CITATION: Klassen v. Beausoleil, 2025 ONSC 4392
COURT FILE NO.: C-348-15
DATE: 2025/07/30

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
HENRY KLASSEN Plaintiff (Defendant by Counterclaim)	Rohit R. Kumar and Nabiel Dawood, Counsel for the Plaintiff (Defendant by Counterclaim)
– and –	
ROBERT BEAUSOLEIL and 1117726 ONTARIO INC. o/a ROBERT'S BOXED MEATS Defendants (Plaintiffs by Counterclaim)	G. Edward Oldfield and Phillip M. Behm, Counsel for the Defendants (Plaintiffs by Counterclaim)
	HEARD: December 4, 5, 7, 8, 11, 12, 13 and 14, 2023, July 2 and 4, 2024, and December 13, 2024

THE HONOURABLE JUSTICE I.R. SMITH

REASONS FOR JUDGMENT

1: Introduction

[1] The defendant Robert Beausoleil runs a meat store in Kitchener called Robert's Boxed Meats ("RBM"). RBM is the current operating name of the defendant 1117726 Ontario Inc. ("726" or the "company"). 726 had its genesis in 1995. Like many new businesses, it did not thrive initially. Indeed, it had years of losses before it became profitable. In its early years, there were

changes in ownership. The first of those changes occurred in 1996. Ultimately, in 1997, Beausoleil became the sole shareholder in 726. Now the business reliably returns an annual profit.

2. The plaintiff Henry Klassen was involved in the business of 726 in its earliest days and at the time of the ownership changes. For two reasons, both of which are denied by Beausoleil, Klassen says that he continues to hold an ownership interest in 726. First, he says that he and Beausoleil entered into an oral agreement in 1997 shortly after Beausoleil purchased 726, whereby they would each own 50% of the company. Second, and in the alternative, he says that two share purchase agreements and two escrow agreements (collectively, the "agreements") executed at the time of the ownership changes in 1996 and 1997 preserve for him a 33.3% interest in 726 represented by shares in 726 that have been held in escrow since 1996. Beausoleil says that, as one of its owners, he continued to work for the company throughout its life and contributed to its success. Klassen says that Beausoleil, who was older and had more experience in the meat business, occasionally offered advice to him but did not at any point after 1996 work for 726.

3. Klassen commenced this action by statement of claim issued in 2015. Among other things, he seeks a declaration that he owns either 50% or 33.3% of 726.

4. Beausoleil's counterclaim seeks a declaration that the defendants are entitled to delivery of the shares held in escrow so that they may be cancelled.

5. For the reasons which follow, I have concluded that Klassen is not a 50% owner of 726 and that his claim to own 33.3% of the company was brought after the expiry of the applicable limitation period. The claim is therefore dismissed. The relief sought by the counterclaim is granted.

2: The trial

6. The trial of this matter unfolded in three parts. In December 2023, I heard eight days of evidence from lay witnesses, including the parties, on all issues. It was revealed that the defendants were in possession of documents that ought to have – but had not – been produced to the plaintiff. It was agreed that the parties' experts, who gave evidence about the value of the company, would

testify after production of documents was complete and the experts had had an opportunity to consider those documents. The experts then testified for two days in July of 2024. After the close of the evidence, the parties prepared very helpful written submissions and returned to make final oral argument on December 13, 2024.

3: Background

3.1: Meats Galore Inc.

7. The parties met in the early 1990's when they both worked for J.M. Schneider ("Schneider's"), a meat processing company in Kitchener. They worked together, Klassen as a salesperson, and Beausoleil as a product manager. Beausoleil joined Schneider's immediately after graduating from Conestoga College. He was 21 years old. Klassen was 33 at that time and had worked at Schneider's since 1980. He was Beausoleil's superior at that company and became a mentor to Beausoleil.

8. Eventually, they decided to go into business together and, on March 29, 1995, a company called Meats Galore Inc. ("Meats Galore"), which eventually became 726, was incorporated. Beausoleil was still working at Schneiders so Meats Galore was owned upon incorporation by Klassen, Lisa Bowman (Beausoleil's then girlfriend), and a man named Glen Hobson, whom Beausoleil and Klassen had met through their work at Schneider's. Hobson operated a store called Meats Galore in Brampton and was looking to expand that business. The three owners, Klassen, Bowman and Hobson, each held 100 shares in the company. A shop was opened sometime thereafter at 1601 River Road East, in Kitchener, where RBM continues to operate today (the "store"). Another Meats Galore store, owned by a different numbered company, had already opened in Waterloo. Klassen said he started working at Meats Galore in May of 1995. Beausoleil said that he left Schneider's in late 1995 or early 1996 and at that time started working full time at the store.

3.2: Klassen sells his shares

9. Klassen was the president and a director of Meats Galore. At first, Klassen worked full time in the store while Bowman and Hobson operated the Waterloo store. However, Klassen says

that he became dissatisfied with his new business partners, believing them to be insufficiently committed to the business. In addition, at that time, the company was doing poorly and, among other things, was not able to meet its obligations to make various government remittances, for example to the Canada Revenue Agency ("CRA") and to the Workplace Safety Insurance Board. Klassen knew that as a director he was personally liable for those remittances.[1] He decided to leave the business in December of 1995 and took up a job at a company called Maxi Poultry as the sales manager for Ontario and Eastern Canada. Klassen resigned his positions as the president and a director of Meats Galore as part of a share purchase agreement dated March 21, 1996 (the "1996 SPA"). Pursuant to that agreement, in addition to offering his resignations, Klassen transferred his 100 shares to Bowman and Hobson effectively free of charge but subject to the satisfaction of certain escrow conditions.

10. The 1996 SPA provided that Meats Galore was indebted to Klassen for (1) back wages ($25,857.51) which were to be paid to him in five equal annual instalments commencing on May 1, 1996; and (2) a loan in the amount of $20,000, the outstanding balance of which, as of March 1, 1996, was $15,024.13 (the "1996 loan"). It also provided that Meats Galore was indebted to Klassen's mother, Margaret Klassen, for a loan in the amount of $10,000, the outstanding balance of which, as of February 15, 1996, was $7,758.61 (the "Margaret loan").

11. The 1996 SPA furether provided that Klassen's shares would be held in escrow pursuant to an escrow agreement also dated March 21, 1996 (the "1996 EA"), and that the 1996 SPA and the 1996 EA would remain in effect until the debts to Klassen and his mother were discharged and Klassen was released by the Bank of Montreal ("BMO") as a guarantor for 726's loan from the bank (the "BMO loan"). The 1996 EA provided that Klassen's shares could not be dealt with in any way until these conditions were satisfied.

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[1] Despite the fact that Klassen said he was aware that Meats Galore was "barely making budget" while he was president, he claimed in cross-examination that he did not know that these remittances were not being made until after he left Meats Galore. He agreed that he was "shocked" to learn the remittances had not been paid when he was discussing with Beausoleil his 1997 purchase of the company. Klassen was "happy" to learn that he was not "on the hook" for these liabilities.

12. Klassen testified that he understood the 1996 EA to mean that the shares held in escrow would revert to him in the event that the conditions of the 1996 SPA were not met, which was a real possibility because, at that time, the company could not pay what it owed to him.

3.3: Beausoleil acquires 726

13. After Klassen's departure, according to Beausoleil, Beausoleil operated the store and Bowman operated the Waterloo location of Meats Galore. Hobson was the president of all three Meats Galore locations. Beausoleil testified that he had issues working with Hobson and that his personal relationship with Bowman failed. He started to operate the store more independently of Hobson and, at the same time, the Waterloo location was in financial difficulty and was likely to close because it was involved in expensive litigation. Hobson approached Beausoleil about taking over sole ownership of the Kitchener Meats Galore location.

14. Beausoleil testified that it was Klassen who brokered the deal for his purchase of Meats Galore from Hobson and Bowman. The result was that on August 18, 1997, Beausoleil purchased all the outstanding shares in the copmany pursuant to a share purchase agreement between him, Hobson, and Bowman (the "1997 SPA") in exchange for assuming most of the company's liabilities. With respect to the balance of those liabilities, which included outstanding remittances to CRA, they were assumed by Hobson. The 1997 SPA confirmed that the shares being sold by Hobson and Bowman were subject to the 1996 EA. In addition, on that same date, the parties entered into a new escrow agreement ("the 1997 EA") whereby Beausoleil assumed responsibility for satisfying the conditions set out in the 1996 EA before Klassen's shares could be released to him.

15. On August 19, 1997, the day after his purchase of the company, by Articles of Amendment filed with the Ministry of Consumer and Commercial Relations, Beausoleil changed the name of the company from Meats Galore to 726 and reduced the minimum number of directors required to operate the company from three to one. He became that sole director.

16. Beausoleil, who was 25 years old at this time, testified that he did not understand the extent of 726's labilities when he bought the company, which was on the verge of bankruptcy. He notes

that the 1997 SPA is especially beneficial to Klassen. Beausoleil said that Klassen knew that if there was no buyer for 726, the company would fail as the Waterloo location was destined to do, and that 726's debt to Klassen would go unpaid while he simultaneously remained liable for the company's debts, which included not only the BMO loan, but substantial unpaid remittances. It was at Klassen's insistence that the 1996 EA was amended and Beausoleil assumed its obligations, which were all in favour of Klassen (and his mother).

17. The BMO loan was paid in full by July of 2000. The Margaret loan was repaid by June 2003.[2] The 1996 loan was repaid by Beausoleil in 2016, after this litigation commenced. Klassen has never been paid for his back wages.

3.4: The alleged oral agreement

18. Klassen testified that he met with Beausoleil on or around August 20, 1997, at Beausoleil's home. It was very shortly after the date of the 1997 SPA. He said that Beausoleil had wanted to discuss 726's financial circumstances and had sent some spreadsheets to Klassen prior to the meeting. According to Klassen, Beausoleil said that he hoped Klassen would consider rejoining 726 as a co-owner because he needed someone with experience in the meat business and because 726 needed to defer payment of Klassen's back wages, the 1996 loan, and the Margaret loan.

19. Klassen testified that the parties came to an agreement (the "oral agreement") that in exchange for a 50% stake in 726, he would defer payment of the various debts owed to him and his mother. He said that he also agreed to remain – and did remain – as a guarantor of the BMO loan and that he would contribute – and did contribute – an additional $19,500 to 726. Finally, because he had just started a new full-time position with a company called Maxi Poultry, it was

[2] Klassen testified that the final payment on the Margaret loan was made in June 2003, but did not refer to any document to corroborate this evidence. In chief, Beausoleil said that he was still making payments on the Margaret loan in 2000. In cross-examination, Beausoleil was asked to agree that he did not fully repay the Margaret loan "until sometime in 2003". He answered as follows: "That could very well be. Yeah, there was a period of time for sure." The balance sheets of 726 show a debt owing to "M Klassen" in 1998, but not after that year. The balance sheet dated as of April 30, 1998, shows the amount owing on the Margaret loan as $598.76 (Klassen testified that this amount was inaccurate and too low). The Margaret loan is also noted in the balance sheet dated as of May 31, 1998, but the amount owing is illegible. The Margaret loan is not referred to in the balance sheet dated as of June 30, 1998, or, so far as I have been able to determine, in any business record with any later date.

agreed that Klassen's role in 726 would be that of a senior manager who gave direction and support to 726 from a high level, while Beausoleil managed the day-to-day operations of the store. Notwithstanding this agreed upon division of labour, Klassen testified that he often came to the store to assist with stocking shelves, cutting and packaging meat, and unloading deliveries.

20. Klassen testified that he did not insist on committing the oral agreement to paper because 726 had no money. He said that he was confident that Beausoleil would honour the oral agreement and that, in any case, he was protected by the escrow agreement.

21. Beausoleil denied that there was any such oral agreement.

3.5: Boxed Meat Revolution

22. Klassen testified that after he rejoined 726 in August of 1997, he recruited Roy Illerbrun and Robert Detzler as investors in 726. Illerbrun owned a store in Guelph that operated under the name Boxed Meat Revolution and Detzler was the manager of that store. Klassen said that he and Beausoleil met with Illerbrun and Detzler in September 1997 to discuss the possibility of them joining 726. Klassen prepared a spreadsheet in advance of the meeting and distributed it to the participants. That spreadsheet shows a proposed share structure and makes proposals for guarantees that would have to be made in connection with 726's various debts, including to BMO.

23. At the meeting, according to Klassen, Illerbrun said that he was prepared to provide inventory and equipment and to allow 726 to use the Boxed Meat Revolution name. Detlzer said he would invest $25,000. Ultimately, Klassen says, they agreed that they would each own 25% of 726.

24. On November 1, 1997, 726 held a grand opening event under the new name of Boxed Meat Revolution. Klassen was in attendance at that event.

