CITATION: Goyal v. Asghar, 2025 ONSC 5195
COURT FILE NO.: CV-18-595214
DATE: 20251010

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
INDER GOYAL Plaintiff	*Gregory M. Sidlofsky* and *Esther Mendelsohn*, for the Plaintiff
– and –	
NOREEN ASGHAR, MIRZA CHAUDHARY, JACK FRYMER, 2425779 ONTARIO INC. and 2623559 ONTARIO INC. Defendants	*Jonathan Rosenstein*, for the Defendants Noreen Asghar and Mirza Chaudhary *Jake Newton*, for the Defendants Wagdy Bishay and 2623559 Ontario Inc.

HEARD at Toronto: January 6-17, March 24, 2025

PARGHI J.

REASONS FOR JUDGMENT

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Introduction

[1] This dispute arises from a gas station development venture gone wrong. The Plaintiff, Inder Goyal, and the Defendant Mirza Chaudhary, both real estate brokers at the time, agreed to develop a gas station located on a vacant property in Thorndale, near London, Ontario (the "Property"). In March 2015, Mr. Goyal acquired a 50% interest in 2425779 Ontario Inc. ("242"), the company

that owned the Property. He paid $350,000 of the purchase price up front and was to pay an additional $150,000 when Mr. Chaudhary satisfied certain obligations relating to the development project. The remaining 50% interest in 242 was purchased by Mr. Chaudhary's wife, the Defendant Noreen Asghar, for $50. In addition to becoming a 50% shareholder, Mr. Goyal became president and a director of 242. Ms. Asghar was the only other director of the corporation.

[2] The relationship between Mr. Goyal and Mr. Chaudhary started to deteriorate within months. Mr. Goyal felt that Mr. Chaudhary was not updating him on the status of the project and was not carrying out his development-related obligations within the timeline he had promised. Mr. Chaudhary felt that Mr. Goyal needed "babysitting" and was asking for information he did not need. In time, Mr. Goyal expressed the wish to walk away from the project. He and Mr. Chaudhary were not able to agree to a price at which one of them could buy the other out or sell the Property to a third party.

[3] On February 26, 2018, Ms. Asghar signed an agreement of purchase and sale that purported to sell the Property on behalf of 242 to the Defendant 2623559 Ontario Inc. ("262"), owned by the Defendant Wagdy Bishay. Mr. Goyal states that Ms. Asghar sold the Property without authority and fraudulently.

[4] Mr. Goyal claims that the conduct of Mr. Chaudhary and Ms. Asghar toward him was oppressive under section 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA") and that the Defendants perpetrated a fraud on him through the sale of the Property to 262. Mr. Goyal originally sought a rescission of the sale of the Property. In November 2020, 262 amended its pleading to consent to the rescission, and the Property was transferred back to 242.

[5] Mr. Goyal now seeks a "shotgun" buyout of 242 or one in which the Property, 242's only asset, is appraised. In the alternative, he seeks a wind-up of 242, to be paid for by Mr. Chaudhary and Ms. Asghar. Mr. Goyal also seeks damages at large of $250,000, on a joint and several basis, as against all the Defendants for fraud, and as against Mr. Chaudhary and Ms. Asghar for oppression. In addition, he seeks punitive damages of $434,200 from Mr. Chaudhary and Ms. Asghar, representing what he says is 20% of the value of the Property as of February 2018, when it was sold to 262.

[6] Mr. Chaudhary and Ms. Asghar deny Mr. Goyal's claims of oppression and assert that the sale to 262 was valid. They counterclaim for breach of contract on the basis that Mr. Goyal improperly refused to pay the $150,000 he owed when they completed their obligations under the 2015 agreements. They seek an order winding up 242 by way of shotgun sale or on the open market.

[7] Ms. Asghar advances a counterclaim for oppression arising from a certificate of pending litigation ("CPL") Mr. Goyal obtained on the Property in April 2018. She asserts that the CPL was obtained to force Mr. Chaudhary to give Mr. Goyal more than his fair share of equity in the Property, and that this was oppressive. She further states that the CPL and this litigation have deprived 242 of the opportunity to develop the Property, resulting in damages to 242 and to her as a shareholder. According to her Amended Statement of Defence and Counterclaim, Ms. Asghar seeks damages "in excess of $500,000."

[8] 262 and Mr. Bishay plead that they did not know about or assist in, nor were they willfully blind to, any fraud on the part of Mr. Chaudhary and Ms. Asghar in the sale of the Property. They say 262 was an innocent purchaser of the Property for value that reasonably relied on the apparent authority of Ms. Asghar to bind 242 in the sale. As such, under the indoor management rule in section 19 of the OBCA, 242 is not entitled to claim that the sale of the Property was unauthorized. Mr. Bishay further states that the action against him personally is statute-barred under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.

[9] 262 counterclaims against Mr. Goyal, seeking damages based on section 103(4) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, which provides that "[a] party who registers" a CPL "without a reasonable claim to an interest in the land is liable for any damages sustained by any person as a result of its registration." 262 states that Mr. Goyal obtained the CPL without a reasonable claim to an interest in land, and that the CPL left 262 unable to refinance or sell the Property. It seeks damages of $1,490,000, less Mr. Goyal's carrying costs on the property, representing the difference between the $1,510,000 purchase price to 262, and the $3,000,000 at which Mr. Goyal estimates the Property's value today. In the alternative, 262 asks me to quantify its damages based on a determination of the point in time at which 262 would have sold the Property, and the value of the Property at that time. 262's pleading further seeks punitive damages of $100,000, although this claim was not advanced at trial.

[10] For the reasons below, I grant the claims of oppression and fraud against Mr. Chaudhary and Ms. Asghar. I do not find Mr. Bishay or 262 liable for fraud. I dismiss Mr. Chaudhary's and Ms. Asghar's counterclaims against Mr. Goyal for breach of contract and oppression. I dismiss 262's counterclaim against Mr. Goyal in respect of the CPL.

[11] By way of remedy, I grant a declaration that Mr. Chaudhary and Ms. Asghar acted in a manner that was oppressive and unfairly prejudicial to Mr. Goyal and that unfairly disregarded his interests. I order a shotgun buy-sell based on an independent appraisal of the Property and with Mr. Goyal being able to elect whether to sell his interest in the Property to Ms. Asghar for 50% of the appraised fair market value of the Property, or to buy her 50% interest at that price. I also order Mr. Chaudhary and Ms. Asghar to pay damages at large to Mr. Goyal of $200,000, on a joint and several basis. I make no award of punitive damages.

Factual Background

Mr. Goyal's investment in the Property and the March 2015 agreements

[12] Mr. Chaudhary, who is also a property developer, gave evidence that he became aware of the Property in late 2013 or early 2014. In early 2014, the Property was subject to an agreement of purchase and sale between its then-owner and a prospective purchaser. Mr. Chaudhary negotiated an assignment of the pending agreement of purchase and sale to his newly formed corporation, 242. The total acquisition cost for the Property by 242 was $535,000, of which $347,750 was financed through mortgages granted by 242 on title to the Property. Mr. Chaudhary asked a business associate named Balwant Bhangu to hold the shares of 242 as his nominee shareholder.

[13] Mr. Goyal and Mr. Chaudhary were introduced by a mutual contact when Mr. Goyal was looking for an investment opportunity. They met together. Mr. Goyal testified that Mr. Chaudhary held himself out as an expert in gas station development. Mr. Chaudhary testified that he has developed many gas stations in the past decade and that he knew Mr. Goyal was not experienced in developing gas stations and was reliant on his expertise.

[14] Mr. Chaudhary told Mr. Goyal about the Property, describing it as a site for gas station development and stating that he could obtain development approvals for the project within a few months. Mr. Goyal testified that Mr. Chaudhary told him that after development, the Property could be sold for $1,500,000-$1,700,000, netting Mr. Goyal a return of approximately $250,000. Alternatively, it could be constructed and then sold as a turn-key business at an even greater profit. Mr. Chaudhary indicated that a site plan would have to be negotiated with the municipality first, and then they would obtain building permits and build the gas station. A lease with Tim Hortons was anticipated, as was an "Esso on the Run" branded convenience store. Mr. Chaudhary also said that he would obtain a fuel supply agreement.

[15] On March 10, 2015, Mr. Chaudhary provided Mr. Goyal with a draft site plan that showed a car wash and multiple exits for a drive-through. He also provided a letter of interest dated June 20, 2014, from The TDL Group Corp., the franchisor of Tim Hortons in Canada (unless it is necessary to distinguish, I will refer to TDL as "Tim Hortons").

[16] Mr. Goyal decided to go forward with the purchase of the Property. Mr. Chaudhary took him to the office of his lawyer, Jack Frymer, who was previously a defendant in this action.

[17] During the meeting with Mr. Frymer, Mr. Goyal learned that he would not be buying the Property directly, but would be acquiring shares in 242, the company that owned the Property. He would be purchasing 50% of the shares of 242 from Mr. Bhangu for a total purchase price of $500,000, to be paid in two installments. The shares would give him a 50% interest in 242; the remaining 50% would be acquired from Mr. Bhangu by Mr. Chaudhary's wife, Ms. Asghar, for $50.

[18] It is uncontested that Mr. Chaudhary, through his nominee, Mr. Bhangu, had a pre-existing interest in the Property and, in fact, owed $350,000 in outstanding mortgage payments from when he first purchased it. It is uncontested that Mr. Chaudhary did not disclose his existing interest in the Property to Mr. Goyal.

[19] Mr. Bhangu held his interest in 242 as Mr. Chaudhary's nominee. Mr. Chaudhary acknowledged this in his testimony, stating that he mostly uses nominees in his deals. When asked whether he told Mr. Goyal that Mr. Bhangu was his nominee, Mr. Chaudhary stated that Mr. Goyal was "told what was on the" share purchase agreement – that is, that Mr. Bhangu controlled the shares of 242. I find that Mr. Chaudhary did not disclose to Mr. Goyal that Mr. Bhangu was his nominee, rather than an arms-length owner and then seller of the shares. As such, Mr. Goyal had no way of knowing that Mr. Chaudhary was in fact "calling the shots" on behalf of Mr. Bhangu.

[20] Also unbeknownst to Mr. Goyal was that Mr. Frymer, the lawyer, had a longstanding relationship with Mr. Chaudhary. Mr. Frymer had incorporated 242. He had acted on the initial

purchase of the Property, taking instructions from Mr. Chaudhary to do so. His evidence was that Mr. Chaudhary sent him 10 to 15 referrals a year. Mr. Chaudhary did not disclose to Mr. Goyal his relationship with Mr. Frymer. Nor did Mr. Frymer disclose that relationship to Mr. Goyal.

[21] Prior to purchasing shares in 242, Mr. Goyal asked Mr. Chaudhary to explain to him how 242 had come to own the Property. Mr. Frymer provided a written explanation to Mr. Goyal. The explanation did not indicate that Mr. Bhangu was holding his shares in 242 as Mr. Chaudhary's nominee. It did not explain Mr. Chaudhary's role in the purchase of the Property. It did not explain Mr. Chaudhary's role in the incorporation of 242.

[22] Mr. Goyal was emphatic that, had he known that Mr. Bhangu was Mr. Chaudhary's nominee, or that Mr. Frymer and Mr. Chaudhary were so closely connected, he would have sought independent legal advice before proceeding with the transaction, to make sure his interests were protected.

[23] Mr. Frymer acted for all the parties in drafting the two agreements whereby Mr. Goyal would purchase Mr. Bhangu's shares: an "agreement" dated March 15, 2015 (the "March Agreement"), and the share purchase agreement dated March 16, 2015 (the "SPA"). The agreements provided that various steps would be taken to develop the Property. Although the agreements did not identify by name who would carry out those steps and be responsible for moving the development project through its various stages, it is common ground between the parties that it would be Mr. Chaudhary who did so. This was consistent with the fact that Mr. Chaudhary was experienced in gas station development and Mr. Goyal was not.

[24] The SPA was entered into by Mr. Bhangu, Mr. Goyal, Ms. Asghar, and 242. It provided that Mr. Goyal would pay the purchase price in two installments. The first, of $350,000, would be paid on closing to Mr. Frymer in trust. The second, of $150,000, would be paid to Mr. Bhangu "[f]orthwith after the registration of a satisfactory (to Goyal) Site Plan Agreement on the title of the Property." The SPA contained a warranty from Mr. Bhangu that he controlled the shares. Nothing in the SPA suggested that Mr. Bhangu was anything other than an arms-length seller.

[25] The March Agreement was entered into by Mr. Goyal, Ms. Asghar, and 242. Although it was dated one day before the SPA, it was entered into at the request of Mr. Goyal because he wanted to address, in writing, certain issues that he felt were not addressed in the SPA. The March Agreement provided that Ms. Asghar would be responsible for all costs associated with negotiating, entering into, and registering a site plan agreement for the Property and for all costs related to environmental testing, reports, and remediation on the Property. In respect of Mr. Goyal's obligation to pay the second installment of $150,000, it provided as follows:

> It is acknowledged that, pursuant to the [SPA] … Goyal shall be providing the sum of $150,000 in accordance with the terms therein, upon the registration of a satisfactory Site Plan Agreement on the Property. The parties hereto agree that in addition to the requirement of a satisfactory (to Goyal) Site Plan Agreement being registered, there shall also be the requirement of the satisfactory completion of lease/sublease/supply agreement documentation between [242] and

> Tim Hortons, Esso as well as Esso On The Run … prior to the release of the aforementioned $150,000.

[26] Thus, the SPA and the March Agreement, read together, required four conditions to be satisfied before Mr. Goyal became responsible for paying the second installment of $150,000:

a. The registration of a site plan agreement, satisfactory to Mr. Goyal, on the Property;

b. Satisfactory completion of lease documentation with Tim Hortons;

c. Satisfactory completion of sublease documentation with Esso on the Run; and

d. Satisfactory completion of a fuel supply agreement with Esso.

