

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Beigi v. FMS Medical Systems Ltd.*,
2025 BCSC 1663

Date: 20250827
Docket: S235554
Registry: Vancouver

Between:

Keivan Beigi

Plaintiff

And

**FMS Medical Systems Ltd., Abouzar Amiri and
Payman Mohajer**

Defendants

Before: The Honourable Justice Shergill

Reasons for Judgment

Counsel for Plaintiff:

L.Y. Babbitt
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The Defendant, appearing in person:

P. Mohajer

Place and Dates of Trial:

Vancouver, B.C.
February 25-28, 2025
May 20, 2025

Place and Date of Judgment:

Vancouver, B.C.
August 27, 2025

Table of Contents

I. OVERVIEW 3

II. CREDIBILITY AND RELIABILITY 3

III. DID MR. AMIRI SIGN THE LOAN AGREEMENT?..... 7

 A. Pre-and Post Signing Events..... 7

 1. History of the Parties’ Relationship 8

 2. The Loan 8

 3. Loan Extensions 12

 4. Breakdown of the Parties’ Relationship 13

 5. Litigation History 14

 B. Circumstances surrounding the signing of the Loan Agreement 15

 C. The parties’ movements on September 27 19

 D. Expert opinion evidence 27

 E. Conclusion..... 36

IV. ORDER 37

I. OVERVIEW

[1] On January 17, 2024, Associate Judge Dick ordered the Defendant, FMS Medical Systems Ltd. (“FMS”), to pay the Plaintiff, Keivan Beigi, the sum of \$151,895.16, plus interest at a per diem rate of \$41.50 (the “Indebtedness”), within 14 days after being served with an entered copy of the Order.¹ FMS failed to pay this amount.

[2] In this trial, the Plaintiff asks that the personal Defendants, Abouzar Amiri and Payman Mohajer, indemnify him for FMS’ failure to pay the Indebtedness.

[3] The Indebtedness relates to a loan that Mr. Beigi advanced to FMS around 2018. At the relevant time, Mr. Amiri and Mr. Mohajer were the principals of, and equal shareholders in, FMS. Both their names appear as indemnifiers on a loan agreement between the Plaintiff and FMS (the “Loan Agreement”). Mr. Mohajer admits he personally signed the Loan Agreement and says that he also witnessed Mr. Amiri placing his signature and initials on the document. Consequently, Mr. Mohajer says that both he and Mr. Amiri are obliged to indemnify the Plaintiff for the Indebtedness. Mr. Amiri denies any liability or signing the Loan Agreement.

[4] At issue is whether Mr. Amiri signed the Loan Agreement, or if his signature was forged by Mr. Mohajer.²

[5] For the following reasons, I find that Mr. Amiri did not sign the Loan Agreement. Consequently, the claim against Mr. Amiri is dismissed, and the claim against Mr. Mohajer is allowed.

II. CREDIBILITY AND RELIABILITY

[6] As this case turns largely on findings of credibility and reliability, I begin with the principals that govern this part of the analysis.

¹ See Term 2, Order Made after Application, dated January 17, 2024.

² Mr. Amiri also raised a limitation period defence in his pleading – see para. 3 of Response to Civil Claim of Abouzar Amiri, Part 3: Legal Basis. However, he abandoned this argument at trial.

[7] Credibility and reliability are related but distinct concepts. Reliability concerns the accuracy of the testimony of a witness. It engages consideration of the witness's ability to accurately observe, recall, and recount the events in issue. Credibility centers on the honesty of the witness. It involves an assessment of the trustworthiness of their evidence, based on their veracity and sincerity, as well as the accuracy of the evidence provided: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392.

[8] A witness who is not telling the truth is not providing reliable evidence. However, the reverse is not the case – a credible witness may still give unreliable evidence. Sometimes an honest witness will be trying their best to tell the truth and will believe the truth of what they are recounting, but nevertheless be mistaken in their recollection: *R. v. H.C.*, 2009 ONCA 56 at para. 41.

[9] In *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414, 2014 leave to appeal to SCC ref'd, [2014] S.C.C.A. No. 547, the Court noted that demeanour is a factor that a court can consider in assessing a witness' credibility.

[10] However, trial judges are cautioned against making credibility assessments based on demeanour alone: *R. v. N.S.*, 2012 SCC 72 at paras. 99-107. This is because the manner in which a witness testifies is a notoriously unreliable measure of credibility. A witness' physical health, personality, cultural and social upbringing, and comfort level with testifying in a courtroom setting, are but some of the things that may affect their demeanour, thereby making it difficult to interpret.

[11] In *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at p. 357, 1951 CanLII 252 (B.C.C.A.) and *Bradshaw* at para. 186, the Court set out the relevant principles and factors to consider when assessing the credibility of interested witnesses. Some of the factors include whether the witness modified their testimony; whether their testimony is in harmony with independent evidence; and whether the testimony seems unreasonable, impossible, or unlikely.

[12] I have applied the above principles and factors when assessing the witness evidence in this case.

[13] The central issue before me is whether Mr. Amiri signed the Loan Agreement or whether his signature was forged by Mr. Mohajer. Mr. Amiri and Mr. Mohajer are the only purported witnesses to the signature and have provided diametrically opposed testimony regarding the signing of the Loan Agreement. As the main dispute in the evidence is between Mr. Mohajer and Mr. Amiri, I will first comment on their testimony.

[14] I generally found Mr. Amiri to be a credible witness. He provided his evidence in a forthright manner, he admitted to the limits of his memory, he made reasonable concessions, and he made numerous admissions against self interest. Mr. Amiri's evidence was also consistent with much of the other evidence in this trial. While I had some concerns about his testimony, these do not affect my overall view of his credibility or reliability.

[15] My view of Mr. Mohajer's evidence is not favourable. I have serious concerns about Mr. Mohajer's veracity as a witness. His testimony was internally and externally inconsistent. Mr. Mohajer was argumentative, vague when it suited him, and rarely made admissions against self interest.

[16] Consequently, where there is a contradiction between the evidence of Mr. Amiri and Mr. Mohajer, I have preferred Mr. Amiri's evidence.

[17] I turn to Mr. Beigi's testimony. As Mr. Beigi was not present when the impugned signature was placed on the Loan Agreement, his credibility and reliability are less central to this case. Nevertheless, insofar as there are any conflicts in the evidence between Mr. Beigi and Mr. Amiri, I have preferred Mr. Amiri's evidence.

[18] All of the parties in this case have a motive to fabricate. However, Mr. Beigi and Mr. Mohajer's motives are particularly suspect given their actions.

[19] Mr. Beigi has taken a side in this dispute in a way that undermines the reliability of both his and Mr. Mohajer's testimony. Mr. Mohajer has admitted to being contractually bound to the Plaintiff under the indemnity contained in the Loan Agreement, and he testified to his willingness to pay his share of the Indebtedness. Yet Mr. Beigi has done nothing to collect this money from Mr. Mohajer, who is a close friend of the Plaintiff's and who stands to benefit personally from Mr. Beigi's singular pursuit of Mr. Amiri.

[20] It is more than curious that a creditor (Mr. Beigi) would undertake the cost and delays associated with a trial to bypass one indemnitor (Mr. Mohajer) in favour of pursuing another (Mr. Amiri), where the indemnitor who he is bypassing: (a) accepts the validity of the indemnity agreement; (b) is willing to accept personal liability for the corporate debt; (c) is willing to pay at least half of the corporate debt on demand; and (d) appears to have the financial ability to pay for the entire amount of Indebtedness. This is particularly noteworthy because of the close personal relationship between the Plaintiff and Mr. Mohajer.