25. It was decided that a shareholder's agreement should be drafted and a lawyer was engaged for that purpose, one Wayne Boehler. In January 1998, Boehler wrote to Illerbrun's lawyer, Bruce Gray, to clarify certain matters, including the continuing effect of the 1997 EA. Thereafter, Gray

wrote to Illerbrun on February 10, 1998, and expressed the opinion that "the financial situation of the corporation and in particular its debt obligations remains murky." He advised Illerbrun to get more information from Beausoleil before deciding what steps to take in connection with 726.

26. After receiving Gray's letter, Illerbrun decided against investing any further in 726 and left the business. He also decided that 726 should no longer use the Boxed Meat Revolution name. Shortly thereafter, Detzler left the business too. Klassen prepared an agreement reflecting the terms of Detzler's departure for Detzler and Beausoleil to sign.

27. Klassen said that after the short-lived arrangement with Illerbrun and Detzler failed, he and Beausoleil agreed that they would simply revert to the 50/50 ownership deal they had agreed to orally in August 1997.

28. Beausoleil testified that there was never any finalized agreement with Illerbrun and Detzler. There were discussions spreading over a period of several months respecting a joint venture with Boxed Meat Revolution, and some steps were taken in that direction, but it never materialized. No final agreement was signed and Beausoleil did not at any time transfer any shares of 726 to anyone. He did not thereafter revert to a 50/50 deal with Klassen because no such deal was ever made.

3.6: Robert's Boxed Meats

29. Since Illerbrun had declined to allow 726 to use the branding of Boxed Meat Revolution, a new name had to be selected. Klassen testified that he and Beausoleil discussed the matter and decided that the name should be Robert's Boxed Meats. He said that he and Beausoleil, who had long-term expansion aspirations, agreed that "Robert", a bilingual name, would facilitate those aspirations.

30. Thereafter, Klassen says that he continued to work at 726 on evenings and weekends, for anywhere from 5 to 20 hours per week, from 1997 until his relationship with Beausoleil soured in 2014. In addition to working in the store (where he said he cut meat, stocked shelves, packaged orders, and unloaded deliveries from trucks), he undertook various efforts to promote 726's business interests, including the following:

- Preparing a loyalty card prototype for use in a loyalty discount program at the store;
- Preparing a release for Mardel Mechanical, a company to which 726 had an outstanding debt;
- Operating 726's booth at the St. Jacob's Farmer's Market from the fall of 1997 to spring of 1998;
- Communicating with BMO about its loan to 726;
- Receiving correspondence for 726 from CRA;
- Assisting 726 with fundraising and sponsorships for local clubs and sports teams;
- Meeting with and recommending suppliers;
- Assisting with product development;
- Meeting monthly with Beausoleil to discuss 726's finances, to give advice and encouragement to Beausoleil, and to approve the company's annual budget and business plan;
- Approving the store's renovations;
- Dealing with 726's landlord;
- Drafting correspondence on behalf of 726;
- Communicating with the company's lawyer;
- Dealing with employee issues; and
- Planning for the proposed expansion of the business to a second store in Waterloo.

31. Beausoleil denied that Klassen worked for RBM. Instead, Klassen pursued his career in the meat industry elsewhere and held a number of jobs in that industry. Occasionally, Beausoleil offered advice and encouragement to Klassen, but he was not a partner in RBM.

3.7: The parties' relationship breaks down

32. According to Klassen, in late 2014, the parties began discussing the possibility of opening a second RBM store in Waterloo. Klassen began preparing a business plan and sending Beausoleil real estate listings of properties they might consider for that purpose.

33. In November of 2014, Klassen says that he attended the store to discuss the proposed second store with Beausoleil. During this meeting, Klassen told Beausoleil that if they were going to expand they should commit the oral agreement to writing. Klassen says that during that meeting it became apparent that he and Beausoleil disagreed about the future of the company, including both its expansion and its ownership structure. Klassen said that he therefore requested that they begin discussing his departure from 726.

34. In an email dated November 13, 2014, Klassen wrote to Beausoleil as follows:

> Let me know when you have 15 minutes next week. I know Mondays are hectic so let's try for Tuesday. I've been giving the whole situation, Waterloo store, our business relationship etc., a lot of thought, and I need to share this with you in person, although I have written it down and will give you a copy for your reference and response. What I'm thinking will undoubtedly affect your business decision making, so the sooner we meet the better.

35. Following this email there is a series of emails in which the two men try to find a time to meet, Beausoleil repeatedly saying that he is very busy or unavailable. Eventually, on November 23, 2014, Klassen wrote and reminded Beausoleil what it was he wanted to talk about:

> As I mentioned in a previous email, I wanted to discuss our business relationship. Basically, it comes down to this: I want to begin the process of ending our business relationship / partnership regarding [726]. I wanted to tell you this in person, but we've had some difficulty meeting, so at least now you know what I am thinking and we can begin the planning process this Wednesday.

36. In his reply email, Beausoleil wrote that he was not sure what Klassen meant by "ending the business relationship on [726]? What relationship are you referring to?" After Klassen responded that he was referring to "our 50/50 ownership" of 726, Beausoleil replied as follows:

> 50/50? I know there is some monies owing for back wages which we have discussed in the past and that is on the books. I know you mentioned at our last meeting that you felt there was a 50/50 partnership. To be frank, I have many things on my plate currently. One of them is not entertaining what you consider now to be a 50/50 ownership. You were clever enough to get back wages put into the resolution of meats galore in 1997. At that time you released your ownership share; if you truly wanted a 50/50 partnership that would have been put in place then. I recognize that you were very helpful in the next couple years when I took over 100% in 1997. I appreciated your support and I also believe it was in your best interests for my company to succeed if you were going to collect your back wages. Fast forward to today 17 years later approaching 18 and you are suggesting we are partners? The last meeting we had you were pushing a new business venture in Waterloo. I had entertained the idea but was frank and said I had to get some more information before I just recklessly jump into another business venture. I also was candid in letting you know my company was looking at expansion. […] So I am gathering I should discontinue any efforts into a proposed new location and work out a payment plan of your back wages?

37. Klassen testified that this was the first time that Beausoleil denied the existence of their co-ownership of 726. Shortly thereafter, he retained counsel and commenced this litigation.

38. On October 11, 2017, Klassen demanded that the escrow agent, Paul Zebroski, who is 726's long-time accountant, release to him the shares held in escrow. Counsel for Beausoleil objected and Zebroski therefore did not release the shares. He continues to hold them in escrow now.

4: Issues

39. It falls to me now to determine whether it has been established that Beausoleil and Klassen had an oral agreement whereby they each owned 50% of 726. Failing proof of such an agreement, I must determine whether Klassen's claim to own 33.3% of the company is brought out of time.

40. As noted at the outset of these reasons, I have concluded that there was no oral agreement as alleged by Klassen, and that the claim for a 33.3% stake of the company was brought outside the relevant limitation period. Nevertheless, in the event that I have erred in coming to these conclusions, below I have made findings of fact relating to amounts claimed by Klassen in order to assist with the ultimate resolution of this litigation.

5: Was there an oral agreement?

41. Klassen says that there was an oral agreement reached in August of 1997 whereby he became the owner of 50% of 726. Beausoleil denies that there was any such agreement.

42. I agree with the defendants that Klassen has failed to prove on a balance of probabilities the existence of an oral agreement. In my view, his evidence on the point is simply not credible. Several topics covered in the evidence point to this conclusion. Before turning to those topics, I set out the applicable legal principles that I am required to apply.

43. In *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22, Rowe J. articulated the necessary preconditions for the formation of an enforceable agreement as follows (at paras. 35 – 38; emphasis added):

> A contract is formed where there is "an offer by one party accepted by the other with the intention of creating a legal relationship, and supported by consideration": *Scotsburn Co-operative Services Ltd. v. W. T. Goodwin Ltd.*, [1985] 1 S.C.R. 54, at p. 63. The common law holds to an objective theory of contract formation. This means that, in determining whether the parties' conduct met the conditions for contract formation, the court is to examine "how each party's conduct would appear to a reasonable person in the position of the other party": *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, [2020] 3 S.C.R. 247, at para. 33.
>
> For present purposes, it will suffice to focus on the requirement of intention to create legal relations. As G. H. L. Fridman explains, "the test of agreement for legal purposes is whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract": *The Law of Contract in Canada* (6th ed. 2011), at p. 15; see also S. M. Waddams, *The Law of Contracts* (7th ed. 2017), at p. 105. <u>This requirement can be understood as an aspect of valid offer and acceptance, in the sense that a valid offer and acceptance must objectively manifest an intention to be legally bound</u>: *Crystal Square*, at paras. 49-50.
>
> The test for an intention to create legal relations is objective. The question is not what the parties subjectively had in mind but whether their conduct was such that a reasonable person would conclude that they intended to be bound: *Kernwood Ltd. v. Renegade Capital Corp.* (1997), 97 O.A.C. 3; *Smith v. Hughes* (1871), L.R. 6 Q.B. 597, at p. 607. <u>In answering this question, courts are not limited to the four corners of the purported agreement, but may consider the</u>

> surrounding circumstances: *Leemhuis v. Kardash Plumbing Ltd.*, 34 B.C.L.R. (6th) 248, at para. 17; *Crystal Square*, at para. 37.
>
> Under the objective test, the nature of the relationship among the parties and the interests at stake may be relevant to the existence of an intention to create legal relations. For example, courts will often assume that such an intention is absent from an informal agreement among spouses or friends: *Balfour v. Balfour*, [1919] 2 K.B. 571 (C.A.); *Eng v. Evans* (1991), 83 Alta. L.R. (2d) 107 (Q.B.). The question in every case is what intention is objectively manifest in the parties' conduct.

44. In *Bawitko Investments Ltd. v. Kernels Popcorn Ltd*. (1991), 79 D.L.R. (4th) 97 (Ont. C.A.), the Court of Appeal set out the necessary elements of an enforceable oral agreement in circumstances where the parties agree on terms orally but intend to commit their agreement to writing later. Robins J.A. wrote as follows (at pp. 103 – 104, italics in the original, underscoring added):

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

> solemn record or memorial of an already complete and binding contract but is essential to the formation of the contract itself.

45. Of course, parties may create a contract orally, whether or not they intend to put that contract into writing later. This point is made clearly by Winkler C.J.O. in *Mountain v. TD Canada Trust Company*, 2012 ONCA 806 (at para. 66):

> Fundamentally, the issue whether a valid and binding oral agreement exists does not depend on the existence of a formal written document between the contracting parties: see *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.* (1991), 79 D.L.R. (4th) 97 (C.A.), at pp. 103-104 D.L.R. The essential terms of an oral contract for the purchase and sale of real property are the parties, property and price: see *McKenzie v. Walsh* (1920), 61 S.C.R. 312. If these terms have been agreed on, then a contract may be found without the need for evidence of a written agreement. The trial judge misconceived the applicable legal test for proving an oral agreement by considering the lack of written documentation as being strong evidence against Gary's claim.

46. My task in this case, then, is to determine whether the parties came to an oral agreement that amounted to a valid offer and acceptance. In doing so, consideration must be given to whether there is objective evidence that Beausoleil and Klassen agreed on all the essential elements and that they both intended to be bound by their agreement. Put in the negative, I must determine whether the terms of any such agreement were not settled or agreed upon, or whether the alleged agreement is too general or uncertain to be valid in itself. Paraphrasing *Mountain* for present purposes, while there is no need for a documented agreement, to find a valid oral contract the parties must have agreed upon at least (i) who the parties were, (ii) what was being sold, and (iii) what price was being paid.[3]

[3] In *Matic v. Waldner*, 2016 MBCA 60, Pfuentzner J.A. wrote as follows (at para. 60; emphasis added): "Identification of the "parties, property and price" are terms that are frequently cited as being essential to the formation of a contract involving the purchase and sale <u>of shares</u> or real estate."

47. I turn then to the evidence and the various considerations which have driven my conclusion on this issue, beginning with the issue of whether the plaintiff has established that there was an agreement on the essential elements set out in *Mountain*.

5.1: Parties, property, and price

48. Even if I accept Klassen's evidence that there was a discussion with Beausoleil about Klassen returning to 726 in August of 1997 and taking an ownership interest in the company, in my view, his evidence about what was agreed to is too vague and imprecise to allow me to conclude that there was an oral agreement on these three essential elements. While it is clear enough on Klassen's evidence that the parties to the agreement were to be Klassen and Beausoleil, the claim that the parties were to be 50/50 owners of 726 leaves open plenty of questions. What does "50/50" mean? By that time, Beausoleil was the only director of the company and would, as such, have various statutory personal liabilities for government remittances. Was Klassen to share in those liabilities?[4] Were the parties to share in any profit equally and were they to receive dividends equally? Were they each to receive compensation for their work at or for the store?[5] If not, how was the unequal division of profit and/or compensation to be determined? Even if some or all of these questions were not essential to an agreement to be 50/50 owners, it is improbable that such an agreement would have been reached without the parties having considered some or all of them.