[27] I will refer to these obligations collectively as "the Chaudhary/Asghar contractual obligations." It is common ground between the parties that Mr. Goyal was to pay the second installment once the Chaudhary/Asghar contractual obligations were carried out. As discussed below, whether the Chaudhary/Asghar contractual obligations were ever carried out is very much at issue.

[28] Mr. Goyal's evidence was that he understood that, by virtue of the Chaudhary/Asghar contractual obligations, Ms. Asghar, as nominee for Mr. Chaudhary, would be responsible for all the costs of the development of the Property, including any necessary environmental reports, and for getting the site plan approved and completing the required leases, subleases, and supply agreements with Tim Hortons, Esso On the Run and Esso. In exchange, she would receive 50% of the shares of 242 for the nominal price of $50. He believed this was a fair arrangement because Ms. Asghar (and Mr. Chaudhary) would be leveraging Mr. Chaudhary's expertise and contacts to take the various agreed-to steps to develop the Property.

[29] In addition to each being 50% owners of 242, Mr. Goyal and Ms. Asghar were also both directors of 242 and its only officers. Mr. Goyal was president and treasurer and Ms. Asghar was secretary. Mr. Goyal testified that it was important to him to be president and that he understood that that title would give him control over corporate decision making.

[30] Although Mr. Goyal was not aware of it at the time, Mr. Bhangu provided an authorization and direction in favour of Mr. Chaudhary, dated March 16, 2015, the same date of the SPA and the day after the March Agreement. It authorized Mr. Chaudhary to "do all acts and things" in relation to obtaining and registering the site plan agreement under the SPA, and to "collect all funds due to" Mr. Bhangu under the SPA. When asked at trial whether he provided the authorization and direction to Mr. Goyal, his evidence was that it was "none of [Mr. Goyal's] business." It was on the basis of the authorization and direction that Mr. Chaudhary would later assert that Mr. Goyal owed the second purchase price installment of $150,000 to him, rather than to Mr. Bhangu.

The breakdown of the relationship

[31] Mr. Goyal's testimony was that Mr. Chaudhary had said he would carry out the Chaudhary/Asghar contractual obligations in three to four months. However, by October 2015, six or seven months after the agreements were signed, Mr. Goyal had received no updates from Mr. Chaudhary on his progress towards carrying out the Chaudhary/Asghar contractual obligations. He therefore followed up with Mr. Chaudhary, seeking updates on the status of the development, including the required leases, subleases, and supply agreements. Mr. Goyal did not receive any substantive responses. He tried to speak with Mr. Chaudhary at his home and, in November 2015, tried to contact the architecture firm involved in the project to see if they could update him.

[32] It was clear from Mr. Chaudhary's evidence that he was not troubled that the leases were taking longer to sort out than he had told Mr. Goyal they would, and that he considered Mr. Goyal's inquiries to be somewhat pesky. He did not think Mr. Goyal required all the information he was seeking. Updating Mr. Goyal was "never [his] priority," and he did not have time to "babysit" Mr. Goyal.

[33] Mr. Goyal became increasingly frustrated and anxious because Mr. Chaudhary was not providing him with information, and there were what he viewed as lengthy delays. He therefore believed it would be best if they parted ways. On November 30, 2015, he offered to purchase the Property from Mr. Chaudhary, at Mr. Chaudhary's purchase price plus expenses.

[34] In response to Mr. Goyal, Mr. Chaudhary suggested that he had a potential purchaser for the land but provided no further information.

[35] Mr. Goyal emailed Mr. Chaudhary again, reiterating his offer and suggesting that he entered into the development project based on Mr. Chaudhary's promises to him.

[36] On December 28, 2015, Mr. Goyal emailed Mr. Chaudhary to say that if his offer was not acceptable, Mr. Chaudhary could provide a counter-offer. He said, "I feel I was trapped and sucked in to this deal with false fabricated promises." He expressed a wish to be "tension free."

[37] Mr. Chaudhary responded by inviting Mr. Goyal to buy out his interest, at a premium: "If you feel you are sucked in, then get your money with additional 50k and go out of it."

[38] Mr. Goyal in turn offered to buy Mr. Chaudhary out on the same terms, urging Mr. Chaudhary, "Let's settle it without any further complications."

[39] Mr. Chaudhary answered, "You are blaming of being sucked in, not me. I am in development business not in selling land business." He invited Mr. Goyal to come to the office to discuss the issue with him.

[40] In January 2017, Mr. Goyal listed the Property on MLS. He testified that he did so in order to determine the fair market value of the Property, so that he and Mr. Chaudhary could arrive at a fair price for a buyout. Mr. Chaudhary objected to the Property being listed on the open market. Mr. Goyal removed the listing.

[41] The site plan for the Property was subsequently approved. Mr. Goyal states, and Mr. Chaudhary does not dispute, that Mr. Chaudhary did not initially relay this news to Mr. Goyal. Instead, in late September 2017, Mr. Chaudhary invited Mr. Goyal to his office and offered to buy out Mr. Goyal's interest in 242 for $500,000. Only after Mr. Goyal did not respond immediately to the offer did Mr. Chaudhary tell him that the site plan had been approved – a fact that no doubt increased the Property's value. He had to tell Mr. Goyal about the site plan approval so that he could obtain Mr. Goyal's signature on a loan application. I infer that Mr. Chaudhary did not tell Mr. Goyal about the site plan approval before making the offer because he hoped to buy out Mr. Goyal's interest at a lower price.

[42] Mr. Goyal subsequently told Mr. Chaudhary that if Mr. Chaudhary's offer of $500,000 was "fair and genuine" then Mr. Chaudhary should find the same offer from Mr. Goyal to be acceptable too. He accordingly offered to buy out Mr. Chaudhary's interest in 242 for $500,000.

[43] Mr. Chaudhary disregarded the offer.

[44] On October 12, 2017, a notice to register the site plan agreement on title to the Property was prepared. It identified Ms. Asghar as having the authority to bind 242. The site plan agreement appended to the notice was signed by Mr. Chaudhary, who was identified in the signature line as having authority to bind 242. In fact, neither of them had authority to bind 242.

[45] The site plan agreement was signed and the notice to register it prepared without Mr. Goyal's knowledge or authorization. When Mr. Goyal learned these steps had been taken, he was concerned. In his view, neither Ms. Asghar nor Mr. Chaudhary had authority to bind 242. He told Mr. Chaudhary that Mr. Chaudhary's signature on behalf of 242 was "unlawful, extremely inappropriate and a misrepresentation," and that Ms. Asghar's statement that she had authority to bind 242 was incorrect. He stated, "You will appreciate that Noreen and I are equal partners in the corporation, and we are both entitled to participate equally in the operation and management of the corporation." Mr. Goyal asked to have the matter addressed "forthwith before moving any further with the proposed construction" on the Property.

[46] Mr. Chaudhary agreed to have Mr. Frymer change the notice to register the site plan agreement so that it would indicate that Mr. Goyal had authority to bind 242.

[47] Mr. Chaudhary acknowledged at trial that Mr. Goyal was upset that someone other than him had signed corporate documents on behalf of 242. He testified that he told Mr. Goyal that, in the future, only Mr. Goyal would sign for the company in "normal circumstances." It is not clear what he meant by "normal circumstances." Mr. Goyal was not asked in cross-examination whether Mr. Chaudhary used that phrase with him. Mr. Goyal has not said that Mr. Chaudhary did. I am of the view that Mr. Chaudhary did not use this significant qualifier in his discussion with Mr. Goyal. Mr. Goyal was unequivocal in his evidence that he believed he had the right to make these types of decisions on behalf of 242 as president, and that Ms. Asghar did not have this authority, at least on her own. He was emphatic that he raised his concerns with Mr. Chaudhary about Ms. Asghar purporting to act on behalf of 242. In my view, if indeed Mr. Chaudhary had told Mr. Goyal that Mr. Goyal would sign for the company only in "normal circumstances" and not in all circumstances, Mr. Goyal would have rejected that suggestion outright and unambiguously.

[48] When the dispute arose over to the notice to register the site plan agreement, Mr. Goyal proposed to Mr. Chaudhary that the parties enter into a shareholders' agreement to clarify their respective roles and responsibilities with respect to 242 and to establish a mechanism for buying out one another or selling the Property to a third party. Mr. Goyal's testimony was that he did not wish to take any further steps to develop the Property with Mr. Chaudhary, including signing a $2,500,000 construction loan, unless Mr. Chaudhary signed such an agreement.

[49] In response, Mr. Chaudhary invited Mr. Goyal to have the shareholders' agreement prepared and said that he would "look into it."

[50] Mr. Goyal retained a lawyer and paid to have the lawyer prepare a draft shareholders' agreement. On November 14, 2017, he sent the draft agreement to Mr. Chaudhary.

[51] Mr. Chaudhary did not respond. He testified that he did not intend to sign any shareholders agreement. He simply told Mr. Goyal he would entertain the idea in order to get Mr. Goyal "off [his] back" and have Mr. Goyal "stop bugging" him.

[52] On December 11, 2017, 242's architects asked Mr. Goyal to pay $15,000 "as a part of site plan work." Mr. Goyal stated that site plan work was to be funded by Mr. Chaudhary, who responded that the fees were related to building permit costs and were to be split between them.

[53] Mr. Goyal responded that he had entered into a partnership with Mr. Chaudhary "in good faith," that Mr. Chaudhary "promised that he will sell [the Property] in Six-eight months and will get us good profit," and that it had now been "over two years" during which Mr. Chaudhary had "used" Mr. Goyal's money "all this while for free."

[54] Mr. Chaudhary responded, "You are a sick person. I regret making this deal with you."

[55] On January 19, 2018, Mr. Goyal asked Mr. Chaudhary about the status of the Tim Hortons lease, asking for a copy of it if it had been signed, and, if it had not been signed, for an update on its status and likely timing. He asked if there was a potential operator for the gas station or convenience store, and for a copy of any associated agreement. He asked if the car wash would be run by the gas station operator or a separate operator, and for a copy of any agreement. He also requested an update on "[a]ny other development that I should be kept in [the] loop about."

[56] Mr. Chaudhary responded: "This email shows the level of understanding you have about the Gas Station business. I am feeling stupid that I am making money for the person like you. What a misread!!!!! Anyway Tim Horton lease is in process. You will be fully responsible if I loose [sic] Esso or Tim because of the delay because you are not paying your portion of the bills."

[57] Mr. Goyal responded with an expletive and called Mr. Chaudhary a "fraudster" and a "cheat" engaged in "[u]nethical and unfair fraudulent and GREEDY behaviour" and doing "anything to make a buck." He said that once Mr. Chaudhary had Mr. Goyal's money, he "totally kept" him "out of the loop."

[58] Mr. Chaudhary reiterated his view that Mr. Goyal was mentally unwell and invited him to exercise one of his options "and get out of [Mr. Chaudhary's] life."

[59] On January 26, 2018, Mr. Goyal made a shot-gun offer: he said that Mr Chaudhary should set the price for the Property, and either of them would then buy the other out at that price.

[60] On January 29, 2018, Mr. Chaudhary made a counter-offer. He stated that the value of the Property was $1,500,000 with the approved site plan, Esso fuel supply agreement, and Tim Hortons lease agreement. He was entitled to $150,000 for completing the Chaudhary/Asghar contractual obligations. As such, he would only pay $600,000 for Mr. Goyal's interest (half of the $1,500,000 market value of the Property, less the $150,000 Mr. Goyal owed him). However, if Mr. Goyal wanted to buy out Mr. Chaudhary's interest, Mr. Goyal would have to pay $900,000 (half of the market value plus the $150,000 owed), plus the architect's fees.

[61] Mr. Goyal responded by proposing that he be bought out for $750,000, all-inclusive.

[62] Mr. Chaudhary declined and reiterated his previous offer.

[63] On February 5, 2018, Mr. Chaudhary received an unsigned form of lease from Tim Hortons. That day, he forwarded it to Mr. Goyal, stating that he had now satisfied the Chaudhary/Asghar contractual obligations ("This is the last part of the Shareholder's Agreement, which I needed to provide to you") and demanding payment of the second installment of the purchase price ("I need $150,000 now. Let me know when will I get the funds.")

[64] On February 16, 2018, Mr. Chaudhary sent an email to Mr. Goyal from both himself and Ms. Asghar. His prior emails had typically been from him alone. In the email, he asserted that Mr. Goyal should pay him $150,000 "since the site plan is approved, Esso contract and Tim Horton lease is obtained. All three has been provided to you." He said that Mr. Goyal should also pay him 50% of the cost of the building permit drawings ($15,000) and 50% of a letter of credit to the municipality for construction work ($25,000). If Mr. Goyal did not pay him these amounts, "then we will explore the other options including the sale" of the Property. He provided the site plan agreement, "TDL lease (draft)," and fuel supply contract.

[65] Mr. Goyal offered to be bought out for $700,000, "[i]n an effort to resolve [the] issue quickly."

[66] Mr. Chaudhary said that Mr. Goyal would need to bring his account up to date by paying the amounts outlined above, after which Mr. Chaudhary would "set up the price" and Mr. Goyal would have the first option to buy Ms. Asghar's interest or sell his own at that price. He reiterated his view that the market value was $1.5 million with the approved site plan, Esso contract and Tim Horton lease.

[67] In response, Mr. Goyal asked for various materials, including a current survey of the Property, environmental reports, technical reports, site servicing plans and drawings, site plan-related drawings, and building permit drawings, along with updated information on outstanding property taxes owed.

The sale of the Property

[68] On February 26, 2018, Ms. Asghar sold the Property, purportedly on behalf of 242, to Mr. Bishay, "in Trust for Corporation to be Incorporated" (later 262). The stated purchase price was $1,510,000. That transaction lies at the root of this litigation.