[21] Of course, Mr. Beigi has every legal right to pursue one alleged indemnitor over another. However, his particular focus on Mr. Amiri reveals a desire to harm Mr. Amiri specifically, while protecting Mr. Mohajer. As discussed elsewhere, Mr. Beigi posted a negative and false Google review of Mr. Amiri's business after the parties had a falling out, which I find was done solely to harm Mr. Amiri's business interests. Further, Mr. Beigi has acted in other ways that reflect a particular bias against Mr. Amiri, which goes beyond a simple financial motivation.

[22] I have taken the above concerns into consideration when assessing the credibility and reliability of both Mr. Beigi's and Mr. Mohajer's evidence.

[23] I will address concerns about the reliability or credibility of the expert witnesses elsewhere as they arise.

[24] I turn now to the first issue before me.

III. DID MR. AMIRI SIGN THE LOAN AGREEMENT?

[25] The three named parties, as well as one handwriting expert each for Mr. Beigi and Mr. Amiri, testified in the trial.

[26] Mr. Mohajer, who appeared without counsel throughout the proceeding, testified in Mr. Beigi’s case. Mr. Mohajer also adopted the evidence led by Mr. Beigi, as well as submissions made on Mr. Beigi’s behalf. Given the close alignment between Mr. Beigi and Mr. Mohajer’s positions at the trial, unless noted otherwise, any references to the “Plaintiff’s” position or arguments include Mr. Mohajer.

[27] The direct evidence which bears on whether Mr. Amiri signed the Loan Agreement, can be organized into three broad categories:

- a) testimony from Mr. Mohajer and Mr. Amiri regarding the signing of the Loan Agreement;
- b) testimony and documentary evidence from Mr. Mohajer and Mr. Amiri regarding the parties’ movements on the day the Loan Agreement was executed, which goes to whether Mr. Amiri could have signed the document; and
- c) expert opinion evidence regarding the likelihood of whether the signature bearing Mr. Amiri’s name and his initials, were written by his hand.

[28] The witnesses provided additional evidence about events prior to and following the signing of the Loan Agreement. As these provide some context and also have some bearing on issues regarding credibility, I will start with that evidence first.

A. Pre-and Post Signing Events

[29] Most of this evidence is uncontroverted. I have set out any disputes in the facts and resolved them here or in a later part of these Reasons.

1. History of the Parties' Relationship

[30] Mr. Beigi met Mr. Mohajer around 2007 through a cousin of Mr. Beigi's. They became good friends and spent a lot of time together.

[31] Mr. Amiri met Mr. Mohajer around 2010 or 2011, close to the time when Mr. Amiri started working with Mr. Mohajer and his parents.

[32] Mr. Amiri and Mr. Mohajer's relationship grew closer over the years, and eventually both men decided to leave their employment and start their own business. They became partners in FMS together with Mr. Fisher, who had founded the company several decades earlier. At the time, FMS was in the business of sales and distribution of x-ray machines.

[33] Around 2014 or 2015, Mr. Amiri and Mr. Mohajer bought out Mr. Fisher and distributed his shares between themselves, such that both defendants became 50% shareholders of FMS. Mr. Mohajer primarily focused on sales, administration and accounting, while Mr. Amiri mainly provided technical support.

[34] Not long after he met his co-defendant, Mr. Mohajer introduced Mr. Amiri to Mr. Beigi. Despite Mr. Amiri and Mr. Beigi also developing a personal relationship, the evidence leads me to conclude that at all material times, the primary friendship was between Mr. Beigi and Mr. Mohajer, who remained very close to the date of trial.

2. The Loan

[35] In late August or early September 2018, Mr. Mohajer asked Mr. Beigi to lend some money to FMS. Around the same time, Mr. Mohajer also arranged to secure financing from Ms. Sadeghiyekta, who was a past employee (the "Sadeghiyekta Loan").

[36] Around September 19, 2018, Mr. Mohajer emailed a sample loan agreement to Mr. Beigi, which was taken from the Sadeghiyekta Loan. The document was substantially in the same form as the Loan Agreement that is the subject of this trial,

including the indemnification clause, but without the names of the parties being included. Mr. Mohajer modified this document and presented it to Mr. Beigi for signing.

[37] On September 27, 2018, Mr. Mohajer and Mr. Beigi met at a coffee shop in Port Moody. Mr. Mohajer produced two copies of a three-page Loan Agreement with attachments as noted below. These documents were already signed and initialled by what appeared to be Mr. Amiri and Mr. Mohajer. According to Mr. Mohajer, Mr. Amiri and he had signed and initialled both copies of the Loan Agreement earlier that morning. Mr. Mohajer then presented these signed copies to Mr. Beigi during the September 27 meeting, for Mr. Beigi’s signature. Mr. Amiri denies that he placed his signature or initials on the Loan Agreement. This issue is addressed elsewhere.

[38] Pursuant to the Loan Agreement, FMS would borrow \$133,000 from Mr. Beigi. The Loan was for a one-year term, with interest accruing on the outstanding principal amount at the rate of 9% per annum. In the event that FMS failed to repay the principal amount by the due date, interest would accrue at the rate of 10% per annum.

[39] Attached to each copy of the Loan Agreement were the following:

- a) a one-page document entitled “SCHEDULE ‘A’ PROMISSORY NOTE”;
- b) a one-page document entitled “ADVANCES AND PAYMENTS OF PRINCIPAL”, which contained a table with columns for the following information, with the first line completed in type and in handwritten ink as follows:

Date	Amount of Advance	Amount of payment	Principal Balance	Initials
2018-09-27	\$133,000.00	\$ 130,000 \$ 3,000	\$133,000.00	PM. A.A

(collectively referred to as the “Loan Agreement”)

[40] Both Mr. Beigi and Mr. Mohajer testified that during their September 27 meeting, each man filled out the table at the end of their respective copies of the Loan Agreement and initialed the boxes. Mr. Beigi also signed one copy of the Loan Agreement and provided it to Mr. Mohajer (the “Mohajer Copy”). He did not sign his own copy of the Loan Agreement (the “Beigi Copy”).

[41] During the September 27 meeting between Mr. Mohajer and Mr. Beigi, in addition to exchanging copies of the Loan Agreement:

- a) Mr. Mohajer gave Mr. Beigi 12 post-dated cheques for \$997.50, representing monthly interest only payments.
- b) Mr. Beigi gave Mr. Mohajer a bank draft made out to FMS, for \$130,000.

[42] There is no dispute that this bank draft was \$3,000 short of the \$133,000 figure specified in the Loan Agreement. Mr. Beigi testified that he provided the remaining \$3,000 in cash, although he was unable to recall when he made this cash payment. Mr. Mohajer too was unable to provide clarity on this issue. Mr. Amiri questions the veracity of Mr. Beigi’s and Mr. Mohajer’s evidence that this additional \$3,000 cash payment was made, particularly given the lack of any documentation in support of it.

[43] Despite concerns raised by Mr. Amiri, it is not open for me to now find that the \$3,000 was not paid. This is because the amount owed by FMS to Mr. Beigi under the Loan Agreement has already been judicially decided. Term 2 of the Order, which is referenced at para. 1 of these Reasons, is based on the principal amount of \$133,000 being advanced to FMS. If Mr. Amiri wanted to challenge the principal amount or calculations of the resulting Indebtedness, the time to do so would have been at the January 17, 2024, hearing. Mr. Amiri was given notice of the hearing but chose not to attend. In the absence of an appeal, the January 17, 2024, Order stands.

[44] Mr. Beigi testified that he scanned his copy of the Loan Agreement to his Google Drive on October 12, 2018. This point, which is not in dispute, is relied on by the Plaintiff to assert that Mr. Amiri's signature was not a forgery, as the parties were getting along at that time. However, simply because the parties were getting along, does not mean that Mr. Amiri's signature was not forged. There are other reasons, aside from mal-intent, that could have caused Mr. Mohajer to commit the forgery. I have addressed those possible reasons in my Conclusion.