49. In addition, Klassen has not established that the parties agreed on a price. This is especially so given that he has not proven that he paid the price he says he agreed to pay – and did pay – to acquire 50% of the company. He has not established that he agreed to provide and did provide 726 with a loan of $19,500. He has not established that he agreed to continue to guarantee the

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[4] In cross-examination, Klassen acknowledged that after the date of the alleged oral agreement, Beausoleil remained as the only director "on the books" and that Beausoleil was liable for the remittances. When it was put to Klassen that if he really were an owner of the company he would have become a director and shared in those risks with Beausoleil, he responded as follows: "In hindsight, maybe that's what we should've done, but we had an oral agree – an oral agreement, and that's what I – that's what we had in place."

[5] Klassen testified only that "based on our 50/50 deal … I was not going to be an employee."

BMO loan and that he continued to do so. And he has not established that he agreed to provide senior management services to 726. I will return to each of these issues below, but note now that these were all, according to Klassen's own evidence, essential components of the consideration he offered to – and paid to – Beausoleil.

50. To be sure, Klassen did provide assistance to Beausoleil and 726, and Klassen did agree to defer the debts owed to him for a time (a topic to which I will return), but Klassen has not established that he did either of these things as consideration for a 50% ownership interest in 726 or that Beausoleil agreed to receive these benefits for that reason. In my view, the evidence is more compelling of the conclusion that Klassen's conduct in this regard was motivated by (i) the obvious reality that 726 simply could not pay what it owed to Klassen; (ii) his history and friendship with Beausoleil; (iii) his hope that 726 would succeed and, as a result, that his loan (and that of his mother) and back wages would be repaid and that he would be released from his guarantee of the BMO loan; and (iv) his hope that 726 would be able to purchase product from one or more of the companies for which Klassen worked while Beausoleil was running 726.

51. At a minimum, Klassen has failed to prove that the parties agreed upon the consideration for his alleged 50% in interest in 726. I come to this conclusion even before considering Beausoleil's denial that there was ever any discussion during which he entertained, let alone agreed to, the idea that Klassen would become an owner of 726.

52. In any case, on a review of all of the evidence, I accept Beausoleil's assertion that there was never any oral agreement between the parties as described by Klassen. It is far more credible than Klassen's claim to the contrary.

5.2: Timing and consideration

53. Klassen's evidence that the oral agreement was struck on August 20, two days after the 1997 SPA was signed makes very little commercial sense in the circumstances that prevailed at that time. Beausoleil had just purchased 100% of the shares of 726 and he and Hobson had agreed to share responsibility for the company's liabilities. Beausoleil had changed the name of the company and reduced the number of required directors to one: himself. It is not reasonable that

Beausoleil would then immediately invite a new owner into the business that he had just acquired and give up 50% of it, especially for little or no consideration in return.

54. Moreover, it seems unlikely that Klassen would immediately want to jump back into a business from which he had extracted himself (by way of two share purchase agreements which he had helped to negotiate), well-protected from any lingering liabilities. The company was not profitable, had significant debts (including debts for which a director would be personally liable), and already owed him and his mother money.

55. With respect to consideration, as I have already noted, for his part of the alleged bargain Klassen says that he was providing to Beausoleil an agreement to (i) defer repayment of the debts owed by 726 to Klassen and to his mother, (ii) loan the company $19,500, (iii) remain as the guarantor of the BMO loan; and (iv) play a senior management role in the company. I address each of these points in turn.

5.2.1: 726's debts to Klassen

56. The debts payable to Klassen and his mother were already deferred pursuant to the 1996 SPA and 1996 EA. Indeed, the 1996 EA existed precisely because the company could not at that time afford to pay what was owed and, pursuant to that agreement, Klassen's shares were to be held in escrow until those payments were made. The 1996 SPA included a timeline for the payment of Klassen's back wages, and promissory notes associated with agreements set out timelines for the repayment of the 1996 loan and the Margaret loan. Those timelines had already been breached even before Beausoleil purchased the company in 1997.

57. During his testimony, Beausoleil did say that Klassen agreed from time to time to defer the repayment of the debts owing to him (but pressed Beausoleil for the repayment of the Margaret loan). Beausoleil denied, however, that these deferrals had anything to do with an oral agreement respecting the ownership of 726. The fact of the matter is that at the time of the 1997 SPA, and at the time of the alleged oral agreement, the company simply could not afford to make good on these debts.

58. In cross-examination, when asked to agree that the company needed Klassen to defer repayment, Beausoleil responded as follows:

> What the company needed was to make money so that Mr. – Mr. Klassen could get those monies back. The – the company was $150,000 in the hole. How was he going to get paid?
>
> […]
>
> I think he didn't have a choice.

59. In other words, the fact that Klassen was going to have to wait for payment was just a fact in the circumstances that then existed. By agreeing to wait, he was not offering any new consideration to 726, he had already been waiting and he knew that insisting on immediate repayment would not put him in any better position.

5.2.2: The alleged loan of $19,500 to 726

60. There is no evidence corroborating Klassen's claim that he agreed to loan 726 a further $19,500 as part of the oral agreement. Indeed, that is the conclusion Sloan J. came to on the summary judgment motion in this matter (see *Klassen v. Beausoleil*, unreported, August 29, 2017, at paras. 76 – 78). He dismissed the plaintiff's claims in that respect. Moreover, Beausoleil denies that any such loan was advanced, and certainly not as any part of an oral agreement.

61. Klassen has failed to establish that the parties agreed on this component of the price to be paid for his alleged 50% interest in 726.

5.2.3: The BMO loan guarantee

62. Klassen says that part of the consideration for his half interest in 726 was his agreement to continue to guarantee the BMO loan. He further testified that he continued to be the guarantor of that loan until the debt was retired in 2000. While Beausoleil testified that Klassen did remain as the guarantor of the BMO loan "for a very short period of time" after the 1997 SPA, he said that this had nothing to do with any oral agreement whereby Beausoleil was to acquire 50% of 726 and that, in any case, his recollection was that Klassen was replaced as guarantor by Detzler and

Beausoleil very shortly after Beausoleil took over ownership of 726, when the ill-fated plan to rebrand as Boxed Meat Revolution was being discussed.

63. That recollection is corroborated by a Bank of Montreal guarantee respecting the debts of 726 to the bank, dated January 8, 1998, and signed by both Detzler and Beausoleil. In short, it appears that Klassen's claim to have agreed to continue to guarantee the BMO loan, and that he did continue to guarantee the loan, is incorrect.

64. At a minimum, Klassen has not established that this component of the price he says he paid for a 50% interest in 726 was either agreed to or paid.

5.2.4: Senior management services

65. Klassen claimed that he offered (and that Beausoleil accepted) "senior management" services to 726 as part of the oral agreement. Those services were to include "strategic planning", budgeting, marketing, pricing, and expenditures. Klassen summarized this role as follows:

> Like, just those – those things that you need to address when you're more senior level managing the company and managing the – the dollars.

66. Setting aside the vagueness of the description of this facet of the alleged consideration, Klassen's evidence on this point is improbable. RBM was a very small business in 1997. It did not require layers of management. Klassen had run the store in 1995 and, as Beausoleil notes, it had not flourished under Klassen's leadership. Indeed, it was near bankruptcy when he left. At the time of the alleged oral agreement, Beausoleil was running the store and making all the decisions for this small operation. While he welcomed advice from time to time from Klassen, he did not need a remote partner whose primary contribution to the business would be "senior management." I accept Beausoleil's evidence that he never agreed to give up 50% of 726 for Klassen's senior management services.

67. Again, the plaintiff has failed to establish that as part of the alleged oral agreement the parties agreed on this component of the purported consideration for the shares of 726. Indeed, he has failed to establish that the parties agreed on any component of the price for those shares.

68. I am fortified in this view by the fact that the evidence does not establish that, apart from providing advice, some occasional assistance, and "cheerleading" (as Beausoleil referred to it in his evidence), Klassen provided senior management services to 726 in the years following Beausoleil's acquisition of the company, as I will explore under the headings which follow. Before doing so, I note that I accept Beausoleil's evidence respecting the nature of Klassen's assistance to Beausoleil and 726, and that such assistance was very much in Klassen's interests. Beausoleil put it this way in his evidence in-chief:

> Basically, once I took over in 1997, [Klassen] didn't have involvement in the store itself. What his involvement was, was phone calls, and most of those were initiated by me, because as I got going and things were coming in out of the woodwork right, left, and centre, and when I mean that, what I'm saying is that the issues that the store was having, and that would mainly had to do with financial stuff, started getting to me, and I was having a hard time dealing with that, because I'm trying to run a store, I have this enormous financial debt, and the pressures of those financial debts. So I would call Mr. Klassen because I also know that he was a creditor of the company, somebody I worked with closely for years, and, at this point in time, I didn't have any issue with Mr. Klassen, so I would call him and say, "Look, I don't think I can do this anymore. I really think we should just close the shop. I don't – I cannot continue doing this, and I know I owe you money, and I'm sorry I can't pay you, but I just don't want to do it." And at that particular time, I remember he was a very good cheerleader, and – and helped me through some scenarios. If I would run into issues with an employee or something like that, he would give some advice, and I've always appreciated that. That that helped me through those times to continue to stay in the store, but it was hard.
>
> […]
>
> He was being that person that I could call if there was an issue at the store. I still felt comfortable talking to him. I think he had an invested interest in the store succeeding. […] That store wasn't going to survive. I think Mr. Klassen knew that. So, it was his best interest to make sure that he was still involved with me to make sure that the store succeeded because if the store succeeded, then he would get those conditions in the escrow agreement paid.

69. What Beausoleil needed in the early life of 726 was advice and encouragement, and that is what Klassen provided. But Beausoleil insisted that he never got advice from Klassen because Klassen had an ownership interest in the company. Instead, as the answers quoted above suggest, Klassen was eager to help because it was in his interests to do so. Notably, according to Beausoleil, Klassen visited less frequently, and contact was much more limited, after the Margaret loan was repaid and Klassen had been removed as a guarantor of the BMO loan. After that time, as Beausoleil recalls it, he saw Klassen only "when he worked for a company that could sell me something."

5.3: Klassen was employed elsewhere and was largely absent from RBM

70. In August of 1997, at the time Klassen says he became a co-owner of 726, he had a full-time job at Maxi Poultry involving significant responsibility for sales in the eastern half of Canada. There was little value to Beausoleil and 726 in a partner who was going to be largely absent from the store.

71. And indeed, the evidence establishes that Klassen was in fact largely absent from the operations of RBM in the years from 1997 to 2014. As Beausoleil submits, the evidence leads to the conclusion that Beausoleil exercised complete operational and financial control over RBM from the time he purchased all of its shares in August of 1997. There is really no compelling evidence to the contrary. Beausoleil answered to no-one with respect to RBM, and certainly not to Klassen.

72. Instead, Klassen pursued his career elsewhere. As noted above, when he left 726 at the end of 1995 or the beginning of 1996, he took up a full-time position at Maxi Poultry in Mississauga. He stayed in that job until 1998. While Klassen's evidence on his work history was confusing, he was clear that between 1997 and 2014 he held full-time positions of significant responsibility, some involving commuting and/or other extensive travel, at the following companies: Cuddy Foods, Cargill Foods, Conestoga Meat Packers, Lester's Meats, European Quality Meats, and Quality Meat Packers. There were some periods of unemployment between the various jobs, but he agreed that he did not go to work at RBM for pay and did not take dividends from 726 when he

was unemployed, notwithstanding the fact that he says that he was a 50% owner of 726. Klassen said that he and his wife were able to live off her income and his employment insurance benefits, and that his job when he was unemployed was to find a new job.

73. Klassen had experience in the meat industry and some of Klassen's advice and assistance was helpful to Beausoleil, especially in the early years of 726's existence. Beausoleil said, though, that they went their separate ways in the early 2000's and did not remain in regular contact thereafter. As Beausoleil submits, there is little or no documentary evidence to suggest otherwise. Beausoleil testified that as of 2005 he did not even know how to find Klassen.[6] Given Klassen's claim of a 50/50 partnership, there is strikingly little evidence of email communication or other correspondence between the two men. Klassen leads evidence of the two men and their spouses socializing together, going on a weekend trip together, and of receiving Christmas cards from Beausoleil. Klassen does not deny that they were friends, but this small collection of pieces of evidence does little to establish their alleged business relationship.