[69] Mr. Bishay was an existing client of Mr. Chaudhary who had used his services as a real estate agent exclusively since 2012 or 2013. Mr. Chaudhary had represented Mr. Bishay on several deals, including the purchase of a gas station in St. Catharine's in 2013 and its sale some time later. Mr. Bishay testified that he generally did business only with people in his own Egyptian Christian community because he did not trust others, but he trusted Mr. Chaudhary.

[70] Mr. Bishay testified that he had become interested in buying a gas station property in the London area in the fall of 2017 because his daughter had begun attending school there, and his wife wanted to move to be closer to their daughter. He saw a magazine ad for the Property, which indicated that the development would feature an Esso gas station with a Tim Hortons. He contacted Mr. Chaudhary, who told him the Property was not ready for sale. Then, in early February 2018, Mr. Chaudhary contacted him to tell him that the Property was available. Mr. Chaudhary said that the Property was able to be sold because Ms. Asghar owned it with another shareholder with whom they were having a dispute. Mr. Bishay testified that Mr. Chaudhary told him that the Property *had* to be sold.

[71] Mr. Chaudhary also told Mr. Bishay, either during this initial call or in a later discussion before Mr. Bishay signed the agreement, that everything had been approved. Mr. Bishay accepted him at his word. Mr. Bishay testified that Mr. Chaudhary had told him the same thing – that everything was approved – in connection with his earlier purchase of the St. Catharine's gas station, so there was no reason not to believe him here.

[72] The parties contest whether Mr. Bishay and Mr. Chaudhary negotiated over the purchase price for the Property. Mr. Bishay testified at trial that he negotiated the sale price. An effort was made to impeach him on that testimony, in light of his evidence at discovery that there were no negotiations over the sale price. In my view, the dispute arises from Mr. Bishay's use of the phrase "no negotiation." I find that Mr. Chaudhary proposed a price of $1.6 million to Mr. Bishay, Mr. Bishay proposed a lower price, and Mr. Chaudhary responded with a price of $1,510,000, saying that he refused to go below that price because it was the price Ms. Asghar wanted. Although Mr. Goyal asserts that in fact there was no negotiation on purchase price, and that Mr. Bishay was successfully impeached on his evidence to the contrary, I do not read the evidence that way. In my view, the evidence as a whole discloses that Mr. Bishay did make a counter-offer, and there was no further negotiation *afterwards* because Mr. Chaudhary was clear that he would not move off his proposed price of $1,510,000.

[73] On February 25, 2018, Mr. Bishay made an unconditional offer to purchase the Property. Ms. Asghar signed it back the next day, purportedly as the authorized signing officer on behalf of 242. Mr. Bishay's evidence was that he did not read the agreement of purchase and sale and indeed "never in his life" reads them. The transaction closed within days of the agreement being entered into, without any due diligence period. Mr. Bishay testified that Mr. Chaudhary inserted the closing

date, because they both agreed that no due diligence was needed, and because Mr. Chaudhary knew when they had to start construction and said they had to start quickly.

[74] On the same date that the Property was sold, February 26, 2018, Mr. Chaudhary informed Mr. Goyal of the sale. His email read, in its entirety, as follows: "Property is sold today for 1,510,000." It is uncontested that he did not tell Mr. Goyal about the potential sale before the agreement of purchase and sale was signed.

[75] The parties agree that the sale was not approved by any resolution of the shareholders of 242 (Mr. Goyal and Ms. Asghar) or any resolution of the corporation's directors (Mr. Goyal and Ms. Asghar). There is no evidence to suggest that the quorum and notice requirements for 242 meetings, established in its by-laws, were complied with. Mr. Chaudhary acknowledged at trial that he knew the corporate structure of 242 and knew that, in light of that corporate structure, both directors and both shareholders would need to agree in order to make a decision on behalf of the corporation. He acknowledged that he did not get a resolution authorizing the sale of the Property or even give notice of the sale.

[76] For her part, Ms. Asghar testified that she would sign whatever Ms. Chaudhary told her to sign. She "did not care." She knew that Mr. Goyal was part of 242, but took no steps to ensure that she took his rights or interests into account.

[77] When told about the sale, Mr. Goyal told Mr. Chaudhary that neither he nor Ms. Asghar had the authority to sell the Property without Mr. Goyal's involvement. The following day, on February 27, 2018, he emailed Mr. Chaudhary twice. He voiced his frustration and shock that the Property had been sold. He asked Mr. Chaudhary to not go through with the sale. In his second email of that date, he told Mr. Chaudhary:

> I told you earlier also and am telling you now also that I am working on something and will give you what you have been asking for since you have rejected my offer to buy me out. I will be able to give you what you have been asking for. … I have been telling you that I am working on something which will look after your interest.

[78] The "something" that Mr. Goyal was "working on" was a potential purchase of the Property by an arms-length third party, HLH Investments Ltd. ("HLH"), which I discuss further below.

[79] On February 28, 2018, Mr. Chaudhary emailed Mr. Goyal, offering him what he called a "last chance." He said that the agreement of purchase and sale had a seller's lawyer review condition which needed to be waived that day. Mr. Goyal could sell his own share or buy Ms. Asghar's share by paying $935,000: $150,000 for the completion of the Chaudhary/Asghar contractual obligations, $30,000 for the building permit drawing fees, and $755,000 for 50% of the shares.

[80] The seller's lawyer review condition to which Mr. Chaudhary referred is found in Schedule A of the agreement, which provides:

> This offer is conditional upon the vendor or vendor's lawyer to

> review this offer for two (2) business days after accepting this offer. If the vendor or vendor's lawyer is not satisfied with the terms and condition stated in this offer, and vendor does not waive this condition in writing, this offer is null and void and deposit will be returned to the buyer in full without any deduction.

Schedule A also contains an identical buyer's lawyer review condition, in favour of the buyer.

[81] Mr. Goyal wrote back to Mr. Chaudhary, saying, "I will buy your share. Do not waive the [seller's lawyer review] condition and do not sell." He asked for a break on the price.

[82] Mr. Goyal retained a lawyer, who spoke with and wrote to Mr. Frymer that same day, objecting to the sale as unauthorized and invalid, and indicating that Mr. Goyal wished to purchase Ms. Asghar's 50% interest in 242.

[83] In his response to Mr. Goyal's lawyer, Mr. Frymer stated that he was acting only for 242 on the sale. He said that the sale of the Property was valid. He then expended considerable effort arguing that Mr. Chaudhary was entitled to the $150,000 payment for having complied with the Chaudhary/Asghar contractual obligations. He said that if Mr. Goyal paid the amounts that Mr. Chaudhary was seeking, "then I will see what I can do to stop the transaction, but failing that, the transaction will close."

[84] I pause to observe that, despite Mr. Frymer's claim that he was acting only for 242 on the sale, it is uncontested that he took instructions on the sale only from Mr. Chaudhary, who did not hold any office with 242. He did so without obtaining authorization from Mr. Goyal. He did so even though he was aware that there was a dispute between Mr. Goyal and Mr. Chaudhary regarding the sale and that Mr. Goyal had not approved of the sale.

[85] It is uncontested that Mr. Frymer had a longstanding and deep relationship with Mr. Chaudhary. He acted in the initial purchase of the Property for Mr. Chaudhary. He drafted the agreements to sell the shares to Mr. Goyal. He registered the site plan agreement. He acted on the sale of the Property to 262. He received 10 to 15 file referrals from Mr. Chaudhary every year.

[86] Mr. Goyal's lawyer also emailed the lawyer who represented 262 in the purchase, Imran Akram, on February 28, 2018, formally objecting to the sale of the Property. Mr. Goyal's lawyer advised Mr. Akram that Mr. Goyal did not consent to the agreement of purchase and sale, that Mr. Goyal was a 50% owner of 242, that the agreement was not binding on 242, and that, as such, there was no agreement.

[87] Unbeknownst to Mr. Goyal, Mr. Akram also had an existing relationship with Mr. Chaudhary. Mr. Chaudhary had used Mr. Akram as his lawyer in the past. He had referred business to Mr. Akram. He acknowledged in his testimony that he had recommended retaining Mr. Akram to Mr. Bishay and even accompanied Mr. Bishay to Mr. Akram's office.

[88] Also unbeknownst to Mr. Goyal, Mr. Frymer was, at the time, representing Mr. Bishay on another deal involving Mr. Chaudhary. Mr. Frymer had also worked on transactions in the past opposite Mr. Akram, on files referred by Mr. Chaudhary. There was thus a web of relationships

among Mr. Chaudhary, Mr. Frymer, Mr. Bishay, and Mr. Akram, about which Mr. Goyal knew nothing at all.

[89] Mr. Bishay's evidence was that he knew, but was not concerned, about any shareholder dispute within 242. Both he and Mr. Chaudhary testified that Mr. Chaudhary told him that there was another shareholder in 242 other than Ms. Asghar. Mr. Bishay's evidence was that Mr. Chaudhary told him that the other shareholder owed a debt, and, as a consequence, Ms. Asghar was the majority shareholder and could sell the Property. Mr. Bishay therefore was content moving ahead with the sale. His suggestion appears to be that Mr. Chaudhary told him that the sale was appropriate, that he relied on that assurance, and that it was reasonable for him to do have done so.

[90] Mr. Bishay testified that he was not aware of Mr. Goyal's objections to the sale before the sale of the Property closed. His evidence was that it was not until April, after the sale closed, that he learned of the February 28, 2018 correspondence from Mr. Goyal's counsel indicating that Mr. Goyal was a 50% shareholder and identifying Mr. Goyal's opposition to the sale.

[91] I reject that evidence. I find that in fact Mr. Bishay became aware of Mr. Goyal's objections to the sale before the sale of the Property closed, but nonetheless proceeded with the transaction. In June 2018, in connection with the CPL proceedings, Mr. Bishay was cross-examined on his affidavit. His evidence at that time, mere months after the sale of the Property, was that he learned from the correspondence from Mr. Goyal's counsel that Mr. Goyal objected to the sale. He asked Mr. Chaudhary about Mr. Goyal's objections, and Mr. Chaudhary said it was still okay for Mr. Bishay to buy the Property. So Mr. Bishay continued on with the transaction; he thought at most Mr. Goyal just wanted more money for the purchase.

[92] Mr. Bishay's evidence in June 2018 was clear that he learned about Mr. Goyal's opposition to the sale before the sale closed. In my view, given that he gave that evidence much closer in time to the transaction, and given my reservations about the credibility of some of Mr. Bishay's statements during his often combative cross-examination at trial, I consider the evidence he gave on this issue in June 2018, mere months after the transaction closed, to be more credible. I am accordingly of the view that Mr. Bishay knew, before the sale closed, about Mr. Goyal's objections, but was unconcerned and went ahead with the sale anyway.

[93] At the time that Mr. Goyal learned of the intended sale of the Property to 262, he had been working with HLH. On February 14, 2018, Mr. Goyal emailed Tyler Desjardine, HLH's real estate agent, providing him with documentation on the Property, telling him about the site plan approval and Tim Hortons' interest, and asking about pricing and whether Mr. Desjardine might be "able to find someone for quick sale." Later that day, he provided the draft Tim Hortons lease. He noted that an offer, if any, "would be conditional anyway." Mr. Goyal followed up with Mr. Desjardine on February 22 and 26, 2018.

[94] HLH made a conditional offer to purchase the Property for $2,004,000 million on February 26, 2018, the same day on which Mr. Chaudhary told Mr. Goyal about the sale of the Property to 262. HLH's offer was signed back by Mr. Goyal, purportedly on behalf of 242, on February 27, 2018. Negotiations ensued. On March 2, 2018, HLH made a final conditional offer for $2,171,000.

The conditions included that HLH be provided with various documents including environmental reports and geotechnical reports, a survey, and site plans and drawings.

[95] Other than the reference in his emails to Mr. Chaudhary to "working on something" that would look after Mr. Chaudhary's interests, Mr. Goyal did not tell Mr. Chaudhary about his dealings with HLH or the conditional offers. In any event, the potential sale of the Property to HLH did not proceed. Mr. Chaudhary completed the sale to 262, over the objections of Mr. Goyal.

The litigation and the return of the Property

[96] After the Property was sold to Mr. Bishay, Mr. Goyal commenced this action. He obtained a CPL on title to the Property on April 6, 2018. The closing proceeds from the sale of the Property were paid into court. Nonetheless, 262 proceeded with the development of the Property. For instance, 262 and Tim Hortons entered into a lease agreement on June 1, 2018.

[97] 262 tried to discharge the CPL, without success. Eventually, 262 amended its pleading to consent to a rescission of its purchase of the Property, and the Property was returned to 242 via order dated January 19, 2021.

[98] In June 2021, HLH again made a conditional offer to purchase the Property for $2,171,000, the same price it had offered in 2018 around the time the Property was being sold to 262.

[99] Mr. Chaudhary and Ms. Asghar did not sign back the offer. Despite this, Mr. Chaudhary rather inexplicably testified at trial that he would have agreed to sell the Property to HLH for the amount being offered.

[100] Mr. Goyal sought to compel Mr. Chaudhary and Ms. Asghar to contribute to property taxes and other expenses on the Property. An order granting this relief was issued on December 10, 2021, although Mr. Chaudhary and Ms. Asghar did not pay the amounts owed until the start of this trial.

[101] In the same motion, Mr. Goyal sought an order compelling the sale of the Property. He was unsuccessful.

[102] On June 7, 2021, Tim Hortons terminated its lease with 262, effective immediately, on the basis that 262 had not developed the Property into a facility with a Tim Hortons within a reasonable time.

[103] On August 24, 2022, Mr. Chaudhary agreed that, subject to certain conditions, Mr. Goyal could have exclusive control over efforts to sell the Property. That November, an agreement of purchase and sale was entered into with an arm's length purchaser to sell the Property for $3,750,000. The agreement did not proceed because, according to the purchaser, current zoning rules did not allow for the carwash or drive-through exits depicted on the site plan agreement. It appears that Mr. Chaudhary did not provide sufficient information to resolve the prospective purchaser's concerns. Mr. Goyal's position is that there is no evidence that the Property was zoned for those proposed uses. Mr. Chaudhary disagrees. In any event, to date, the Property has not been sold.

