence in questions of law and, in the interests of litigation economy, it is appropriate for the Court to rule on an arbitrator’s jurisdiction where the factual questions only require a superficial consideration of the documentary evidence in the record. Equally, the Court may hear a case where the very existence of an arbitration right is in issue.

[36] As posed by the Applicants, the question of law is whether an oppression action (whether in Court or by arbitration) is even available where an offer to purchase the complainant's shares at FMV has been advanced, and moreover, where there is a contractual mechanism in place to determine FMV.

[37] In this case, Mr. Eger brings forth a veritable litany of wrongdoing allegations against the Applicants in general and Mr. Durstling in particular. He casts Mr. Durstling as a Machiavellian figure who manipulates people and corporate finances for his own nefarious ends. The Applicants say that Mr. Eger's assertions of wrongful conduct are nothing but a mix of allegation, innuendo, conclusion and argument and are not matters of unassailable and established fact. The Applicants do not profess to litigate the allegations in this application but would say, in any event, there is an answer to each of them.

[38] By way of example, even within Mr. Eger's own affidavit is evidence of ONE Properties management exercising "business judgment" (for example, Ms. Anderson's full-throated explanation of the Omnibus Agreement with AIMCo and the reasons behind reduced shareholder distributions).<sup>2</sup> Mr. Eger himself admitted in his November 15, 2019 email to Mr. Durstling that "he (Mr. Durstling) may have the right to take such action and ... there may be a compelling business case ..." That is to say, there are rebuttals or defences to the allegations that could be raised.

[39] Other rebuttals or defences, on the allegations presented, include acquiescence or lack of diligence on Mr. Eger's part (bearing in mind the allegations date back to 2013) or that the ONE Properties enterprise has simply been unprofitable.

[40] Having said all of that, I conclude that it is not necessary to examine the merits of Mr. Eger's allegations in order to resolve this application and cross-application. I accept as fact that Mr. Eger makes the allegations and that the Applicants do not accept them as true. That much is apparent from the material before me. Otherwise, who the parties are, the content of the agreements and the chronology of events are all undisputed.

[41] No other fact-finding is necessary. I am left with the legal question of whether the rights to arbitrate in the two USA's have been extinguished by Durs Corp's exercise of the option in the separate Option Agreement. The Applicants say this is the case because of the doctrine of abuse of process found in UK law.

## **F. Applicability of the UK Law**

[42] In invoking abuse of process, the Applicants rely on McGinnis and Coombs, *Canadian Business Corporations Law*, 4<sup>th</sup> edition, Volume 3 (Toronto: Lexis-Nexis Canada, 2024) at pp 568 – 569, paras 23-323 & 23-324:

Where the shareholders of a corporation fall out without there being any question of serious wrongdoing by the majority, it is normally an abuse of process for a minority shareholder who was excluded from the corporation to present or maintain an oppression or unfair prejudice application if the majority shareholders offer to purchase his (or her) shares at fair value where: (a) the valuation was to

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<sup>2</sup> See Ms. Anderson memo of September 16, 2019 sent to Mr. Eger, Mr. Durstling and others at Exhibit "F" to Mr. Eger's affidavit of December 6, 2022.

be undertaken by a suitably qualified and independent professional to whom the parties could make submissions after access to any relevant information; (b) no discount was to be applied by reason of the petitioner having minority shareholding; and (c) the offer included payment of the complainant's costs in instituting the oppression or unfair prejudice proceeding. It is even more obviously an abuse of process if the complainant had contractually agreed to sell his or her stake in given circumstances in accordance with a particular method for ascertaining its fair value...

Conversely, even where the parties agreed to the circumstances in which a minority shareholder could be compelled to sell its shareholding and the manner for ascertaining its value, it was not necessarily an abuse of process for the shareholder to proceed with an oppression or unfair prejudice application in the face of an offer to purchase made according to the agreed valuation procedure where there was evidence to suggest that the majority's conduct had caused substantial assets of the corporation to be misapplied, or if the agreed valuer for some reason was not in a position to exercise independent judgment on the question of value...