74. While, as noted earlier in these reasons, Klassen claims that he undertook all manner of work on behalf of 726 in the years following 1997, in my view this body of evidence does little more than show that Klassen offered assistance to Beausoleil from time to time. It does not show that he was acting as an owner of the business. It is more likely that his efforts to assist 726 were in aid of his hope that 726's debt to him would be repaid. Further, in my view, the fact that Klassen never took any dividends or a salary from 726 – despite his claim to have worked many hours for the company – supports the conclusion that he was not an owner of the company.

5.3.1: Did Klassen work in the store?

75. As I have said, Klassen testified that he continued to work at 726 on evenings and weekends for anywhere from 5 to 20 hours per week, from 1997 until 2014 (albeit fewer hours per week over time). He said that he helped out by cutting meat, stocking shelves, packaging orders, and

[6] An email exchange between the parties in May of 2009 tends to confirm that the two men were not regularly in touch. Klassen had to provide his home email and telephone numbers to Beausoleil so that they could communicate. As Beausoleil submits, it seems unlikely that partners in a small business would not have contact information for each other.

unloading trucks, which sometimes occurred late at night. He never got paid for this work and it seems that he did not expect to be paid.

76. Paul Hackett testified that he reported to Klassen at Maxi Poultry and was the sales representative assigned to the RBM account from late 1997 until October of 1998. He also said that he was a personal customer of RBM until the early 2000's. Hackett said that when he visited the store, he would sometimes see Klassen working, cutting meat, or packaging an order.

77. Beausoleil denied that Klassen worked in the store as Klassen testified that he had. Detzler's evidence was that in anticipation of the proposed joint venture with Boxed Meat Revolution he started working at the store with Beausoleil. He said, by contrast, that Klassen was not working at the store at that time because he was employed full-time at Maxi Poultry. When Klassen came to the store, it was to sell products from Maxi Poultry *to* the store, not to work *for* the store.

78. In this respect, I accept the evidence of Sara Szymanski. She testified that she has worked in the store for 25 years (since she was 15 years old), including the past 15 years as its manager. She said that she knew Klassen as a sales representative for other companies and that she could "count on … both hands the amount of times I probably, actually, came into contact with him about sales rep situations." Szymanski said that she had never seen Klassen working at RBM for RBM and, in particular, never saw him stocking shelves or cutting meat, as Klassen claimed to have done routinely. Others did those tasks. She further provided evidence that contradicted Klassen's claim to have unload deliveries to RBM, which Klassen said he did after hours, late at night. Szymanski said that deliveries were always done during store hours. Beausoleil also testified that 5:00 p.m. was the normal cut off time for deliveries.

79. It may be that from time-to-time Klassen assisted at the store, but his claim to have done so extensively, especially given that he was employed full time at other jobs that involved commuting and travel, is not credible. Moreover, on this point, I prefer the evidence of Szymanski to that of Hackett. She was the person actually running the store and was in the better position to know what role Klassen played. Hackett's evidence, by contrast, related to a relatively short period

over two decades ago and concerned his relatively infrequent visits to the store. While Detzler also provided evidence that was dated, he was testifying about a time when he was working daily at the store.[7]

5.3.2: Advising and meeting with Beausoleil

80. Klassen testified that he met regularly with Beausoleil and that they discussed the finances of the company, reviewed financial statements, and approved the company's annual budget and business plan. He said that he routinely gave advice and encouragement to Beausoleil. Klassen described their arrangement as follows:

> Well, we knew we were both co-owners of the company. We both knew that we had 50 percent ownership, and we both knew that Robert worked in the store, I worked out of the store, but when it came to major decisions, we collaborated because we were equal co-owners.

81. Among other things, Klassen said that he approved the store's renovations in 2012, and that he dealt with employee issues for 726.

82. I have already quoted above (at para. 68) Beausoleil's evidence respecting the role that he says Klassen played advising and encouraging Beausoleil in the early – and especially difficult – days of 726's life as a business. However, Beausoleil testified that by no later than 2004, and perhaps earlier, he was no longer calling Klassen for advice.

83. The evidence does establish that Beausoleil provided Klassen with financial information about the company from time to time, especially before his mother's loan was paid off. Beausoleil said that he did so for two reasons: because he welcomed Klassen's help, and because Klassen was

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[7] I appreciate that Szymanski is employed by Beausoleil, and is likely to be loyal to him, and that their relationship is relevant to an assessment of her credibility, but it is also clear the Hackett is a friend of Klassen's and fond of him and also likely to be loyal. On balance, for the reasons I have expressed, I prefer the evidence of Szymanski. Detzler, whose evidence on this point favours Beausoleil, appears to be best described as a neutral witness in this matter.

a creditor of 726. He did not do so because Klassen was an owner with whom he met regularly to make decisions about the finances and direction of the company.

84. In this respect, Beausoleil points out that Klassen acknowledged never having even met Zebroski, 726's long-time accountant (a fact Zebroski confirmed in his evidence), and submits that there is next to no documentary evidence (notes, agendas, calendar entries) to corroborate Klassen's claim that he met regularly with Beausoleil to chart a course for 726 and its finances. In this latter respect, the one document to which Klassen pointed to support his claim that his allegedly regular meetings with Beausoleil occurred was a half page of typed notes that are undated, untitled, and do not appear to me to be complete.[8] The notes do not name 726 by that or any other name under which it was operated. The document does not refer to meat. It is far from clear that the notes are notes of a meeting. No person is named. Last, assuming that the notes do refer to 726, it seems that they are from a time pre-dating 2000, since they refer to a time when the company's sales were not surpassing $130,000 per month, a target which 726 has surpassed since 1999.

85. Beausoleil agreed that Klassen provided advice about employee issues at Beausoleil's request, but said that such assistance was on an *ad hoc* basis over the years, and not because Klassen was a co-owner of the business. Klassen's own evidence is similar to Beausoleil's description of his role in those issues. He testified as follows:

> … if Robert had a situation that he wasn't comfortable with or wasn't sure of wanted some advice on or wanted just to bounce it off me, I would be in involved in that, like, a – from that HR perspective.

86. Beausoleil denied that Klassen had anything to do with approving 726's renovations in 2012. There is no documentary evidence suggesting that Klassen was involved in the approval of those renovations.

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[8] Although this document was put to Klassen during his evidence, it seems that it was inadvertently not marked as an exhibit.

87. I agree with the submission of Beausoleil that the evidence establishes that Klassen provided advice and encouragement which was helpful to Beausoleil, especially early on, but not that Klassen played the senior management role he claims to have played. To the extent that Klassen did help out, he did so not because he owned the company, but because he needed 726 to succeed so that 726 could pay him what he was owed. In addition, 726 was a customer of the companies for which Klassen did work. A healthy 726 and a good relationship with Beausoleil were obvious benefits to Klassen's employers who wanted 726 to purchase as much of their product as it could.

5.3.3: Communicating with third parties for 726

88. Klassen says that part of his senior management role involved communicating with third parties on behalf of the company. There is evidence that he drafted an agreement upon Detzler's departure from the store, that he drafted and received correspondence for 726, and that he dealt with the company's landlord.

89. In my view, none of this evidence establishes that Klassen was providing senior management services to 726 or that he was acting as an owner of the company. First, there is very little correspondence in evidence and certainly not enough to suggest that Klassen's work on such correspondence reveals a deep involvement with the company. Second, the agreement and the letters drafted by Klassen were prepared for Beausoleil's signature and tended to suggest that Beausoleil was the sole owner of 726. Third, as Beausoleil submits, the fact that the correspondence in evidence from the CRA was addressed to Klassen likely reflects only that the mailing address that CRA had for the company had not been updated since Beausoleil's resignation as a director of the company. In any case, Klassen testified that he could not remember getting any more such correspondence from CRA. Fourth, correspondence Klassen received from a lawyer respecting the BMO loan shows little more than that Klassen was no longer a guarantor of that loan.

90. Klassen called Ernst Friedel, who had been the company's landlord. Friedel testified that he first negotiated a lease with Klassen and Beausoleil in 1995. Of course, at that time, Klassen

was a shareholder of the company. He also testified that he met them again in 2001 to renegotiate the lease. At trial, an unsigned draft of a lease was put before Friedel, who said he could not remember the document but assumed that it had been signed, although he could not say for sure. The draft lease has signature lines for both Beasoleil (who is identified as the president of 726) and Klassen (who is not otherwise identified as having any position). Klassen testified that he signed that lease. Beausoleil testified that he alone signed the lease, and that Klassen did not. Neither party was able to produce an executed copy of the lease. On this point, nothing has been established other than that Klassen participated in discussions respecting the renewal of 726's lease.

91. On balance, this body of evidence is consistent with Beausoleil's testimony that Klassen provided assistance and advice to him from time to time. It does not help to establish that Klassen played a role as an owner of 726.

5.3.4: Boxed Meat Revolution

92. Neither does the effort to reach an agreement with Illerbrun, Detzler and Boxed Meat Revolution show that Klassen was acting as an owner of 726. Beausoleil's position on this point is well-summarized in the reasons of Sloan J. on the summary judgment motion in this case (at paras. 7 – 8):

> Sometime in or about 1998, there were discussions between four individuals, including the plaintiff and the defendant, with respect to all four of them getting involved in running the corporate defendant through a "business entity."
>
> Although it appears that the discussions went on for a matter of months, no final agreement emerged and no shares were transferred from the defendant to any of the other three parties.

93. I accept Beausoleil's testimony that Klassen was involved in these discussions because of 726's debt to Klassen (which 726 could not pay at that time), and not because of any oral agreement that he was a 50% owner of the company. The discussions with Illerbrun and Detzler continued for some time but there was never any final agreement. There was some hope that there would be an agreement, and the store was rebranded and re-opened in anticipation of that agreement, but the

whole idea was short-lived because, as Beausoleil testified, Illerbrun became aware that 726 was in significant financial difficulty. Illebrun demanded that 726 stop using the Boxed Meat Revolution name very shortly after 726 started using it.

94. Beausoleil's evidence on this point is largely corroborated by evidence from Detzler. Detzler died before trial, but the parties read into the record excerpts from the transcript of an examination of him. He confirmed that "there was lots of talk about" a four-way partnership in Boxed Meat Revolution, but that it never came to fruition because Illerbrun pulled out. As noted earlier in these reasons, Detzler said that he started working at the store with Beausoleil, but that Klassen did not because he was working at Maxi Poultry. Detzler understood that Klassen's interest in 726 was the result of monies owed to Klassen by the company. He said that no-one told him that Klassen was a 50% owner of 726. He said that Klassen did not invest any new money in the proposed venture. Instead, Klassen was selling product from his employer, Maxi Poultry, to 726. Detzler said that he loaned $25,000 to 726 and that it was paid off in instalments after he left the store. He was paid for his work at the store, but it was a nominal amount given that 726 simply could not afford to pay more.

95. Detzler agreed that he used a business card describing himself as "Manager/Owner" of the Boxed Meat Store in Kitchener, and that he signed a guarantee for the company. In addition, some draft documents were prepared including a draft licensing agreement. But the Boxed Meat Revolution name was used at the store for a very short time because the deal was never finalized and Illerbrun put an end to it.

96. Klassen emphasizes that he attended the grand opening of the store in November 1997 when it was briefly re-branded as Boxed Meat Revolution. In my view, the evidence on this point leads to the conclusion that Klassen was present not because he was a 50% owner of 726, but because he was hopeful that the arrangement with Detzler and Illebrun would come to fruition and possibly because he was operating a booth at the event for his then full-time employer, Maxi Poultry, which was selling product to 726 at the time.

97. Beausoleil, who said that Klassen did not work for 726 at the time of the grand opening, is corroborated on this point by Detzler, who said that Klassen was working for Maxi Poultry, not 726, while Detzler was involved in the store. The witness Paul Hackett also testified that Klassen was working at Maxi Poultry at the time, as did Klassen himself. Moreover, the photographs of the event in evidence do little more than establish that Klassen was present.

98. As I have said, and as Sloan J. concluded, there were discussions about this potential joint venture, and considerable hope on the part of Detzler, Klassen and Beausoleil that it would come to fruition, but "no final agreement emerged and no shares were transferred from the defendant to any of the other three parties."

99. Beausoleil testified that the time of the discussions about the proposed Boxed Meat Revolution partnership was the only time after the 1997 SPA that he ever entertained the possibility that Klassen would be a partner in his business. Those discussions did not bear fruit, and Klassen did not join the ownership of the company.

5.3.5: Products and marketing

100. Klassen says that his senior management and ownership role in 726 is demonstrated by evidence of his role in various aspect of the company's product line and its marketing. He says that he met with suppliers, proposed and developed new products, developed a loyalty card prototype for use in a loyalty discount program at the store, assisted 726 with fundraising and sponsorships for local sports teams and clubs, and that he operated a booth at the St. Jacob's Farmer's Market for 726.

