

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Huber Estate Vineyards Inc. v. Hainle
Vineyards Estate Winery Ltd.*,
2025 BCSC 2182

Date: 20251106
Docket: S130787
Registry: Kelowna

Between:

**Huber Estate Vineyards Inc., Rosa Irene Huber,
Walter Georg Huber and WTJ Consulting Inc.**

Plaintiffs

And

**Hainle Estate Winery Ltd.
and Bella Valley Enterprises Ltd.**

Defendants

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment

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Place and Date of Trial/Hearing:

Kelowna, B.C.
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Place and Date of Judgment:

Kelowna, B.C.
November 6, 2025

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I. Introduction

[1] This case centers around the April 2017 purchase of a Peachland, BC, winery and vineyard known as the Hainle Estate Winery Ltd. (“Hainle”). It is yet another example of the ills that can befall parties when they bypass their lawyers and attempt to paper agreements on their own, especially when the parties are from different ethnic cultures and agreements are drafted in a language other than the drafter’s native tongue.

[2] The plaintiff Huber Estate Vineyards Inc. (“Huber Inc.”) sold Hainle to the defendant Bella Valley Enterprises Ltd. (“Bella Valley”) by way of a share purchase agreement dated April 12, 2017 (“SPA”). While the SPA was drafted by lawyers and the sale completed as planned, the parties entered into a series of collateral agreements, both before and after the SPA, respecting the purchase of Hainle’s wine inventory and post-SPA employment arrangements, all of which have complicated matters and brought about this lawsuit.

[3] Huber Inc. sues, saying that in addition to the paid purchase price of \$3.9 million (“Purchase Price”) as contemplated by the SPA, Bella Valley still owes it \$2.02 million for the wine inventory in existence at the time of the SPA (“Inventory”). Bella Valley defends saying that the Inventory was included in the Purchase Price and in any event the Inventory was faulted and unsaleable. It says nothing further is owing.

[4] The plaintiff Walter Huber (“Walter”) is the principal of Huber Inc. As part of the negotiations leading to the SPA, he agreed with Bella Valley’s principle, Bella Huang (“Bella”) and her husband Xifu Zhuang (“Tony”) to continue working after the SPA as Hainle’s general manager and chief winemaker at an annual salary of \$125,000 (the “Employment Contract”). He was dismissed from that position in June 2020, and he sues Hainle seeking damages for wrongful dismissal.

[5] Walter is also the principal of the plaintiff WTJ Consulting Inc. (“WTJ Inc.”). WTJ Inc. sues Hainle seeking damages for breach of an alleged post-SPA consulting agreement whereby, in addition to Walter’s annual salary of \$125,000,

Walter says WTJ Inc. was to be paid \$125,000 annually for consulting services (“Consulting Agreement”).

[6] The plaintiff Rosa Irene Huber (“Rosa”) is Walter’s mother. She owns property on Gummow Road near Hainle (“Gummow Road Property”) containing vineyards and a warehouse (“Warehouse”) that, since 2002, was leased to Hainle under a twenty-year written lease agreement (“Written Lease”) that provided for Hainle to pay expenses only. Prior to the Written Lease expiring in 2022 and without knowledge of the Written Lease, Bella orally agreed with Walter to lease the Gummow Road Property for \$25,000 per year plus GST (“Oral Lease”). Rosa seeks damages for breach of the Oral Lease or alternatively the Written Lease.

[7] The defendants deny the existence of the Consulting Agreement and deny that any monies are owing under either the Written Lease or the Oral Lease. Not only do they deny that any monies are owing to any of the plaintiffs, but they also counterclaim for fraud and misrepresentation. They assert Walter is guilty of adulterating wine, fraudulently fabricating documentation related to wines he shipped to China, and breaching fiduciary duties they say he owed to Hainle during his tenure as its general manager and winemaker post-SPA, justifying his dismissal for cause.

[8] Specifically, the defendants say that:

- a) Pursuant to the terms of the SPA, the Inventory was included in the Purchase Price, and no additional monies are owing;
- b) In breach of representations contained in the SPA, the Inventory was of unmerchantable quality and was unsaleable;
- c) To induce Bella and Tony to purchase Hainle in the first place, Walter actively and fraudulently misrepresented its history, achievements, awards, quality of the Inventory and actively misrepresented his education and wine making abilities. Although they do not seek to set aside the SPA, they say that these fraudulent misrepresentations misled them into

purchasing Hainle and agreeing to hire him under the Employment Contract; and

- d) Walter fraudulently “doctored” lab test results for wine exported to China and falsely labelled icewine exported to China as “BC VQA” icewine when it was neither icewine nor BC VQA, resulting in it being unsaleable in China.

[9] The trial of this action was lengthy, significantly exceeding the 10-day time estimate at the trial management conference, in part because much of the evidence had to be translated between Mandarin and English.

II. The Parties/Players

[10] I shall start with an overview of the parties and the main players involved.

[11] Walter is 65 years old and has eastern-European heritage. His parents purchased Hainle in the early 2000’s and in approximately 2007 he began working at Hainle and learned the winemaking trade by watching Hainle’s then winemakers. He has no formal education in winemaking.

[12] At all material times prior to the SPA, Hainle was owned by Deep Creek Wine Estates Ltd. (“Deep Creek”), and Walter was its sole shareholder. Deep Creek’s name was changed to Huber Inc. when the SPA was completed.

[13] Bella Valley purchased the shares of Hainle from Deep Creek in April 2017 for \$3.9 million and has owned and operated Hainle since.

[14] Bella is a Chinese national and the principal of Hainle and Bella Valley. Bella’s fluency in the English language is marginal.

[15] Tony is Bella’s husband and is also a Chinese citizen. He does not speak, read or understand English.

[16] Bella Crafts (Guangzhou) Ltd. (“Bella Crafts”) is a Chinese company owned by Tony. Bella Crafts was used to purchase and import wines into China.

[17] Aileen Montgomery (“Aileen”) was hired by Bella in 2018, initially as a bookkeeper, and is currently Hainle’s chief operating officer.

III. Background

[18] Hainle is a boutique winery and vineyard located in Peachland, BC. It was purchased by Walter’s parents in the early 2000’s and was initially operated by them. The wines it produces can be classified as “old European wines” that appeal to a niche market. The wines are considered “dry” and not typical of wines produced elsewhere in the Okanagan Valley. Walter took over Hainle’s management and wine making in the 2008-time frame.

[19] By mid-2016, Walter was growing tired of operating Hainle and listed it for sale for \$3.9 million. The list price did not include Inventory or the Gummow Road Property nor was the Gummow Road Property or the Written Lease mentioned in the listing or sale documents.

[20] Meanwhile in China, Tony was operating a grape growing business in a wine region known as Hidden Valley. To assist with demand, in the past and through Bella Crafts, he had imported bulk wines from other wineries around the world including those produced in the Okanagan region of British Columbia. At the time, Bella was living in Vancouver with the couple’s son who was attending university.

[21] In the fall of 2016, Tony travelled to Vancouver with the intention of purchasing more bulk wines from the Okanagan Valley. Through Bella and Tony’s realtor, they became aware of two Okanagan wineries that were for sale, Hainle being one of them. Tony determined that, instead of buying wines from third parties, it would be financially prudent to purchase a winery in the Okanagan, produce his own wines and ship them to China for resale. With that, Tony, Bella, their realtor’s assistant “Alex”, and their Vancouver accountant “David”, drove to the Okanagan to view both Hainle and the other listed vineyard with the intention of purchasing one of them. In the end, Hainle was the only vineyard they visited.

[22] On October 16 or 17, 2016, Bella, Tony, Alex and David visited Hainle for the first time. They met Walter who regaled to them highlights of the winery's history, wines and awards, as translated by Alex. Walter served them samples of a few of Hainle's wines, and they were suitably impressed. The first visit was relatively short, lasting only a couple of hours. During this visit, Bella and Tony noted that the overall condition of the place was generally poor.

[23] They returned on October 21, 2016, with the intention of making Walter an offer. Through Alex, Tony attempted to negotiate down the listing price of \$3.9 million but Walter held firm. Tony relented and decided to pay the full asking price and a contract of purchase and sale was drafted and signed. The agreement was structured as an asset purchase to include 12.367 acres of land, vineyards, a wine shop, tasting room, winery and cellar. It did not include the Inventory. Because Bella was living in Vancouver, and despite Bella's reluctance at the time, Tony decided that Bella would own and operate Hainle once it was purchased through Bella Valley.

[24] During their two meetings with Walter, both Bella and Tony relied on Alex to translate Walter's words into the Mandarin language. His ability to accurately translate is unknown.

[25] In November 2016, Walter travelled to China as Bella and Tony's guest. The purpose was to show Walter around Hidden Valley and promote Hainle's wines. Walter was interviewed by a television station during which he regaled some of Hainle's history, position in the world of winemaking, awards and accomplishments, many of which he made up. Towards the end of the visit, Bella was expressing extreme reluctance in continuing with the purchase. Walter said he would 'sweeten the pot' by including the Inventory in the Purchase Price. Thinking that such an offer was too generous, Tony and Bella proposed a "profit-sharing" arrangement for the treatment of the Inventory. On November 19, 2016, shortly before Walter's return to Canada, they agreed that the Inventory would be included in the Purchase Price, but that Walter would be paid for it in addition to the Purchase Price on a net-profit

sharing arrangement with Walter receiving 40%, Bella receiving 40% and Tony receiving 20% of the profits as the Inventory was sold. This agreement was reduced to writing by Bella and signed on December 6, 2016, by all three parties (“December 2016 Agreement”). It reads in part:

On Nov 19th 2016, the Vendor and the Purchaser reached an agreement on terms of sale of the Inventory as below, to supplement the purchase and sale contract dated on Oct 21, 2016...

The inventory of the bottled and unbottled wine belonging to the Vendor shall be included in the Purchase Price: The Vendor and the Purchaser agreed that: ...