[43] One might say, that in the case before me, there is a question of serious wrongdoing raised by Mr. Eger. However, the authority for the statement that serious wrongdoing negates abuse of process is *Re a Company (No. 006834 of 1988)*, in which Hoffman J said at p 368:

... in stating the principle to which I have referred in *Re a Company (No. 0004377 of 1986)*, [1987] PCL C 94 at 102, I said:

... It seems to me that if the articles provide a method for determining the fair value of a party's shares, a member seeking to sell his shares on a breakdown of relations with other shareholders should not ordinarily be entitled to complain of unfair conduct if he has made no attempt to use the machinery provided by the articles. I say nothing about cases in which there has been bad faith or plain impropriety in the conduct of the respondents or about cases in which the articles provide for some arbitrary or artificial method of valuation.

Counsel for the petitioner says that this is a case of impropriety in the conduct of the respondent and that, therefore, that principle should not apply. I think that is giving too extended a construction to what I said. The remark was made in the context of the use of the valuation provisions in the company's articles, and what I meant was that there might be cases of impropriety on the part of the respondent which also affected the value of the shares in the company as to make it inappropriate for the matter to be dealt with by a straightforward valuation. In this case, however, the effect of the alleged improprieties on the valuation of the shares in the company is likely to be minimal. What the valuer will be concerned with is applying a suitable multiple to the profits which the company appears to be likely to earn in the future. Furthermore, the respondent has said that the valuer should be free, if he felt it fair to do so, to write back into the accounts any sums which he considered to have been improperly disbursed.

A similar contention was made to Millet J in *Re a Company (No 003843 of 1986)*, [1987] BCLC 562, where the judge said that counsel had argued that, because there was a suspicion of misfeasance and misappropriation, it was not possible that the petitioners, who had offered to submit to an independent evaluation, had made a fair offer. The judge said (at 571):

In my judgment, there is nothing in that point. The terms of the offer that I have read ensure that both sides will have an opportunity to have access to all the company's books and papers and make whatever representations they wish to make the independent accountants. In case there is any doubt, I should make it absolutely clear that, in my judgment, if the accountants have any reason to think that there has been any misappropriation or misapplication of the company's assets which would have effect of depreciating the value of the petitioner's interest, then they will have to take that into account in valuing the company.

This seems to me to be just such a case.

[44] In the above cited case, the complainant felt that the majority shareholder had disrespected him and had refused to accord him the status and responsibilities to which he was entitled. The complainant also accused the majority shareholder of charging personal expenses to the company and allowing his friends and family to have holidays at the company's expense. Further, in *Re Boswell*, the Court stated that the effect of misfeasance claims which the company might have against its directors and others should be left to the independent valuator.

[45] In *Re Belfield*, the Court held at para 38 that the notion of pursuing an oppression remedy in the face of an offer by the majority to purchase the minority shareholder's shares at FMV as an abuse of process applies

... with even greater force where (as in the present case) the petitioner has contractually bound himself to sell his stake in given circumstances and agreed [to] a particular method for ascertaining fair value. Accordingly, in such cases, it may be an abuse of process to proceed with a s 459 petition even if the agreed mechanism lacks features which would be necessary to constitute an offer made pursuant to it 'a reasonable offer' ... In many if not most cases, the petitioner will be stuck with the bargain he made.

[46] Here, there is no suggestion that the agreed mechanism, which has yet to reach finality because Grant Thornton has not weighed in with its written report, is unfair.

[47] Thus, all of *Re a Company (No. 006834 of 1988)* at p 368, *Re a Company (No 003843 of 1986)* at p 571, *Re Boswell* at p 150 and *Re Belfield* at para 38 state that a valuator has discretion to consider claims of misfeasance or "add back any questionable payments" if it is fair to do so.

[48] I appreciate that these English authorities are not binding upon me nor is a Canadian textbook that cites the authorities as applicable in Canada. Mr. Eger's counsel underscored for me that these are English cases with no known equivalent in Canada, involved interpretation of the UK *Companies Act* and did not deal with arbitrations or unanimous shareholder agreements. I agree with all that.