101. I agree with Beausoleil that none of this evidence shows that Klassen was playing a senior role at the company. Klassen certainly represented suppliers who sold to 726. In addition, though, he points to one email which indicates that he met with people at a company called Tillsonburg Custom Foods in 2009 and reported back to Beausoleil, and to a second email which shows that Klassen recommended a cupcake supplier for the store. He says that he also proposed that RBM carry "meal kits" and tendered a three-page handwritten and undated note about how the kits could be assembled.

102. Beausoleil testified that he put Klassen in touch with Tillsonburg Custom Foods because he thought it might be a good employment opportunity for Klassen. The cupcake company was run by Klassen's then girlfriend, and Beausoleil said that nothing ever came of the proposal to have RBM sell her products. Similarly, as Klassen testified, the loyalty card proposal never "got off the ground." Beausoleil said that he had no recollection of selling the meal kits described in Klassen's note.

103. RBM sponsored Klassen's daughter's soccer team, and Beausoleil organized fundraising efforts for teams and clubs (including a team his daughter played on) where team or club members would sell products from RBM. This body of evidence establishes little except that Klassen was acting as many involved parents do.

104. Klassen testified that he operated a booth for RBM at the St. Jacob's farmer's market from the fall of 1997 to the spring of 1998. Beausoleil testified that Klassen operated the booth just a handful of times over a period of five or six months. While helpful to Beausoleil and 726, this does not show that Klassen was an owner of the company.

5.3.6: Was Klassen held out as an owner of 726

105. There is competing evidence about whether people other than the parties understood Klassen to be an owner of 726.

106. Hackett testified that while he and Klassen worked for Maxi Poultry, he came to know that Klassen was a 50% owner of 726. He remembered congratulating Klassen and Beausoleil on their partnership. He said that on many occasions he witnessed or overheard them discussing the details of the business together. Hackett also testified that he and Klassen met by conference call with the owner of Maxi Products, Tom Friedmann, in July or August of 1997. The topic of discussion was whether Friedmann had any concern that Klassen was an owner of 726 given that he was selling Maxi Poultry product to 726. Hackett said that Friedmann said that he had no concern given that Maxi Poultry had set pricing policies and that Hackett could be the direct contact with 726.

Klassen also tendered an affidavit from Friedmann, who is now deceased, which is to the same effect insofar as the conference call is concerned.[9]

107. Klassen called Andrea MacPherson, Beausoleil's common law spouse from December 2009 to January 2015. She testified that she understood from Beausoleil that Klassen was a 50% owner of 726. She said the Beausoleil referred to Klassen as a shareholder. In this respect, Klassen also points to an email dated May 11, 2009, in which Beausoleil writes to Klassen, saying, "please let me know your intentions for the shares." Klassen testified that this was a reference to his 50% share of 726. When he was shown this email, Beausoleil said he did not understand, and could not remember, the context in which he had written to Klassen some 14 years earlier.

108. On the other hand, Detzler testified that he was never advised that Klassen was an owner of 726 at the time when they were deeply involved over a period of months in the negotiation of the proposed joint venture with Boxed Meat Revolution.

109. Robert Viveiros, who worked closely with and reported to Klassen at European Quality Meats for about three years from 2011 – 2014, said that Klassen introduced him to Beausoleil, and that the RBM account became his responsibility. Klassen never told Viveiros that he was an owner of RBM. When Klassen was let go, he had difficulty finding a new job, and called Viveiros frequently to see if Viveiros was aware of any employment opportunity. Viveiros only learned of the allegation that Klassen was an owner of RBM when he heard that this action had been commenced. He thought it was odd that Klassen had difficulty finding employment. He testified as follows:

> And I just find it very strange for somebody that was let go of a company, and was unemployed, and was still contacting me, that if he owned a company, then why wouldn't he go and work there when he was unemployed?

[9] Beausoleil objects to the admissibility of this affidavit. Given the conclusions I have come to, I assume the admissibility of the affidavit.

110. All this evidence suffers from obvious frailties. The evidence of Hackett and Friedmann refers to a conference call that happened more than two decades before their evidence was given. Hackett is friendly with Klassen and Friedmann was not even available for cross-examination. Hackett's evidence also concerns the time at which Klassen and Beausoleil were working on the proposed joint venture with Boxed Meat Revolution, a point at which they both agree they were anticipating a partnership (although it did not materialize). MacPherson had an apparent dislike of Beausoleil. She agreed that their relationship "ended badly" and in litigation. She too was testifying about things she says she heard many years ago. The same can be said of Detzler and Viveiros, the latter of whom is friendly with Beausoleil. The May 11, 2009, email from Beausoleil to Klassen lacks context to give it meaning.

111. Most importantly, though, not one of the witnesses referred to here inspected the books and records of 726, or was aware of the share purchase and escrow agreements, or knew of the contents of the company's corporate minute book, or of the details of the financial and other circumstances of 726.

112. For all these reasons, I find this body of evidence unhelpful to me and I give it very little weight in my analysis of the issues. Certainly, it does not establish on a balance of probabilities that Klassen was an owner of 726.

5.3.7: Proposed expansion to Waterloo

113. Klassen says that the parties' discussions in 2014 relating to the possibility of opening a second RBM store in Waterloo is further evidence of his ownership interest in the company. Beausoleil testified that he was not interested in opening a new store in Waterloo because he was also considering expanding the size of the existing store. He said that he could not do both. Beausoleil said that he listened to Klassen's proposal about being partners in a new store, but said that he was "humouring" him by doing so.

114. Beausoleil also said that he had no interest in a partnership with Klassen. He testified as follows:

> So, I had no interest in being a partner with Henry Klassen in the Waterloo store. I've had previous experience with Mr. Klassen, and – and I just don't believe there is anything there to offer – he had anything to offer that I would be interested in, in opening a store with him, especially in that location in Waterloo.

115. Beausoleil said that when Klassen first contacted him to discuss the proposal for a Waterloo store, he was surprised to hear from him because they had not been in touch for so long. After hearing the proposal, he eventually told Klassen he was not interested. It was at that point that Klassen told Beausoleil that he wanted to discuss changing their business relationship, and asserted his co-ownership of 726. Beausoleil said that he was "stunned" when he read Klassen's email to that effect.

116. The evidence of Viveiros establishes that Klassen was let go from his position at European Quality Meats in 2014 and that in the aftermath of that, Klassen called him frequently to enquire about work opportunities. Klassen gave evidence that he was of the opinion that when one is unemployed it becomes that person's full-time job to find employment.

117. I accept the submission of Beausoleil that Klassen's proposal for a store in Waterloo was animated by his desire to have employment, and not because he was a 50% owner of the company. As Viveiros observed, if he had been an owner, Klassen could have just started working at RBM. Instead, he needed to attempt to create a new opportunity for himself.

5.4: Why was the agreement not reduced to writing?

118. I preface this portion of my reasons by repeating that, in *Mountain,* the Court of Appeal held that it is an error for a trial judge to reject the existence of an oral agreement because "of the lack of signed documents" evidencing the contract (para. 65). The Court further held that the existence of an oral agreement "does not depend on the existence of a formal written document between the contracting parties". Instead, where there is agreement on the parties, property and price, "then a contract may be found without the need for evidence of a written agreement" (para. 66).

119. I do not take *Mountain* to mean that I cannot consider whether it was likely that the parties would have made an oral agreement. Clearly, oral agreements can be reached and, if so, will be binding even in the absence of a formal document. But it seems to me that if the circumstances suggest that it was very unlikely that the parties would have agreed without committing their agreement to writing, that fact is a relevant consideration in determining the credibility of the assertion that there was in fact an oral agreement. It is one of the relevant "surrounding circumstances" (*Ethiopian Orthodox*, at para. 37) and, in this case, is related to "the nature of the relationship among the parties and the interests at stake" (para. 38), which are all relevant to the question of whether there was a contract.

120. In the case at bar, in all the surrounding circumstances, it makes little sense to me that a bargain as significant as the alleged oral agreement purports to be would not have been reduced to writing immediately after it was said to have been struck on August 20, 1997, or at least at some point much earlier than 2014. Beausoleil had just two days earlier, on August 18, 1997, acquired 726 in a share purchase that was fully documented with the assistance of a solicitor. The corporate minute book was updated just one day later, on August 19, 1997, to reflect the changes. The change in ownership in 1996 was also fully documented, again with legal advice.[10] Indeed, Klassen had been involved in both those transactions and had signed some of the documents himself. As Beausoleil asks, why, two days after signing carefully prepared documents evidencing a transaction of fundamental significance to this young company, would the parties then undo that transaction on the basis of a handshake and a vague collection of understandings? Klassen testified that he knew that it was important for companies and businesspeople to document their affairs carefully. As president, he had signed various documents in 726's minute book.

121. In all these circumstances, it is not credible that the parties agreed to divide the ownership of 726 between them and did not think to commit that agreement to writing. As Beausoleil submits, the "fact that there is no documentation in evidence setting out or creating a record of the rights

[10] A letter from Boehler dated December 21, 1995, reveals that Klassen was to be responsible for the legal fees associated with documenting this transaction.

and obligations of Klassen following the alleged oral agreement" weighs heavily against the conclusion that any such agreement was ever reached.

122. In any case, as I have already concluded, Klassen has not established that the parties agreed orally to property or price.

5.5: The name of the business

123. I do not accept Klassen's evidence that after the hoped for joint venture with Boxed Meat Revolution failed, he and Beausoleil jointly decided to rename the store "Robert's Boxed Meats" because it was a bilingual name that would assist with their expansion aspirations. Kitchener is a largely English-speaking community without a large French-speaking minority. However, as Beausoleil points out, Kitchener does have a large community of people of German descent, to whom "Klassen's Boxed Meats" might have been an attractive name. Further, the names "Robert & Henry's Boxed Meats", or "Beausoleil & Klassen's Boxed Meats," would both have cast a wider net if the idea was to appeal to people of different backgrounds. But none of these possible store names was chosen.

124. The obvious reason for the re-naming of the store as "Robert's Boxed Meats" is that it was Robert Beausoleil's store, it was his company, and he was running it. Klassen's name did not appear in the name of the store because he was not, as he claimed, a 50% owner of it. The claim that the store needed or would benefit from a bilingual name, and that that is why Klassen's name was omitted, is simply not credible.

5.6: Conclusion respecting the alleged oral agreement

125. Although I have addressed the various alleged indicia of Klassen's 50% ownership of 726 under separate headings, I have also considered whether those indicia taken cumulatively support Klassen's claim. In my view, they do not.

126. I have also considered Klassen's submissions respecting the credibility of Beausoleil. While Beausoleil's evidence was imperfect, I have concluded that his version of events is more

likely to be true and is both more faithful to the documentary record and more commercially reasonable. I accept Beausoleil's evidence that he never made any oral agreement with Klassen, that he never intended to be bound by any oral discussion he had with Klassen, and that he never agreed to or intended to give up 50% of 726 having just acquired the company 2 days earlier. Further, as I have already concluded, Klassen's evidence about what was agreed to is too vague and imprecise to allow me to conclude that there was an oral agreement on "parties, property and price."

127. For all these reasons, it has not been established that Klassen and Beausoleil entered into the oral agreement. On the contrary, in my view, the evidence establishes that it is much more likely that there was no such oral agreement and that Klassen's version of events is simply not credible. As Beausoleil submits, it is also much more likely that the idea of the oral agreement was only suggested after Klassen saw evidence of the success of RBM and after Beausoleil had rejected his 2014 proposal that they become business partners in a new Waterloo store.

6: Is Klassen's claim for 33.3% of 726 time barred?

128. As I have said, the plaintiff argues in the alternative that he is entitled to a 33.3% share in 726 based on his reading of the share purchase agreements and the escrow agreements signed in 1996 and 1997.

129. The defendant argues that the plaintiff's claim is out of time and is barred by the *Limitations Act*, R.S.O. 1990, c. L.15 (the "*Limitations Act*") or by the *Limitations Act, 2002*, S.O. 2002 c. 24, Sch. B. (the "*Limitations Act, 2002*") or by the doctrine of laches.

130. It is necessary to review some of the background to determine whether in fact Klassen is out of time.

6.1: Background

6.1.1: The agreements

131. As set out earlier in these reasons, Klassen decided to sell his shares in the company in late 1995 and entered into an agreement to do so with Hobson and Bowman, the 1996 SPA, on March 21, 1996.

132. In the introductory paragraphs to 1996 SPA, it provides as follows:

> WHEREAS Klassen wants to withdraw from the Corporation and transfer his shares to [Bowman] and Hobson.

133. The agreement then set out the debts owed by the company to Klassen and to his mother. With respect to the back wages owed to Klassen, the agreement provides that the corporation will pay that debt in five equal annual instalments commencing on May 1, 1996. Reference is made to appended promissory notes evidencing the 1996 Loan and the Margaret loan.