The percentage of the net profit sharing from the sales of the inventory is as below: 20% Tony, 40% Walter, 40% Bella...

Tony will bear the relevant risk: if in the case that Walter’s portion of profit sharing is less than \$3 million dollars by January 31, 2019, Tony will pay the remaining amount...

[26] On a second copy of the December 2016 Agreement, Bella hand wrote:

The inventory value will based on the actual no. as of Jan. 31st, 2017.

[27] Bella and Tony’s plan was that Bella would continue to live in Vancouver with the couple’s son, and Tony would continue to live and work in China. Because Bella had no experience with either winemaking or operating a vineyard, they asked Walter if he would be willing to continue working as Hainle’s general manager and chief winemaker. Walter readily agreed. Walter says the agreement was that he would be paid a total of \$250,000 per year for his services, but for tax efficiency, \$125,000 would be paid as a salary and \$125,000 would be paid as a “consultant fee” through WTJ Inc., a company he would incorporate for that purpose. Tony and Bella disagree and say that Walter was only to be paid a total of \$125,000 annually and that WTJ Inc. was something Walter talked about setting up to receive his share of the net profits from the sale of the Inventory which would assist in reducing income taxes.

[28] On December 29, 2016, the parties signed the Employment Contract that set out Walter’s duties as general manager and chief winemaker and which provided for a salary of \$125,000 annually. Although Walter maintains a written Consulting

Agreement existed, Bella and Tony assert there was no such thing. No written agreement was produced in evidence.

[29] An addendum to the contract of purchase and sale was entered into by the parties on December 23, 2016. According to this document, the Purchase Price specifically included the Inventory.

[30] Between October 2016 and April 2017, the parties agreed to structure the deal as a share purchase rather than an asset purchase. The SPA defined the Inventory as an asset of Hainle included in the Purchase Price.

[31] On February 28, 2017, Bella Valley and Huber Inc. entered into two addendum agreements (“Addendum A” and “Addendum B”) to the December 2016 Agreement regarding the purchase of the winery and payment for the Inventory respectively.

[32] Addendum A included the statement:

Tangible assets are the property of the winery, including land, building, inventory, equipment and other assets...

[33] Addendum B stated:

Tony will assume the responsibility:

By March 1st, 2019, if Walter’s net profit share amount is less than \$1,546,000, Tony will prepay the difference of the amount to Walter in advance.

From March 2nd, 2019 to March 2nd, 2020, if Walter’s net profit share is less than \$520,000, Tony will continue to prepay the difference of the amount to Walter in advance.

For these two pre-paid payment, the amount will be deducted back to Tony from the net profit share for Walter.

Instruction: \$1,546,000 plus \$520,000 together is the total value of the inventory of wine, this value will be based on the actual amount by the closing day.

[34] Prior to the SPA, Walter gave Bella spreadsheets setting out the Inventory count broken down by wines, vinegar, “library wines”, older wines, and wines available for sale on a day-to-day basis at the wine shop. It also included 14 cases

of wine identified as “bad wine – for vinegar”. The final reconciliation of Inventory in April 2017 was based on \$10 per bottle for red and white wine (a total of 57,822 bottles), \$25 per bottle of icewine (12,064 bottles), \$10 per bottle of vinegar (1,041 bottles) and \$10 per litre for bulk wine and vinegar and \$25 per litre of bulk icewine (“Inventory Valuation Formula”). The Inventory Valuation Formula never changed between October 2016 and May 2019.

[35] On April 3, 2017, Bella authored and, together with Tony, signed a “Guarantee Letter” to Walter, stating in part:

As the Net profit sharing agreement dated Feb 28th 2017, we make the guarantee to Walter Huber, we’ll pay the amount of the inventory value (which is \$2,020,000) by Jan 31, 2017, the exact amount will be checked on the closing date and adjust the amount accordingly.

This inventory value amount is included in the 40% net profit sharing which will be paid to Walter Huber when he is taking the duty as General Manager and chief wine make for Hainle Estate Winery as agreed by the parties in the agreements Dated Dec 6th 2016.

The amount and date will be paid as the schedule as below:

\$1,500,000 No later than April 30 2019

\$520,000 No later than April 30th 2020

[36] On April 4, 2017, Bella wrote the following in an email related to Walter’s employment:

The company consultant fee \$125,000 plus the salary \$125,000 as the employee. Ttl\$ 250,000. It’s a good income for Walter as he expected. From the 2016 finance statement. I noticed the net profit from Hainle is \$72117.89, compare with \$250,000, it’s a huge difference, I think Walter will have a good life after he sells the winery, as besides this part, he still has the net profit sharing.

[37] On April 27, 2017, the share purchase of Hainle completed pursuant to the SPA for \$3.9 million, with an agreed upon holdback of \$250,000 which was released to Huber Inc. on March 10, 2018. The SPA was negotiated, prepared and finalized by both party’s respective legal counsel, Mr. Sommerey for Walter and Ms. Chung for Bella and Tony. The SPA included the Inventory as an “asset” of Hainle that was included in the Purchase Price. The price allocation for the Inventory “for the buyer’s

own purposes” was \$1,013,901 which came from Hainle’s accounting records. A schedule to the SPA included the Inventory list prepared by Walter with the note:

Inventory List (exact count to be confirmed on closing but should not be significantly less than the one dated Jan 31, 2017).

[38] After the SPA completed, Bella was heavily involved in Hainle’s management and was a key part of its operations while still living in Vancouver. She was in almost daily communication with Walter and later, Aileen, whom she hired in 2018, initially as a bookkeeper and later as the winery’s CFO. Her communications were by email, WeChat messenger, and in person when she was at the winery. Bella oversaw all financial matters, wine shipments to China, wine labelling, hiring employees, setting wine prices, promotions, displays at the wineshop and decisions regarding bulk wine purchases.

[39] Tony and Bella were anxious to have the Inventory and post-SPA wines that Walter produced shipped to China as soon as possible. Plans to have them shipped in advance of the 2017 Chinese New Year had been missed because the SPA had dragged on. Ultimately, Hainle made four wine shipments to Bella Crafts in China: July 6, 2017, September 9, 2017, January 3, 2018, and December 7, 2018 (the “December 2018 Shipment”). How much of this wine was sold in China is unknown. Tony and Bella suggest that none of it was sold because it was either faulted, did not meet the Chinese wine palette that preferred sweeter wines, or remains in a Chinese government warehouse.

[40] Prior to the December 2018 Shipment, Hainle’s wine was sent to the Penticton Wine Lab for testing. The results were set out in a December 12, 2018, report (the “Penticton Lab Report”) and emailed to either Aileen, Walter, or both in an editable Microsoft Word document. At some point, the Penticton Lab Report was altered to accord with the labels on three of the wines that identified their alcohol content as 13.5% when the Penticton Lab Report showed they were 15.4%, 16.6% and 18.1% respectively (the “Altered Lab Report”). On December 13, 2018, Aileen emailed the Altered Lab Report to Bella Crafts in China.

[41] Prior to purchasing the winery, Bella planned a series of upgrades including the construction of a new cellar, which began prior to the SPA's completion. After the SPA, Bella and Tony were eager to ramp up wine production for the Chinese market but Hainle's existing infrastructure would not support the volume they wanted. To increase production Bella purchased new equipment, and bulk wines were purchased from other wineries to blend with Hainle's wines at Walter's suggestion. Walter also wanted Bella to invest in new wine barrels, but Bella declined because of money constraints. This placed a strain on the winery's ability to produce the quantity and quality Walter sought, which he expressed in a series of WeChat messages he sent to Bella documenting his frustrations.

[42] From the SPA onward, in addition to wines shipped to China, Hainle sold wine from the Inventory at its wine shop and at wine retailers throughout the province. When wine from Inventory was needed, Walter provided it from the Warehouse that only he had access to. How much of the Inventory was sold as compared with post-SPA produced wines is unknown, but Hainle's post-SPA financial statements suggest the annual wine sales increased substantially from the pre-SPA era.

[43] No monies were paid to Walter in accordance with the net-profit sharing agreements. In February 2019, Tony, Bella and Walter agreed to "void" the previous net profit-sharing arrangement in favour of an agreement that provided for the Inventory to be valued at \$2.02 million as at the SPA and that Walter would simply be paid that amount in two tranches, subject to a final quality and quantity inspection. On February 16, 2019, Bella authored and, together with Walter, signed an agreement that stated:

Regarding the Guarantee Letter dated April 3, 2017, the total inventory has been corrected to 2,020,000 by Walter Huber. Before payment, there will be a final quality and amount inspection.

Both sides agree, any net profit sharing agreement from before have been voided.

Regarding the Guarantee Letter dated April 3rd, 2017, the payment date for the 1,500,000 is changed to April 30, 2019, and payment for the 520,000 is changed to April 30th, 2020.

[44] On May 7, 2019, another, and what was to be the final, agreement respecting the Inventory, was reached (the “May 2019 Agreement”). It too was drafted by Bella and signed by Bella and Walter. At the time, Bella was hoping for a third-party investor to provide Hainle with some badly-need cash. The May 2019 Agreement specifically “voided” all prior agreements respecting the Inventory. Its relevant provisions state:

In order to protect Walter’s benefit from the inventory, also to protect the business of Hainle Estate Winery, We agree and make the following declaration: ...

...Walter also agrees that before payment [for the Inventory], there will be a final quality and quantity inspection.

Bella and Walter agrees that the inventory payment will be paid in two parts. The payment for the inventory in the GUARANTEE LETTER signed on April 3, 2017 and the AGREEMENT signed on February 26, 2019 shall be modified as follows:

The first part of the payment will be paid to Walter within 1 week after the new investor finishes the quality and quantity inspection and the investor’s payment for the inventory arrives in Bella’s accounts.

When Walter receives the inventory payment, he must immediately transfer the inventory to Hainle...

The 2nd Part of the payment will be arranged after the completion of CRA’s tax audit of WALTER’s business in the period before April 27, 2017, the payment should be completed before April 30, 2020...