[45] The parties all agree that Mr. Beigi deposited the 12 post-dated cheques to his bank account.

[46] Mr. Amiri testified that he did not become aware of the loan from Mr. Beigi (the "Beigi Loan") until early 2019, when he noticed that payments were being made to Mr. Beigi and asked Mr. Mohajer about this. When he learned about the existence of the Beigi Loan, his only concern was the amount. Mr. Amiri acknowledged that he did not demand that Mr. Mohajer return the money to Mr. Beigi. He also stated that after his discovery of the Beigi Loan, Mr. Mohajer kept him apprised of the loan extensions shortly after they were each agreed to.

[47] The Plaintiff submits that Mr. Amiri's failure to demand that the Beigi Loan be returned once he became aware of it, undermines Mr. Amiri's credibility about whether he signed the Loan Agreement. I disagree. In my view, Mr. Amiri's evidence that he knew of the loan extensions, and that his only concern at the time was the amount of the Beigi Loan rather than the loan having been entered into, are examples of admissions against self interest which support Mr. Amiri's credibility, rather than detract from it.

[48] Just because Mr. Amiri did not ask for the loan funds to be returned to Mr. Beigi, does not mean that Mr. Amiri signed the Loan Agreement or that he was aware of the loan prior to it being made. The reasonableness of Mr. Amiri's actions must be viewed in the context of his business relationship with Mr. Mohajer and their respective job duties.

[49] The uncontroverted evidence is that Mr. Mohajer was the person who primarily took care of the administrative side of the business. Both Mr. Mohajer and Mr. Amiri were very busy with their work duties, and Mr. Amiri was rarely in the office. I accept that Mr. Amiri trusted Mr. Mohajer to make most of the business decisions, and was often informed about them afterwards. Seen in that light, I do not find it unusual that Mr. Amiri did not ask for the loan funds to be immediately repaid upon learning of the Beigi Loan.

3. Loan Extensions

[50] Around September 27, 2019, Mr. Beigi agreed to extend the term of the Loan for an additional year. Around November 13, 2019, Mr. Mohajer provided Mr. Beigi with a further 12 monthly postdated cheques from FMS for \$997.50 each. There is no dispute that these cheques were also deposited by Mr. Beigi to his bank account. According to Mr. Beigi and Mr. Mohajer, all three men were present when Mr. Mohajer signed this second set of postdated cheques. Mr. Amiri does not challenge this evidence.

[51] The term of the Loan was extended for a second time the following year. Around October 1, 2020, Mr. Mohajer provided Mr. Beigi with a third set of 12 monthly postdated cheques from FMS for \$997.50 each. These cheques too were deposited by Mr. Beigi to his bank account.

[52] I infer from the evidence that the Loan was extended for a third time in 2021. Further cheques were provided by Mr. Mohajer to Mr. Beigi between September 2021 and August 5, 2022, all of which were deposited by Mr. Beigi into his bank account. No further payments were made after August 2022.

[53] The parties agree that after this last payment was made in August 2022, FMS had paid \$48,877.50 to Mr. Beigi, representing interest only payments on the Loan.

4. Breakdown of the Parties' Relationship

[54] The Loan payments stopped in 2022 around the same time that a conflict arose between Mr. Mohajer and Mr. Amiri.

[55] At the time, Mr. Mohajer and Mr. Amiri jointly owned two companies: BR2 Medical Holdings Ltd. ("BR2") and FMS. In turn, BR2 owned the following three companies:

- a) Innotech Medical Industries Corp ("IMI");
- b) Raymax Medical Corporation ("RMC");
- c) El-Rad Services Ltd. ("CXS").

[56] After their conflict arose, Mr. Mohajer and Mr. Amiri did not want to continue their partnership. They decided to separate their business interests and arrived at a memorandum of understanding ("MOU"). The MOU was dated December 22, 2022, and involved Mr. Mohajer, Mr. Amiri, and Mr. Beigi. It contemplated that Mr. Beigi would become a business partner with Mr. Mohajer in place of Mr. Amiri.

[57] Pursuant to the MOU, Mr. Amiri would sell his shares and all ownership interests in BR2 and FMS, to Mr. Beigi for \$700,000. In exchange, BR2 would sell its shares and ownership interest in IMI to Mr. Amiri for one dollar. After the share transfer, Mr. Amiri would become the sole owner of IMI and would no longer have any involvement in BR2 and its other two companies (RMC and CXS). He would also no longer have any involvement in FMS. Accordingly, when the transaction was completed, Mr. Amiri would no longer be partners with Mr. Mohajer, and Mr. Beigi and Mr. Mohajer would each own 50% of FMS and 50% of BR2.

[58] The MOU required that Mr. Beigi pay a \$100,000 deposit to Mr. Amiri by January 1, 2023. There is no dispute that this deposit was paid. However, Mr. Amiri testified that around June 2023, he learned about some debts that were owed by IMI. Mr. Amiri believed that Mr. Mohajer was trying to cheat him and had been

siphoning off money. Mr. Amiri refused to follow through with the share transfer or return the deposit to Mr. Beigi.

[59] Mr. Amiri then started a new company called Medna. At some point after this, Mr. Beigi posted the following Google review of Medna:

Signed a contract, took the deposit and disappeared. We are suing him.

[60] Mr. Beigi testified that this comment related to the failure of Mr. Amiri to follow through with the share transfer, and his refusal to return the deposit. However, he conceded under cross-examination that this Google review was false insofar as Medna had nothing to do with the share transfer. Nevertheless, Mr. Beigi maintained that he was justified in posting the comment due to Mr. Amiri being the principal of Medna, and Mr. Amiri's failure to return the \$100,000 deposit. Mr. Amiri took issue with this Google review and commenced a lawsuit against Mr. Beigi for defamation. In turn, Mr. Amiri was sued for return of the deposit.

[61] Ultimately, Mr. Beigi removed the post and Mr. Amiri returned the \$100,000 deposit. Despite the resolution of these issues, I find that a great deal of animosity remained between the Plaintiff and Mr. Amiri, as well as between Mr. Mohajer and Mr. Amiri.

5. Litigation History

[62] Around July 2023, Mr. Beigi demanded that FMS repay the principal amount of the Loan and accrued interest. When FMS failed to do so, Mr. Beigi commenced legal proceedings.

[63] Mr. Beigi commenced this proceeding by filing a Notice of Civil Claim on August 8, 2023 ("NOCC").

[64] Mr. Amiri filed his Response to Civil Claim on September 18, 2023 ("RTCC"); Mr. Mohajer filed his RTCC on October 13, 2023.

[65] FMS did not file a response to the NOCC. When his attempt to get default judgment against FMS was unsuccessful, Mr. Beigi filed an Amended Notice of Civil Claim, on November 20, 2023. That too went unanswered by FMS.

[66] On December 28, 2023, Mr. Beigi filed a Notice of Application seeking, amongst other things, default judgment against FMS in the amount of \$151,895.16, plus interest. The matter was heard in Associate Judge's Chambers on January 17, 2024. None of the Defendants attended the January 17 hearing, despite having received notice. Associate Judge Dick granted Mr. Beigi the default order sought against FMS for the claimed amount.

[67] This matter came before me for trial at the end of February 2025. Due to inadequate time estimates, the trial did not conclude until May 2025.

B. Circumstances surrounding the signing of the Loan Agreement

[68] I begin first with whether Mr. Amiri was aware in advance that FMS would be borrowing money from Mr. Beigi.