[49] However, in my view, the seeking of an oppression remedy is the seeking of an oppression remedy regardless of the forum in which it is sought, court or arbitration. As Mr. Eger’s counsel noted, arbitrators have the same fact-finding ability as courts and, in an oppression case, the same authority to grant remedies. Further, an oppression claim is an oppression claim whether it is based on a contract or something else. These differences are not material to me.

[50] McGinnis and Coombs note at para 23-126 (p 450) that the UK dropped the term “oppression” in 1980 and replaced it with “unfairly prejudicial”. The authors recount how in 1985, the UK Parliament enacted a new corporate law, the *Companies Act* 1985, which at s 459 employed the term “unfairly prejudicial” which was meant to be deliberately imprecise. The authors point out at para 23-129 (p 453) that “oppression” is a convenient umbrella term that encompasses that which is “unfairly prejudicial to or that unfairly disregards” to the rights of a complainant. Thus, the oppression remedy in Canada and s 459 of the UK *Companies Act*, 1985 have the same purpose and intent.

[51] The authors further point out at para 23-245 (p 527) that the UK equivalent of the oppression remedy found in s 459 of the 1985 UK statute is now embodied in s 248 of the Ontario corporations statute and the corresponding provisions of business corporations’ statutes across Canada.

[52] Admittedly, Canadian corporations’ statutes tend to be more enumerative in listing various forms of remedy (for example, see s 242(3) of the *ABCA*). The remedy section in the then UK statute uses fewer words but to the same effect. Section 461 of the UK statute provides that if the Court finds that the complaint is “well-founded” it may make any Order “it thinks fit” for giving relief to the complaint, including among non-exhaustive examples a remedy that the Court may “require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do.” This broad language could include the payment of compensation or even the winding-up of the corporation. All to say, there is no material difference between s 461 of the UK statute and s 242 of the *ABCA* in terms of the relief available.

[53] I would have been inclined to say that the English cases on oppression have less relevance if the oppression remedy in Canada provided broader relief than that of the UK. But that does not appear to be the case.

[54] Therefore, I find the English authorities persuasive, and I am prepared to apply them here. To me, it is logical that the exercise of an option to purchase shares involves purchasing all of the rights that attach to the shares and that, through independent valuation, all of those rights can be priced. Thus, in this case, the ability to arbitrate those rights no longer exists as it was subsumed in the exercise of the Option Agreement option and the fair pricing mechanism stated therein.

[55] In coming to this conclusion, I have regard to the following undisputed facts:

- Mr. Eger caused a “draft” Notice to Arbitrate to be issued on March 23, 2021. In response, the Applicants issued a “draft” Arbitration Agreement. The Arbitration Agreement was not signed or further acted upon by either side.
- Durs Corp exercised its option in the Option Agreement to purchase Mr. Eger’s shares in Turtle Bay at FMV on May 21, 2021. The Option Agreement provides a

mechanism for determining FMV: taking the mean of 2 valuations conducted by 2 different CBVs, one appointed by each side.

- Mr. Eger named Grant Thornton LLP as his valuator. He received information from Grant Thornton on February 4, 2022, that the One Properties enterprise was in a “\$74 million hole”, meaning that the Turtle Bay shares have no value.
- On February 24, 2022, Deloitte LLP, the CBV appointed by the Applicants, issued its report. Deloitte reported its finding that the shares of Turtle Bay owned by Mr. Eger have “nil or nominal” value.
- On March 25, 2022, Mr. Eger caused to be issued through his counsel the 3 Notices to Arbitrate that are presently before the Court for adjudication.
- Grant Thornton, as of this date, has not completed its valuation. There is a dispute between the two sides as what further documents are required from the Applicants and whether Mr. Eger needs to sign a further non-disclosure agreement or otherwise commit to non-disclosure of the Data Room information. Each side accuses the other of stonewalling.