...Bella did not take control of the inventory after the share purchase of Hainle on April 27 2017. The inventory has been controlled and regulated by Walter until now...

Bella Valley purchased inventory separately at the price of \$2,020,000 (at the price of \$10 per bottle for red wine and white wine, and \$25 per bottle for ice wine) as of April 27, 2017. This is a planned purchase, but not yet completed.

We jointly declare that all agreements concerning inventory signed by Tony, Walter, and Bella before this date May 7 2019 has been voided. All net profit sharing agreements had been voided, as well.

[45] The May 2019 Agreement refers to “memorandum no. 1051-002” (the “2019 Memorandum”) between Bella and proposed third-party investors described in the agreement as a memorandum of understanding, the relevant provisions of which state:

- a) The third-party investors would buy 60% of Bella Valley shares;

- b) Hainle would be valued at \$4.485 million (\$3.9 million purchase price plus 15% increased value since the SPA);
- c) Bella Valley purchased the Inventory separately for \$2.02 million based on \$10 per bottle for red wine, white wine and vinegar and \$25 per bottle for icewine;
- d) The third-party investors would purchase the Inventory separately from the 60% paid for Bella Valley's shares and the value of the Inventory would be based on a "fair market price" based on its acquisition price on April 27, 2017; and
- e) The proposed closing date was March 31, 2019.

[46] Starting in September 2019, Bella began to spend more time at the winery. By early 2020, when the third-party investors she was hoping for backed out citing quality issues with Hainle's wines, she began to have doubts about Walter's wine-making abilities. In January 2020, Bella, Tony and Walter met at the winery and a confrontation ensued related to the quality and price of Walter's wine. Walter insisted that the wines he was producing were of top quality while Tony maintained that the wines were not saleable in China.

[47] Shortly after this confrontation, Bella observed Walter removing boxes of Walter's pre-SPA business records from the winery. She confronted him and demanded he return them, and Walter complied. Although not expressed to Walter, his attempt to remove records belonging to Hainle increased Bella's overall concerns about him.

[48] In February 2020, Bella was introduced to Mr. Rob Ingram ("Mr. Ingram") whom she understood had experience in building and managing wineries. She promptly hired him as a consultant. Mr. Ingram told Bella that the quality of Walter's wines was poor and that she needed to find another winemaker.

[49] In March 2020, using funding from China, Bella started a major renovation of the winery.

[50] Towards the end of April 2020, through security cameras at the winery, Bella observed Walter and his then girlfriend at Hainle on a Saturday when the winery was closed. This prompted Bella to arrange to have the locks changed which prompted Walter to refuse to come to work citing illness. By this point, Bella had decided to terminate Walter's employment, however she made no mention of this decision to Walter.

[51] As it happens, Mr. Ingram's son, Scott Ingram ("Scott") was a winemaker. In May 2020, Mr. Ingram arranged for Scott, Mr. Anthony Buchanan – a wine producer ("Mr. Buchanan"), and Mr. Andrew Melville – a wine marketer ("Mr. Melville"), to attend Hainle to perform a quality evaluation of the wines remaining in the Inventory and the wine in the tanks. Their conclusions were that although some of the wine was saleable, it was mostly of poor quality. Much of the Inventory, they said, had oxidized and turned bad. Their assessments used adjectives such as "oxidized", "dirty", "rancid", "soapy", "mousy", and "brown". They suggested selling the product at greatly reduced prices. This assessment confirmed Bella's suspicions about Walter's abilities as a winemaker.

[52] Beginning in May 2020, Hainle began moving the Inventory it wished to keep and sell from the Warehouse, including most of the icewine, to Mission Bottle Washing's ("Mission Bottle") storage facility. The wine it considered "bad" was left behind.

[53] Walter's employment was formally terminated on June 16, 2020, when he received a termination letter authored by Mr. Ingram. This letter was the first notice Walter had that his position at the winery was in jeopardy. The letter stated that his termination was because his relationship with Hainle's owners had irretrievably broken down and the owners had lost confidence in his abilities to effectively manage the winery's operations. The letter also stated that his management of the

winery had been unsatisfactory for a long period of time and that it had damaged both the existing business and the future of the winery.

[54] Following Walter's termination, Hainle continued promoting and selling wines from the Inventory that it now stored at Mission Bottle, albeit some at a discount. Additionally, Bella continued promoting Hainle's pre-SPA awards, medals and recognitions at the wineshop, including displays that:

- a) Suggested the Deep Creek Estate 2007 Pinot Noir was "The Best Pinot Noir in the World" with 99 points;
- b) Promoted Walter's 2010 Gewurztraminer icewine for \$369.99 per bottle;
- c) Suggested Walter's 2004 Zweigelt had "the unique honour of serving at the 80th Annual Oscar Academy Awards and winner of "best of Class Award" at the Los Angeles International Wine & Spirits 2007 Competition"; and
- d) Suggested Walter's 1983 Riesling Icewine was "proudly served at a Royal Wedding".

[55] During the litigation, it became evident, and Bella became aware, that some of these recognitions, including wine being served at the Oscars and at a Royal Wedding were fictitious. Nevertheless, Bella continued to have the recognitions prominently on display at Hainle's wine shop.

IV. Summary of Collateral Agreements Respecting the Inventory

[56] The parties filed an Agreed Statement of Facts ("ASF") into evidence which included a summary of the relevant parties, a chronology of key events and copies of the various written agreements between the parties, excerpts of which are included above. The following summarizes those agreements as they relate to the Inventory. Save for the SPA, all were drafted by Bella without legal assistance:

- a) December 6, 2016 – Bella and Walter agreed to a “net profit sharing” arrangement, recorded in the December 2016 Agreement, whereby Bella Valley guaranteed that by January 31, 2019, it would pay Huber Inc. \$3 million for the Inventory. This agreement provided that the \$3 million would be paid either through profit sharing or directly by Tony on or before January 31, 2019. The term “net profit” was not defined.
- b) February 28, 2017 – At a meeting in Vancouver, Bella prepared, and Bella, Tony and Walter signed, Addendum A and Addendum B. Addendum A noted that the property of the winery that was being purchased included the Inventory. Addendum B provided that the total value of the Inventory as at “closing” and which was the subject of the profit sharing was \$2,060,000 and that the payment deadline of January 31, 2019, set out in the December 2016 Agreement was extended such that \$1.546 million would be paid by March 1, 2019 and the balance of \$520,000 would be paid by March 2, 2020. Tony agreed to assume responsibility for any shortfall in Walter’s portion of the profit sharing.
- c) April 3, 2017 – Tony was again in British Columbia and Bella, Tony and Walter confirmed the total value of the Inventory at closing was \$2.066 million. They agreed to further extend the payment deadline for the Inventory to April 3, 2020.
- d) April 12, 2017 – Share Purchase Agreement – The SPA included the Inventory as part of Hainle’s assets to be included in the purchase. The SPA contained a boiler plate “entire agreement” clause.
- e) February 16, 2019 – Bella, Tony and Walter agreed to reduce the value of the Inventory from \$2.06 million to \$2.02 million and to further extend the deadline for Walter’s payment for the Inventory to April 30, 2020.
- f) May 7, 2019 – the May 2019 Agreement states:

- i. All prior agreements regarding the Inventory are voided, including all prior profit-sharing agreements;
- ii. The Inventory was not included in the purchase price of the winery and Walter continues to have control and regulation of it. Bella Valley purchased the Inventory separately for \$2,020,000, based on \$10 per bottle for red and white wine and \$25 per bottle for icewine as of April 27, 2017. This purchase has not yet completed;
- iii. The \$2.02 million will be paid in two installments following two specified events. Prior to payment for the Inventory, there will be a final quality and quantity inspection. The first tranche will be paid within one week of the new investor finishing their quality and quantity inspection and Bella receives money from the investor. The second tranche will be paid following completion of CRA's tax audit of the winery business for the period preceding April 7, 2017, and confirmation is received from CRA that there are no outstanding taxes owed; and
- iv. Walter commits to protecting and agreeing not to harm Hainle's business.

[57] These agreements all confirmed, in one form or another, that, although the Inventory was included in the SPA, Bella Valley would be paying for it separately and in the additional amount of \$2.02 million. Although signed by Bella and Tony in their personal capacity, they admit they were signing as representatives of Bella Valley and Hainle.

V. Issues

[58] The issues for determination are:

- a) Was the Inventory included in the Purchase Price?
- b) Did Bella Valley breach a collateral agreement to pay Huber Inc. for the Inventory in addition to the Purchase Price?

- c) Is Huber Inc. entitled to claim damages under the doctrines of quantum meruit and unjust enrichment?
- d) Was Walter wrongfully dismissed from his employment as Hainle's general manager and chief winemaker and, if so, what damages flow?
- e) Is Hainle in breach of a Consulting Agreement with WTJ Inc.?
- f) Did Hainle breach either the Written Lease or the Oral Lease? If so, what damages flow, if any?
- g) Respecting the Counterclaim, as set out below, is Walter guilty of fraud and/or fraudulent misrepresentation and, if so, what damages flow, if any?
- h) Is Hainle entitled to claim a set-off?

VI. Discussion of Evidentiary Matters

i. Documents Submitted to the Court

[59] It is well established that documents submitted to British Columbia courts must either be in English or be accompanied by an English translation. *Conseil scolaire francophone de la Colombie-Britannique et al. v. British Columbia*, 2013 SCC 42 at para. 13; *Supreme Court Civil Rules*, R. 22-3(2).