[69] According to Mr. Mohajer, the idea of borrowing money from Mr. Beigi came up during conversations he and Mr. Amiri had regarding a loan from Ms. Sadeghiyekta. He stated that he and Mr. Amiri wanted to have some insurance in case Ms. Sadeghiyekta did not agree to lend them money. Mr. Mohajer stated that he and Mr. Amiri put the idea to Mr. Beigi casually during their meetings. Mr. Beigi liked the idea and they both told Mr. Beigi that they wanted to use the contract with Ms. Sadeghiyekta as a template for their own agreement. Mr. Mohajer stated that Mr. Amiri was "absolutely" part of these initial conversations with Mr. Beigi.

[70] Mr. Amiri denied that he was a party to any prior discussions with Mr. Beigi regarding the Beigi Loan. Mr. Amiri did however admit to Mr. Mohajer telling him at the time that he was taking steps to borrow money to finance FMS' operations. However, he stated that these conversations were casual, and Mr. Mohajer did not mention any particular names.

[71] Mr. Beigi contradicted Mr. Mohajer's version of events regarding Mr. Amiri's presence and participation in discussions about the Beigi Loan with Mr. Beigi prior to its entry. According to Mr. Beigi, the only person that he discussed the Loan with was Mr. Mohajer. He testified that a few weeks before the Loan Agreement was signed, Mr. Mohajer called him and told him that "there was a business opportunity where they could purchase inventory at a reduced cost if they had some cash flow". Mr. Beigi testified that Mr. Amiri was not a party to this conversation, and that it was the only "major" conversation about the Loan that he could recall, before the contract was actually signed.³

[72] This evidence from Mr. Beigi is important in two respects. First, it supports Mr. Amiri's version of events regarding Mr. Amiri's lack of prior knowledge of the Loan. Second, Mr. Beigi's contradiction of Mr. Mohajer on this key point suggests a lack of collusion between Mr. Beigi and Mr. Mohajer. I have taken this into account when assessing the testimony of the parties and in arriving at my conclusions regarding credibility and reliability of the witness' evidence.

[73] Based on the evidence as a whole, I am satisfied that Mr. Amiri was not a party to any conversations with Mr. Beigi prior to the signing of the Loan, and further that he was not aware that Mr. Mohajer had asked Mr. Beigi to lend FMS money.

[74] In coming to this conclusion, I do not place much weight on Mr. Amiri's failure to recall the details of the Sadeghiyekta Loan. Mr. Amiri testified that he could not recall if he signed any loan documents in relation to the Sadeghiyekta Loan. However, he allowed for this possibility. He explained his lack of memory by the passage of time, and the fact that this loan was not of much concern to him as it was re-paid in a very short period of time. I find this explanation credible, particularly in light of Mr. Amiri's uncontroverted evidence that: this was a very busy period of time for both he and Mr. Mohajer; he was rarely in the office; Mr. Mohajer handled the

³ Transcript of Proceedings, February 25, 2025, p. 7, lines 13-45.

financial side of things; and he trusted Mr. Mohajer to make the day-to-day business decisions, while he focussed on other parts of their business.

[75] I turn now to who created the draft loan agreement to present to Mr. Beigi. For the reasons that follow, I conclude that it was Mr. Mohajer.

[76] Mr. Mohajer testified that the loan document presented to Mr. Beigi was based on the contract that Ms. Sadeghiyekta had used for her loan to FMS. According to Mr. Mohajer, he and Mr. Amiri had reviewed the Sadeghiyekta Loan agreement in considerable detail prior to signing it. He explained it thus:

...Mr. Amiri and I had to go through all of it with her, from A to Z, and we read it, we talked about it, we signed it, and then when we wanted to offer it to Mr. Beigi, we used the same draft and sent it to Mr. Beigi so he can approve it.⁴

[77] However, there is no evidence from Mr. Beigi that Mr. Amiri communicated at all with him regarding the Beigi Loan Agreement. Nor is there any evidence that Mr. Mohajer copied Mr. Amiri with the email communications between Mr. Mohajer and Ms. Sadeghiyekta, or between Mr. Mohajer and Mr. Beigi, regarding the draft loan agreement that was ultimately presented to the Plaintiff.

[78] I find that Mr. Mohajer's testimony, when viewed as a whole, lacks credibility. Mr. Mohajer's evidence on this point was equivocal. He initially tried to suggest that Mr. Amiri may have prepared the Loan Agreement, stating that he could not say "for sure" whether it was him or Mr. Amiri, "because sometimes we used to use his computer, or my computer". However, Mr. Mohajer also acknowledged that "most of the time all the printing and this kind of stuff would be with me and then sitting together and discussing it with others". At another point in his testimony Mr. Mohajer stated that he modified the loan agreement upon receipt of an email from Ms. Sadeghiyekta. When asked if Mr. Amiri assisted with this process, he stated that he could not recall, though he surmised that Mr. Amiri had, given their past practices.

⁴ Transcript of Proceedings, February 26, 2025, p. 9, lines 37-42.

[79] After having regard to all of the evidence, I conclude that Mr. Mohajer prepared the draft loan agreement with no involvement from Mr. Amiri, and that he also did so without Mr. Amiri's knowledge.

[80] I now turn to the actual signing of the Loan Agreement. Mr. Mohajer's evidence is that Mr. Amiri signed the Loan Agreement in their corporate office on the morning of September 27, 2018. He states that he and Mr. Amiri were the only people present when the Loan Agreement was signed by them both, and that he was a witness to Mr. Amiri's signature. Mr. Amiri denies not only signing the Loan Agreement, but also being in the office on the morning of September 27, 2018. I will address Mr. Amiri's alibi in the next section.

[81] Mr. Mohajer testified that on the morning of September 27, 2018, he and Mr. Amiri met in Mr. Mohajer's office to review and sign the Loan Agreement. Although both their offices were located next to each other, Mr. Mohajer's office was larger and also had a boardroom table. He stated that he and Mr. Amiri each had a copy of the document in front of them, which Mr. Mohajer had printed out for Mr. Amiri's review.

[82] Mr. Mohajer testified that he was aware that Mr. Amiri was scheduled to do some work out of town that day. Although they were pressed for time because Mr. Amiri needed to catch a ferry, Mr. Amiri reviewed the document very carefully. Mr. Amiri also asked some questions about the document. According to Mr. Mohajer, Mr. Amiri was a detail-oriented person and had a habit of reviewing contracts word by word. Once he had reviewed the Loan Agreement, Mr. Amiri initialed and signed it in Mr. Mohajer's presence. Mr. Mohajer stated that the entire process took anywhere from approximately 10 to 15 minutes.

[83] I have serious concerns about the veracity of the above testimony from Mr. Mohajer. For example, Mr. Mohajer testified that Mr. Amiri had reviewed the Sadeghiyekta Loan agreement "from A to Z". This Sadeghiyekta Loan agreement was then used as the template for the Beigi Loan Agreement. I find it against the

preponderance of probability that Mr. Amiri would review the Beigi Loan Agreement in the amount of detail suggested by Mr. Mohajer, when: (1) Mr. Amiri (by Mr. Mohajer's own evidence) had reviewed virtually the same document in detail only days earlier when it was executed with Ms. Sadeghiyekta; and (2) Mr. Amiri had a ferry to catch and was pressed for time.

[84] Further, during his cross-examination, Mr. Mohajer stated that the document review conducted in the office was "a very fast review and sign and leaving" as Mr. Amiri had to go to the Island for work. This contradicts his other evidence regarding Mr. Amiri's detailed review of the documents and the posing of various questions to Mr. Mohajer.

[85] Finally, when it was put to Mr. Mohajer that Mr. Amiri had a habit of sometimes reviewing a document "letter by letter". Mr. Mohajer denied this and stated that the words "letter by letter" did not make sense "except as a metaphor I don't understand". Yet he had used those very same words during his Examination for Discovery testimony, when he described the process used by Mr. Amiri to review the Loan Agreement in the office that day.