[104] Mr. Desjardine, a real estate broker with Cushman & Wakefield who specializes in commercial real estate in the London area, testified at trial. He was the real estate agent for HLH in 2018, when HLH made its conditional offer to purchase the Property. In 2022, he began working under Mr. Goyal's direction to sell the Property. His evidence was that the listing price for the Property had to be reduced because there were apparent issues with the site plan agreement that Mr. Chaudhary had obtained, and because of competition from a gas station development across the street.

[105] Mr. Goyal submits that Mr. Desjardine's evidence makes clear that Mr. Chaudhary's obstruction of efforts to sell the Property have resulted in delay; now, says Mr. Goyal, there is a competing gas station being developed across the street and the Property's value as a gas station is therefore spent. The only value of the Property is in the land. According to Mr. Goyal, the work that Mr. Chaudhary did in support of his 50% interest in 242 is "now worthless."

Liability

[106] The liability issues before me are:

a. Whether Mr. Chaudhary's and Ms. Asghar's conduct toward Mr. Goyal in relation to the sale of the Property to 262 constituted oppression;

b. Whether the Defendants committed a fraud against Mr. Goyal through the sale of the Property;

c. Whether Mr. Chaudhary carried out the Chaudhary/Asghar contractual obligations, such that Mr. Goyal breached his contract with Ms. Asghar by not paying the remaining $150,000 of the purchase price for his 50% interest in 242;

d. Whether Mr. Bishay and 262 were entitled to rely on Ms. Asghar's apparent authority to bind 242 under the indoor management rule in section 19 of the OBCA, such that the sale of the Property was valid and binding, 262 became the owner of good and valid title to the Property on March 5, 2018, and Mr. Goyal is prevented from challenging the sale as unauthorized;

e. Whether Mr. Goyal registered a Certificate of Pending Litigation on title to the Property without a reasonable claim to an interest in the Property, such that he engaged in oppressive conduct and/or caused damages to the Defendants under section 103(5) of the *Courts of Justice Act*; and

f. Whether the action against Mr. Bishay personally is statute-barred under the *Limitations Act, 2002*.

[107] In the Amended Amended Statement of Claim, Mr. Goyal alleges unjust enrichment, in addition to oppression and fraud. However, that claim was not advanced at trial.

Oppression

[108] I find that Mr. Chaudhary's and Ms. Asghar's conduct toward Mr. Goyal constituted oppression.

[109] The oppression remedy for Ontario corporations is outlined in section 248 of the OBCA, which provides that any shareholder, creditor, director, or officer of a corporation may apply to the court for an order to rectify conduct that is oppressive or unfairly prejudicial, or which unfairly disregards their interests.

[110] The Supreme Court of Canada has held that the oppression remedy is concerned with "harm to the legal and equitable interests of stakeholders affected by oppressive acts of a corporation or its directors" (*BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 45). In assessing an oppression claim, I must consider, first, whether the evidence supports the reasonable expectation asserted by the claimant, considering such factors as general commercial practice, the nature of the corporation, the relationship between the parties, past practice, steps the claimant could have taken to protect itself, representations and agreements, and the fair resolution of conflicting interests between corporate stakeholders. Second, I am to consider whether the evidence establishes that the reasonable expectation was "violated by conduct falling within the terms 'oppression', 'unfair prejudice' or 'unfair disregard' of a relevant interest" on the part of the stakeholders (*BCE*, at paras. 68, 72).

[111] It is uncontested that the sale of the Property, 242's only asset, took place based on the purported authority of Ms. Asghar. She alone signed the agreement of purchase and sale on behalf of 242 as the vendor. She alone signed the March 5, 2018 directors' resolution purporting to authorize 242 to enter into the agreement of purchase and sale. She was one of two directors, along with Mr. Goyal, and a 50% shareholder, along with Mr. Goyal. She was not authorized to bind 242 on her own in either capacity.

Mr. Goyal's reasonable expectations

[112] I find that the sale violated Mr. Goyal's reasonable expectations as a director and shareholder of 242. He had a reasonable expectation that Ms. Asghar and Ms. Chaudhary would not sell the Property without his agreement.

[113] As one of 242's two directors, Mr. Goyal had the reasonable expectation that any decision to sell or list the Property would be made by 242's directors, on proper notice and with the required quorum. He also had the reasonable expectation that he would, in effect, be able to veto any decision to accept the terms of any proposed sale and sell the Property. This is because Mr. Goyal's approval would be required for the board of directors to be able to make corporate decisions and sign directors' resolutions. These expectations were reasonable, given Mr. Goyal's role as one of two directors, and given the provisions of 242's by-laws which require a majority of the directors to be present for there to be a quorum at any meeting of the board of directors.

[114] It is uncontested that there was no meeting of the directors and, accordingly, no quorum; that no notice was given to Mr. Goyal of the directors' resolution purportedly signed by Ms. Asghar

to authorize 242 to sell the Property; and that he had no notice of, or opportunity to weigh in on, the sale before it took place.

[115] As a 50% shareholder of 242, Mr. Goyal had the reasonable expectation that he would be notified of any proposed sale of the Property and would in effect have a veto over whether to approve it. This expectation was reasonable given Mr. Goyal's role as a 50% shareholder. Pursuant to section 184(3) of the OBCA, "[a] sale …of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders." Additionally, section 184(4) requires that the notice of a meeting of shareholders to approve such a transaction be sent to all shareholders. Mr. Goyal's expectation was also reasonable in light of 242's by-laws, which require a majority of the shareholders entitled to vote to be present for there to be quorum at a shareholders meeting.

[116] It is undisputed that there was no meeting of shareholders at which the proposed sale was discussed and voted on by a quorum of shareholders, and that the Property, 242's only asset, was nonetheless sold in the absence of the requisite shareholder approval.

[117] Mr. Chaudhary and Ms. Asghar assert that section 184(3) of the OBCA did not apply because the sale of the Property to 262 was in the ordinary course of business. 242 was created to acquire and sell the Property, and the parties agreed and accepted through their conduct (Mr. Goyal's dealings with HLH, and Mr. Chaudhary and Ms. Asghar's sale to 262) that it was time to sell.

[118] I reject this argument.

[119] Whether a sale is in the ordinary course of business is "a question of fact to be objectively assessed, based on all the circumstances of the particular case" (*GE Canada Equipment Financing G.P. v. ING Insurance Company of Canada*, 2009 ONCA 171, 94 O.R. (3d) 321, at para. 66). In making this assessment, the court may consider a number of factors (*Fairline Boats Ltd. v. Leger*, [1980] O.J. No. 216 (S.C.), at pp. 222-23).

[120] One such factor is whether the transaction is one that is normally entered into by people in the seller's business. 242 was created for the purpose of owning the Property and developing it, not for the purpose of selling it. Indeed, Mr. Chaudhary himself told Mr. Goyal that he was "in development business not in selling land business." This would suggest that 242's sale of the Property was not a transaction in the ordinary course of business.

[121] A second factor that would suggest that the sale is in the ordinary course of business is whether the buyer is an ordinary everyday consumer. As discussed below, Mr. Bishay was not an ordinary arms-length buyer from the open market. Mr. Chaudhary approached Mr. Bishay about the sale, Mr. Bishay knew little about the Property (and did not even read the site plan), he made an unconditional offer that called for no due diligence, and he negotiated minimally over the price. He cannot reasonably be characterized as an ordinary everyday consumer.

[122] A third factor is whether the price charged is in the range of the usual market price. As discussed below, I am of the view that the Property was sold to 262 for an ostensible price ($1,510,000) that was below its fair market value, and an actual price (the down payment of

$510,000, which was all that Mr. Bishay actually paid or was ever required to pay by Mr. Chaudhary) that was grossly inadequate.

[123] All these considerations would suggest that the sale to 262 was not in the ordinary course of business, and did therefore require shareholder approval under section 184(3) of the OBCA.

[124] Moreover, I am not persuaded that, as Mr. Chaudhary and Ms. Asghar claim, the parties had agreed that it was time to sell. In any event, even if they had so agreed, Mr. Chaudhary and Ms. Asghar's reasoning would suggest that any corporation created for the purpose of holding property would be able to sell its property without shareholder notice and approval the moment there is any discussion among shareholders of the possibility of selling. Such an argument would eviscerate the shareholder protections in sections 184(3) and (4) of the OBCA.

[125] Mr. Chaudhary's representations to Mr. Goyal underscored the reasonableness of Mr. Goyal's expectations as director and shareholder. As discussed above, after Ms. Asghar signed the notice to register the site plan agreement on behalf of 242 without authorization, and Mr. Chaudhary signed the site plan agreement itself on behalf of 242 without authorization, Mr. Chaudhary told Mr. Goyal that he would be the one to sign documents to bind 242 going forward. This assurance from Mr. Chaudhary bolstered Mr. Goyal's reasonable expectation that Mr. Chaudhary and Ms. Asghar would not purport to make decisions on behalf of 242 without him.

[126] Finally, I find that, as president, director, and 50% shareholder, Mr. Goyal had a reasonable expectation that the Property would be sold or attempted to be sold in a commercially reasonable way, which would include listing it on MLS and selling it to an arms length buyer, for fair market value. As discussed below, I find that the Property was not sold to 262 in a commercially reasonable manner.

[127] In my view, these reasonable expectations of Mr. Goyal were disregarded by Mr. Chaudhary and Ms. Asghar.

The disregard of Mr. Goyal's reasonable expectations

[128] Under the OBCA, I am then to consider whether this disregard of Mr. Goyal's reasonable expectations was oppressive or constituted "unfair prejudice" or "unfair disregard." In *BCE*, the Court observed the following (at para. 67):

> 'Oppression' carries the sense of conduct that is coercive and abusive, and suggests bad faith. 'Unfair prejudice' may admit of a less culpable state of mind, that nevertheless has unfair consequences. Finally, 'unfair disregard' of interests extends the remedy to ignoring an interest as being of no importance, contrary to the stakeholders' reasonable expectations" [Citations omitted].

[129] Mr. Chaudhary deliberately and fragrantly, through concerted effort and over some period of time, denied Mr. Goyal of his right to participate in the management of 242 and in the decision to sell its only asset. He had told Mr. Goyal that he would ensure Mr. Goyal was the one to sign documents binding 242 going forward, but he did not do so. In fact, Mr. Chaudhary acted

unilaterally, through Ms. Asghar, his nominee and only a 50% shareholder and one of two directors. Ms. Asghar purported to sign the agreement of purchase and sale and the directors' resolution authorizing the sale, in breach of 242's by-laws and the OBCA's requirements. Moreover, Mr. Chaudhary told Mr. Goyal nothing about the pending sale of the Property to 262 until after the agreement was signed. He did not disclose that he was discussing a potential sale with Mr. Bishay, or that he had entered into an agreement with Mr. Bishay.

[130] In addition, Mr. Chaudhary falsely portrayed to Mr. Goyal that the sale was proceeding at arms-length. In fact, as I have found, the sale was hasty, was not for fair market value, and bore several the indicia of a fraudulent sale. Mr. Chaudhary had longstanding and close connections with Mr. Bishay, Mr. Bishay's lawyer, and Mr. Frymer, who purported to act on behalf of 242 but in fact took his instructions only from Mr. Chaudhary and with no authorization from the corporation. He disclosed none of those relationships to Mr. Goyal at any time.

[131] For her part, Ms. Asghar did what Mr. Chaudhary told her to do, without considering her obligations as an officer and director of 242. While she was not an active decision maker, she knowingly allowed Mr. Chaudhary, the active decision maker, to misuse her position to oppress Mr. Goyal.

[132] This conduct toward Mr. Goyal was oppressive. It was deliberate, deceitful, and wrongful, and a visible departure from standards of proper conduct and fair dealing with Mr. Goyal, who was Ms. Asghar's fellow director and 50% shareholder. It was a wrong of the most serious sort (*BCE*, at paras. 89–92).

[133] Mr. Chaudhary and Ms. Asghar state that even if shareholder approval was required under section 184(3), the failure to obtain proper shareholder approval resulted in no substantive harm to Mr. Goyal. They say that if a shareholder meeting had been convened, then, given that both parties clearly wanted to sell the Property, having both taken steps to sell it by that time (Mr. Goyal with HLH, and Mr. Chaudhary with 262), they would either have agreed to sell, or voted against a sale for tactical reasons only. Had there been a deadlock on the issue, then one of them would have brought an application to wind up the corporation. Most likely, they would have agreed to sell to a third party, which they were already trying to do.

[134] I reject this argument. It is much more likely that a deadlock would have led the parties to either agree to a procedure to sell the Property – a procedure that did not involve disregarding the rights of either 50% shareholder – or to go the court seeking directions. This, in turn, would likely have resulted in the Property being marketed and sold on the open market, for fair market value, to an arms length purchaser. I do not agree that the failure to obtain shareholder approval had no effect.

[135] Mr. Chaudhary and Ms. Asghar assert that Mr. Goyal's expectations were not in fact violated, because he was deadlocked with Mr. Chaudhary, felt that they could not continue developing the Property together, and expected the Property to be sold. As such, even if the sale of the Property was not authorized, it was not oppressive.

[136] I disagree. A deadlock might shape one's views of the appropriate path forward, but it would not lead one to relinquish one's rights as an officer, director, or shareholder, or to allow decisions to be made unilaterally and company assets to be sold without authorization, as Mr. Chaudhary and Ms. Asghar appear to suggest. Mr. Goyal had a reasonable expectation that he would be kept informed of 242's affairs and of any anticipated or actual sale of its only asset. That reasonable expectation did not go away when his relationship with Mr. Chaudhary deteriorated. To suggest otherwise would eviscerate the oppression remedy by suggesting, wrongly, that friction among directors, shareholders, or officers somehow modifies their expectations and serves to justify otherwise impermissible unilateral conduct.