[60] Here, there were several documents written in the Chinese (Mandarin) language that did not contain English translations. Accordingly, those documents are inadmissible and will not be considered.

ii. Witness Testimony

[61] Credibility and reliability are not the same thing. Credibility relates to a witness's veracity and reliability relates to the accuracy of a witness's testimony: *Ford v. Lin*, 2022 BCCA 179 at para. 104. In assessing credibility:

- a) The usual starting point is to presume truthfulness: *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10;

- b) Factors that may be considered include whether a witness's explanation defies logic or common sense, or if a witness is evasive, longwinded, or argumentative in their responses: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at para. 92, aff'd 2020 BCCA 130;
- c) A court may accept all, some or none of a witness's evidence: *R. v. R.E.M.*, 2008 SCC 51 at para. 65; and
- d) The most reliable evidence as to what transpired is frequently found in contemporaneous written documentation: *1025996 B.C. Ltd. v. Chahal*, 2024 BCSC 1058 at para. 88, citing *Wu v. Sun-Gifford, Fine Line Interiors Group Ltd. & Bluerock Developments Ltd.*, 2001 BCSC 191 at paras. 28, 29.

[62] Both sides called several witnesses, whose credibility and reliability I will address later in these reasons.

iii. Contractual Interpretation

[63] Contracts are not made in a vacuum. The law dictates that I am to take a practical and common-sense approach to the interpretation of the various agreements between the parties rather than a technical and rules-based approach. The goal is to determine the object and purpose the parties were seeking to attain by their agreement, having regard to the surrounding circumstances. The agreements are to be read as a whole, giving the words used their ordinary grammatical meaning, consistent with the surrounding circumstances known to the parties at the time the agreements were made. While the surrounding circumstances will be considered in interpreting the terms of the agreements, they must never be allowed to overwhelm the words of the agreements themselves: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] at paras. 47, 57; *Firestar Custom Home Builders Inc. v. 1099000 B.C. Ltd.*, 2022 BCCA 324 at paras. 40–42.

[64] The Supreme Court of Canada recently described it this way in *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20:

[63] The actual words chosen are central to the analysis because this is how the parties chose to capture and convey their contractual objectives. To determine their true intent, decision-makers “must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract” (*Sattva*, at para. 47). While “[t]he facts surrounding the formation of a contract are relevant to its interpretation” (*Corner Brook*, at para. 19), they “must never be allowed to overwhelm the words of that agreement” or cause courts to create brand new agreements (para. 20; *Sattva*, at para. 57; see also D. Bertolini, “Unmixing the Mixed Questions: A Framework for Distinguishing Between Questions of Fact and Questions of Law in Contractual Interpretation” (2019), 52 *U.B.C. L. Rev.* 345, at pp. 402-3; D. Bertolini, “Releasing the Unknown: Theoretical and Evidentiary Challenges in Interpreting the Release of Unanticipated Claims” (2023), 48:2 *Queen’s L.J.* 61, at p. 65; D. Bertolini, “Unpacking Entire Agreement Clauses: On the (Elusive) Search for Contractually Induced Formalism in Contractual Adjudication” (2021), 66 *McGill L.J.* 465, at p. 500).

[64] While the language used is central, courts recognize that words are not ends in themselves: they are a means to demonstrate, discern and determine the true intention of the parties. The jurisprudence seeks certainty but acknowledges the limits of language. This Court recognized how “words alone do not have an immutable or absolute meaning” and cannot, by themselves, convey the commercial purpose of a contract (*Sattva*, at para. 47). When seeking the meaning of a document, the focus of the court is properly on what the parties objectively intended and what they reasonably understood their words to mean. This is because the “meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean” (*Sattva*, at para. 48, citing *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, [1998] 1 All E.R. 98 (H.L.), at p. 115).

[65] Courts are therefore directed “to have regard for the surrounding circumstances of the contract — often referred to as the factual matrix — when interpreting a written contract” (*Sattva*, at para. 46). The meaning of the words of a contract can be derived from reference to various contextual factors, which include the purpose of the agreement and the nature of the relationship created by the agreement (para. 48). *Sattva* allows courts to interpret contractual terms in light of the contract as a whole and with reference to objective evidence that illustrates what was within the parties’ knowledge at or before the time of their contract’s formation (para. 58). Ultimately, ascertaining the objective intent of the parties involves not only a consideration of the actual words used in a contract but also a consideration of the factual matrix surrounding the contract.

[65] Other relevant principles of contract interpretation can be summarized as follows:

- a) Relevant surrounding circumstances do not include the parties' subjective intentions: *Cardero Coal Ltd. v. Carbon Creek Partnerships*, 2022 BCSC 253 at para. 136, citing *Corner Brook (City) v. Bailey*, 2021 SCC 29;
- b) The existence of subsequent negotiations does not negate that a binding contract existed. The entire course of the negotiations should be looked at to decide the parties' true intentions and what agreement, if any, was reached: *Vancouver Canucks Limited Partnership v. Canon Canada Inc.*, 2015 BCCA 144 at para. 79;
- c) The existence of an "entire agreement" does not override the need to consider surrounding circumstances or factual matrix evidence: *Cardero Coal*, at para. 138; and
- d) The parties' conduct informs whether a contract was formed. The court looks at whether the parties "have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract": *Oswald v. Start Up SRL*, 2021 BCCA 352 at para. 33 quoting G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed. (Toronto: Carswell, 2011) at 15.

VII. Summary of Overall Findings

[66] With these principles in mind, I conclude overall that Tony and Bella initially planned to travel to the Okanagan with the intention of negotiating the purchase of bulk wines for export to China. When Tony heard that Hainle was for sale, he decided that it would be beneficial to own a winery that could meet his requirements. Without a modicum of due diligence, such as engaging knowledgeable people to assess and evaluate Hainle's business, production capacity, equipment, infrastructure, quality of the Inventory and ability to turn a profit, and without reviewing any financial statements, Tony decided to purchase Hainle at the full

asking price and have Bella, who had no prior winery or business experience, own and operate it. Bella, albeit initially reluctant, was soon enthusiastic and agreed to Tony's plan.

[67] As I will discuss later, while Walter, motivated by an inflated ego, held out some of his wines to be wines they were not and falsely represented that they received awards and other accolades they did not, those representations were not what drove Bella and Tony's decision to purchase Hainle. Bella and Tony were anxious to complete the purchase as soon as possible so that Hainle's wines could be exported to China in time for the 2017 Chinese New Year.

[68] Hainle had always been a small, boutique winery specializing in wines that catered to a traditional eastern-European wine pallet. It was not, and never had been, a winery capable of producing the type of wines that, according to Tony, the Chinese market apparently prefers. Further, the winery's historic sales were at best modest, it made little money and was in dire need of new equipment and a facelift. Yet for unexplained reasons, Tony concluded that Hainle could produce substantial quantities of the wine that would fit the Chinese wine palate and would meet what he felt was a significant Chinese demand.

[69] Initially, the Inventory was not part of the Purchase Price. That changed in November 2016 during Walter's trip to China where the parties agreed that the Inventory would be included in the purchase, but that Walter would be paid up to \$3 million for it in addition to the Purchase Price in the form of a net profit-sharing arrangement proposed by Tony and accepted by Walter.

[70] Each side retained lawyers, and the process to paper the deal as a share purchase began. The lawyers did not complete the SPA as quickly as Bella and Tony wanted and they both became frustrated with how long it was taking. Bella did not want to use lawyers more than she considered necessary because she viewed them as time consuming and expensive. Instead, she was content to rely on the various collateral agreements she drafted regarding how Walter would be paid for the Inventory and the employment arrangements between them.

[71] The changing collateral agreements were mainly because the wines comprising the Inventory were not selling as quickly as Bella and Tony initially expected and because the winery did not have the cash flow to pay both its expenses and Walter for the Inventory.

[72] I note there were significant cultural differences between the parties that resulted in some misunderstandings and arguments between them. However, to the extent Hainle did not meet Bella and Tony's financial expectations and resulted in the financial misfortune to which they complain, they have themselves to blame.

VIII. Key Witnesses and Findings

[73] In support of their case, the plaintiffs called three lay witnesses and one expert: Walter, Ms. Barbara Rattray (an employee of Hainle from May 2019 to the end of the 2021 wine season), Rommy Dandoy (an employee of Hainle from April 2018 through late 2020), and Mr. Ross Wise (a Master of Wine who testified as an expert). Ms. Rattray, Ms. Dandoy and Mr. Wise all testified in a straightforward manner. Walter had some failings.

[74] In response and in support of their counterclaim, the defendants called eight lay witnesses and one expert: Bella, Tony, Aileen, Mr. Abhi Sharma (the current wine shop manager), Mr. Ingram, Mr. Buchanan, Ms. Lorrie Zander (representative of the BC Wine Authority), Mr. Greg Devins (principal of Penticton Wine Labs) and Mr. Rhys Pender, a wine expert. Mr. Sharma, Ms. Zander, Mr. Devins and Mr. Pender all testified in a straightforward manner. The others had some failings.

[75] Bella and Tony's testimony was obtained through an English/Mandarin translator which was often difficult to follow and, at times, lacked clarity. Regarding the other witnesses, I will only reference their evidence where required on important points.

[76] As will be evident from my comments below, I was not impressed with Walter, Bella or Tony as witnesses. They all appeared to embellish facts that they

considered were favourable to their respective cases and conveniently were unable to recall those that did not.

i. Walter Huber

[77] Walter was the plaintiffs' main witness. He had no problem making statements of fact based on his own biased beliefs – real or imaginary. Both before and after the SPA, he had a propensity to self-promote, exaggerate and embellish himself and Hainle's awards and accomplishments. His explanation for doing so was that he was engaged in "promotion". Oddly, being caught misrepresenting himself and some of Hainle's accomplishments did not seem to bother him. I found this propensity, and his convenient lapses of memory, disturbing. What I found the most troublesome were the high accolades he suggested various of his wines had received which were largely made up.