[56] It is further undisputed that:

- Mr. Eger acknowledged that the option in the Option Agreement supersedes the option in the OPSMC USA. He acknowledged that he is bound by the Option Agreement.
- He acted upon the exercise of the Option Agreement option by retaining a CBV to conduct a valuation *per* the fair pricing mechanism in the Option Agreement.
- Mr. Eger only purported to issue the 3 current Notices to Arbitrate after finding out from his own expert that the Turtle Bay shares have no value.

[57] As the law cited in the next section shows, the irrevocable offer made by Mr. Eger/Turtle Bay in the Option Agreement was accepted by Durs Corp issuing its Notice of Exercise on May 2021. After that, the only remaining question was that of price.

[58] I find that Mr. Eger’s arbitration rights under the two USAs are extinguished by the exercise of the option in the separate Option Agreement, whether because of abuse of process (following the UK law) or as a function of logic. In this regard, I make a declaration that under s 47(2) of the *Arbitration Act*, the arbitration provisions in the two USAs are either invalid or have ceased to exist, and further, that they are inapplicable to the matter at hand, which is the valuation of the Turtle Bay shares under the separate Option Agreement.

## **G. Option Agreement**

### **1) Nature of an Option**

[59] What is an option? The Supreme Court of Canada in *Canadian Long Island Petroleum Ltd et al v Irving Industries Ltd*, 1974 CanLII 190 (SCC), [1975] 2 SCR 715 at p 731 described the nature of an option as follows:

An option gives to the optionee, at the time it is granted, a right, which he may exercise in the future, to compel the optionor to convey to him the optioned property.

[60] The Court further described the effect of the exercise of an option at para 27 of *Mitsui* as follows:

The exercise of an option is the election to buy property on the terms specified in the option agreement, and is the equivalent of accepting the irrevocable offer made in the option.

[61] That is what has happened here in relation to the shares of Turtle Bay.

## 2) Validity or Invalidity

[62] Mr. Eger contends that the Option Agreement is invalid because it lacks the essential legal features recognized by Canada’s highest Court in *Mitsui* at para 26 and applied by the Court of Appeal of Alberta in *Caleron* at paras 12 and 22.<sup>3</sup> The first of these essential features is “exclusivity and irrevocability of the offer to sell within the time period specified in the option.” Mr. Eger’s counsel argues that the separate Option Agreement fails on this count because:

- the Option Agreement is not exclusive nor is it irrevocable, as it specifically provides Durs Corp with the right to assign the Option Agreement and gives the parties the ability to amend it in writing; and
- there is no time period specified in the Option Agreement within which it must be exercised, simply stating that it is a “continuing option.”

[63] The Applicants defend against this argument primarily by saying that Mr. Eger has not complied with *Rule* 6.3(2) which requires a litigant in to state the remedy claimed and the grounds for it in the application. With regard to this particular remedy, a declaration that the Option Agreement is invalid, no notice of the relief sought or the grounds relied on were provided in the Respondents’ Notice of Application. The matter was first raised in the Respondents’ cross-application brief.

[64] The Applicants rely on *Matta v Matta*, 2021 ABQB 826 at paras 18 to 20 wherein it is stated that the purpose behind the *Rule* is so that the opposing party/counsel and the Court are not taken by surprise. However, the objection is attenuated in the case of a special application where the arguments are made in writing in advance, as was the case here: *Reeves v Grassi*, 2019 ABQB 416 at paras 12 to 15. I note here that Mr. Eger’s cross-application brief was filed on January 31, 2025 in the Applicants’ reply brief was filed on March 20, 2025, so there was opportunity for the Applicants to address the additional relief sought by Mr. Eger and they did so. As then Master Robertson suggested in the *Reeves* case, failure to state forms of relief may be dealt with by way of costs.