[86] Consequently, I find Mr. Mohajer's evidence on this issue to lack credibility.

[87] I now turn to the parties' movements on September 27, 2018, which also support my finding that Mr. Amiri did not sign the Loan Agreement.

C. The parties' movements on September 27

[88] The parties disagree on whether Mr. Amiri could have been present at the office to sign the Loan Agreement on September 27. There is no dispute that Mr. Amiri had two appointments booked at Salt Spring Island for the afternoon of September 27. Mr. Amiri's ability to sign the Loan Agreement depends on which ferries he took to get to those appointments.

[89] Mr. Amiri's position is that he took the 9:00 a.m. ferry from the Tsawwassen Ferry Terminal, and as such, it was impossible for him to be in the office on

September 27 to sign the Loan Agreement. Mr. Mohajer's position is that Mr. Amiri had enough time to sign the Loan Agreement because he was on the 1:00 p.m. ferry from the Tsawwassen Ferry Terminal.

[90] It is helpful first to consider Mr. Mohajer's movements on the day in question. Mr. Mohajer's location and movements on September 27, 2018, are supported by his GPS data, and are not challenged by Mr. Amiri.

[91] Mr. Mohajer testified that prior to going to his office on September 27, 2018, he first went for breakfast at the Sheraton hotel. After finishing breakfast, he headed to the FMS office which was located on Pemberton Avenue in North Vancouver. He arrived at his office building at 8:21 a.m. Shortly after his arrival, he printed out two copies of the Loan documents for signature. He then met with Mr. Amiri in his own office. They reviewed the documents in detail, Mr. Amiri asked him some questions, and then they both signed and initialled the documents. Mr. Amiri then left for the ferry terminal. I pause here to note that Mr. Mohajer did not have independent recollection of these specific times and relied on his GPS data to support the timing of these events.

[92] Mr. Mohajer testified that he remained in his office until 12:15 p.m. Upon leaving the office, Mr. Mohajer went to his house. He then drove to meet Mr. Beigi in Port Moody, where Mr. Beigi signed the Loan Agreement and gave Mr. Mohajer the bank draft for \$130,000.

[93] Based on the evidence before me, I conclude that the earliest that Mr. Amiri could have left the office after signing the documents, is approximately 8:45 a.m. This would allow 25 minutes or so for Mr. Mohajer to park his car, go to his office, print out the loan documents for Mr. Amiri's signature, wait for Mr. Amiri to make his way into his office, review the documents in detail with Mr. Amiri, answer any questions, and then sign off on the paperwork.

[94] I turn now to Mr. Amiri's evidence. Mr. Amiri did not have GPS data to support his movements. However, he did have some text messages and other documents which corroborate his version of events.

[95] Mr. Amiri testified that on September 27, 2018, he was scheduled to attend at two clinics on Salt Spring Island. While there, he was going to conduct radiation safety inspections on the machines and answer any questions that the customers might have.

[96] Because there was no direct route to Salt Spring Island, Mr. Amiri stated that he had to allow enough time to catch the various ferries. As such, he decided to catch the 9:00 a.m. ferry from the Tsawwassen Ferry Terminal. Mr. Amiri could not recall what time he left his home that morning, but insisted that he left to go to the Tsawwassen Ferry Terminal straight from his home, and did not make any detour to his office.

[97] Mr. Amiri's evidence that he took the 9:00 a.m. ferry from Tsawwassen is different than what Mr. Amiri stated during his examination for discovery held on May 10, 2024. On that date, Mr. Amiri stated that he believed he took the 10:00 a.m. or 10:30 a.m. ferry from Tsawwassen. When asked about this contradiction, Mr. Amiri testified that he gave the 9:00 a.m. time based on the ferry schedule which he saw after he had been examined for discovery. That ferry schedule is for the period February to March 2025. According to this schedule, there was no ferry scheduled at 10:00 a.m. or 10:30 a.m.; rather the ferry ran every two hours from the Tsawwassen Ferry Terminal, with a 9:00 a.m. sailing followed by an 11:00 a.m. sailing.

[98] This evidence suggests that Mr. Amiri may have changed his evidence to accord with the documents, rather than relying on his actual memory. That raises potential concerns of reliability and credibility, which I have taken into consideration when weighing Mr. Amiri's evidence. I have also considered other contradictions in Mr. Amiri's evidence, which were on minor issues and have not detracted from my overall view of his credibility.

[99] After having regard to all of the evidence, I am satisfied that Mr. Amiri took the 9:00 a.m. ferry from the Tsawwassen Ferry Terminal, and could not have gone into the office to sign the documents on September 27. The evidence supporting this finding is summarized below:

- a) On September 27, 2018, Mr. Amiri had scheduled meetings with two clinics on Salt Spring Island.
- b) The ferry schedule entered into evidence shows a sailing every two hours starting at 7:00 a.m.
- c) Mr. Amiri's residence and the FMS office were both located in North Vancouver. North Vancouver is connected to Vancouver and other parts of Metro Vancouver, including Tsawwassen, by two bridges: the Lionsgate Bridge and the Iron Workers Memorial Bridge. The Lionsgate Bridge is further West than the Iron Workers Memorial Bridge. The FMS office was located closer to the Lionsgate Bridge. Mr. Amiri's residence was located closer to the Iron Workers Memorial Bridge, near the Upper Levels Highway.
- d) The drive from Mr. Amiri's residence in North Vancouver to the Tsawwassen ferry terminal ordinarily took between 1 to 1.5 hours, depending on traffic. I accept that to make it in time for his appointments, Mr. Amiri would have needed to arrive at the terminal in Tsawwassen "a reasonable period of time before the scheduled sailing."
- e) From the Lower Mainland, Salt Spring Island is only accessible by ferry. To get there, Mr. Amiri testified that he (a) drove to the Tsawwassen Ferry Terminal, (b) took a ferry from Tsawwassen to Swartz Bay, on Vancouver Island, and (c) took a second ferry from Swartz Bay to Fulford Harbour, on Salt Spring Island. He further testified as follows:

- i. The ferry from Tsawwassen to Swartz Bay generally takes 1 hour and 35 minutes.
 - ii. To connect to his second ferry, Mr. Amiri was required to disembark at the Swartz Bay Ferry Terminal and board a different vessel to Fulford Harbour. It is Mr. Amiri's evidence that the "turn around" time for this transfer took more than 25 minutes. It required him to leave the Swartz Bay ferry terminal, drive down the highway for "some distance" before he could exit and turn around, return to the terminal, then line up for the connecting ferry.
 - iii. The ferry from Swartz Bay to Fulford Harbour generally takes 35 minutes.
-
- f) At 1:18 p.m., Mr. Amiri sent a text to Dr. Bond, who worked at one of the two clinics where Mr. Amiri had scheduled meetings that day. The text read, "Im on 1:05 Ferry will be there in couple hrs".
 - g) Mr. Amiri was on the Swartz Bay ferry when he sent that message, which means he would have docked at Fulford Harbour at approximately 1:40 p.m.
 - h) After arriving at Fulford Harbour, Mr. Amiri drove to Dr. Tedder's veterinary clinic. The drive takes about 20 minutes, depending on traffic.
 - i) Mr. Amiri did not recall what time the appointment was scheduled for with Dr. Tedder, what time he arrived at Dr. Tedder's clinic, or how long the appointment took. The appointment time varied depending on the age of the machine and if there were any issues with it. The appointment could have taken an hour at Dr. Tedder's clinic.