Fraud

[137] I find Mr. Chaudhary and Ms. Asghar liable for fraud in connection with the unauthorized sale of the Property by 242 to Mr. Bishay in trust for 262. I do not find Mr. Bishay or 262 liable for fraud.

[138] There is no exhaustive definition of "fraud" for the purposes of tort law. While claims of fraud are often advanced under the framework of fraudulent misrepresentation, fraud is also broader than that: "As a theory of liability, fraud is much broader in scope than deceit. There is no need to prove a false representation. Indeed, the courts have recognized that it is difficult, if not impossible, to define fraud because it is capable of being committed in endless forms and new forms continually arise" (L. Klar, *Remedies in Tort*, Vol. 1 (Toronto: Carswell, 1987), at pp. 511-512, cited in *Harland v. Fancsali*, (1993), 13 O.R. (3d) 103 (S.C.J.), aff'd (1994), 21 O.R. (3d) 798 (Div. Ct.)).

[139] In *Mining Technologies International, Inc. v. Krako Inc.*, 2013 ONSC 7280, [2013] O.J. No. 5385, at paras. 237-238, this court accepted that the word "defraud" may apply to more than deception or fraudulent misrepresentation. Richetti J. relied on the observations of the House of Lords that the word ordinarily means "to deprive a person dishonestly of something which is his or of something to which he is or would or might but for the perpetration of the fraud, be entitled" (*Scott v. Commissioner of Police for the Metropolis*, [1974] 3 All E.R. 1032, at p. 1038).

[140] In assessing whether the Defendants committed fraud through the sale of the Property, I am informed by this court's decision in *Indcondo v. Sloan*, 2014 ONSC 4018, 121 O.R. (3d) 160. At paras. 51-53, the court identified the "badges of fraud" in a real estate transfer or transaction, which it said "represent evidentiary rules developed over time which, when considered in all the circumstances, may enable the court to make a finding unless the proponents of the transaction can explain away the suspicious circumstances." The court discussed the "badges of fraud" in the context of evaluating whether a conveyance was undertaken with the intention to defeat the seller's creditors. In my view, those same indicia of fraud are also helpful in determining more generally whether a particular real estate transaction was fraudulent.

[141] The transaction was not *bona fide* and arms-length; to the contrary, it bore many "badges of fraud" in relation to Mr. Chaudhary's and Ms. Asghar's conduct. I accept Mr. Goyal's characterization of the transaction as a sham that Mr. Chaudhary designed and Ms. Asghar willingly carried out. The result of the fraud, drawing on the language of *Scott*, was to deprive

Mr. Goyal dishonestly of something to which he would have been entitled, but for the perpetration of the fraud: his interest in 242 and the Property, and his rights to weigh in on the affairs of 242 as its president, a director, and a 50% shareholder. While the sale of the Property to 262 was ultimately rescinded, that does not resolve Mr. Goyal's fraud claim.

[142] Below, I consider the "badges of fraud" that support a finding of fraud on the part of Mr. Chaudhary and, in turn, Ms. Asghar. While Mr. Bishay is implicated in some of the badges of fraud – and, indeed, they could not have materialized without him – I am not of the view that he was legally responsible for them. To the contrary, he was generally doing what Mr. Chaudhary asked him to.

The secret nature of the sale

[143] One of the "badges of fraud" discussed in *Indcondo* is whether the transaction was secret (at para. 52).

[144] The sale of the Property to 262 was very clearly a secret. Mr. Chaudhary disclosed nothing about it to Mr. Goyal until after the agreement of purchase and sale was signed by Ms. Asghar and Mr. Bishay.

[145] This "badge of fraud" has nothing to do with Mr. Bishay or 262. Mr. Bishay was a stranger to Mr. Goyal until after the deal was finalized.

The likelihood of legal proceedings at the time of the sale

[146] A second "badge of fraud" is whether the transaction was undertaken in the face of threatened legal proceedings (*Indcondo*, at para. 52).

[147] While there were no expressly threatened legal proceedings at the time the agreement of purchase and sale was entered into, it is clear that the relationship between Mr. Chaudhary and Mr. Goyal was becoming increasingly acrimonious, and that their efforts to find an off-ramp, by agreeing on a price at which they could buy one another out or sell to a third party, had proven unsuccessful. In my view, legal proceedings were likely by this time, albeit not actually threatened.

[148] This "badge of fraud," too, supports a finding of fraudulent conduct on the part of Mr. Chaudhary, but not Mr. Bishay or 262.

Unusual haste in carrying out the sale

[149] An additional "badge of fraud" is whether there was "unusual haste in effecting the transaction" (*Indcondo,* at para. 52).

[150] The sale of the Property to 262 closed only five business days after the agreement was signed. It was sold further to an unconditional offer and there was no due diligence. In my view, this was hasty.

[151] I find that the haste is properly attributed to Mr. Chaudhary alone. He was the one who dictated the speed of the deal and demanded the rapid closing date. Mr. Bishay facilitated it, but only at the insistence of Mr. Chaudhary.

[152] Mr. Goyal submits that Mr. Bishay and 262's complicity in the fraud is evidenced by Mr. Bishay's readiness to close the deal quickly, with no due diligence or any financing or other conditions. Mr. Goyal states that this approach was out of step with Mr. Bishay's usual land purchases, which had conditions and due diligence requirements, and that Mr. Bishay's willingness to do things differently in the Property purchase show that he was a knowing participant in the fraud.

[153] I do not agree. I accept Mr. Bishay's evidence that the sale could close quickly because there was no need for due diligence or any financing or other conditions. I find that Mr. Chaudhary took the lead on pushing for a quick closing date, and Mr. Bishay obliged him.

[154] In my view, Mr. Bishay adequately explained his reasons for proceeding without an environmental inspection. Mr. Bishay testified that the Property was vacant and had never had a gas station on it, so it did not need an environmental inspection at that stage. It might need one in the future when additional financing became necessary, but it did not need one now. By contrast, the St. Catharine's property, which Mr. Bishay had purchased previously with Mr. Chaudhary's help, had operated as a gas station for 20 years and been closed down due to contamination. It therefore needed an environmental inspection before closing. Similarly, the Caledon gas station property, which he purchased in March or April 2018, shortly after he purchased the Property, was an operating gas station and, therefore, presented a risk of tanks leaking underground. As such, it required an environmental inspection, unlike the Property.

[155] Mr. Bishay also explained the other unconditional aspects of the purchase. He testified that because the Property was not an operating gas station, he did not need time to check its sales revenue or inspect its existing pump equipment; by contrast, the Caledon gas station was an operation gas station so it required this due diligence. He did not need a financing condition to buy the Property because Mr. Chaudhary promised him that the existing loan would be renewed and that he would help get a construction loan.

[156] Mr. Bishay's evidence was that the closing date had to be quick because, according to Mr. Chaudhary, they "had to start as soon as possible" because the construction had to start in June 2018 for Tim Hortons. Mr. Chaudhary was clear that they "had to start quickly." Mr. Chaudhary inserted the closing date into the agreement, because he knew better than Mr. Bishay when construction had to start.

[157] Mr. Bishay testified that he trusted Mr. Chaudhary "blindly." He signed whatever Mr. Chaudhary told him to. He felt that everything with the St. Catharine's property had gone smoothly, so this one would, too. He did not review the site plan agreement to see what was planned; he trusted the listing for the Property that he had seen, which referred to the Tim Hortons and Esso. He did not check title on the Property. He did not confirm that Tim Hortons or Esso were still interested in the Property.

[158] Mr. Goyal states that Mr. Bishay's explanation for the speedy closing was not credible. Mr. Bishay testified that the purchase of the Property had to close quickly because, according to Mr. Chaudhary, Tim Hortons needed the construction to start in June 2018. Mr. Goyal points out that Tim Hortons did not know what the construction start date would be until after the sale to 262 had already closed: it only learned of the June 2018 construction start date on March 19, 2018, after asking Mr. Chaudhary for it.

[159] In my view, this does not undermine Mr. Bishay's evidence. Mr. Bishay was testifying as to his understanding of the need for urgency, based on Mr. Chaudhary's representations to him. It does not matter when Mr. Chaudhary told Tim Hortons that the construction could start. What matters is what Mr. Chaudhary told Mr. Bishay himself about when the construction had to start. It is clear from Mr. Bishay's evidence that Mr. Chaudhary told him that Tim Hortons wanted the construction to start in June. That may well have been untrue, since the record is clear that he was the one who told Tim Hortons of the June start date, and not the other way around, as he suggested to Mr. Bishay. But that does not matter. What matters is that it is what he told Mr. Bishay. Based on this representation from Mr. Chaudhary, Mr. Bishay understood that the deal had to close quickly, and was prepared to make that happen by agreeing to a short closing date.

[160] I find that Mr. Bishay was able to move quickly because he did not need to place conditions on the purchase or leave himself time to conduct due diligence. I find that he was prepared to move quickly because it was clearly important to Mr. Chaudhary that he do so. In my assessment, this was a hasty transaction, at the behest of Mr. Chaudhary. This supports a finding of fraud on the part of Mr. Chaudhary.

Sale documents containing falsehoods as to consideration

[161] A further "badge of fraud" is whether the transaction documents contained false statements as to consideration (*Indcondo*, at para. 52).

[162] They did in this case. Mr. Chaudhary acknowledged in his testimony that while the land transfer tax statement stated that $800,000 was paid, the only amount actually paid was $510,000. Mr. Bishay never paid the balance that was owed. Mr. Chaudhary further acknowledged that, contrary to what the land transfer tax statement indicated, there was not $710,000 in goodwill associated with the vacant land. Mr. Chaudhary did not seem particularly troubled by these discrepancies and offered little or no explanation for them. In my view, these discrepancies cast significant further doubt on the *bona fides* of the transaction insofar as Mr. Chaudhary's role in it was concerned.

[163] Mr. Bishay's evidence was that he did not understand the intricacies of legal documents like the land transfer tax statement and that he trusted his lawyer. While this may be an oversimplification, given that Mr. Bishay was a seasoned businessman and property developer, there is no evidence to suggest that Mr. Bishay knew about the falsehoods in the statement.

[164] As such, the falsities in the land transfer tax statement are another badge of fraud on the part of Mr. Chaudhary.

The close relationship between Mr. Bishay and Mr. Chaudhary

[165] *Indcondo* also identifies as a "badge of fraud" a "close relationship [existing] between the parties to the transaction" (at para. 52). There was certainly such a close relationship here. As detailed above, Mr. Chaudhary had a longstanding connection with Mr. Bishay. He had a similarly close connection to Mr. Bishay's lawyer, Mr. Akram. Mr. Chaudhary also had a close relationship with, and was an important source of work for, Mr. Frymer, who purported to act on behalf of 242 but in fact took his instructions only from Mr. Chaudhary. He disclosed none of those relationships to Mr. Goyal at any time during their relationship together.

[166] I do not find that this "badge of fraud" implicates Mr. Bishay or 262. Although Mr. Bishay did have a close relationship with Mr. Chaudhary, he did not leverage that relationship to achieve an improper end. If anything, Mr. Chaudhary capitalized on Mr. Bishay's trust, but not the other way around.

Grossly inadequate consideration in the sale

[167] Another "badge of fraud" identified in *Indcondo* is whether the consideration paid in the transaction was grossly inadequate (at para. 52).

[168] I find that the actual consideration paid was grossly inadequate, and the purported consideration was also inadequate.

[169] 262 was to pay $1,510,000 for the Property. Notably, the only amount it actually paid was the $510,000 down payment. Mr. Chaudhary and Mr. Bishay both acknowledged that no payments were ever made on the $1,000,000 vendor take back mortgage. Nor did Mr. Chaudhary ever ask Mr. Bishay to make any such payments. 262 accordingly never paid in full for the Property. The true consideration on the transaction, therefore, was $510,000. In my view, that was grossly inadequate.

[170] Even if I were to find that the consideration on the transaction was the full purchase price of $1,510,000 – which was never paid and never required to be paid – I would find that that ostensible purchase price was inadequate and significantly lower than the likely fair market value of the Property.

[171] I do not agree with Mr. Chaudhary's assertion that the sale price of $1,510,000 reflected the Property's market value. A sale price based on an appraisal or through the open market presumably reflects market value. The Court of Appeal for Ontario has held that in real estate law, "fair market value… is based on what a seller and buyer, 'each knowledgeable and willing', would pay for it on the open market" (*Saramia Crescent General Paertner Inc. v. Delco Wire and Cable Ltd.,* 2018 ONCA 519, at para. 63).

[172] On the facts before me, this definition of fair market value is not satisfied.

[173] This was not an open market. Mr. Chaudhary contacted Mr. Bishay about buying the Property. There is no evidence that he contacted anyone other than Mr. Bishay about it. Mr. Chaudhary did not list the Property on MLS or elsewhere. He did nothing to elicit bids from

the open market. Asked why he did not list the Property on MLS, Mr. Chaudhary testified that it would be "disrespectful" to the Property to list it on MLS. He did not explain this claim. I have difficulty understanding the claim in its own right, and in light of his admission at trial that he had in the past listed gas station properties on MLS and even had current such listings.

[174] Mr. Chaudhary did not obtain an appraisal, or any expert assessment of the Property's market value, before approaching Mr. Bishay about the sale. Asked why, he testified that he "was the appraisal" and that he "was the authority."

[175] I have found Mr. Chaudhary and Mr. Bishay did negotiate to some extent on the purchase price, contrary to what Mr. Goyal claims. That fact would tend to suggest that they did arrive at something closer to a fair market value. But I do not agree that Mr. Bishay was a "knowledgeable" buyer, given how little he knew about the Property, by his own evidence. While he had visited the Property and seen an ad for it, he did not review the site plan agreement, confirm that Tim Hortons or Esso still wished to proceed, or do any due diligence. He trusted Mr. Chaudhary "blindly". Mr. Chaudhary's private, truncated negotiation with a friendly purchaser who possessed limited information, conducted without the benefit of any appraisal or expressions of interest in the open market, cannot reasonably be considered to have arrived at the actual value of the Property on the open market.