[65] I prefer to address Mr. Eger’s argument head-on. First, the Option Agreement is exclusive. It is exclusive to Durs Corp as the optionee, and then if it had been assigned, it would have been exclusive to the assignee. Second, the Option Agreement is irrevocable in the sense

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<sup>3</sup> The principles for a valid option referred to in these cases are directly quoted from an academic article: Paul M. Perrell, “Options, Rights of Repurchase and Rights of First Refusal as Contracts and as Interests in Land” (1991), 70 *Canadian Bar Review* 1 at p 3, available at <https://cbr.cba.org/index.php/cbr/article/view/3581>.

that there is no provision allowing revocation by the optionor (Mr. Eger) while expressly stating that it is binding upon the parties and their successors. Nor does the ability to amend make the Option Agreement revocable. It would still be irrevocable in its amended form. For example, that Mr. Eger has the ability to change his address for notice in the Option Agreement should not render the Option Agreement revocable as opposed to irrevocable. Finally, I do not read *Matsui* or *Caleron* as stating that an option, in order to be valid, must have an expiry date. Rather, the Option Agreement must state a time period during which it is valid as opposed to not stating a period of validity. In this case, the Option Agreement provides that it is valid from 3:00 p.m. on October 31, 2014, and thereafter for an indefinite continuing period.

[66] Since validity of the Option Agreement is a question of law that can be resolved simply by looking at the Option Agreement itself, the question falls within the *Dell Computer* exception and is not required to be submitted to an arbitrator. I find there is sufficient certainty in the Option Agreement that it is valid.

[67] Finally, even if the Option Agreement is invalid, there is still an offer to buy Mr. Eger's shares in Turtle Bay at FMV with a valuation process to which both parties have already committed. Either way, my ruling above that the arbitration provisions in the USAs have been, in effect, extinguished, would still stand.

### 3) Arbitrability of Access & Data Room Issues

[68] Mr. Eger's notice to arbitrate in respect of the Option Agreement contains two further aspects:

- First, Mr. Eger contends that he has been barred from the Data Room and the question of his access to the Data Room is a proper question for arbitration; and
- Second, Mr. Eger asserts that certain information not provided by the Applicants should be placed in the Data Room for review by Grant Thornton.

[69] The Applicants say there is nothing in dispute under the Option Agreement, simply that Mr. Eger refuses to comply with his obligations to conclude the sale and purchase of the Turtle Bay shares. The arbitration provision in the Option Agreement states:

Arbitration: In the event that any disagreement arises between Tom and Darrenco with reference to this agreement, then any such dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act* (Alberta) or any other similar legislation in force in the province of Alberta from time to time.

[70] Darrenco is another way to identify Mr. Durstling's holding company, which I have called Durs Corp in these reasons. Tom is Mr. Eger.

[71] In my view, Mr. Eger's access to the Data Room and whether or not all of the proper documents have been placed in the Data Room are disagreements that have arisen between Mr. Eger and Durs Corp with reference to the agreement. The agreement contemplates the valuation by the respective CBVs appointed by the parties. The Applicants have chosen to put the valuation documents in a Data Room to be accessed by Grant Thornton.

[72] Who should have access to the Data Room, how that access should occur and what the content of the Data Room should be are matters of dispute arising from the Option Agreement. These issues do not involve discrete extricable questions of law that do not require resolution of

disputed facts. Whoever the adjudicator is, judge or arbitrator, would be required to engage in fact-finding and fault-finding. The questions do not fall within the *Dell Computer* exception.

[73] Accordingly, I find that both issues are the proper subject of arbitration and the Notice to Arbitrate and arbitration respecting the Option Agreement are valid with regard to those two issues.

[74] The Applicants say that the bar to giving Mr. Eger entry into the Data Room lies in the fact that he has refused to sign a non-disclosure agreement (NDA). For his part, Mr. Eger professes that he has already signed an NDA. The Applicants say that once Applicants' counsel realized the extent and nature of documents being deposited into the Data Room, an elevated NDA was required to be signed by Mr. Eger. He has refused to do so. He was also given the choice of signing an undertaking to the Court to keep the Data Room documents confidential. He has not executed that undertaking.

[75] Mr. Eger contends that the Applicants are deliberately withholding relevant documents to either cover-up their misconduct or to keep the true value of the shares from being revealed. In answer, the Applicants say that the production of the requested documents would obfuscate the valuation process and allow Mr. Eger to embark on a fishing expedition.