- j) After completing his visit to Dr. Tedder's clinic, Mr. Amiri drove to Dr. Bond's veterinary clinic. The drive to Dr. Bond's clinic takes about 8 minutes in the absence of traffic.
- k) It was common for Mr. Amiri to stay in the car and work if he was early for an appointment.
- l) Mr. Amiri took a series of photos during his time on Salt Spring Island. It was his practice to take the photos at the end of a visit:
 - i. The time stamps on the photos show Mr. Amiri took photos at Dr. Tedder's clinic between 4:27 p.m. and 5:11 p.m., and Dr. Bond's clinic at 6:04 p.m. and 6:05 p.m.
 - ii. Mr. Amiri also took a photo of a cheque on his pant leg at 6:55 p.m. Mr. Amiri says he took the photo while waiting for a return ferry at the Fulford Harbour terminal.

[100] The evidence is that Mr. Amiri was a very meticulous and detailed oriented person. Consequently, I am satisfied that he would have timed his morning departure so as to ensure that he made it to his appointments on time that day, which required him to be on the 9:00 a.m. sailing from Tsawwassen to Swartz Bay.

[101] Plaintiff's counsel argues that Mr. Amiri was talking about the ferry from Tsawwassen to Swartz Bay, rather than Swartz Bay to Fulford Harbour, when he sent the 1:18 p.m. text to Dr. Bond. Counsel says the words "be there in a couple hrs" support this conclusion. I disagree, for the following reasons.

[102] There is no evidence of a "1:05" ferry from Tsawwassen to Swartz Bay on the date in question. As such, it is likely that Mr. Amiri was referring to a 1:00 p.m. ferry that left late. Based on the ferry schedules, this means that Mr. Amiri could have been referring to the 1:00 p.m. ferry from Tsawwassen to Swartz Bay, or the 1:00

p.m. ferry from Swartz Bay to Fulford Harbour. However, it is more probable that this reference was to the 1:00 p.m. ferry from Scwartz Bay, given the below.

[103] Mr. Amiri had two appointments scheduled on September 27 – the first was with Dr. Tedder, and the second appointment was with Dr. Bond. The ferry schedule from Swartz Bay to Fulford Harbour indicates a total travel time of 35 minutes, meaning that the ferry (if it left at 1:00 p.m. from Swartz Bay) would arrive at Fulford Harbour at 1:40 p.m. Since Mr. Amiri had to attend at Dr. Tedder’s clinic first, it would make sense for him to tell Dr. Bond that he would arrive at his clinic in a “couple of hours”. While I accept that a “couple of hours” was an inaccurate time estimate, insofar as Mr. Amiri did not arrive at Dr. Bond’s clinic until around 5:30 p.m., the most reasonable interpretation of the evidence is that he was on the ferry from Swartz Bay to Fulford Harbour when he sent that text

[104] The ferry schedule for the ferry from Tsawwassen to Swartz Bay, indicates a total sailing time of 1 hour and 35 minutes. This would mean that if the Tsawwassen ferry left at 1:05 p.m., he would not arrive at Swartz Bay until 2:40 p.m. Mr. Amiri would then have had to disembark at Swartz Bay and turn around for the Fulford Harbour ferry, which would take him until approximately 3:05 p.m. This means that he would miss the Fulford Harbour ferry, since that ferry was scheduled to depart at 3:00 p.m. Even if Mr. Amiri was able to disembark and turn around in as little as 10-15 minutes, it is highly unlikely that he would have been able to catch the Fulford Harbour ferry as he would have only had a few minutes before the ferry was scheduled to leave.

[105] I also reject the notion that Mr. Amiri took the so called “milk run ferry” from Tsawwassen to Salt Spring Island. There is insufficient evidence to support this proposition.

[106] Rather, I find on a balance of probability that Mr. Amiri was on the 1:00 p.m. ferry from Swartz Bay to Fulford Harbour when he sent the text to Dr. Bond. On that

basis, I find that it was not possible for Mr. Amiri to have attended the FMS office and sign the Loan documents on the morning of September 27.

[107] Mr. Amiri testified that he took the 9:00 a.m. ferry from Tsawwassen to Swartz Bay and that, in order to be sure of catching that ferry, he would have to have arrived at the Tsawwassen terminal about an hour before the sailing. However, Mr. Amiri also testified that driving from the FMS office on Pemberton Avenue to Tsawwassen – which involved driving over the Lions Gate Bridge rather than the Second Narrows Bridge – would have added about 25 extra minutes to the travel time. If Mr. Amiri was at the office at all that morning, he would have had to leave the office sometime around 6:30 a.m. to catch the 9:00 a.m. ferry. There is no evidence that he met Mr. Mohajer around that time.

[108] I find that Mr. Amiri's evidence regarding his travel route on September 27 was logical and consistent with the preponderance of probability. By Mr. Mohajer's own evidence, Mr. Amiri was a meticulous man, and it is highly unlikely that he would have taken a chance at missing the ferry connections for his trip to Salt Spring Island. Rather, it is more likely that he would have arrived earlier, rather than later, to ensure that he caught all of the connecting ferries.

[109] Mr. Amiri admitted during his testimony that he does not remember the exact timing and route he took on September 27, 2018. For example, Mr. Amiri was unable to independently remember which ferry he took from Tsawwassen, or details of his visits with Dr. Tedder or Dr. Bond. Rather than detract from his credibility, I find Mr. Amiri's admissions about what he can no longer remember, as further support that he was telling the truth at trial.

[110] Even though Mr. Amiri did not remember details of the specific day in question, I further infer from the evidence that he likely left his home early in order to make the 9:00 a.m. sailing from the Tsawwassen Ferry Terminal to Swartz Bay, that he transferred ferries on Vancouver Island, and that he took a ferry from Swartz Bay to Fulford Harbour which left at 1:05 p.m.

[111] Plaintiff's counsel argues that the Court cannot rely on Mr. Amiri's testimony that he took the 9:00 a.m. ferry because this statement was based on a 2025 – rather than 2018 – version of the ferry schedule. However, there is no 2018 schedule in evidence before the Court. In the absence of a schedule from 2018, and without any evidence to suggest that the ferry schedule in 2018 was markedly different than what has been entered into evidence, I accept that the ferry sailings during the period in question are as depicted in the documents entered into evidence.

[112] The evidence leads me to conclude that Mr. Amiri took the 9:00 a.m. ferry from Tsawwassen Ferry Terminal, and that he could not have gone into the office to sign the Loan Documents on the morning of September 27, 2018.

D. Expert opinion evidence

[113] I now turn to the expert opinion evidence, which I find also supports Mr. Amiri's version of events.

[114] Nathalie Bureau and Brenda Petty were both qualified as experts in forensic document examination and handwriting identification. They were called to testify on behalf of Mr. Beigi and Mr. Amiri, respectively.

[115] Ms. Bureau prepared two reports, which are dated November 27, 2024 ("First Bureau Report") and December 26, 2024 ("Second Bureau Report"). The first report serves as Ms. Bureau's main opinion in this case; her second report is a critique of the expert opinion of Mr. Amiri's expert, as set out in the First Petty Report.

[116] Ms. Petty submitted three expert reports as follows: the first report is dated December 1, 2024 (the "First Petty Report"), and is based on an examination of a coloured copy of the Beigi Copy of the Loan Agreement; the second report is dated December 18, 2024 (the "Second Petty Report"), and is based on her examination of the original of the same document; and her third report is dated January 9, 2025 ("Third Petty Report") and serves as a critique of the First Bureau Report.

[117] Both experts were given the Beigi Copy of the Loan Agreement (the “questioned” document), as well as samples of Mr. Amiri’s handwriting (the “known samples”).

[118] Based on her examination, Ms. Bureau concluded that the signatures and initials purported to be authored by Mr. Amiri are genuine, meaning that they were written by the same person who wrote the known samples that she examined. According to Ms. Bureau, the comparison of the questioned and known documents revealed various similarities, including with method of construction, pen pressure, relative proportions of the letters, and the placement of the “dot” between the two “A’s”. Though she found some variations in the writing, she concluded that these were natural and within the normal variance expected.