[176] I therefore do not accept Mr. Chaudhary's claim that the price at which he sold 262 to Mr. Bishay was a reflection of fair market value.

[177] Moreover, as discussed above, around the time that Mr. Goyal learned of the intended sale to 262, HLH had made an arms-length conditional offer to purchase the Property for $2,171,000. This was $661,000, or 44%, more than the purchase price Mr. Chaudhary had worked out with 262 at that same time.

[178] The HLH offer was a conditional one, and therefore not a precise gauge of market value. Nonetheless, in my view it offers an approximation of market value based on the gas station development proceeding as intended, as Mr. Chaudhary insisted all along it would, including to Mr. Bishay. Moreover, the HLH offer came from a real, arms-length purchaser in the open market, who felt the Property had "all the ingredients" they were looking for. At a minimum, it calls into question the significantly lower price at which the Property was sold to 262.

[179] In light of this evidence, I conclude that the Property was sold to 262 for an ostensible price ($1,510,000) that was below its fair market value, and an actual price (the down payment of $510,000, which was all that Mr. Bishay actually paid or was ever required to pay by Mr. Chaudhary) that was grossly inadequate, even in relation to what Mr. Chaudhary calls the fair market value of the Property. This, too, is a "badge of fraud."

[180] Mr. Chaudhary is the one whose conduct is implicated by these facts. While the Property could not have been sold to Mr. Bishay for this price without his involvement, there is no basis on which to conclude that Mr. Bishay somehow knowingly facilitated a sale of the Property for less than fair market value. Indeed, based on the evidence before me, he did not even know enough about the Property to be able to gauge its market value.

Mr. Chaudhary's possible role in paying for the purchase

[181] The issue arose at trial over the extent to which Mr. Chaudhary provided some or all of the funds that Mr. Bishay used to purchase the Property, such that he really was purchasing the Property from himself, simply to keep it out of Mr. Goyal's grasp.

[182] Mr. Bishay's accounting for the money he used towards the purchase of the Property took some effort to piece together and was not comprehensive. He adequately explained the provenance of the money he used for the deposit on the property, but his evidence on the sources of the $510,000 down payment was less clear. He did not provide adequate documentation to clearly support his claim that the funds came from the sale of the St. Catharine's property. Nor did he provide corroborating evidence for his claim that the $599,287 that went back into his account soon after the purchase closed came from his business associate George Elgohary in anticipation of a "future deal."

[183] Mr. Goyal invites me to draw an adverse inference from Mr. Bishay's failure to tender documentation or other evidence supporting any of his claims about the source of the $510,000 or $599,287 amounts. Mr. Goyal states that after he tendered evidence that demonstrated the presence of fraud in the sale, the tactical burden fell on Mr. Bishay to lead evidence in support of his defence to the claim of fraud. Mr. Bishay did not do so. I may therefore draw an adverse inference (*Bristol- Myers Squibb Co. v. Apotex Inc.*, 2003 FCA 263, at para. 10). Mr. Goyal urges me to infer that Mr. Bishay's evidence on the provenance of those funds would have been incriminating.

[184] I do not draw such an inference. An adverse inference "should not be drawn unless it is warranted in all the circumstances" of a particular case (*Parris v. Laidley,* 2012 ONCA 755, at para. 2). In considering whether an adverse inference should be drawn, I am to assess whether the evidence supports the contention that the party inviting the inference is trying to make (*Tiwari v. Chevalier,* 2022 ONSC 3071, at para. 29).

[185] In this case, as the above discussion makes clear, the badges of fraud point to wrongdoing on the part of Mr. Chaudhary, but not Mr. Bishay. As such, there was no tactical burden on Mr. Bishay to rebut a presumption of fraud by him. There is no basis on which I may draw an adverse inference from his failure to tender additional evidence.

[186] Even if I were to draw such an adverse inference, it would not discharge Mr. Goyal's burden of proof. For all of the challenges associated with Mr. Bishay's testimony about the origin of the funds, he did consistently and emphatically communicate that the money he used to buy the Property came from the refinancing of his home and of the St. Catharine's gas station. He answered unambiguously in the negative when he was asked, more than once, whether Mr. Chaudhary provided any of the funds. And there is no documentation to show any payments flowing from Mr. Chaudhary to him.

[187] Viewing the evidence as a whole, I conclude that the evidence does not support a finding, on a balance of probabilities, that the funds came from Mr. Chaudhary.

Conclusion regarding fraud

[188] For all these reasons, I find that the sale of the Property to 262 was a sham transaction. It was a fraud to which both Mr. Chaudhary and Ms. Asghar were parties and for which they are liable.

[189] Mr. Chaudhary conceived of the sham purchase; privately and secretly arranged for his longtime client, Mr. Bishay, to make an unconditional and uninformed offer with a short closing and for an artificially low purchase price; arranged for Mr. Bishay to use another longtime contact, Mr. Akram, as his counsel and attended Mr. Bishay's first meeting with him; had his longtime contact, Mr. Frymer, who relied on him for referrals and his own business, act as counsel on the sale; facilitated the preparation of transfer documents containing false statements as to the consideration paid; and concealed the sale altogether from Mr. Goyal until after it was concluded.

[190] Ms. Asghar knowingly let Mr. Chaudhary use her to carry out the sham sale by, among other things, signing the agreement of purchase and sale and the March 5, 2018, directors' resolution purporting to authorize 242 to enter into the agreement of purchase and sale. She was clear in her evidence that she would sign whatever Ms. Chaudhary told her to sign and "did not care."

[191] I do not find Mr. Bishay or 262 liable for fraud. They were not knowing participants in the fraud. While Mr. Bishay was essential to Mr. Chaudhary's fraudulent plan, he did not know about it and did not knowingly facilitate or enable it.

Breach of Contract

[192] Mr. Chaudhary and Ms. Asghar submit that by the time Mr. Chaudhary demanded the additional $150,000 from Mr. Goyal on January 29, 2018, he had carried out the Chaudhary/Asghar contractual obligations. That is, the Tim Hortons lease, Esso On the Run sublease, and fuel supply agreement were "completed" and there was a site plan agreement that was "satisfactory to Goyal." As such, they say, by not paying the $150,000, Mr. Goyal breached the Agreement and SPA.

[193] I disagree, for the reasons below.

The lease with Tim Hortons

[194] The version of the Tim Hortons lease that Mr. Chaudhary provided to Mr. Goyal on February 5, 2018 was unsigned. I do not agree that an unsigned agreement can reasonably be considered "completed." An unsigned agreement may simply reflect the terms that one side to the deal wishes to see. It does not demonstrate the acceptance by the other side of those proposed terms.

[195] Moreover, the lease was not substantively complete or finalized. It was missing the schedules containing the site plan, floor plan, and signage specifications, which were later added in. It contained schedules setting forth various landlord obligations regarding drinking water and waste water, which were later removed. It contained different deadlines for starting and completing

the construction than the final lease did. These deadlines were material provisions; indeed, it was on the basis of 262's failure to meet these deadlines that Tim Hortons later terminated the lease. I do not accept that an agreement that is materially different in substance from its final version can be considered "completed."

[196] Nor did the parties themselves view the February 5, 2018 version of the lease to be completed. On March 2, 2018, Mr. Frymer himself observed that "certain changes" had to be made to the Tim Hortons lease "in order for [242] to benefit from same." On March 12, 2018, Tim Hortons requested documentation in PDF format from the architect so that it could "complete the lease." On March 19, 2018, Tim Hortons asked Mr. Chaudhary for the start and end dates for the construction on the Property, and four days later asked its counsel to add into the lease covenants relating to those construction dates. On March 28, 2018, Mr. Chaudhary sent the landlord-signed lease to Tim Hortons, noting that he had revised the construction completion date. It was only on June 1, 2018, that Tim Hortons sent the signed lease in finalized form back to Mr. Chaudhary.

[197] In my view, the version of the lease provided to Mr. Goyal on February 5, 2018, and relied on by Mr. Chaudhary to argue that the lease was completed, cannot be considered "completed" in these circumstances.

The sublease with Esso On the Run

[198] There was no sublease for an Esso On the Run, even in draft form. While Mr. Chaudhary submits that he obtained documentation confirming that Esso was prepared to provide an Esso on the Run franchise, in my view, this claim overstates what he in fact obtained. The record discloses a letter dated April 4, 2017, referring to "preliminary approval" for the "Esso On The Run program." The letter was clear that an application process and agreement would be required in order to move forward:

> As discussed the site in Thorndale, Ontario … is preliminary [sic] approved for the Esso On The Run program.
>
> As you know this is a franchise program so the final confirmation occurs once you officially apply.
>
> The process will be, after the application, you will receive disclosure documents that include details about the program and the franchisor including the franchise agreement. Once the potential franchisee signs the receipt of the documents, the disclosure time will start.
>
> Potential franchisee have to wait between 14 to 16 days (franchise law) and then he would sign the agreement to move forward.

[199] There was no application by 242 or anyone on its behalf. No disclosure documents were provided with details about the program. No franchise agreement was received, reviewed, or signed.

[200] Mr. Chaudhary suggested that he had a fuel supply agreement with Esso that entitled him to have an Esso On the Run. The fuel supply agreement does not in fact permit 242 or Mr. Chaudhary to set up an Esso On the Run. To the contrary, it expressly states that there is no authorization to use the "On the Run" trademark.

[201] I therefore find that there was no completed sublease or other documentation with Esso On the Run.

The fuel supply agreement with Esso

[202] The fuel supply agreement, which Mr. Chaudhary provided to Mr. Goyal in draft unsigned form on January 29, 2018, was never signed. There is no evidence before me that Esso ever agreed to or approved the terms of any fuel supply agreement.

[203] Mr. Chaudhary testified that fuel suppliers are content to sign fuel supply agreements when the parties are prepared to do so. He submits that given how long 242 was from constructing the gas station, it was too soon to sign the fuel supply agreement and too soon for 242 to ask that Esso sign one.

[204] In my view, if Mr. Chaudhary wished to advance this argument, he needed to do so with the benefit of evidence from a representative of Esso who could confirm that Esso agreed to the terms of the particular draft fuel supply agreement at issue in this case. He did not do so. Given that there is no signed fuel supply agreement, and no indication that Esso agreed to or approved the terms of the draft unsigned fuel supply agreement in the record before me, I do not agree that the agreement provided to Mr. Goyal was "completed." For the reasons above, I do not agree that the unsigned, unapproved, and unagreed-to draft fuel supply agreement can be considered to be a completed agreement.

Conclusion regarding breach of contract

[205] I therefore find that none of the three required agreements – the Tim Hortons lease, the Esso On the Run sublease, or the fuel supply agreement – were completed as required by the SPA and March Agreement. I reject Mr. Chaudhary's claim to the contrary. While it is clear from his evidence that he was confident that the agreements would be completed, that does not mean they were in fact completed before he demanded the $150,000 payment or at all.

[206] In light of this finding, I need not consider whether the last of the Chaudhary/Asghar contractual obligations – that the site plan agreement be "satisfactory to Goyal" – was satisfied. All four of the Chaudhary/Asghar contractual obligations had to be satisfied in order for Mr. Chaudhary to legitimately demand the payment of $150,000 from Mr. Goyal. In my assessment, at least three of the obligations were not carried out. As such, Mr. Goyal did not yet owe the payment and Mr. Chaudhary had no basis on which to claim it from him.

[207] Mr. Chaudhary and Ms. Asghar submit that the March agreement and SPA did not require signed agreements. Rather, they required merely "satisfactory completion of … documentation." They state that this must mean documentation satisfactory for the purposes for which it is intended. That is, documentation that, if accepted by the parties, would grant the parties the rights they were

seeking. In other words, as long as there were prepared but unsigned agreements, that was sufficient.

[208] I disagree, for the reasons above: an unsigned agreement contains no confirmation from the parties that they accept its terms, and therefore may simply reflect the hopes and dreams of one side to the deal, and nothing more. It therefore cannot reasonably be said that an unsigned agreement is "completed." As Mr. Chaudhary's and Ms. Asghar's submission itself acknowledges, an unsigned agreement has not been accepted. I therefore do not see how it could be considered "completed."

[209] My view is underscored by the facts that the Tim Hortons lease underwent substantive changes after the draft, unsigned version was provided to Mr. Goyal, and that there is no evidence that Esso agreed to or approved the terms of the unsigned draft fuel supply agreement before me. I also note that there is no sublease at all with Esso On the Run, even in draft, unsigned form.

The validity of the sale

[210] 262 and Mr. Bishay assert that, based on the indoor management rule in section 19 of the OBCA, they acquired the right to proceed with the purchase of the Property, the agreement for purchase and sale was valid and binding, and they became the owners of good and valid title on the Property on March 5, 2018, the closing date of the sale. They state that, accordingly, 242 cannot now assert that the sale was unauthorized.

[211] I disagree.

[212] The indoor management rule holds that a third party dealing with a corporation – in this case, Mr. Bishay – who acts in good faith and has no knowledge of any impropriety or irregularity on the part of the corporation may assume that the corporation is complying with its internal policies and requirements. The rule is articulated in section 19 of the OBCA, which provides in relevant part:

> **19** A corporation or a guarantor of an obligation of a corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that,
>
> …
>
> (f) a sale, lease or exchange of property referred to in subsection 184 (3) was not authorized,
>
> except where the person has or ought to have, by virtue of the person's position with or relationship to the corporation, knowledge to that effect.

[213] 262 and Mr. Bishay state that the indoor management rule applies here. They submit that the Property is referred to in section 184(3) of the OBCA, because it was the only asset of 242, and as such is a transaction protected by the rule under section 19(f). They further submit that,

based on the rule, Mr. Bishay was entitled to rely on Ms. Asghar's apparent authority to sell the Property on behalf of 242, and Mr. Goyal is precluded from arguing that the sale was unauthorized.