[76] I understand that the two sides do not trust one another. Mr. Eger's distrust of Mr. Durstling and the Applicants is obvious from the allegations in his Affidavit. The Applicants, in return, have cause to distrust Mr. Eger because of the issuance of the three more recent Notices to Arbitrate in the face of Durs Corp's exercise of the Option Agreement option and in the midst of both sides engaging in the valuation process set out in the Option Agreement. The Applicants are concerned that Mr. Eger cannot be trusted not to inappropriately disclose or use the additional detailed information that might be placed in the Data Room.

[77] It seems to me that it would be unreasonable and inefficient, inconvenient and unnecessarily costly to enter arbitration over the access issue. I note that Mr. Eger, while seated in Court as a spectator during the hearing, signaled his agreement on the record to an undertaking not to disclose the Deloitte February 24, 2022 Valuation Report if given access. It would be a simple thing for him to either sign the elevated NDA or give a similar undertaking with regard to the Data Room contents.

[78] I make a similar observation about the issue of the relevance of the requested documents. On April 21, 2022, Grant Thornton (through Mr. Eger's counsel) requested seven categories of additional documents from the Applicants. Counsel for the Applicants replied on May 2, 2022 to the request, providing some information but not all, and Mr. Eger's counsel's response to the response of June 2, 2022, reiterated the request for information not provided. Mr. Lacasse of Grant Thornton by his own letter of May 29, 2023, confirmed that the reasons Grant Thornton wanted the documents were as set out in the June 2, 2022 letter from Mr. Eger's counsel.

[79] I appreciate that the Applicants feel that Mr. Eger is attempting to orchestrate a scenario whereby the Applicants are cast as the obstructionists. However, Mr. Lacasse has stated as a professional that Grant Thornton requires the documents. I would not profess to tell Mr. Lacasse or Grant Thornton how to do their business. I am prepared to accept that Mr. Lacasse's requests, and his explanation for them, are *bona fide* and not part of a ruse on Mr. Eger's part to make the Applicants look bad.

[80] I did say that the content of the Data Room is an arbitrable issue. In order to avoid an arbitration, the Applicants might well consider placing what remains of requested but thus far unproduced documents in the Data Room and thus allow both sides to move forward with the second of the two valuations.

[81] Further under this heading, while I agree with counsel for Mr. Eger that the value of the shares is an arbitrable issue, it only arises after Grant Thornton completes its valuation. That is plain from a mere reading of the Option Agreement, which sets out a definitive mechanism for determining value. After the contemplated valuation process is completed, if there remains an issue about the fairness or validity of the process, then there may be an issue related to value that is eligible for arbitration. For the types of issues that might give rise to challenging a valuation, see McGuiness & Coombs at p 569, para 23-325.

#### 4) Effect of OPSMC Amending Agreement

[82] Lastly under this heading, Mr. Eger argues that the Amending Agreement to the OPSMC USA, which post-dates the Option Agreement, restores the primacy of the option in the USA over the option in the Option Agreement on the theory that last in time prevails. In reading the relevant part of the Amending Agreement (quoted in full above), it is apparent that it adds another event that activates the option in the USA. I accept that the option in the USA was triggered by Mr. Eger retiring, which was a termination of employment not involving just cause, which is another named event. However, the option was activated by the retirement of Mr. Eger, no matter how characterized, and the undisputed fact that remains is that Durs Corp did not exercise that option. The 90 days came and went. That should not have been a surprise. Mr. Durstling indicated to Mr. Eger by email on November 15, 2019, that he (Mr. Durstling) likely would not be exercising the option in the OPSMC USA. Thus, Mr. Eger knew in advance of his retirement that Mr. Durstling would likely decline to do so. Mr. Durstling chose instead a year-and-a-half after Mr. Eger's retirement to exercise the continuing option in the Option Agreement, as was his irrefutable right.

[83] The Amending Agreement is irrelevant.

[84] Mr. Eger cannot now say that it is an arbitrable issue as to which option applies (that found in the OPSMC USA or in the Option Agreement) or that the valuation methodology in the former should prevail over that of the latter. On facts that are undisputed, the option in the OPSMC USA expired without being exercised.