[119] Ms. Petty came to the opposite opinion. According to her, the impugned signatures and initials that appear on the Loan Agreement documents were not genuine, and were “written by a different hand than the known comparison signatures of Abouzar Amiri”.⁵ In support of her opinion, Ms. Petty noted “significant” differences in the writing habits between the questioned document and the known signatures and initials, including what she considered to be the inconsistent application of a cross-stroke. She also noted anomalies on the document itself, with misaligned text suggesting that the document had been altered. However, Ms. Petty opined that some of the irregularities she noted could be due to scanning errors, and as such, she requested the opportunity to review the original loan documents. These were produced to her, and formed the basis of her second report.

[120] In the Second Petty Report, Ms. Petty expanded upon the “irregularities and inconsistencies” which she stated she had found in the copy of the Beigi Loan Documents reviewed in her first report. Ms. Petty clarified that some of the irregularities noted in her first examination were caused by scanner errors. Nevertheless, she detected numerous additional irregularities which “gave greater

⁵ First Petty Report at p. 10, para. 25.

and more accurate evidence”, and supported her opinion that a different hand had made the signatures and initials on the Loan Documents, as compared to the known signatures.⁶

[121] Ms. Petty, who also had expertise in printers, opined that at least two different types of printers had been used on the documents, a practice which she found “highly irregular”.⁷

[122] Ms. Petty noted the following additional anomalies which she believes point “strongly” to the documents having been altered: ⁸

- a) misalignment of the left margins;
- b) the misalignments appeared on the signature pages;
- c) the signature lines were printed by a different printer than the “keyed” signatures;
- d) misalignment in the signatures compared to some type print;
- e) words that appear to be squeezed together;
- f) the signatures are bolded on one page and not on the other;
- g) some “lightening” and “erasures” of some keyed text;
- h) the presence of pencil marks on the first page of the Loan Documents, where the initials of Mr. Amiri are found, suggestive of “trace marks” or “simulation”; and
- i) the use of different writing instruments on different pages of the document.

⁶ Second Petty Report at p. 9, para. 29.

⁷ Second Petty Report at p. 4, para. 16.

⁸ Second Petty Report at pp. 5-7.

[123] At page 7, para. 25 of the Second Petty Report, Ms. Petty noted that upon examination of the original document, she could see that the first “A” in the initials in the question documents was formed similarly to that in the known documents. However, this did not change her opinion that a different person wrote the initials, because she was able to see some further variances in the initials that supported her opinion that they were made from a different hand.

[124] Ms. Petty concluded at para. 30 of her Second Petty Report, that the questioned initials and signatures of Mr. Amiri in the Loan Agreement were “not genuine” and were “written by a different hand than the known comparison signatures” of Mr. Amiri. In particular, she found, “significant differences...in pressure and common habits were identified that are found when signatures are being simulated”. Ms. Petty went on to opine as follows:⁹

- D) It is also my professional opinion that with the alignment issues, two different printers used in the printing of the documents and three of the documents containing evidence of two different printers on the same page, evidence of copy/paste as well as editing software on the Q-PG1 through Q-PG5 documents, that the documents have been re-created or edited or altered and manipulated. When this evidence is coupled with the irregularities found in the writing of the signatures of Abouzar Amiri (even though the signatures are wet ink), weight is added that the documents are not genuine but created documents.

[125] The central points of disagreement between the two experts are: (1) whether the differences in the handwriting between the two sets of documents are natural variations or significant anomalies indicative of forgery; (2) whether there exists evidence of cut-and-paste of certain portions of the document, particularly around the signature lines; and (3) whether the impugned document was printed using the same printer or different printers. To this latter point, Ms. Bureau admitted at trial that she is not a printer expert and would not be able to comment on this aspect of Ms. Petty’s opinion. However, I have not placed weight on this aspect of Ms. Petty’s opinion regarding the printer anomalies, as it was not put directly to Mr. Mohajer.

⁹ Second Petty Report at p. 9, para. 30(D).

[126] Pursuant to the rule in *Browne v. Dunn*, if counsel intends to impeach a witness's credibility using extrinsic evidence, they must give the witness notice and provide them with an opportunity to explain the apparent contradiction: *R. v. Drygden*, 2013 BCCA 253. However, the rule in *Browne v. Dunn* is not "absolute": *R. v. Palmer*, [1980] 1 S.C.R. 759 at 781-782, 1979 CanLII 8.

[127] In *Palmer* at 781, the Court agreed with the following proposition from the Court of Appeal for British Columbia: "In my opinion the effect to be given to the absence or brevity of cross-examination depends upon the circumstances of each case. There can be no general or absolute rule. It is a matter of weight to be decided by the tribunal of fact...".

[128] Although Mr. Mohajer was asked about printing the document, this was in the context of building a timeline for the morning of September 27, rather than asking him to explain why or how the documents may appear to have been printed by multiple different printers (as opined on by Ms. Petty). Trial fairness requires that such a significant point should have been put to him directly, if counsel wished to rely on it. Thus, out of concerns of trial fairness, I have placed no weight on Ms. Petty's evidence regarding the use of multiple printers to print the copies of the Loan Agreement.

[129] Ms. Bureau's critique of Ms. Petty's Report can be summarized into three main concerns: (1) editing concerns such as "missing headings", incorrect numbering of a paragraph, poor organization of the report, and use of the words "red flag", which reveal a lack of professionalism on the part of Ms. Petty; (2) Ms. Petty's failure to comment on writing speed, which when considered with similar formations and writing characteristics, is an indicator of genuine writing; (3) Ms. Petty's overemphasis on differences rather than the similarities between the documents.

[130] The first set of concerns raised by Ms. Bureau are more argument than opinion, and I have placed little weight on them.

[131] The second concern relating to writing speed is not applicable, as Ms. Petty did indeed address it in her Second Petty Report.

[132] The third concern relating to Ms. Petty's alleged overemphasis on differences rather than similarities between the impugned writings and known samples, is not valid. In her Third Petty Report, Ms. Petty addresses this concern directly. Ms. Petty disagrees with Ms. Bureau's heavy reliance on the presence of similarities between the question documents and the known samples. According to Ms. Petty, the presence of numerous similarities does not mean that a document has not been altered or manipulated. Rather, she notes that "all good simulations have similarities", and points to documented historical forgeries which were considered to be "great" precisely because the imitations were so close that they were able to fool the experts. I agree with these remarks, and find that Ms. Bureau has placed undue reliance on the similarities between the documents.

[133] Ms. Petty's critique of the First Bureau Report relates to her failure to address concerns such as: the use of different printers; the presence of "squeezed" words and left margin misalignment; missing or broken lines; "cut/paste" misalignments; and the obvious pencil markings under the initials which Ms. Bureau simply dismissed as "doodles". Ms. Petty also criticizes Ms. Bureau's methodology, noting that in forensic document examination, "like is compared to like", noting that Ms. Bureau does not appear to do that when comparing the printed name with the initials.

[134] Ms. Petty also disagrees with Ms. Bureau's dismissal of the differences in the writing patterns as simply "natural variation". I find Ms. Petty's opinion on this point compelling, and conclude that there are far too many anomalies in the writing patterns to dismiss them as simply being due to "natural variation". Further, I find that Ms. Bureau has glossed over many of the differences as simply being due to "natural variations", without adequately considering the very real concerns raised by Ms. Petty. Rather than addressing the presence of pencil markings or misalignments, she dismisses them as "doodles" and "typos".

[135] It is clear from Ms. Bureau's reports as well as her trial testimony, that she approached her task from the perspective that the impugned signatures and initials were genuine, rather than approaching the documents neutrally with a view to determining their authenticity. At trial, she was defensive, argumentative and dismissive of genuine concerns that arise when the documents are compared.