[78] There are numerous examples of concerns raised by Walter's evidence and his character. Some examples of his exaggerations/misrepresentations illustrate this point and are worthy of note in the context of the case:

- a) He perpetuated a false story that some of his wine had been served at Prince William and Kate Middleton's wedding ("Royal Wedding") and at the 80th Academy Awards in Los Angeles ("Oscars");
- b) Respecting the Written Lease, he attempted to suggest during cross-examination that Hainle had always paid rent of \$25,000 per year for the Gummow Road Property, which was plainly false. When Hainle's pre-SPA financial statements making no reference to a \$25,000 per year rent were put to him, he attempted to explain it by blaming his accountants;
- c) He suggested to various audiences, including during a November 2016 interview at a Chinese television station, that a bottle of one of Hainle's first vintage icewines sold at auction in London for 1.5 million pounds when he had no legitimate basis to believe it was true;

- d) He used labels on icewine shipped to China that stated it was BC VQA when it was not;
- e) He suggested to Tony and Bella early on that the Inventory was worth in the vicinity of \$180 million, when he knew it was worth nothing like that; and
- f) For what he called “promotional purposes”, he bought a bogus PhD certificate in 2001 for \$2,500 which he displayed in Hainle’s tasting room, leaving the impression that he had received a doctorate degree from a European University, when he knew the degree was fake. He also displayed a fake transcript of marks of courses (mostly A’s and A-minuses) he had never taken and fake letters of reference from fake professors.

[79] In cross-examination, it was easily established that many of his representations about his and Hainle’s accomplishments were pure fantasy. To impress the public, Walter had no trouble making up stories to make both himself and Hainle appear to be more impressive than they were. Given his tendency to embellish both his own and Hainle’s accomplishments, I approach his evidence with extreme caution.

ii. Bella Huang

[80] Bella was the defendants’ main witness. Although she can speak some English, she testified through a Mandarin interpreter. She was a nervous witness who became emotional and belligerent at times.

[81] Bella was not an objective witness. On cross-examination her answers tended to be non-responsive, evasive and argumentative. She often had trouble answering simple yes or no questions in favour of long-winded answers that she felt supported her case. She would not concede basic propositions, preferring instead to argue her case. She often had a selective memory of events and often accused plaintiff’s counsel of asking misleading, repetitive and unfair questions.

[82] She revealed herself to be an unreliable historian of the events in issue.

[83] Her evidence confirmed that based on one short visit and a few quick wine tastings, Bella and Tony decided to purchase Hainle at Walter's full asking price with no due diligence. She admitted this was a foolish mistake. She admitted having no experience whatsoever in operating a winery and, for some inexplicable reason, thought she could produce and sell unlimited quantities of wine that would satisfy the Chinese market without considering the land, equipment and infrastructure required to do so.

[84] Bella confirmed that no testing of the Inventory was conducted prior to entering the SPA and that it was not until April 2020 that any testing or assessment of the Inventory was conducted.

[85] According to Bella, Walter's wine was unsaleable in China because: i) its alcohol content was too high; ii) it was priced too high; iii) the Chinese market did not like its colour or sediment content; and iv) the Chinese market does not like aged wine.

[86] Bella also tended to provide explanations that defied business logic and common sense and her evidence regarding the intent and meaning of the various collateral agreements relating to the Inventory contradicted Tony's evidence.

[87] Examples of where I found her evidence to be troublesome include:

- a) When confronted with inconsistencies in her testimony compared to other witnesses, she suggested that her evidence was being translated inaccurately;
- b) Contrary to my explicit instructions not to speak to anyone about the case or her evidence until her cross-examination was complete, she spoke to one of her witnesses, Mr. Sharma, about his testimony and sought then to clarify his evidence;

- c) During cross-examination, she confirmed that she was in possession of highly relevant documents related to her allegation that Walter was the one who fraudulently prepared the Altered Lab Report, and was in breach of a July 31, 2024, court order to produce said relevant documents. These documents included:
- i. an email from the Penticton Wine Labs to Hainle's accountant Aileen attaching the lab results;
 - ii. correspondence between Bella and Bella Crafts in China regarding the lab results; and
 - iii. the original versions of the documents sent to China, including the Word version of the Altered Lab Report containing the metadata which would have confirmed when the lab results were modified and by whom.

This failure warrants an adverse inference be taken that the documents would not have supported the defence allegations.

- d) Her evidence that she and her staff felt threatened by Walter was contradicted by her staff who testified;
- e) Despite maintaining the Inventory was bad, she confirmed that Tony continued to want it shipped to China for sale;
- f) The May 2019 Agreement, a document she prepared, states "*Bella Valley purchased the inventory separately for a price of \$2,020,000... as of April 27, 2017. This is a planned purchase, but not yet completed*". Bella attempted to suggest that what she meant by this was that Bella Crafts was to purchase the Inventory from Bella Valley for \$2,020,000, but the purchase did not complete because the Inventory was of bad quality and not saleable in China. This evidence made no sense and was completely contrary to the agreement's plain language;

- g) Despite knowing that Walter's wine was not served at either the Royal Wedding or the Oscars, she continues to advertise that it was;
- h) In Hainle's wine shop and on its website, she continues to display "Anniversary Icewines" which she asserts were fraudulently mislabelled. Likewise, she continues to display wines with medals and awards that she alleges are mislabelled and/or faulted; and
- i) Despite her position that the Inventory is unsaleable, she continues to promote certain of its wines and medals in the wineshop. She stated that she has not removed these misleading displays because it would be too expensive to do so, and that she decided to await this Court's decision.

[88] In the end, on the main issue of whether Walter was to be paid for the Inventory separately from the SPA and in addition to the Purchase Price, I did not find Bella to be an objective, credible or reliable witness. Much of Bella's testimony was influenced by her stance in this litigation. This coloured her evidence respecting the other issues in the case and, like Walter's evidence, I approach it with extreme caution.

iii. Tony Zhuang

[89] I make similar findings regarding Tony's evidence. He had difficulty answering simple questions in a straight-forward manner and tended to make speeches.

[90] Further, his evidence differed from Bella's in many respects. Tony does not read, speak or understand English and much of what he had to say in evidence was based on what Bella told him, which, I conclude, was probably biased.

iv. Other Notable Lay Witnesses

Barbara Rattray

[91] Ms. Rattray's evidence, which I accept, was that, both before and after Walter's departure, much of the wine comprising the Inventory was sold in Hainle's wine shop, retail outlets and elsewhere. She also testified that Bella took an active

role in running the winery, including often ordering price changes in the wine shop. She confirmed that Walter was at work every day she was there, that she was not aware of any complaints against him and that she did not witness him being abusive or threatening to the staff. On Walter's dismissal, she was asked to write a testimonial about him. Although reluctant to do so, she provided one to Aileen which was never produced. She also confirmed that after Walter's termination, Bella arranged, framed and displayed the Royal Wedding letter in the wine shop.

Rommy Dandoy

[92] Ms. Dandoy worked in the vineyard in April 2018 and later in the wine shop and wine cellar. She reported mainly to Aileen. She confirmed that customer feedback about Hainle's wines was generally positive, that Bella provided pricing input and often changed wine pricing. She, too, was unaware of any complaints against Walter and did not notice him being confrontational, aggressive or abusive. She also confirmed that wines in the Inventory continued to be sold after Walter's departure.

Aileen Montgomery

[93] Aileen was hired by Bella as Hainle's bookkeeper/accountant and Walter's assistant in March 2018. She speaks English and Mandarin. She worked part time initially and was soon promoted to be Hainle's CFO, now COO. She had no prior experience in the wine industry. She first started with cleaning up what she described as Walter's messy accounting system.

[94] She confirmed that she has been involved in all financial matters and communications with Bella Crafts in China, that Bella was always involved in wine sales and wineshop displays, offered discounts to Chinese customers, and that Bella would often change her mind about matters which she found frustrating. She testified that Bella was very involved in the business, and that working at Hainle was extremely stressful and required Aileen to work long hours, which led to her attempting to quit on two occasions. When she was first hired, Bella had told her that Walter had a doctorate degree and so she started calling him "Doctor Walter" until

he told her to stop. She confirmed that Hainle was struggling financially, its sales were not very good, its expenses were high, and it was having difficulty paying Walter's wages and WTJ Inc. consulting fees. To make ends meet, Bella regularly injected cash. She stated that most of the arguments she witnessed between Walter and Bella were related to Walter wanting to be paid for the Inventory and WTJ Inc.'s consulting fee. They also fought about pricing wines. Bella wanted to discount the wine prices to increase cash flow and Walter did not agree.

[95] With Walter's help, Aileen was involved in the four wine shipments to China. She stated that she got the Penticton Lab Report from Walter, that she had no knowledge of the criteria for wine to be called "icewine" or the BC VQA rules. She confirmed that the Penticton Lab Report was emailed to both her and Walter and that she was the one who sent it to Bella Craft under pressure to do so.

[96] On Mr. Ingram's instructions, she arranged to have Hainle's locks changed preventing Walter from being there on his own. She confirmed that wines from the Inventory that were stored at the Warehouse, were moved to Mission Bottle and on Scott and Mr. Buchanan's recommendations were sold in bulk to various other wineries, at discounted prices. For the first time during the litigation, she stated that in 2021 Hainle permanently lost all its emails.

[97] It was obvious from her testimony that Aileen was conflicted in giving her evidence. She became emotional at one point, seeming not wanting to say anything that might negatively impact Bella's case, but not wanting to disparage Walter either.

Rob Ingram

[98] Mr. Ingram is an accountant with a history of winery consulting. He also was part of a group who purchased wineries in Oliver, Penticton and West Kelowna. He left that group in 2018 and in early 2020 was approached to help turn Hainle's business around and make it profitable. Working with Bella and Aileen for approximately six months, he identified several issues with the winery including that there was too much capital invested and not enough sales, leading to insufficient cash flow. He recommended retaining Mr. Melville who had a history of helping

another winery grow its sales, and in April 2020 recommended that Bella hire Scott, who was a new winemaker at the time, to take over as chief winemaker.

[99] It was clear from his evidence that he did not like Walter, accepted whatever Bella told him about the circumstances surrounding her decision to purchase Hainle and decided from the outset of his involvement that Walter had “committed crimes”. He began building a file against Walter that he called “Walter Huber Crimes against the people”. Without having much in the way of one-on-one dealings with Walter, he determined that Walter did not know much about the Canadian wine industry, was not spending enough time at the winery, had a strained relationship with Bella and Aileen. He admitted that he recommended Walter’s termination, pressured Bella into terminating Walter, and composed and signed Walter’s termination letter. He agreed that he relied on Scott and Mr. Melville’s assessment as to what wines in the Inventory they considered saleable.