134. Further, the 1996 SPA provides that "Klassen shall transfer" his shares "to Hobson and [Bowman]" which shares will be held in escrow pursuant to the appended 1996 EA, and that "Klassen shall resign as an officer and director of the Corporation and execute all documentation required to complete the transfer of his shares."

135. The 1996 SPA then provides as follows:

> This Agreement and the Escrow Agreement shall remain in full force and effect until such time as the Corporation's indebtedness referred to herein has been discharged to the satisfaction of all parties and Henry Klassen has been released by the Bank of Montreal as a guarantor for the Corporation's debts.
>
> Time is at all times of the essence.

136. The first promissory note attached to the 1996 SPA provides that the 1996 loan is to be repaid in equal monthly installments commencing June 1, 1995, and ending on May 1, 1998, and that default in any payment shall "render the entire unpaid balance … at once due and payable."

137. The second promissory note attached to the 1996 SPA provides that the Margaret loan is to be repaid in equal monthly installments commencing June 15, 1995, and ending on May 15, 1998. Again, any default would render the entire unpaid balance payable immediately.

138. In the 1996 EA (which is a schedule to the 1996 SPA), the parties acknowledge that they have entered into the 1996 SPA (which is referred to as the "Primary Agreement") for the sale of Klassen's shares (referred to as the "property"), that Klassen will transfer title to those shares to the escrow agent for the purposes of the 1996 EA, and that the shares will not be sold or released from escrow "except pursuant to the terms and conditions of this agreement." Those terms include the following (emphasis added):

> 2.1 The Escrow Agent will deliver the property to the Purchasers or their nominee, as the case may be, on the following conditions:
>
> 2.1.1 On receipt of a written notice from the Purchasers stating that the purchasers are entitled under this agreement to the property and that the conditions of the Primary Agreement have been satisfied, the Escrow agent will deliver to the Purchasers the property …
>
> 2.1.2 On receipt of a written notice from the Vendor, stating that the Vendor is entitled under this agreement to the return of the property (other than as set forth in this agreement) and demanding return, the Escrow Agent will deliver the property and all accrued interest on it to the Vendor …

139. The 1996 EA also provides that while the shares are held in escrow, any "dividends … declared on them or income … received from them, such amounts so received shall be paid as received to the Purchaser."

140. As noted earlier in these reasons, the following year, Beausoleil purchased 100% of the company's shares. Pursuant to the 1997 SPA, Hobson and Bowman transferred both their shares and their "beneficial ownership of the Klassen Escrow Shares" to Beausoleil, the latter of which would continue to be held in escrow pursuant to a new escrow agreement, the 1997 EA. Again, it is a term of the 1997 SPA that time is of the essence.

141. The first paragraph of the 1997 EA provides that the parties to the 1996 EA agreed that the escrow agent would hold Klassen's shares in the company "as security for the payment by [Bowman and Hobson] (the "Beneficial Owners") of the Purchase Price for same as set for in the [1996 SPA]". In the second paragraph, reference is made to the 1997 SPA whereby Beausoleil has taken beneficial ownership of the Klassen escrow shares and assumed "all obligations relating thereto as provided for under the [1996 SPA] and the [1996 EA]". Again, time is of the essence.

6.1.2: The obligations to Klassen set out in the agreements

142. 726 did not pay on the timelines set out in the 1996 and 1997 agreements and in the related promissory notes. There was no deadline set for removing Klassen as the guarantor of the BMO loan but, as I have found above, he was replaced as guarantor on January 8, 1998. In any case, that loan was repaid by July 2000. The Margaret loan was to have been repaid by May 15, 1998, and was not repaid in full until June 2003. The 1996 loan was to have been repaid May 1, 1998, but was not repaid by 726 until January 20, 2016, after this litigation commenced in 2014. Klassen's back wages, which were to have been paid by May 1, 2001, have never been paid.

6.1.3: Deferral

143. I have already found that the parties did not agree to defer the amounts owing to Klassen as part of a 50/50 ownership arrangement. But it is clear that those debts were deferred. Klassen testified that he and Beausoleil agreed to defer amounts owning to Klassen. In-chief, he described that agreement as follows:

> Yeah, we said a maximum of three years for the two – for the loan and the back wages. And we deferred my mom's until about a – well, we deferred hers. I don't remember the exact date, but hers was deferred, too, and then it was deferred even beyond that.

144. Klassen later corrected this evidence, indicating that the deferrals were to be for a minimum of three years. In any case, after three years, he and Beausoleil just agreed to defer the payment of those debts again. He did not recall that a further deadline was set, but testified that from time

to time over the years he would ask Beausoleil for his money and they would agreed to defer payment again. The deferrals continued until their relationship dissolved in November of 2014. Klassen said that he agreed to these repeated deferrals because he was a 50% owner of 726 and "money was tight" for 726 at the beginning.

145. Later, when 726 became profitable, Klassen said that even then the deferrals continued. He gave the following evidence:

> Robert would insist - that might be a strong word - Robert would recommend or say, "Leave your money in", because we did have an interest rate – interest rate agreement on that money, so I was – I was doing fine that way. It wasn't like it was just sitting there not earning interest.

146. Beausoleil agreed that in the early days of his ownership of 726 the company needed time to pay the amounts owning to Klassen and his mother. In cross-examination, when asked to agree that Klassen repeatedly agreed to defer the amounts owing to him, Beausoleil answered as follows:

> Definitely for the first three or four years, from my recollection, he agreed to hold off paying his loan; not his mum's. He was very, very all over me about paying his mum's loan. Even if it was 20 bucks, 30 bucks, whatever. And he did get payments slowly, consistently over a time period until it got paid. But he agreed at that particular time to let his sit and not get paid. He wanted his mother's – that was his preference to get his mother's paid first.

147. Beausoleil denied that these deferrals during the first few years of his ownership of the company were part of any larger agreement between the parties. It was simply a fact that 726 could not pay and Klassen knew that. After the Margaret loan was repaid, though, Beausoleil says that things changed. In cross-examination, he testified as follows:

> … I think that needs a little further clarification. So, in the first four years or so, maybe five years when the company wasn't doing well and Mr. Henry Klassen was around cheer-leading me and wanting to make sure that his mother's loan was paid, that was the case. He agreed to put it off. There was many years that went by that I never saw Mr. Klassen. The only time I saw him was when he worked for a company that could sell me something. So, say for an example

> when he worked for Conestoga Meats, Cargill Meats and stuff like that - he couldn't sell me. I already had existing reps. I never saw him.

6.1.4: Beausoleil's November 25, 2014 email

148. In November of 2014, Klassen told Beausoleil that he believed he was a 50% owner of 726. By email dated November 25, Beausoleil disagreed. That email begins as follows: "50/50? I know there is some monies owing for back wages which we have discussed in the past and that is on the books."

6.1.5: The original claim

149. Thereafter, Klassen sued Beausoleil. The original statement of claim was issued April 15, 2015. In that claim, Beausoleil sought a declaration that he has a 50% ownership interest in 726. He did not expressly assert in the alternative that he held a 33.3% interest in the company.

6.1.6: 726 pays off the 1996 loan

150. By cheque delivered with a letter dated January 20, 2016, from their then counsel, the defendants paid Klassen the principal and interest owing on the 1996 loan.

6.1.7: Summary judgment motion

151. Thereafter, the defendants brought a summary judgment motion which was heard by Sloan J. and decided on August 29, 2017, in unreported reasons. He concluded that Klassen no longer had a claim in connection with the 1996 loan since it had been repaid and the applicable interest rate set out in the promissory note. Klassen's claim that there was a different agreement respecting interest was rejected. Sloan J. wrote as follows:

> Notwithstanding the plaintiff's claim that there is one or multiple oral agreements between him and the defendant, I do not see how a court under the parole evidence rule could admit oral evidence to defeat a simple well drafted loan agreement.

152. With respect to Klassen's back wages, Sloan J. wrote that this question had to proceed to trial as it depended on whether there were oral agreements to defer payment as alleged by Klassen. On this point, Sloan J. concluded as follows:

> But for the possibility that there is/are oral agreements, it would appear that this claim would have been statute-barred well before the issuance of the claim.

153. He described the issue for the trial judge as follows:

> Are there any enforceable oral agreement between the parties that would extend the time period under the *Limitations Act* to allow the plaintiff's claim for back wages to proceed?

154. Sloan J. dismissed Klassen's claim that the parties had agreed to an interest rate on the back wages of "business prime plus."

155. As noted earlier in these reasons, Sloan J. found that there was no evidence that Klassen had loaned $19,500 to 726 as part of the alleged oral agreement. He found, though, that the question of whether there had been an oral agreement that Klassen was a 50% owner of the company had to be tested at trial because it depended on assessments of credibility.

6.1.8: Klassen demands delivery of the escrow shares

156. On October 11, 2017, by way of a letter from his counsel, Klassen demanded that the escrow agent, Zebroski, return the shares held in escrow to Klassen. Counsel for Beausoleil objected to the release of the shares and Zebroski declined to do so, citing the provisions of the 1997 EA.

6.1.9: Klassen seeks leave to amend his claim

157. In December of 2017, Klassen sought leave to amend his claim so that it added the alternative claim for a declaration that he was a 33.3% owner of 726. The defendants opposed that request and the motion was heard by Broad J. In reasons fount at 2018 ONSC 5237, he agreed

with the defendants that Klassen's amended claim advanced a new cause of action raised after the expiry of a limitation period. Broad J. put his conclusions on this point as follows (at para. 21; emphasis added):

> In my view a claim to a 33.3% interest in the corporation based upon an entirely different agreement or agreements does not consist of an alternative claim for relief, or a statement of a different legal conclusion based on no new facts and does go beyond the factual matrix from which the original claim to an ownership interest arose. As such, the amendment should not be allowed as it would deprive the defendants of a defence based upon the limitations statute. The plaintiff acknowledges that the applicable limitation period has long passed. His request for leave to amend, based on the 1997 Share Purchase Agreement, rests solely on the submission that it does not constitute a new cause of action but rather is an alternative claim for relief based on no new facts.

158. Klassen successfully appealed to the Court of Appeal, that court finding that the amended statement of claim did not advance a new cause of action. Writing for the court, Harvison-Young J.A. said that the question of whether the claim was time-barred was a matter for trial. She wrote as follows (at paras. 45 – 46):

> During oral argument on the appeal, counsel for the respondent forcefully argued that the underlying claim to the return of the shares in escrow or claim to a 33% ownership interest, however framed, is incurably time-barred. In this vein, the respondents argue that the failure to make payment on the promissory note and back wages in 1997 triggered the start of the applicable limitation period, such that any claim for breach of the 1996 SPA, 1996 Escrow Agreement and 1997 SPA, and corresponding request for the return of the shares, is now statute-barred.
>
> Whatever the merits of the respondents' limitations arguments, it is only necessary to determine whether a limitation period has expired in respect of the proposed amendments if the amendments assert a new cause of action. I have concluded that the proposed amendments do not do so. For this reason, it is unnecessary to address the parties' various limitation arguments arising from the original pleadings at this stage. It is clear that whether any or all of the appellant's claims are time-barred will be a central issue at the eventual trial of this matter.

6.2: Positions of the parties

159. The defendants argue that the 1996 SPA and 1996 EA were breached as early as May 1, 1996, because Hobson and Bowman failed to make the payments they agreed to make against Klassen's back wages, the 1996 loan, and the Margaret loan. Similarly, after the 1997 agreements, Beausoleil immediately failed to abide by the timelines for paying back the debts to Klassen and his mother. In the alternative, no payments were made in respect of the 1996 loan and Klassen's back wages after the Margaret loan was repaid. There was no agreement thereafter to defer payment of these remaining debts, so Klassen's claims were discoverable then. There was no later acknowledgement of these debts in writing. The payment of the 1996 loan in 2016 was made after the limitation period had expired and therefore does not reset the limitation period. The escrow agreements are security agreements which grant no right to Klassen to demand return of the shares. His remedy was not the return of the shares, it was to sue to realize on his security. The defendants also say that the claim is barred by the doctrine of laches.

160. Klassen argues that no limitation period has passed because the escrow agreements allow him to demand return of the escrow shares at any time. Any limitation period would then run from the date of the demand for the escrow shares, which was actually made after the action had already been launched. Further, Klassen argues that the parties repeatedly agreed to defer the payment of the debts owed to him right up until their falling out in 2014. At that point, Beausoleil acknowledged the back wages debt in writing, which had also been acknowledged in the company's books and records.

6.3: Discussion

6.3.1: What is the nature of the escrow agreements?

161. The parties differ over what rights the share purchase and escrow agreements grant to Klassen. Klassen argues that the 1997 EA permits him to demand the return of the escrow shares at any time given that the conditions of agreement were never fully satisfied. Beausoleil argues that the 1997 EA represents nothing more than a security agreement that allowed Klassen the right to sue in the event that the agreements were breached.