[136] To that end, I find Ms. Bureau's opinion unreliable and have placed little weight on it.

[137] My view of Ms. Petty's opinion is much more positive. I found Ms. Petty to be a compelling witness. She displayed a sound knowledge of the subject matter which informed her forensic analysis of the documents. Ms. Petty was not defensive and readily acknowledged when she had perceived errors in the scanned documents which were not present in the originals.

[138] Thus, where the opinion of Ms. Petty and Ms. Bureau differs, I have placed greater weight on Ms. Petty's opinion as I found it to be more reliable.

[139] After considering the expert opinion evidence in this case, I conclude that it supports a finding that Mr. Amiri's signatures and initials on the Loan Agreement were forged.

[140] Plaintiff's Counsel argues that Ms. Petty could not have properly formed an opinion on the authenticity of the initials in the Loan Agreement, as she only had access to two examples of initials in the known documents with which to compare the initials in the questioned document. First, I note that both experts had the same number of samples for comparison. Second, Ms. Petty stated that her preference was to seek as close to 20 known examples as possible, but given the "significant differences" she observed, the documents she had were "enough" to form a conclusion. I accept her evidence on this point.

[141] Before leaving this section, I wish to address an issue that was raised by both parties regarding the failure of the other party to examine the Mohajer Copy of the

Loan Agreement. The document was produced by Mr. Mohajer only a few weeks before trial. Neither party had their handwriting expert analyze this document, and both say that it was the responsibility of the other party to do so.

[142] As the party seeking to rely on the Loan Agreement, the Plaintiff bears the burden of showing that the agreement is binding and enforceable: *Thomson v. A.R. Thomson Group*, 2024 BCSC 2303 at para. 300.

[143] However, where a party alleges forgery, the onus shifts and it is the alleging party that must meet the evidentiary burden to support their allegation of forgery: *Wong v. Jang*, 2015 BCSC 1540 at para. 51.

[144] Here, both Mr. Beigi and Mr. Amiri brought expert evidence to support their respective positions. However, their experts restricted their analysis to the Beigi Copy of the Loan Agreement. That is because the Mohajer Copy of the Loan Agreement was not produced until only a few weeks before the trial.

[145] The Plaintiff argues that Mr. Amiri's failure to challenge the authenticity of the Mohajer Copy, and to have it analyzed by the expert, evidences his tacit acknowledgement that his signature and initials on this document are authentic. Since both documents were signed at the same time, the Plaintiff submits that even if the Beigi Copy is found to be a forgery, Mr. Amiri is bound by the indemnity agreement contained in the Mohajer Copy. The Plaintiff further argues that if Mr. Amiri wished to challenge his signature and initials on the Mohajer Copy as a forgery, then it was incumbent on him to have this document analyzed. I disagree.

[146] First, the evidentiary burden to prove a forgery can be met with evidence other than from a handwriting analyst. In this case, Mr. Amiri has relied on the evidence of the parties' movements on the date in question as well as other evidence, to support his position that the Mohajer Copy was also a forgery, as it was purported to have been signed at the same time as the Beigi Copy. To that end, it was not necessary for Mr. Amiri to have the Mohajer Copy of the Loan Agreement

analyzed by his handwriting expert to show that it was a forgery, as the evidence shows that Mr. Amiri could not have been present to sign this document.

[147] Further, Mr. Amiri has denied that he signed the Loan Agreement. This denial applies to both the Beigi Copy and the Mohajer Copy, since these were created at the same time. Mr. Mohajer's evidence was that both documents were signed by Mr. Amiri on September 27 shortly after 8:21 a.m. There is no suggestion whatsoever that the Mohajer Copy was signed at a different time. Based on the movements of the parties that day, I have found that Mr. Amiri could not have been present in the meeting to sign either the Beigi Copy or the Mohajer Copy. Consequently, if he could not have signed the Mohajer Copy, his signature on this document must have been a forgery.

[148] Finally, the timing of the production of the Mohajer Copy undermines the suggestion that Mr. Amiri's decision to not have it analyzed was intentional because Mr. Amiri knew his signature and initials on it were authentic. The disclosure of the Mohajer Copy was not within Mr. Amiri's control. When the experts were initially engaged by the parties, there was only one known version of the Loan Agreement – that version was the Beigi Copy. Both parties had that document examined and prepared their expert reports accordingly. The Mohajer Copy of the Loan Agreement was produced by Mr. Mohajer a few weeks before the trial. At the time, Mr. Mohajer and the Plaintiff were aware that Mr. Amiri had denied signing the Beigi Copy of the Loan Agreement. The decision to not have the Mohajer Copy analyzed was made by all parties, and not just the Plaintiff. In my view, it was a strategic decision made out of considerations of trial delay and costs, rather than evidencing a concession of authenticity (or lack thereof) by one party of the other. In that regard, I find that none of the parties wanted to examine the document at that late stage given that this would most definitely have resulted in an adjournment of the trial.

[149] In summary, I am satisfied that there was no need for Mr. Amiri to have the Mohajer Copy examined by his expert in order to advance his argument that the Loan Agreement was a forgery, as there is other evidence to support his allegation

of forgery. To that end, I find that Mr. Amiri has met his burden of showing that the Mohajer Copy was a forgery.

E. Conclusion

[150] After considering the evidence as a whole, and for the reasons set out above, I conclude that the Plaintiff has failed to show on a balance of probabilities, that the Loan Agreement is binding and enforceable against Mr. Amiri. In particular, I find that Mr. Amiri has met the burden of establishing that his signature on the Loan Agreement was forged by Mr. Mohajer.

[151] Consequently, Mr. Amiri is not liable under the indemnity.

[152] In coming to this conclusion, I am not suggesting that Mr. Beigi and Mr. Mohajer colluded in forging Mr. Amiri's signature. Rather, I find that Mr. Mohajer took these steps on his own.

[153] Nor am I suggesting that there was necessarily something nefarious in Mr. Mohajer's actions. It is possible that Mr. Mohajer forged Mr. Amiri's signature out of convenience, because: (a) Mr. Amiri was not going to be around to sign the Loan Agreement; (b) Mr. Mohajer did not want to wait for Mr. Amiri to return from Salt Spring Island, as this would mean a delay in getting the funds from Mr. Beigi; (c) Mr. Mohajer did not think that Mr. Amiri would mind based on their relationship and how the business had been managed thus far; and (d) at the time, the Plaintiff, Mr. Mohajer, and Mr. Amiri were all getting along, so Mr. Mohajer had no reason to believe that anything would go wrong with the Beigi Loan.

[154] Regardless of Mr. Mohajer's intentions, his actions were wrong and the outcome remains the same: the signatures and initials of Mr. Amiri which were placed on the Loan Agreement by Mr. Mohajer's hand, are invalid.

[155] As the Loan Agreement was never signed by Mr. Amiri, it cannot bind Mr. Amiri to the indemnity.

IV. ORDER

[156] Mr. Amiri is not liable under the indemnity contained in the Loan Agreement. The action against Mr. Amiri is therefore dismissed.

[157] The indemnity clause in the Loan Agreement is binding and enforceable against Mr. Mohajer. Mr. Mohajer is therefore personally liable under the Loan Agreement to indemnify the Plaintiff for the judgment rendered against FMS by order of the Court dated January 17, 2024.

[158] Judgment is granted to the Plaintiff against Payman Mohajer for the amount of indebtedness on that date that is 14 days after the order of the Court dated January 17, 2024, accounting for any payments made by FMS Medical Systems Ltd. on the Judgment.

[159] If the parties are unable to agree on costs, they may seek leave of the Court to address this issue.

“Shergill J.”