### H. Summary of Rulings

[85] I summarize the rulings made above as follows:

- Mr. Eger's arbitration rights under the two USAs are extinguished by the exercise of the option in the separate Option Agreement, whether because of abuse of process (following the UK law) or as a function of logic. Under s 47(2) of the *Arbitration Act*, the arbitration provisions in the two USAs are either invalid or have ceased to exist, and further, that they are inapplicable to the matter at hand, which is the valuation of the Turtle Bay shares under the separate Option Agreement.
- In line with *Re a Company (No. 0068834 of 1988)*, *Re a Company (No 003843 of 1986)*, *Re Belfield* and *Re Boswell & Co (Steels) Ltd*, the effect of any alleged

misfeasance claims is left with the valuator, in this case Grant Thornton LLP. Broadly speaking, such considerations fall into “past and present financial performance and future financial prospects.” In this regard, I am cognizant that the Option Agreement requires the shares of Turtle Bay to be valued. The value of the Turtle Bay shares is in whole or in part derived from the value of shares of OPSMC, which has no assets other than its ownership of 33% of the shares in Holdings. Whether there are rights having value attaching to the shares of Turtle Bay, separate and apart from the value of the shares in Holdings, is a matter for the valuator.

- The Notice to Arbitrate based on the arbitration clause in the Option Agreement is valid to the extent of the issues relating to Mr. Eger’s access to the Data Room and the content of the Data Room. Those issues may proceed to arbitration. However, I suggest (although I do not direct) that the parties resolve these issues consensually by Mr. Eger agreeing to non-disclosure either by elevated NDA or Court undertaking, and the Applicants agreeing to deposit the remaining requested but not-yet-produced information into the Data Room.

## I. Final Observations

[86] I make these comments and observations with a view to assisting the parties as they move forward to complete the sale and purchase required under the exercised option to purchase.

### 1) Court Direction regarding implementation of the Option Agreement

[87] The Applicants had asked for Court direction that Mr. Eger surrender the shares immediately. I note that Article 6 of the Option Agreement defines the “closing date”, and Article 7 sets out a process to compel the completion of the sale. The closing date for this transaction went by more than 4 years ago. The sticking point is that Grant Thornton has not completed its valuation yet. The Applicants also requested that I impose a deadline for Grant Thornton to complete its task. I am reluctant to do so since the issue of timely completion seems to me to be an arbitration issue. My suggestion is that once the Data Room content is settled, the Applicants themselves impose a reasonable deadline and if it is not met, then the Applicants proceed with their own arbitration to determine the purchase price based on the Deloitte Report. Once the purchase price is established in this manner, the Applicants can invoke Article 7 to complete the transaction.

### 2) Limitation Periods

[88] Since the arguments by both sides on limitation periods and the effect of effluxion of time on the appropriateness of an oppression action relate to the merits of the allegations, I will refrain from commenting too much. On the one hand, once the ability to civilly enforce a right (if it ever existed) is extinguished due to expiry of a limitation period, then such a right no longer attaches to the shares, for any purpose including valuation. However, I remain mindful that limitation periods may also be defined by a continuous course of conduct or a series of related acts and discoverability: *Seidel* at paras 42-47, *Limitations Act*, s 3(3)(a).

[89] The Court of Appeal has also ruled that where there is a series of instances of non-payment, each non-payment is a discrete breach that gives rise to its own cause of action and

therefore its own limitation period: *James H Meek Jr Trust v San Juan Resources Inc*, 2005 ABCA 448 at paras 48-49.

[90] Limitations should be considered by the valuator in the adding-back of any value for past events in relation to either the shares of Holdings or Turtle Bay.