[100] Regrettably, Mr. Ingram was not an objective witness, he tailored his evidence in Bella’s favour, and I give it little weight.

Anthony Buchanan

[101] On Mr. Ingram’s recommendation, Mr. Buchanan was hired by Bella as a wine sales and marketing consultant in the spring of 2020. He is a wine industry consultant with a history as winemaker for various wineries around the province and owned his own winery in the south Okanagan. Effective May 1, 2020, he agreed to attend the Hainle premises for two hours once per week to teach wine making to Scott. On average, Mr. Buchanan was present at the winery for only about 10 hours per month.

[102] From his observation, Hainle’s cellar was old, dirty, and needed new equipment. The wine barrels all needed to be replaced. On his recommendation, the wine cellar was repainted and updated making what he described as a “massive” transformation. He confirmed that the various recommendations he made to Bella were based on what she stated she wanted for the various vintages and types of wines she was looking for. He stated that wine making is part art and part science

and, in his experience, wine making logbooks are needed to track the process. When he requested the logbooks or other records, he was surprised that none were available.

[103] Mr. Buchanan was involved in a “tasting session” of the Inventory in May 2020. He testified that some of the wines were in saleable condition, and some were not. He recommended trying to rejuvenate some of the wines by blending them with other wines, which, he stated, winemakers do all the time. He admitted that what he knew about Walter came from what Bella, Aileen or others had told him, which he accepted on its face and without scrutiny. He had very little first-hand dealings with Walter.

[104] In general, and like Mr. Ingram, I found Mr. Buchanan was not an objective witness. His evidence showed clear bias against Walter and was coloured in Bella’s favour. I do not give it much weight on the issues I must decide.

Lorrie Zander

[105] Lorrie Zander is a coordinator with the not-for-profit BC Wine Authority (“BCWA”). BCWA established the criteria for “Wines of Marked Quality”, or VQA, pursuant to the BCWA’s authority under the *Wines of Marked Quality Regulation*, BC Reg 168/2018 and its predecessors (the “Regulations”).

[106] Her evidence revolved around how a wine is designated as BC VQA. She testified that Hainle had been a member of BCWA since 1999. She stated that for a wine to exhibit “BC VQA” on its label, the winery must be a member of the BCWA, the wine must undergo a sensory evaluation by a panel of three assessors, a laboratory analysis and the label must be approved by the BCWA. If a particular wine fails an assessment, it can be resubmitted an unlimited number of times. If a winery does not wish to belong to the BCWA or part of the VQA system, the wine can still be sold, just not with VQA noted on the label. She also testified about “icewine” which is also administered by BCWA under established criteria set out in the Regulations. For example, a laboratory analysis must show that the wine has a volatile acidity level under 0.1 grams per litre and a sugar content of at least 100

grams per litre. If a winery labels a wine as “icewine” that does not meet the criteria for icewine, it will be asked to remove the term “icewine” from its label.

[107] Some of Hainle’s wines submitted as icewines were approved, and some were not. Of the wines that were rejected as “icewine”, some continued to note VQA Icewine on its labels. Ms. Zander stated that it was not uncommon for BC wines to be mis-labeled as VQA and/or Icewine when they do not meet the proper criteria.

Greg Devins

[108] Greg Devins is a principal of the Penticton Wine Laboratory, which conducts tests and prepares lab reports. The reports are in Word format and can be edited. He confirmed that the December Lab Report summarizing the test results of four of Hainle’s icewines was emailed to Hainle on December 12, 2018. He also confirmed that the test results respecting three of these wines were changed in the Altered Lab Report that Hainle sent to Bella Crafts. The Altered Lab Report showed an increase in wine sugars and a decrease in alcohol content such that the three wines met the BCWA criteria for icewine. Mr. Devins was unable to say with any certainty who at Hainle the lab report was emailed to. He believed it might have been Walter but agreed it could have been Aileen.

Abhimanyu Sharma

[109] Abhimanyu Sharma was hired by Hainle in July 2021 as a wine shop assistant. At that time, most of the wines for sale at the wine shop were produced by Scott. Mr. Sharma is now the director of sales and the wine shop manager who deals with customer complaints. When a customer complains about the wine, he usually either exchanges the wine, gives a discount or takes steps to issue a refund. He stated that most complaining customers were happy to take an exchange. He testified that, to sell wines, Bella launched winery promotions (such as selling mix and match cases of old wine for \$99). He stated that some of the Inventory wines had dried out corks and excessive sediment. He stated that the prime focus of the customer complaints he received was in relation to wines produced since the SPA (so not part of the Inventory). He estimated that about 30% of the returned wines

were old wines that comprised the \$99 case wines and icewines. These returned wines were simply discarded. He had no say in which wines were discounted or cleared out.

v. The Wine Experts

[110] Two wine experts provided written opinions regarding Inventory wines they were given to assess. Both were qualified without debate as experts in the evaluation of wines and wine faults and both reports were admitted into evidence without objection. Both experts conducted a sensory analysis of a selection of wine from the Inventory in the spring of 2024, Mr. Pender in March and Mr. Wise in April. The experts sampled different bottles of the same vintage.

[111] The defendants rely on the expert report of Mr. Rhys Pender, Master of Wine, dated March 6, 2024, entitled “Hainle Wine Sensory Evaluation” which suggested that the Inventory was mostly unsaleable due to age. Mr. Pender evaluated 11 different wines from the Inventory: 2003 Riesling Late Harvest; 2003 Riesling Organic Icewine; 2008 Pinot Noir Icewine; 2013 Zweigelt Icewine; 2002 DC Z3 Zweigelt; 2003 Cabernet Sauvignon; 2013 Merlot Estate Reserve; 2003 Deep Creek Chardonnay; 2009 Ehrenfelser; 2016 Meritage White; and 2017 Gruner Veltliner. The tastings took place over two days, March 4 and 5, 2024. Mr. Pender concluded that most of the wines were unsaleable because they were oxidized from age rather than because of any fault. That is, he concluded that the wines were well beyond their maximum shelf life of 5–10 years from their vintage date, had deteriorated and had become excessively oxidated. Because the wines were made without additives, as the labels suggested, it is likely the wines’ lifespan would have been even less than 5–10 years.

[112] The plaintiffs countered with the expert report of Mr. Ross Wise, dated April 28, 2024. The Wise report was more comprehensive than Mr. Pender’s report, discussing in some detail the nature of a wine fault and the many factors that can cause a wine to be faulty.

[113] I found both experts to be qualified in their fields; they provided objective, unbiased and helpful evidence. Indeed, what I took away was that their evidence confirmed my common sense understanding that wines are in the taste of the beholder.

[114] Mr. Wise provided a helpful definition of “faulted wine”:

A wine fault is an unpleasant sensory characteristic, including appearance, smell, or taste. For a wine to be considered faulted, the degree of unpleasantness of the specific fault characteristic needs to be detrimental to the enjoyment of the wine, meaning the unpleasant faulted characters detract from the pleasant characters in the wine, leaving it out of balance.

[115] He goes on to explain the cause of wine faults:

Wine faults can be caused by factors including microbial activity, oxygen, or the chemical composition of the wine. Common wine faults include:

- Volatile acidity (VA), commonly characterized by vinegar like aromas;
- Ethyl acetate (EA), commonly characterized by nail polish remover aromas;
- Brettanomyces, a spoilage yeast that can cause barnyard or earthy aromas;
- Oxidation, exposure to oxygen resulting in browning of colour, dried, cooked or bruised fruit aromas, nuttiness, honey aromas;
- Reduction (a lack of oxygen) resulting in volatile sulphur compounds commonly characterized by cabbage, garlic, struck match aromas;
- Cork taint (commonly referred to as coked wine) commonly characterized by musty, cork aromas.

[116] As Mr. Wise stated in his report:

The perception of wine faults can vary according to wine style, stage of production, the age of the wine, and differing detection thresholds of individual tasters. Wine faults can also change over time within the same wine due to the developing aromas of a wine, or by the continued action of microbes or oxygen.

[117] There can be a variety of reasons why bottled wine can spoil as it ages including if it is unfiltered prior to bottling, not bottled under sterile conditions or a faulty or damaged cork allowing oxygen to enter, or wine oxidation developing over time post-bottling. The rate of oxidation can be impacted by such factors as the use

of antioxidant additives, pH and alcohol levels, tannin levels and wine cellaring temperatures.

[118] Mr. Wise goes on:

The development of wine refers to how it ‘ages’. Wine continues to develop after bottling, which results in a change or evolution of aromatic compounds. For many wine styles, wine development adds to the aromatic complexity of the wine, and therefore the overall quality of the wine. Some grape varieties and styles of wine are intended for early consumption, and therefore development is not considered desirable.

When a wine is young it has predominantly primary fruit aromas. These aromas are derived directly from the grapes and are commonly associated with fresh fruit characters, such as green apple, lemon juice, and flowers. As a wine ages, oxygen impacts the aromatic compounds of the wine, causing tertiary aromas to develop. These tertiary aromas can include dried and cooked fruits, nuts, honey, leather, and earthiness.

When a wine has predominately primary fruit, it is considered ‘youthful’. When it has both primary and tertiary fruit aromas, it can be considered developing. When it contains only tertiary aromas the wine can be considered fully developed. Wines that are fully developed can be considered still fit for consumption and may be fit for consumption in their fully developed state for many years. Other wines can lose their sensory appeal when developing or fully developed, making them not fit for consumption. The deciding factor between these two outcomes is influenced by the balance between pleasant and unpleasant aromas, the style of wine, and the subjective consumer preferences.