[214] I find that Mr. Bishay's purchase of the Property is not protected by the indoor management rule, because, before the transaction closed, he knew that Ms. Asghar could not bind 242 and that the sale was therefore not authorized. He is therefore caught by the "knowledge" exception to the rule set forth in its concluding language.

[215] On February 28, 2018, Mr. Goyal's counsel wrote to Mr. Bishay's counsel, Mr. Akram, and advised him that Mr. Goyal did not consent to the agreement of purchase and sale, that Mr. Goyal was a 50% owner of 242, and that it was Mr. Goyal's position that the agreement was not binding on 242 There is no evidence to suggest that Mr. Akram did not receive that correspondence. Mr. Akram's knowledge as counsel may properly be imputed to Mr. Bishay, his client (*Durbin v. Monserat Investments Ltd.*, 20 O.R. (2d) 181 (C.A.), at para. 8).

[216] Moreover, I have found, despite Mr. Bishay's trial testimony to the contrary, that Mr. Bishay himself learned of Mr. Goyal's objections to the sale as unauthorized. He learned of those objections by virtue of the letter from Mr. Goyal's counsel. He learned of them before the sale closed on March 5, 2018. He thus had actual knowledge that Ms. Asghar did not have authority to bind the company in the sale of the Property to him, before the sale closed. He continued on with the transaction nonetheless.

[217] Mr. Bishay asserts that the date on which his state of knowledge should be assessed under the indoor management rule is the date on which the agreement of purchase and sale was entered into, not the date on which the sale of the Property closed. He says that by the time he entered into the agreement of purchase and sale, it was "too late to stop the deal."

[218] I disagree.

[219] First, no authority is provided to me in support of the proposition that knowledge for the purposes of the indoor management rule is to be evaluated as at the date of the agreement, not the date of closing. The jurisprudence indicates the opposite (see, for example, *1162251 Ontario Ltd. v. 833960 Ontario Ltd. (M-Plan Consulting)*, 2017 ONCA 854, at paras. 71 and 72).

[220] Second, it was not "too late to stop the deal" by the time the agreement was entered into. As discussed above, Schedule A of the agreement of purchase and sale contained a buyer's lawyer's review condition that provided that the offer was conditional upon Mr. Bishay or his lawyer's review of the offer for two business days after its acceptance. Additionally, section 8 of the agreement provided that Mr. Bishay had until March 2, 2018 to examine the title to the Property. Section 10 provided that "[if] within the specified times referred to in paragraph 8 any valid objection to title … is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy … and which Buyer will not waive… this Agreement … shall be at an end and all monies paid shall be returned." Notably, Ms. Asghar confirmed acceptance of the offer at 12:00 p.m. on Monday, February 26, 2018, and Mr. Bishay's counsel received an email from Mr. Goyal's counsel objecting to the sale at 4:59 p.m. on Wednesday, February 28, 2018. After receiving this communication, pursuant to Schedule A or section 10 of the agreement, Mr. Bishay

could have legitimately raised his concerns about ownership of the Property and pulled out of the purchase if needed. It was by no means "too late" for him to address Mr. Goyal's concerns.

[221] Since Mr. Bishay had knowledge that Ms. Asghar could not legitimately bind the company, Mr. Bishay and 262 cannot invoke the protection of the indoor management rule, based on section 19(f) of the OBCA. As such, Mr. Goyal is not precluded from asserting that the sale of the Property was unauthorized. I have found that it was unauthorized, and that the indoor management rule affords Mr. Bishay and 262 no defence.

[222] I therefore dismiss Mr. Bishay's and 262's request for a declaration that the agreement of purchase and sale was valid and binding and rendered 262 the owner of good and valid title on the Property on March 5, 2018.

Damages from the Certificate of Pending Litigation

[223] 262 and Mr. Bishay counterclaim based on section 103(4) of the *Courts of Justice Act*, which provides that "[a] party who registers" a CPL "without a reasonable claim to an interest in the land is liable for any damages sustained by any person as a result of its registration." They assert that Mr. Goyal obtained the CPL without a reasonable claim to an interest in land, and that the CPL left 262 unable to refinance or sell the Property.

[224] They urge me to put 262 back in the position they say it would have been in had the CPL not been improperly obtained. They seek damages of $1,490,000 (the difference between the $1,510,000 purchase price, and the $3,000,000 at which Mr. Goyal estimates the Property's value today), less Mr. Goyal's carrying costs on the property. In the alternative, they ask me to quantify their damages based on a determination of the point in time at which 262 would have sold the Property, and the value of the Property at that time.

[225] Ms. Asghar likewise claims that Mr. Goyal had no proper basis for seeking or obtaining the CPL, and that the CPL deprived 242 of the opportunity to develop the Property, resulting in damages to 242 and to her as a shareholder. She also states that Mr. Goyal's registration of the CPL was oppressive, because it was done in an effort to force Mr. Chaudhary to give Mr. Goyal more than his fair share of equity in the Property. Her claim for damages arising from the CPL is rooted in a claim of oppression, while 262 and Mr. Bishay ground theirs in section 103(4) of the *Courts of Justice Act*.

[226] I reject these claims.

[227] Having regard to Ms. Asghar's oppression claim, Mr. Goyal withdrew his claim that he is entitled to hold anything more than 50% of 242. In any event, based on the record before me, there is no support for the suggestion that Mr. Goyal sought the CPL to leverage a larger ownership stake in 242.

[228] Having regard to the claim for damages under section 103(4) of the *Courts of Justice Act*, 262 and Mr. Bishay assert that the indoor management rule applies to the transaction, and that, as a consequence, neither 242, nor Mr. Goyal as its shareholder, had any interest in the land. They assert that the agreement of purchase and sale was valid and binding notwithstanding Ms. Asghar's

lack of authority. 242's interest in the land was accordingly transferred on the closing date of the transaction, March 5, 2018.

[229] I have found that the indoor management rule does not apply to the sale of the Property. I therefore reject the suggestion that Mr. Goyal did not have any interest in the Property. To the contrary, as a 50% shareholder of 242, which owned the Property, he very clearly had an interest in the Property.

[230] In any event, a CPL is granted where "an interest in land is in question." Even if Mr. Goyal did not have an interest in the Property – and I find that he did – there was clearly an interest in land at issue in this litigation. Mr. Goyal was seeking rescission of the agreement of purchase and sale. He was also claiming that the sale was a fraud. The allegations squarely placed the ownership and status of the land in question. The Court of Appeal for Ontario has held that the interest in land need not be claimed by the plaintiff; it is sufficient that there be an interest in the land in question in the proceeding generally (*Chilian v. Augdome Corp.*, [1991] O.J. No. 414 (C.A.), at p. 31).

[231] I am also of the view that there was reasonable cause for the CPL to be granted. As discussed above, the agreement of purchase and sale was entered into without legal authority. The transaction also bore several "badges of fraud."

[232] I accordingly find that the CPL was appropriately granted and appropriately upheld. I dismiss Mr. Bishay's and 262's request for a declaration that Mr. Goyal had no interest in the land when he registered the CPL, and dismiss their claim for damages arising from the registration of the CPL under section 103(4) of the *Courts of Justice Act*. I also dismiss Ms. Asghar's claim that Mr. Goyal had no legitimate basis to seek or obtain the CPL and that it was oppressive for him to have done so.

The *Limitations Act, 2002*

[233] Mr. Bishay states that the action against him personally is statute-barred based on the *Limitations Act, 2002*. He says Mr. Goyal added him as a personal defendant outside of the two-year limitation period established in the statute.

[234] Given my finding that Mr. Bishay is not liable for fraud, I need not consider this defence.

[235] Had I found Mr. Bishay liable, however, I would not have barred the claim against him based on the limitation period. In my view, the basis for Mr. Goyal's claim against Mr. Bishay personally was only discovered during examinations for discovery, which commenced on June 26, 2018, within the limitation period relative to when Mr. Bishay was sought to be brought into the action. It was during discovery that Mr. Goyal learned that Mr. Bishay depended on Mr. Chaudhary and trusted him "blindly," that Mr. Bishay did not read the agreement of purchase and sale for his purchase of the Property, and that Mr. Bishay did not do any due diligence before the purchase. These are facts that gave rise to Mr. Goyal's claim against Mr. Bishay personally.

[236] There are several facts that were known to Mr. Goyal before discoveries, to which Mr. Bishay points as evidence that Mr. Goyal could have commenced his claim earlier. In my view, these facts are supportive of the fraud claim against 262, but not of any claim against

Mr. Bishay personally. For instance, the fact that the transaction proceeded even after Mr. Goyal's lawyer advised Mr. Bishay's lawyer that Ms. Asghar lacked authority to bind 242 grounds a claim against 262, but not a personal claim against Mr. Bishay. The fact that he knew, based on the terms of the agreement, that it had a tight closing and no due diligence condition was similarly not sufficient to anchor a claim of personal liability.

[237] As such, it was only at discovery that Mr. Goyal's claim against Mr. Bishay personally was discovered. This was when he acquired actual or constructive knowledge "of the material facts upon which a plausible inference of liability on the defendant's part can be drawn" (*Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, 461 D.L.R. (4th) 613, at para. 42).

[238] Limitation periods were tolled in Ontario on March 16, 2020, further to Ontario Regulation 74/20, and continued to be tolled as of September 11, 2020, the date on which Mr. Goyal's motion to add Mr. Bishay as a defendant personally was served. As such, the last date on which the limitations clock was running before Mr. Bishay was sought to be added as a defendant was March 16, 2020. The time period between Mr. Bishay's first discovery on June 26, 2018, and March 16, 2020 is one year, 8 months, and 20 days. This was within the two-year limitation period.

Remedy

[239] Mr. Goyal seeks a range of remedies, all grounded in section 248(3) of the OBCA, which provides that the court may make "any interim or final order it thinks fit," including an order for the purchase of securities, an order winding up a corporation, or an order "compensating an aggrieved person."

[240] The issues before me on remedy are the following:

a. Whether Mr. Goyal is entitled to a declaration that Mr. Chaudhary and Ms. Asghar acted in a manner that was oppressive and unfairly prejudicial to him and that unfairly disregarded his interests;

b. Whether Mr. Goyal is entitled to a "shotgun" buyout, and if so on what terms, or, in the alternative, whether 242 should be wound up under section 248(3)(l) of the OBCA, with the costs of the wind-up to be paid by Mr. Chaudhary and Ms. Asghar;

c. Whether Mr. Goyal is entitled to damages at large of $250,000 from the Defendants on a joint and several basis (as against Mr. Chaudhary and Ms. Asghar for oppression and fraud, and as against Mr. Bishay and 262 for fraud alone); and

d. Whether Mr. Goyal is entitled to punitive damages of $434,200 from Mr. Chaudhary and Ms. Asghar, representing what he says is 20% of the value of the Property as of February 2018, when it was sold to 262.

[241] Some of the relief that Mr. Goyal initially sought in the Amended Amended Statement of Claim is now moot, including the rescission of the agreement of purchase and sale between 242 and 262. Other relief, such as an order removing Ms. Asghar as a shareholder, officer, and director of 242 and a declaration that Mr. Goyal is the sole owner of the Property is no longer pursued.

[242] Because I have not found Mr. Bishay or 262 liable for fraud against Mr. Goyal, I do not consider Mr. Goyal's request for damages at large from them. Likewise, because I have found that the counterclaims are not made out, I need not consider the claims of Mr. Chaudhary and/or Ms. Asghar for damages for Mr. Goyal's alleged breach of contract, or for oppression or under the *Courts of Justice Act* arising from Mr. Goyal's registration of the CPL. Nor do I need to consider the claims by 262 and Mr. Bishay for damages arising from the CPL.

Declaration of oppression

[243] Mr. Goyal seeks a declaration that Mr. Chaudhary and Ms. Asghar have acted in a manner that is oppressive and unfairly prejudicial to Mr. Goyal and that has unfairly disregarded his interests. I have found that their conduct towards Mr. Goyal was oppressive and accordingly grant this declaration.

Buyout or windup

[244] The parties agree that some form of buyout or wind-up of 242 is appropriate. The question before me is whether a buyout or wind-up is more suitable, and what the structure of the buyout should be.

[245] Mr. Goyal proposes a shotgun buy-sell agreement in which Mr. Chaudhary sets the price for 50% of the value of the Property or 242, and Mr. Goyal is then allowed to choose whether to purchase Ms. Asghar's interest in the Property or 242 at that price or sell his own interest to Ms. Asghar at that price. In the alternative, Mr. Goyal proposes a buyout in which the value of the Property is appraised, and he is then permitted to make the same election. For his part, Mr. Chaudhary proposes that Mr. Goyal be the one to pick the price and that Mr. Chaudhary be the one permitted to make the election. It is not in dispute that the Property is 242's only asset, and as such a Property appraisal will gauge the value of both the company and the Property.

[246] Given that I have found that Mr. Chaudhary is the one who oppressed Mr. Goyal's interests, and my concerns about his conduct generally, I do not grant a buyout along the lines Mr. Chaudhary has proposed. I do not consider it appropriate to grant him control over the process. In any event, it is common ground between the parties that Mr. Goyal has little experience in gas station development and as such I am not of the view that he is the appropriate one to value the Property.

[247] While Mr. Chaudhary certainly has the required experience, and indeed boasted about his property appraisal expertise in his testimony, it would not be appropriate for him to be the one to appraise the Property either, given my findings about his conduct. In any event, it is clear that his and Mr. Goyal's relationship has deteriorated completely, and no degree of trust survives between them. It is appropriate to minimize the dealings they have with one another and not ask one of them to rely on the other for anything more than what is necessary.

[248] I therefore order that an independent appraiser, who has had no prior dealings with any of Mr. Chaudhary, Ms. Asghar, Mr. Bishay, Mr. Goyal, their respective companies, or Mr. Frymer or Mr. Akram, conduct a valuation of the Property as at the date of the release of these Reasons. The appraiser is to be chosen by the parties within 15 days of the date of these Reasons, or, if they

are unable to agree, by the court from a list of independent appraisers proposed by each of the parties. The appraisal is to be completed within 30 days of the engagement of the appraiser.