### 3) Rewriting Contracts

[91] The Applicants make a valid point that neither a court nor an arbitrator can rewrite history by amending a contract that sophisticated parties entered into at arm's-length that has ultimately proved disadvantageous to one of the parties: *JSM Corp (Ontario) Ltd* paras 60-62 & *Jedfro Investments* at para 34. In this regard, I specifically refer to Mr. Eger's claims for compensation that he says he gave up as part of entering into the new management structure in 2013. Most persons who enter business arrangements do so with optimism. I accept that Mr. Eger is disappointed that he did not receive the profit distributions he was hoping for or even anticipated and that his shares in Turtle Bay may not be worth the \$7.1 million he thought they might be in 2019. I realize he feels he gave something up financially in return for signing the Senior Management Restructuring Term Sheet and OPSMC USA for what turned out to be less than satisfactory return. With the clarity of hindsight, it does not look like such a good deal. But at this point, I feel there is no legal principle applicable here that would permit the rewriting of a contract made in 2013, so that the terms are more favourable to Mr. Eger.

[92] The same would apply to the Option Agreement, now that Mr. Eger realizes the Turtle Bay shares may not be what he thought they were worth.

### 4) Good Faith

[93] I agree with counsel for the Applicants that the parties to an option contract are subject to the contractual duty of good faith: per Coroza JA at para 78 in the ONCA *Jones v Quinn* case. Since I am not compelling performance of the Option Agreement, I do find it necessary to make a finding on the Applicants' argument that Mr. Eger has breached this duty of good faith by failing to complete the transaction. Arguments about good faith can be made should the matter proceed further to arbitration under the Option Agreement.

### 5) Deloitte Valuation Report

[94] I asked counsel after the hearing for comments regarding the significance, weight and probative value that I should attach to the Deloitte Report. Counsel obliged me with submissions. The Report is referenced as Exhibit "B" to Ms. Anderson's September 23, 2022 Affidavit but not actually attached, the Applicants having relied on *Rule* 13.21. The Applicants were concerned that Mr. Eger, based on prior conduct, might misuse the information if prohibitions were not agreed to. No arrangements had been for viewing of the Report by Respondents' counsel prior to the hearing. The Report was produced at court on April 3, 2025, to both the Court and Respondents' counsel.

[95] I have concluded that since the Report is essentially hearsay, I should have no regard to its content in formulating these reasons. That the Report says the Turtle Bay shares have a nil or nominal value is an undisputed fact. However, the conclusion itself is disputed, and it is not up to me to determine whether it is correct or not. That is the task of Grant Thornton.

**6) Request to remove Mr. Durstling personally as a party**

[96] Finally, during the hearing, counsel for the Applicants asked that I remove Mr. Durstling personally as a party to these proceedings on the grounds that there is no contractual privity. The point was not really pressed beyond the mere request. In fairness, in light of Harris J's dictum in *Matta* at paras 16 & 17, I cannot strike Mr. Durstling as party because no mention of such relief is contained in the Applicants' September 23, 2022 Originating Application nor in either of the briefs filed by the Applicants.

**J. Concluding Matters**

[97] I task Mr. Payne with preparation of the Court Order that emanates from this decision and Mr. Hoose with its approval as to form and content. Thereafter, the approved form of Order should be submitted to me for signing using the KB electronic filing protocol.

[98] If either side seeks costs and the parties are unable to agree, they may address costs by each sending me a single-spaced letter of no more than 2 pages in length, not including authorities and exhibits, and supported by a draft Bill of Costs, no later than 30 days from the date of this decision.

Heard on the 3<sup>rd</sup> day of April, 2025.

Additional written submissions received on the 25<sup>th</sup> and 29<sup>th</sup> days of April, 2025.

**Dated** at the City of Edmonton, Alberta this 23<sup>rd</sup> day of May, 2025.

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**Douglas R. Mah**  
**J.C.K.B.A.**

**Appearances:**

Roderick C. Payne,  
DLA Piper (Canada) LLP  
for One Properties Holdings Corp, One Properties Senior Management Corp, Durs (2013)  
Holdings Corp and Darren Durstling (Applicants/Cross-Respondents)

Christopher G. Hoose  
Stillman LLP  
for Turtle Bay Investments Ltd and Thomas Eger (Respondents/Cross-Applicants)

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**Corrigendum of the Memorandum of Decision  
of  
The Honourable Justice Douglas R. Mah**

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- Amendment has been made in para 92 as follows:

" ... the Turtle Bay shares may not be what he thought they were worth."