[119] The two experts disagreed on three of the wines they tasted. Mr. Pender concluded that the 2016 Meritage, the 2009 Ehrenfelser and the 2008 Pinot Noir Icewine were all faulted and not saleable. Mr. Wise disagreed and concluded that the same three wines (albeit from different bottles) were not faulted, were fit for consumption and were saleable.

vi. Findings of Fact

[120] I have earlier mentioned my misgivings about the three main witnesses in the case, Walter, Bella and Tony. Given my concerns about Walter, Bella and Tony’s evidence, and to the extent it contradicts the various and numerous agreements, emails, text messages, photographs and other documents in evidence, I give the documents more weight.

[121] The following important findings of fact are made with reference to other evidence, particularly the documents that were filed as exhibits. Some of these findings are repetitive of my earlier comments:

- a) Hainle owns approximately five acres of old grape vines on site. Prior to the SPA, most of the grapes Hainle used for wine production were grown at the Gummow Road Property;
- b) Walter was a self-taught winemaker who specialized in making old-world European-style dry wines favoured by a select group of wine drinkers. He has no professional training in winemaking; he learned winemaking by watching and helping Hainle's then traditional European-style winemakers and modeled his winemaking style after them;
- c) Throughout its tenure and before the SPA, Hainle operated as a boutique, small batch winery. It did not produce large quantities of wine and did not have modern winemaking equipment capable of large wine production;
- d) Hainle's red wines were unfiltered and produced through aging over several years in a mix of old and new wine barrels. As a result, sediment can be found in its bottled wines;
- e) Save for his dessert-style wines, including icewines, Walter's wines tended to be less fruity, drier and more acidic than typical Okanagan wines;
- f) Walter submitted some of his wines for VQA testing and approval, some of which passed and some of which failed due to the presence of oxidation, which the panel perceived as a fault. Nevertheless, those wines continued to be saleable;
- g) Walter's wines did not appeal to all wine drinkers, but he was able to cultivate a niche market of customers who enjoyed his traditional wine making style. Hainle's wines won awards over the years which were

displayed in the winery's tasting room. Some of Hainle's wines achieved high rankings on the wine ranking website "Vivino";

- h) Walter's older "vintage" wines were not preferred by the typical Chinese market;
- i) In March 2011, Walter received a letter from St. James' Palace in England requesting that Hainle supply some of its icewine and Pino Noir Estate wine for the Royal Wedding. Although he ultimately never sent the wine, he nevertheless displayed the letter and a photo of the Earl of Spencer on the pretense that his wine was in fact served at the Royal Wedding when he knew it had not;
- j) Bella and Tony, together with their Vancouver realtor's assistant "Alex" and accountant "David", first visited Hainle on October 16 or 17, 2016. During that visit, Bella saw that some of the vines had sustained fire damage, and she knew the overall condition of the property was poor;
- k) Bella and Tony's native language is Mandarin. Bella speaks and can understand limited English, more limited in 2016 than today. Tony does not speak or understand English. Both relied on Alex to translate what Walter told them. Alex's ability to accurately translate is unknown;
- l) During the first meeting, Walter talked about his and Hainle's achievements, including that:
 - i. It was ranked #1 in Canada and was one of the top 100 wineries in the world;
 - ii. It supplied wines to the Oscars;
 - iii. It was the first winery in Canada to get organic certification and the first in North America to produce icewine;
 - iv. Its wine was served at the Royal Wedding;

- v. Walter's family used to be winemakers for German kings; and
 - vi. Walter was a "doctor" which, based on Walter's stated achievements, Tony assumed to mean a doctor of wine making.
- m) At no time prior to the SPA did either Bella or Tony view or inspect the Gummow Road Property, the Warehouse or the Inventory;
- n) During the first visit, although he could see it was small and very old, Tony decided Hainle was very valuable and decided he wanted to buy it. Tony had previously purchased wine from another winery in the Okanagan for supply to the Chinese market. Bella and Tony thought that instead of buying more wine, they could buy a winery in the Okanagan to continue to supply wine to the Chinese market. That was their motivation for purchasing Hainle;
- o) Tony and Bella's decision to purchase Hainle was not influenced much by Walter's representations but was motivated by Tony's naïve expectation that Hainle could produce sufficient quality and quantity of wine for the Chinese market so he could eliminate the need to purchase wines from third-party producers;
- p) Tony's winery in China could not produce enough wine to cover his perceived Chinese demand. Both he and Bella were in a rush to complete the SPA because they wanted to have the Inventory in China and available for sale for the 2017 Chinese New Year celebrations to take place in February 2017;
- q) At no time prior to the SPA, did Bella or Tony arrange to have the Inventory assessed or tested for quality. The Inventory was not assessed for quality at all until a May 2020 informal evaluation performed by Mr. Buchanan, Mr. Melville and Scott;

- r) Although Bella was initially reluctant, Tony was persistent and talked her into buying and managing Hainle. To allay her concerns, Tony agreed to guarantee any losses that Bella might incur in operating the winery;
- s) Without conducting any due diligence of his own, Tony assumed that Hainle could produce the type of wine the Chinese market preferred and at a significantly higher volume than the existing equipment could manage;
- t) During Walter's November 2016 China visit, the parties discussed the purchase of the Inventory and agreed to a profit-sharing arrangement whereby the Inventory would be shipped to China and sold, with Walter receiving 40% of the net profit, Bella receiving 40% of the net profit and Tony receiving 20% of the net profit;
- u) As a result of this arrangement, Walter, Bella and Tony agreed that the SPA would include the Inventory, but that Walter would be paid for it over and above the \$3.9 million purchase price as and when the Inventory sold based on the Inventory Valuation Formula up to a maximum of \$3 million. Tony expected that he would be able to sell at least one-half of the Inventory at that time and the rest of the Inventory within one or two years;
- v) In advance of the SPA, Walter prepared a spreadsheet of the Inventory count which was agreed to by Bella;
- w) Prior to purchasing the winery, Bella planned and commenced a series of upgrades including the construction of a new wine cellar. After the SPA, Bella invested significant money improving the overall appearance and street appeal of the winery;
- x) Throughout Walter's employment after the SPA, and despite often being absent, Bella was heavily involved in all aspects of Hainle's management and was a key part of its operations. She was in constant communication with Walter and later Aileen regarding the winery's operations. Walter would make recommendations regarding various things including pricing

and labelling, but Bella made the final decisions. She was a hands-on manager. Walter routinely reported Hainle's operations and business matters to Bella, and was in constant contact with her throughout his employment with Hainle;

- y) From the outset of the purchase, Bella and Tony wanted to ramp up Hainle's wine production for shipment to China. At the time, Hainle had neither the grapes nor the capacity to produce the quantity of wine Bella and Tony wanted for the Chinese market. To increase volume, Walter suggested, and Bella approved, the purchase of bulk wines to blend with Hainle wines. Additionally, Bella purchased new winemaking equipment including a new bottling line, wine press and steam cleaner. Walter's recommendations for other improvements such as new wine barrels were not approved. This hampered Walter's ability to produce the quantity and quality of wines Bella and Tony were expecting;
- z) After the SPA, customer feedback of Hainle's wines was generally positive although some complaints were received. Some wines were popular while others were not. Hainle had several repeat customers;
- aa) Hainle continued selling wines from the Inventory after the SPA. This included selling it at the wine shop and to third-party retailers. The Inventory was kept at the Warehouse and Walter transferred wines from the Inventory to the winery as required. Wines from the Inventory that Hainle deemed saleable continued to be sold after Walter's termination. While some of the wines in the Inventory were unsaleable, most of it was and continues to be saleable. It is not possible on the evidence to determine the amount of wine in the Inventory that was sold or was unsaleable. The defendants did not disclose details of the Inventory sales;
- bb) Bella was the final decision maker respecting wine pricing, which she routinely changed;

- cc) Customer complaints against Walter were few. Although Walter's personality was stubborn, strong, and he argued with Bella and Tony, he was not overly confrontational, aggressive or verbally abusive to Bella or Hainle's staff;
- dd) In 2017 and 2018, Hainle sold four shipments of wine, including wine from the Inventory to Bella Crafts in China at a discount, with Tony planning on selling it at higher prices in the Chinese market. How much of that wine that was sold in China is unknown. I do not accept Bella and Tony's evidence that none of it was sold;
- ee) In the fall of 2019, a third-party invested money into Hainle prompting Bella to undertake substantial renovations of the wine shop and purchase new winemaking equipment including barrels and tanks;
- ff) Bella did not arrange for wines in the Inventory to be tested for quality until May 2020 and then only in small quantities of red and white wines. Some of these wines were determined by the assessors (Mr. Buchanan, Mr. Melville and Scott) to be unsaleable and some were determined to be saleable and in good condition. The icewines were not tested;
- gg) In May 2020, Hainle moved wines it considered saleable, including wines remaining in the Inventory, from the Warehouse to Mission Bottle for storage. Hainle continued selling those wines in unknown quantities and vintages, some at a discount;
- hh) At some point after Walter's termination, Bella arranged to showcase the "Royal Wedding" letter in the wineshop;
- ii) Save for one occasion in May 2020 when Walter temporarily refused access to the Inventory stored at the Warehouse, Hainle staff had access to the Inventory at the Warehouse on request;

jj) When signing the various collateral agreements as “Bella”, Bella was doing so on behalf of the respective entities she represented, in particular Bella Valley and Hainle. When these agreements were signed by “Walter”, he was doing so on behalf of Huber Inc.; and

kk) Monthly cheques for consulting services were paid to WTJ Inc. from May 2017 until April 2018, after which there were no further payments to WTJ Inc.

[122] With these findings in mind, I will address the issues to be determined.

IX. Determination of Issues

Issue #1 – Was the Inventory included in the Purchase Price?

[123] I conclude that although the SPA included the Inventory as part of the Purchase Price, the parties entered into a series of agreements collateral to the SPA for Huber Inc. to be paid for the Inventory separately. These agreements morphed from a “net profit sharing” arrangement to an arrangement for Huber Inc. to be paid for the Inventory independent of sales or profits. The collateral agreements were referred to by the parties’ lawyers as a “wine sales agreement”. Mr. Sommerey, who was Walter’s lawyer, wanted the December 2016 Agreement attached to the SPA as a schedule. In an April 7, 2017, email to Bella’s lawyer, Ms. Chung, he noted that a wine sales agreement had already been drafted by Bella and signed by the parties.