[249] Mr. Goyal is to then be permitted to elect whether to sell his interest in the Property to Ms. Asghar for 50% of the appraised fair market value, or to buy her 50% interest at that price. He is to make his election within 15 days of receipt of the appraisal.

[250] It is appropriate that Mr. Goyal be the one to make this election. Mr. Chaudhary engaged in oppression and fraud. His lying and deliberate withholding of information are responsible for the breakdown of the relationship between him and Mr. Goyal and, ultimately, the deadlock in the company. This started before Mr. Goyal purchased his shares in 242, when Mr. Chaudhary concealed the fact that Mr. Bhangu was his nominee. It continued throughout his working relationship with Mr. Goyal and included his orchestration of the sale of 242 to Mr. Bishay, secretly and without authorization, and his subsequent refusal, even after the Property was transferred back to 242, to entertain offers to purchase it. To permit him to purchase Mr. Goyal's shares would let him take advantage of a situation that he created. That would not be fair or equitable.

[251] Because I have found that a buyout of the parties' interests in 242 is appropriate, I need not consider the alternative proposed remedy of a wind-up.

Damages at large

[252] Mr. Goyal also seeks damages at large for oppression and fraud from Mr. Chaudhary and Ms. Asghar. I grant such damages, in the amount of $200,000.

[253] In the leading case of *Uni-Jet Industrial Pipe Ltd. v. Canada (Attorney General),* 2001 MBCA 40, 198 D.L.R. (4th) 577, at paras. 66-73, the Manitoba Court of Appeal summarized the principles governing damages at large. These principles have been reiterated by the Court of Appeal for Ontario (see, for example, *Grand Financial Management Inc. v. Solemio Transportation Inc.* 2016 ONCA 175, 396 D.L.R. (4th) 529 leave ref'd [2016] S.C.C.A. No. 183, at paras. 83-85) and this court (see, for example, *Groh v Quocksister*, 2021 ONSC 3226, at paras. 42-43). Damages at large generally include compensation for loss of reputation, injured feelings, bad or good conduct by either party, or punishment. They are compensatory for loss that can be foreseen but cannot be readily quantified. They may also serve as an opportunity to condemn flagrant abuses of the legal process.

[254] Damages at large are a matter of discretion for the trial judge and more a "matter of impression and not addition" (*Vale v. International Longshoremen's and Warehousemen's Union, Local 508,* 12 B.C.L.R. 249 (C.A.), at p. 238). They are not capable of being precisely measured and must consider "a host of circumstances involving both the particular plaintiff and the particular defendant, and they are likely to be unique in each case" (*Unijet,* at para. 72).

[255] In my view, damages at large are appropriately awarded to Mr. Goyal for several reasons.

[256] Mr. Goyal experienced losses as a consequence of Mr. Chaudhary and Ms. Asghar's oppressive and fraudulent conduct. Those losses could be foreseen but cannot be readily quantified.

[257] Mr. Goyal was not able to sell the Property from February 2018, when it was sold to Mr. Bishay, until August 2022, when Mr. Chaudhary agreed Mr. Goyal could list the Property for sale. In fact, even after the Property was reverted to 242's ownership in 2021, Mr. Chaudhary and Ms. Goyal still did not let Mr. Goyal sell it. Mr. Goyal had been in discussions with HLH before the Property was sold to Mr. Bishay. Although the HLH offer was conditional, it was for a significantly higher sum ($2,171,000) than the amount for which Mr. Bishay bought the Property – an amount that I have found did not reflect its fair market value. Notably, HLH renewed its offer to purchase after the Property was returned to 242 in 2021, at the same price that it had offered in 2018. However, Mr. Chaudhary refused to engage in any discussions about a potential sale in 2021. Had 242 been able to sell the Property to HLH or another buyer for market value, Mr. Goyal would have derived the benefit of that sale (as indeed Ms. Asghar would have). But Mr. Chaudhary and Ms. Asghar's conduct foreclosed this possibility.

[258] Had the Property sold, Mr. Goyal also would not have had to pay more than his fair share of the expenses toward the Property. After the dispute over the unauthorized sale of the Property erupted, the Defendants paid no expenses on the Property. This was so even after Mr. Goyal obtained a court order requiring them to pay their shares. Indeed, it was not until this trial began that Mr. Chaudhary and Ms. Asghar finally complied with the court order and remitted their share of the expenses. Their counsel describes this as handing out "rough justice" for the hardship that they felt Mr. Goyal had put them through. I would characterize it as a failure to comply with a court order.

[259] The money Mr. Goyal could have earned from a fair market value sale of the Property, and the money he could have held onto had the Defendants paid their court-ordered share of the Property's expenses, could in turn have been invested to generate revenue for Mr. Goyal. Instead, it was tied up, as a direct consequence of the Defendants' misconduct.

[260] These losses were foreseeable. It was known to Mr. Chaudhary and Ms. Asghar that Mr. Goyal's funds were tied up in the Property and that he could not sell without their participation. It was precisely because it would cost Mr. Goyal that they refused to pay the expenses on the Property, and they would reasonably have understood that because he did not have that money, he could not invest it.

[261] The money that Mr. Goyal could have earned from a fair market value sale cannot be quantified because there is no clear evidence before me of the fair market value of the Property at the various points in time between February 2018 and August 2022 when Mr. Goyal could potentially have sold the Property had Mr. Chaudhary and Ms. Asghar not impeded his ability to do so.

[262] The money that Mr. Goyal could have earned by investing his share of the revenue from the sale of the Property, and by investing the money that he instead had to pay towards Mr. Chaudhary and Ms. Asghar's share of expenses on the Property, cannot readily be quantified.

It would be an abstract exercise to try to calculate his return on investments that he never had the opportunity to make. It is even more abstract to try to quantify any such losses over a period of years.

[263] Additionally, the evidence of Mr. Desjardine was that the Property is likely no longer marketable as a gas station because of a development going up across the street from the Property, and that they no longer advertise the site plan agreement in the listing. The value of the site plan agreement has thus evaporated because the Property could not be sold earlier. Based on Mr. Desjardine's evidence, it is likely that the Property's value has diminished.

[264] This loss was foreseeable. Mr. Chaudhary and Ms. Asghar should reasonably have known that the passage of time could diminish the value of the Property, especially when Mr. Chaudhary did not satisfy the Chaudhary/Asghar contractual obligations that were intended to move the Property toward development.

[265] The loss cannot readily be quantified based on the record before me, which, for example, contains no evidence on the current market value of the Property.

[266] It is also appropriate to grant damages at large to punish Mr. Chaudhary and Ms. Asghar, and compensate Mr. Goyal, for their fraudulent sale of the Property. If damages at large are not granted, Mr. Goyal will get no real remedy in relation to the fraud.

[267] The Defendants submit that because the agreement of purchase and sale was eventually rescinded and the Property returned to 242, Mr. Goyal suffered no harm. He was put back to the position that he was in before the fraudulent sale: he is once again the 50% owner of the company that owns the Property.

[268] I disagree. The fraudulent sale of the Property did result in harm to Mr. Goyal, for the reasons above. Moreover, the fact that the agreement was rescinded does not disentitle Mr. Goyal to relief. On this reasoning, any bad actor could sell a property fraudulently, and once caught, return it to its owner and claim no harm was done. This would be an unfair and absurd result.

[269] Mr. Goyal suffered harm as a consequence of the fraud. He was not made whole for that harm through the rescission of the agreement. Nor did the harm stop with the rescission of the agreement. Even after the Property was returned to 242, Mr. Chaudhary and Ms. Asghar refused to entertain offers to sell the Property or to pay their share of expenses on the Property. In these circumstances, damages at large are properly awarded to recognize the bad conduct on the part of Mr. Chaudhary and Ms. Asghar, and to offer Mr. Goyal a remedy for it.

[270] I am of the view that damages at large of $200,000 are appropriate, having regard to the principles underlying awards for damages at large, the nature of the losses incurred by Mr. Goyal as a consequence of Mr. Chaudhary and Ms. Asghar's misconduct, and the time frame over which he suffered those losses.

Punitive damages

[271] Finally, Mr. Goyal seeks punitive damages from Mr. Chaudhary and Ms. Asghar, on the basis that Mr. Chaudhary repeatedly lied to him, withheld information from him, and demanded payments from him to which he was not entitled, all in order to give himself the chance to deal unilaterally with the Property and 242, and prevent Mr. Goyal from protecting himself in his interactions with Mr. Chaudhary.

[272] I decline to award punitive damages.

[273] The principles governing punitive damages are articulated in the Supreme Court of Canada decision of *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595. The court held that punitive damages are "very much the exception rather than the rule" and are to be "imposed *only* if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour" (at para. 94, emphasis in original).

[274] I accept that some of Mr. Chaudhary's conduct was indeed reprehensible. His lies and concealment of information, detailed throughout this judgment, are a marked degree from ordinary standards of decent behaviour.

[275] Nonetheless, Mr. Goyal does not come with entirely clean hands, because he too seems to have been working to try to sell the Property behind the scenes. Just as Mr. Chaudhary had discussions and negotiations with Mr. Bishay about buying the Property, which he did not tell Mr. Goyal about until the Property was sold, Mr. Goyal, too, had such conversations with HLH during the same time period. By the time Mr. Chaudhary sold the Property to 242, Mr. Goyal had already exchanged signed offers back and forth with HLH. His discussions with HLH were far from theoretical.

[276] Mr. Goyal states that Mr. Chaudhary's refusal to terminate the proposed sale to Mr. Bishay led him to conceal his negotiations with HLH from Mr. Chaudhary, because he felt Mr. Chaudhary would use the information to sell the Property to HLH unilaterally.

[277] I am unable to accept this explanation. Mr. Goyal only learned of the sale to Mr. Bishay on February 26, 2018. The following day, he asked Mr. Chaudhary not to go through with it, and the day after that, Mr. Chaudhary rebuffed his request. Thus, it was not until February 28 that Mr. Chaudhary refused to terminate the sale. But by that time, Mr. Goyal had been interacting with HLH for two full weeks. On February 14, 2018, he emailed Mr. Desjardine with documentation about the Property and asked whether Mr. Desjardine might be "able to find someone for quick sale." On February 22, he followed up via email with Mr. Desjardine about potential interest in the Property. On February 26, he received a signed, conditional offer from HLH to purchase the Property. On February 27, he signed back HLH's offer, purportedly on behalf of 242. All of those dealings took place before Mr. Chaudhary refused to walk back the sale to Mr. Bishay. Many of them took place before Mr. Goyal even knew about the sale to Mr. Bishay. I therefore do not accept Mr. Goyal's explanation that his decision to keep his dealings with HLH

from Mr. Chaudhary was rooted in Mr. Chaudhary's refusal to terminate the sale to Mr. Bishay. That explanation is not supported by the timeline of events.

[278] In my view, the fact that Mr. Goyal had discussions and exchanged signed offers with a prospective purchaser and did not disclose those dealings to Ms. Asghar, the other 50% shareholder, was improper. Just as Mr. Chaudhary ought to have been transparent about his dealings with Mr. Bishay, to protect Mr. Goyal's rights and the interests of the corporation, Mr. Goyal similarly ought to have been transparent about his negotiations with HLH. I find that his failure to do so means that he does not come to court with clean hands and is not entitled to punitive damages (see, for example, *IT/Net Inc. v. Cameron*, [2003] O.J. No. 4202 (S.C.J.), at para. 21, rev'd on other grounds [2006] O.J. No. 156 (C.A.)).

[279] Mr. Chaudhary invites me to conclude that Mr. Goyal intended to self-deal – that is, to secretly "tee up" the conditional sale to HLH so that, if he could persuade Mr. Chaudhary to abandon the sale to 262 and sell Ms. Asghar's 50% share to him, he could then turn around and sell the Property to HLH for a higher price. I decline to draw this conclusion. It is speculative. It is also a distraction for the purposes of this litigation. Mr. Chaudhary and Ms. Asghar are the only ones who actually sold the Property fraudulently and without authorization.

Order Granted

[280] I grant the following:

a. A declaration that Mr. Chaudhary and Ms. Asghar acted in a manner that was oppressive and unfairly prejudicial to Mr. Goyal and that unfairly disregarded his interests;

b. An order for a "shotgun buy-sell" as follows:

   i. An independent appraiser who has had no prior dealings with any of Mr. Chaudhary, Ms. Asghar, Mr. Bishay, Mr. Goyal, their respective companies, or Mr. Frymer or Mr. Akram, shall conduct a valuation of the Property;

   ii. The appraiser is to be chosen by the parties within 15 days of the date of these Reasons, or, if they are unable to agree, by the court from independent appraisers proposed by each of the parties;

   iii. The appraisal is to be conducted as at the date of the release of these Reasons and is to be completed within 30 days of the engagement of the appraiser; and

   iv. Mr. Goyal is to then elect whether to sell his interest in the Property to Ms. Asghar for 50% of the appraised fair market value, or to buy her 50% interest at that price, and is to make his election within 15 days of receipt of the appraisal.

c. An order that Mr. Chaudhary and Ms. Asghar pay Mr. Goyal damages at large for oppression and fraud in the amount of $200,000, on a joint and several basis.

[281] The parties may advise me if they require further direction on the valuation and sale of the Property or any other orders that are appropriate in light of these reasons.

[282] The parties are to work together to resolve costs. If they are unable to do so within 30 days, they are to contact my judicial assistant, and I will set a timetable for costs submissions.

Parghi J.

Released: October 10, 2025

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

INDER GOYAL

Plaintiff

– and –

NOREEN ASGHAR, MIRZA CHAUDHARY, JACK FRYMER, 2425779 ONTARIO INC. and 2623559 ONTARIO INC

Defendants

REASONS FOR JUDGMENT

Parghi J.

Released: October 10, 2025