162. Klassen relies on high authority for the proposition that the person who places property in escrow may demand the return of that property if the conditions of the escrow are not fulfilled. He points to the case of *Alan Estates Limited v. W.G. Stores Limited, et al.*, [1981] 2 All E.R. 481 (C.A.), where, in a case involving a lease of commercial premises, Lord Denning described the doctrine of escrow as follows (at p. 486; emphasis added; citations omitted):

> If [a document] is handed over to another unconditionally, it is delivered as a deed. If it is handed over to another conditionally, it is delivered as an escrow. It only becomes a deed when the conditions are fulfilled.
>
> Thus far there can be no dispute. The question in this case is: What is the effect of an escrow before the conditions are fulfilled? One thing is clear. Whilst the conditions are in suspense, the maker of the escrow cannot recall it. He cannot dispose of the land or mortgage it in derogation of the grant which he has made. He is bound to adhere to the grant for a reasonable time so as to see whether the conditions are to be fulfilled or not. If the conditions are not fulfilled at all, or not fulfilled within a reasonable time, he can renounce it. On his doing so, the transaction fails altogether. It has no effect at all. But if the conditions are fulfilled within a reasonable time, then the conveyance or other disposition is binding on him absolutely. It becomes effective to pass the title to the land or other interest in the land from the grantor to the grantee. The title is then said to "relate back" to the time when the document was executed and delivered as an escrow. But this only means that no further deed or act is necessary in order to perfect the title of the grantee. As between grantor and grantee, it must be regarded as a valid transaction which was effective to pass the title to the grantee as at the date of the escrow… But this doctrine of "relation back" does not operate so as to affect dealings with third parties... So far as the grantee is concerned, whilst the conditions are in suspense, he gets no title such as to validate his dealings with third persons. He cannot collect rents from the tenants. Nor can he give the tenants notice to quit. He cannot validly mortgage the land, though, if he purports to do so, the mortgage might be "fed" later when he acquires the title.

163. In a concurring opinion, Sir Denys Buckley wrote as follows (at p. 491; emphasis added; citations omitted):

> It has been accepted as common ground by the parties in this case that, once the maker of an instrument has delivered it as an escrow, he cannot by any means withdraw from it or alter it… It may perchance never take effect because the condition or event upon which the instrument is intended to become operative never occurs, but otherwise it will certainly take effect upon the satisfaction of

> that condition or the occurrence of that event. The maker, having delivered the instrument, has lost all control and dominion over it. It is as binding upon him as if he had delivered it unconditionally.
>
> I am much disposed to think that the effect of delivery upon a deed is the same as the effect of delivery upon an escrow. Each renders the delivered instrument inescapably binding upon the deliverer. The difference between a deed and an escrow lies not in the binding quality of the instrument but in the time and circumstances at and in which the obligation can be enforced. For my part I should be prepared to hold that an instrument delivered in escrow is as much a deed as is a precisely similar instrument delivered unconditionally in the first instance save that the operative effects of the instrument are suspended while it remains in escrow.

164. From these passages, Klassen argues that his sale of his shares in 726 never became operative because the conditions of the escrow were not completely fulfilled. He was, therefore, at any time entitled to renounce the transaction, to demand the return of the escrow shares, and to resume his one-third ownership of 726. Any limitation period would then run from the date of the refusal to return the shares to him which, in this case, was on October 11, 2017, after the date of the original statement of claim and just two months before Klassen's request for leave to amend his pleadings.

165. Beausoleil takes a very different view of the nature of the agreements in this case, and argues that the cases upon which Klassen relies, including *Alan Estates*, are distinguishable. Beausoleil argues that the agreements entered into in 1996 and 1997 need to be read closely to determine their true nature. The mere fact that the word "escrow" was used in them does not necessitate the conclusion that Klassen could demand the return of the shares at any time. On the contrary, according to Beausoleil, read properly, the agreements in this case have the nature of security agreements, with the shares held as collateral for the debts owed to Klassen.

166. For the following reasons, I agree with Beausoleil that the agreements did not permit Klassen to demand the return of his shares at any time. While the agreements bore some of the badges of escrow agreements, they contain other provisions which lead to this conclusion.

167. Like the escrows described in *Alan Estates*, the agreements in this case make plain that Klassen was giving up control over his shares in 726. However, unlike escrow agreements, it is clear that the parties intended that the transaction would be effective (or "operative", to quote Sir Denys Buckley) immediately. First Bowman and Hobson in 1996, and then Beausoleil in 1997, took over full operational control of 726. This was obviously the intention of the parties. The agreements were clear that Klassen "wants to withdraw" from 726 and to transfer his shares, and that he was to resign as an officer and director of the company. "Beneficial ownership" of the shares was said to reside first with Bowman and Hobson, and then with Beausoleil. Beausoleil took on the obligations for the debts of 726 (excepting Klassen's temporary guarantee of the BMO loan). Importantly, the parties agreed that income and dividends paid on the shares held in escrow would be paid to "the purchasers", not to Klassen.

168. It bears repeating that Klassen was involved in the negotiation of all the relevant agreements. In them, he gave up control of his shares, gave up control of the operations of the company, resigned his positions with the company, gave up the right to receive income and dividends, and assumed no risk for losses or debt other than for the BMO loan. This transaction was not one that was being held in abeyance pending the satisfaction of conditions, it was operative *ab initio*.

169. Moreover, as Beausoleil argues, the agreements taken together have the traits of a security agreement for debts owed to Klassen. Indeed, both the 1996 SPA and the 1997 SPA expressly refer to the debts owed to Klassen and his mother. The 1996 SPA makes it plain that the agreements are to remain in force until that indebtedness has been discharged. Significantly, the 1997 EA is explicit that both it and the 1996 EA are security agreements: it provides that the shares were held pursuant to the 1996 EA "in escrow as security" for the payment of the purchase price for them as described in the 1996 SPA. That purchase price was, essentially, the company's recognition of its debts to Klassen and its agreement to discharge them. In the event of default on his debts, Klassen's remedy was to sue, and the agreements provided him two routes to do so. First, he held promissory notes which provided that the amounts owing was payable in full "at once" upon any default of the terms of the notes. Second, he could sue and realize on the security by seeking an

order of the court permitting him to seize and sell the shares being held by the escrow agent as security.

170. I am further driven to this conclusion because the escrow agreements are far from clear that Klassen was entitled to demand the return of his shares. First, though, and by contrast, the 1996 EA is very clear about the right of the purchaser to demand the release of the shares to him once the conditions of the escrow were satisfied, *i.e.*, when "the conditions of the Primary Agreement have been satisfied" (clause 2.1.1 of the 1996 EA).

171. The 1996 EA provides that the shares were not to be released from escrow "except pursuant to the terms and conditions of this agreement." Clause 2.1 provides that the shares will be delivered to "the Purchasers" on conditions but makes no mention of the vendor. Clause 2.1.1 sets out the conditions for release to the purchasers and, curiously (given the wording of clause 2.1), clause 2.1.2 provides for release of the shares to the vendor on these terms: when "the Vendor is entitled under this agreement to the return of the property (other than as set forth in this agreement)". It is difficult to know what this clause means, but the 1996 EA does not anywhere indicate when or under what circumstances "under this agreement" the vendor would be entitled to the release of the shares. Nor does it indicate when or under what circumstances the vendor might be able to make a demand for release "other than as set forth in this agreement." Certainly, the 1996 EA does not say that Klassen can demand the return of the shares if the conditions of the Primary agreement are <u>not</u> satisfied. The omission of such language from clause 2.1.2 – the mirror image of the language which <u>does</u> appear in clause 2.1.1 – is strong evidence that the parties did not intend the vendor to have that right.

172. Klassen argues that the very nature of an escrow agreement is to allow for the person who puts a thing into escrow to demand its return if conditions are not fulfilled. But as Beausoleil argues, the agreement as drafted leads to the conclusion that this was not the intention of the parties. As noted above, Bowman and Hobson in 1996 and Klassen in 1997 assumed most of the risk of the business, exercised full control of it, had the exclusive right to income and interest on the escrowed shares, and entered into a security arrangement. Reading the documents as a whole (including the differences in the language of clauses 2.1.1 and 2.1.2), I am satisfied that they do

not provide a right to Klassen to demand the return of the shares because the parties understood, unlike the parties in the cases to which Klassen refers, that their bargain was operative immediately upon the signing of the agreements.

173. In the absence of the right to demand the return of the shares, Klassen's remedy for any breach of the agreements was to commence an action. The question, then, is when did the time for such an action begin to run?

6.3.2: When did the limitation period begin to run?

174. Beausoleil argues that the limitation period runs from the date that the Margaret loan was repaid. He notes that the breach of contract in this case was known to Klassen in 1996 as soon as the first payments due on the various debts owed to him were not paid in accordance with the 1996 SPA, the 1996 EA, and the related promissory notes. But this was before Beausoleil was even a party to the agreements.

175. As Beausoleil argues, Klassen knew that he could sue Bowman and Hobson, but also knew that doing so would likely lead to the bankruptcy of the company. Accordingly, and instead, he brokered the 1997 agreements to protect the possibility that the company would be successful and that the debts to his mother and to him would be repaid. Beausoleil acknowledges that Klassen agreed to defer payment on debts owing to him while 726 paid off the Margaret loan but denies that there was any agreement to defer payments on the 1996 loan and Klassen's back wages thereafter. His evidence was that after the Margaret loan was paid off, he stopped hearing from Klassen, and stopped regularly providing financial information respecting the company to Klassen.

176. I have already rejected Klassen's evidence of his alleged regular involvement in the affairs of 726 in the years between 1997 and 2014. Part of that evidence was that he regularly agreed to defer repayment of the debts owed to him because he was a 50/50 owner of 726. As I have already found, this evidence is not credible. He was not a 50/50 owner of 726 and has not established that he was regularly discussing the debts owed to him with Beausoleil. I accept the evidence of Klassen that contact between the two men became limited after the Margaret loan was repaid.

177. Beausoleil does agree that Klassen agreed to defer payment on the amounts owing to him until the Margaret loan was repaid, but not thereafter. Klassen has not established otherwise, and I accept Beausoleil's evidence on this point. Accordingly, once the Margaret loan was repaid, the agreement to defer expired. It is uncontroverted that 726 made no payments toward the 1996 loan until 2016, and no payment ever toward Klassen's back wages. In all these circumstances, including that the parties agreed that time was of the essence, I agree with Klassen that as soon as the Margaret loan was repaid, in the absence of a further agreement to defer, the debts to Klassen became due. His claim against the defendants was discoverable at that time: *Zeppa v. Woodbridge Heating & Air-Conditioning Ltd.*, 2019 ONCA 47, at para. 41; *Lawless v. Anderson*, 2011 ONCA 102, at paras. 22 – 23.

178. As noted above (at footnote 2), it is not certain when the Margaret loan was repaid. From the company's books and records, it appears to have been paid off in 1998, but Klassen said it was repaid in June of 2003, and Beausoleil seemed to agree that this was possible. Giving Klassen the benefit of this doubt on this point, the limitation period in this case runs from no later than June 30, 2003.

179. That date falls during the transitional period between the application of the *Limitations Act*, and that of the *Limitations Act, 2002*. Section 24(5) of the *Limitations Act, 2002* reads as follows:

> (5) If the former limitation period did not expire before January 1, 2004 and if a limitation period under this Act would apply were the claim based on an act or omission that took place on or after that date, the following rules apply:
>
> 1. If the claim was not discovered before January 1, 2004, this Act applies as if the act or omission had taken place on that date.
>
> 2. If the claim was discovered before January 1, 2004, the former limitation period applies.

180. I have found that the claim was discovered before January 1, 2004. Therefore, the 6-year limitation period found in s. 45(1)(g) of the *Limitation Act* applies. That period expired on June 30, 2009, and the claim, launched in 2015, is therefore time-barred.

181. Klassen argues, however, that any limitation period in this case was reset by the repeated acknowledgments by the defendants of the amounts owing to Klassen. These include the defendants' repayment of the 1996 loan in 2016, Beausoleil's acknowledgment of back wages owing in his email of November 25, 2014, and debts reflected in the books and records of 726. In this respect, he relies on s. 13(1) of the *Limitations Act, 2002*, which reads as follows:

> **13** (1) If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made.

182. With respect to the 2014 email and the loan repayment in 2016, neither of these events could operate to reset the limitation period because they both post-date its expiry on June 30, 2009: *Limitations Act, 2002*, s. 13(9); *Cross Bridges Inc. v. Z-Teca Foods Inc.*, 2016 ONCA 27, at para. 10.

183. With respect to 726's books and records, Klassen relies on the company's balance sheets, which he says that he received from Beausoleil, and which repeatedly acknowledged 726's debts to Klassen. In making this argument, Klassen relies on the judgment of the British Columbia Court of Appeal in *Freeway Properties Inc. v. Genoc Resources Ltd.*, 2012 BCCA 258, where, at para. 21, Smith J.A. wrote that "it is well-settled that a company's balance sheet is capable of containing an acknowledgment of 'a cause of action, right or title of another.'"

184. There are several impediments to Klassen's position on this point. First, the only relevant documents for this purpose are those which relate to the period between the discoverability of Klassen's claim (which I have fixed at June 30, 2003) and the expiry of the limitation period (June 30, 2009). The documents in that category include three sets of financial statements, dated as at July 31, 2004, July 31, 2006 and July 31, 2008 respectively. In each of these statements, the unaudited balance sheet refers to "Shareholders' Loans" and indicates an amount owing for the year in question and for the previous year. No attempt to break down the amounts owing to whom is made (in this regard I note that there is evidence before me that both parties had outstanding

shareholder's loans to the company). In my view, to quote the Court of Appeal in *Middleton v. Aboutown Enterprises Inc.*, 2009 ONCA 466, this "did not constitute a clear and unequivocal acknowledgement of the debt claimed".

185. Further, the financial statements themselves are unaudited, and bear a notice to reader which advises that 726's accountants "express no assurance" on them and that "readers are cautioned that these statements may not be appropriate for their purposes." Compare the facts in *Freeway*, the case upon which Klassen relies. In that case the trial judge found that the relevant company's audited financial statements, signed by two directors, "[contain] irrefutable evidence as to the exact amounts referred to in those financial statements" (para 18).

186. In this vein, during his testimony, Klassen testified several times that 726's balance sheets were inaccurate and did not properly reflect amounts owing to him. In addition, Klassen agreed that the amounts shown on the balance sheets did not include what was owing to him by way of back wages. The payment of that debt is the only unfulfilled condition of the 1996 and 1997 agreements. In other words, the balance sheets do not acknowledge the one debt that remains in issue.

187. For all these reasons, I cannot conclude that Beausoleil made any acknowledgement of the debt owing to Klassen during the relevant period such that the limitation period would begin anew. The claim, then, is out of time.

188. To the extent that Klassen claims oppression remedies under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B-16 (the "OBCA"), in my view that claim is also out of time. I have found that the effect of the 1996 SPA was that Klassen was no longer a shareholder of the company. He remained, however, a creditor of the company. Assuming that his status as a creditor qualifies him as a "complainant" entitled to bring an oppression remedy (OBCA, ss. 245 and 248), in my view his claim was discoverable at the same time as his other claims against Beausoleil: the period following the repayment of the Margaret loan when Beausoleil failed to pay off the debts owed to Klassen, in particular, his back wages. As a creditor, Klassen's relief on an oppression remedy would be limited to the recovery of the amount owed to him: *Laakso v. Ranali*, 2017 ONSC

1605, at para. 7. He knew that those amounts were due and were not being paid to him as of June 2003. That is the conduct that he might have claimed was "oppressive or unfairly prejudicial" or that "unfairly disregard[ed]" his interests as a creditor: OBCA, s. 248(2). The claim for oppression is therefore also out of time.

6.3.3: Laches

189. Although it is unnecessary to do so given my conclusion that Klassen's claims are out of time, I add here that I am inclined to the view that the defendants' argument that Klassen's claims in equity ought to be dismissed pursuant to the doctrine of laches is well-founded. In this respect, I note that in favour of his claim that he is entitled to the return of the escrow shares, Klassen argues that Beausoleil's lengthy delay – and ultimate failure – in satisfying the conditions of the escrow agreements shows that Beausoleil abandoned those agreements, and that Klassen is justified in treating them as abandoned: *Smith v. Ash*, [1919] 1 W.W.R. 633 (Sask. Q.B.), at para. 6.

190. On the evidence before me, the better conclusion is that it was Klassen who abandoned the agreements. He failed to take any steps to assert his rights under them after the Margaret loan was repaid, which was no later than June, 2003. Moreover, he absented himself from 726 while Beausoleil alone took on the responsibility of doing the work of operating 726, and, from 1998 (when Klassen was replaced as the guarantor of the BMO loan), assumed all of its risks. Now that the company is profitable, Klassen asserts his ownership of it.

191. In *Husar Estate v. P. & M. Construction Limited*, 2007 ONCA 191, Cronk J.A. set out the applicable law on this point as follows (at para. 62; emphasis in the original):

> There is no dispute that laches can operate as a complete bar to relief in equity. In R. C. I'Anson Banks, ed. *Lindley & Banks on Partnership*, 18th ed. (London: Sweet & Maxwell, 2002) at 23-18 and 23-20, the author states:
>
> > A partner may, on normal principles, be precluded from obtaining equitable relief by reason of laches or acquiescence. *Laches…presupposes not only the passage of time, but also the existence of circumstances which render it inequitable*

> *to afford a claimant the relief which he seeks*. Similarly in the case of acquiescence.
>
> …
>
> Questions of laches and/or acquiescence frequently arise where a person has agreed to enter into partnership but has, in effect, hung back in order to see whether participation in the venture is worthwhile. Lord Lindley explained:
>
> > "The doctrine of laches is of great importance where persons have agreed to become partners, and one of them has unfairly left the other to do all the work, and then, there being a profit, comes forward and claims a share of it. In such cases as these, the [*claimant's*] conduct lays him open to the remark that nothing would have been heard of him had the joint adventure ended in loss instead of gain; and a court will not aid those who can be shown to have remained quiet in the hope of being able to evade responsibility in case of loss, but of being able to claim a share of gain in case of ultimate success."

192. In the present case, I am satisfied that the combination of delay and Klassen's course of conduct renders any claim for equitable relief unreasonable and unjust. He stood by while Beausoleil invested time and energy into building a business and assumed all the risks. Only once the company had become reliably profitable, and the risks of loss avoided, did Beausoleil hear from Klassen, who then staked his claim to 726's ultimate success: *Husar Estate*, at paras. 72 – 73.

193. Klassen's claims for relief in equity must therefore fail.

7: The defendants' counterclaim

194. In their counterclaim, the defendants seek a declaration that they are entitled to delivery of the escrow shares so that they may be cancelled. Given the conclusions I have reached above, I agree that this relief ought to be granted.

8: Further findings

195. In the event that I am found to have erred in any of the conclusions which I have drawn to this point, I make the following additional findings.

8.1: Back wages

196. In the event that Klassen is entitled to be repaid for his back wages, the total of those back wages was agreed by the parties to the 1996 SPA to be "$25,857.51 … before deductions ($17,500 after deductions)." Beausoleil took on responsibility for this debt in 1997 and Klassen agreed to defer its repayment until the Margaret loan was repaid in June, 2003. Klassen would then be entitled to prejudgment interest on $17,500 from June 31, 2003.

197. On the summary judgment motion, Sloan J. dismissed Klassen's claim that the interest rate on this debt was to be calculated on the basis of "business prime plus" (paras. 73 – 75) but left open the issue of what interest rate other than "business prime plus" ought to be applied (para. 83). Klassen testified before me that the rate was business prime plus. I heard no other evidence on this point and neither of the parties addressed it in submissions.

198. Accordingly, then, if Klassen is entitled to his back wages, prejudgment interest will be at the "prejudgment interest rate" set by s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43.

8.2: The value of the company

199. In the event that Klassen is entitled to a 50% or 33.3% share of the company, he would be entitled to a buyout by Beausoleil.

200. Both parties called experts to give opinion evidence about the value of the company as at December 31, 2014. Klassen's expert, Tim Rickert, gave 726 a mid-point value of $825,000. Beausoleil's expert, Ron Martindale, put the mid-point value of the company at $477,500. The differences between the experts' two valuations come down to three main issues: the company's advertising costs, management compensation for Beausoleil, and expenses related to Beausoleil's travel and use of a company vehicle.

8.2.1: Advertising

201. The chief argument of Klassen under this heading is that Beausoleil overspent on advertising in the years relevant to the valuation of the company. In aid of this conclusion, he led through Rickert evidence of industry norms for the rate of advertising expenses relative to sales. That evidence suggested a rate of somewhere between 0.02% and 4%, whereas 726's advertising spending rate was at 7% of sales. This spending rate, said to be too high by Klassen, is alleged to have the effect of unnecessarily decreasing the value of the company.

202. Beausoleil testified that the evidence of industry norms had little application to his one-store company. He said that he made decisions about advertising spending based on his assessment of RBM's needs, including its need to draw customers away from large grocery stores and to his specialty shop which offered products not available elsewhere. This required the advertising spending levels he made during the valuation period. Beausoleil's evidence in this regard was supported by the evidence of Martindale.

203. On this point, I accept the evidence of Beausoleil and Martindale, and agree with the submissions made on Beausoleil's behalf, that 726 was a unique single-location store to which broader industry spending norms have no application, and that it is unfair to second guess his real time judgments on what advertising spending was in 726's best interest. He was very unlikely to have overspent and driven down his own profit by unnecessary advertising costs.

8.2.2: Management compensation

204. Rickert testified that his assessment of the annual salary that ought to have been paid to the manager of a store like RBM in 2014 was $75,000. Martindale said that $100,000 was an appropriate annual salary for Beausoleil in 2014. Rickert's conclusion was based on government-published data respecting salaries paid to managers in the retail and food sectors. Martindale's was based on data respecting salaries paid to retail and wholesale trade managers.

205. On this point, I accept the submissions of Beausoleil and prefer the conclusion of Martindale. As Beausoleil notes, the data relied on by Rickert assumed a 40-hour work week for

the person receiving the salary. Beausoleil's evidence was uncontradicted that at all relevant times he worked more than 40 hours per week, sometimes many more. In my view, a salary of $100,000 is justified on the evidence before me.

8.2.3: Travel and vehicle costs

206. There is evidence before me that 726 paid for some of Beausoleil's personal travel expenses and the Cadillac Escalade that he drove. Beausoleil took the view that the Cadillac was a necessary expense for the business given that it was used for his business travel to trade shows and elsewhere and for picking up and delivering products and supplies.

207. On this point, I accept the submissions of Klassen and prefer the conclusion of Rickert. The Cadillac was clearly being used for personal purposes, including trips to NASCAR races. Further, there was no need for 726 to be paying for a luxury vehicle that lacked refrigeration equipment necessary for the transportation of meat. I accept Rickert's opinion that no arm's length purchaser of 726 would pay for the Cadillac as part of the business.

8.3: The 2014 value of the company

208. At my request of the parties, Rickert and Martindale each produced alternate calculations of the value of 726 based on the other's conclusions on these three topics on which they did not agree.

209. As noted above, Rickert's opinion was that the 2014 value of 726 was $825,000. According to his alternate calculations, my conclusion in favour of Beausoleil on advertising would reduce the value of the company by $335,000 and on management compensation by a further $60,000. The resulting value of the company would be $430,000.

210. Martindale's original opinion was that the 2014 value of 726 was $477,500. His alternate calculation based on my conclusion in favour of Klassen on the issues relating to travel and the Cadillac, would increase the value of the company to $497,500.

211. On these recalculations, the opinion of value offered by Rickert is lower than that offered by Martindale. In this respect, the opinion of each expert is contrary to the interests of the party which called him, but true to their duties as experts to provide fair and impartial evidence to the court.

212. In my view, in these circumstances, the fairest way to fix a value for the company is to do what the experts did and use the mid-point of the range of estimated values. Accordingly, in the event that Klassen is entitled to a buyout, the value of the company should be fixed at $463,750 as at December 31, 2014.

9: Conclusion and costs

213. For all these reasons, the plaintiff's claim is dismissed. The relief sought by counterclaim is granted. The escrow agent will deliver the escrow shares to the defendants for cancellation.

214. If the parties cannot agree on costs, the defendants may serve and file brief written submissions respecting costs within 14 days of the release of these reasons, directed to my attention by email to my judicial assistant at mona.goodwin@ontario.ca and Kitchener.SCJJA@ontario.ca. The plaintiff may serve and file brief responding submissions within 21 days of the release of these reasons. The respondents' reply, if any, may be served and filed within 24 days of the release of these reasons.

I.R. Smith J.

Released: July 30, 2025

CITATION: Klassen v. Beausoleil, 2025 ONSC 4392
COURT FILE NO.: C-348-15
DATE: 2025/07/30

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HENRY KLASSEN

Plaintiff (Defendant by Counterclaim)

– and –

ROBERT BEAUSOLEIL and 1117726 ONTARIO INC. o/a ROBERT'S BOXED MEATS

Defendants (Plaintiffs by Counterclaim)

REASONS FOR JUDGMENT

I.R. Smith J.

Released: July 30, 2025