[124] By the spring of 2017, Bella and Tony were frustrated with how long it was taking to finish the SPA and close the deal and were becoming impatient. Tony had already missed being able to sell the Inventory during the 2017 Chinese New Year. Bella made it clear that she wanted the SPA finalized and did not want to spend any more time or money on lawyers ironing out finer details. To avoid extra cost and delay, Bella made a point of bypassing the parties’ lawyers and communicating directly with Walter.

[125] In a March 14, 2017 email, Ms. Chung wrote:

Based on the mutual understanding of Buyer and Walter, the sales of the inventory of wines will happen after the acquisition of all outstanding shares of Hainle...These are separate from the acquisition of all outstanding shares of Hainle, and the terms of such have already been agreed between the parties.

[126] On April 10, 2017, Bella emailed Walter directly stating:

As we discussed last Saturday, we no need lawyers to waste time to argue on the SPA document as we need pay their time, the lawyers should follow our agreement to move forward for closing. I pushed [Ms. Chung] yesterday to do that.

[127] On April 11, 2017, Mr. Sommerey emailed Ms. Chung:

We have deleted any reference to the Inventory Sales Agreement ...as your client requested.

[128] On April 14, 2017, Bella emailed Mr. Sommerey, Ms. Chung, Walter and others stating in part:

I noticed we were given suggestion from [Mr. Sommerey], how to improve the employee and (inventory sale) net profit sharing agreement, there are lot's of good points, Thank you, [Mr. Sommerey].

I talked with Walter by phone just now, we can improve those agreement later accordingly, it will be good for both sides for a long term cooperation relationship as we look forward, but right now we just focus on signing the SPA and move forward to closing, then we can start the business that will relate to the employment and net profit sharing. Walter agreed that, he said he will talk to his lawyer about that, and I requested him to send out an email to the lawyers to clarify his decision as the seller.

[129] Mr. Sommerey responded shortly afterwards stating that the SPA and the "other two agreements" were a package and that there would be no compromise.

[130] On April 15, 2017, Ms. Chung emailed Mr. Sommerey, Walter and Bella referencing the Inventory Sales Agreement:

To follow up on my email of yesterday evening, the signed employment terms and inventory sales are valid and enforceable agreements already. Without knowing whether there is a deal or not, we are inclined to focus on closing the deal by having a signed SPA with the terms that are mutually acceptable to both sides. With the signed SPA, we will be able to discuss on the necessity on supplementing with more details on the employment and inventory sales (if both sides consider it is necessary to do so) as a next step.

[131] Ultimately, the inventory sales agreement was not included in the final SPA because Bella wanted it treated separately, and Walter reluctantly agreed. The fact that it was not attached to the SPA does not mean the inventory sales agreement did not continue as a binding agreement between the parties. That agreement guaranteed that Walter would receive up to \$3 million for the Inventory.

[132] To be clear, this is the timeline:

- a) The October 21, 2016, contract of purchase and sale did not include the Inventory. The parties left the details of how and when the Inventory would be purchased to later negotiations;
- b) In November 2016, while in China, the parties agreed to a net-profit sharing arrangement whereby the Inventory would be included in the winery's purchase but Walter would be paid for the Inventory in addition to the \$3.9 million purchase price, a minimum of \$3.0 million, over time as the Inventory was sold, with payment to be made on or before January 31, 2019, failing which Tony would make up the difference;
- c) In February 2017, the parties agreed that, as part of the net-profit sharing agreement, the Inventory would be valued at \$2,020,000 and by March 1, 2019, Walter would be paid at least \$1,546,000 and the balance of \$520,000 by March 2, 2020, as his share of the net-profit sharing, failing which Tony would make up the difference. In April 2017, the dates for payment for the Inventory were changed to April 30, 2019, and April 30, 2020, respectively;
- d) In February 2019, the parties agreed to vacate the net profit sharing agreement altogether and instead Walter would be paid \$2.02 million for the Inventory, in two tranches of \$1.5 million on April 30, 2019, and \$520,000 on April 30, 2020. Before payment, there was to be a "final quality and amount inspection"; and

- e) In the May 2019 Agreement, the parties agreed to modify the payment arrangement for the Inventory with payments to Walter for the Inventory (which Bella confirmed was purchased separately for \$2.02 million) to be made after the proposed third-party investor provided funds and Walter's pre-SPA tax audit was complete. Any uncertainty that the net profit-sharing agreements were no longer in effect was clarified with this agreement stating that "*...all agreements concerning inventory signed by Tony, Walter and Bella before this date May 7, 2019 has been voided. All net profit sharing agreements has been voided, as well*".

[133] While the various collateral agreements are not the model of clarity (for example, the parties quite informally used their respective first names rather than the proper corporate names), the substance of the parties' true intentions is clear. I am satisfied that Huber Inc. was to be paid for the Inventory separate and apart from the SPA. Indeed, save for the SPA, all relevant documents and the parties' conduct reflect their mutual intentions that the Inventory was to be paid for separately and in addition to the Purchase Price, and I reject the defendants' position to the contrary.

[134] As pre-conditions to Walter being paid, that the defendants say were not met, the defendants rely on two clauses in the May 2019 Agreement. One required a final quality and quantity inspection of the Inventory, and the other required Bella Valley receiving funds from a new investor.

[135] Dealing first with the "quality and quantity inspection", other than the May 2019 Agreement stating that the first payment would be made within one week "after the new investor finishes the quality and quantity inspection", there was no explanation of how the "quality inspection" was to be completed, or by whom specifically. As both wine experts testified, the assessment of wine is an inherently subjective exercise. It is also unclear whether the quality inspection was to be conducted by Walter, Bella, by way of chemical analysis, sensory tasting by a wine expert or by someone else. Given this uncertainty, and given the nature of wine assessment, this term is so uncertain as to be unenforceable. In any event, the

“quality and quantity” inspection was for the sole benefit of Bella Valley who had the onus to complete it in a timely fashion. No such steps were taken until May 2020, shortly before Walter was terminated. Meanwhile, Hainle had been selling bottles from the Inventory since April 2017. Even after the May 2020 wine assessment, Hainle moved the remaining portion of the Inventory it considered saleable to Mission Bottle and continued selling it.

[136] The defendants next argue that the provision in the May 2019 Agreement that Walter would be paid for the Inventory upon receipt by Bella Valley of funds from a third-party investor was a condition precedent to payment being made. They say that the third-party Bella had hoped would invest was outside of her control, the investor backed out and therefore this condition precedent was not met and therefore no monies are owing: *061403 BC Ltd., v. Canada Willingdon Holdings Ltd.*, 2018 BCSC 1067 at paras. 53–56.

[137] The May 2019 Agreement does not speak to a specific investor. Although the evidence is that a potential investor did back out, the evidence is also that Bella did receive funds from an “investor” in September 2019, which were used in part for renovations at the winery and to purchase new winery equipment, with the balance sent to China. In my view, to the extent this was a condition precedent for Walter to be paid for the Inventory, it had been satisfied.

[138] On a consideration of all the circumstances, I am easily persuaded that, collateral to the SPA, Bella Valley contracted with Huber Inc. to purchase the Inventory separately for \$2.02 million.

Issue #2 – Did Bella Valley breach a collateral agreement to pay Huber Inc. for the Inventory in addition to the Purchase Price?

[139] Yes.

[140] Considering my decision respecting Issue #1 and despite my concerns about Walter’s credibility, I have concluded that Bella Valley is in breach of its agreement to pay Huber Inc. \$2.02 million for the Inventory. The documentary evidence is

overwhelming that both Bella and Tony agreed that, although the Inventory was included in the SPA, Walter was to be paid for it over and above the Purchase Price.

[141] There is no dispute that after the SPA completed, Hainle sold wines comprising the Inventory. There is also no dispute that, starting in June 2017, Hainle sent four shipments of wines including wines from the Inventory to Bella Crafts in China and that Bella Crafts paid Bella Valley for those wines.

[142] I conclude that the defendants are attempting, because of a lack of funds and cash flow issues, to resile from their agreement respecting the Inventory. Huber Inc. has proven the existence of a collateral agreement whereby Bella Crafts and Hainle agreed to pay it \$2.02 million for the Inventory and they are in breach of that agreement.

[143] Huber Inc.'s claim against Bella Valley for \$2.02 million succeeds.

Issue #3 – Is Huber Inc. entitled to claim damages under the Doctrines of Unjust Enrichment and Quantum Meruit?

[144] Given my ruling that Huber Inc. is entitled to judgment against Bella Valley for \$2.02 million for the unpaid Inventory, it is not necessary to deal with its alternative claim for unjust enrichment and quantum meruit.

Issue #4 – Was Walter wrongfully dismissed from his employment as Hainle's General manager and Chief Winemaker and if so, what damages flow?

[145] Yes.

[146] Subject to an employment contract, an employer may dismiss an employee at any time without notice. If the employer has just cause for the dismissal, no salary in lieu of notice is required. If the employer does not have just cause for the dismissal, reasonable notice or salary in lieu of notice must be given: *Lau v. Royal Bank of Canada*, 2015 BCSC 1639 at para. 142, varied on other grounds, 2017 BCCA 253.

[147] Just cause is employee behaviour that, viewed in all the circumstances, is seriously incompatible with the employee's duties, conduct which goes to the root of

the contract and fundamentally strikes at the employment relationship: *Lefebvre v. Gisborne Holdings Ltd.*, 2023 BCSC 2231 at para. 23, citing *Panton v. Everywoman's Health Centre Society (1988)*, 2000 BCCA 621; *Scorpio Security Inc. v. Jain*, 2018 BCSC 978 at paras. 49–51, cited with approval in *Dove v. Destiny Media Technologies Inc.*, 2023 BCSC 1032 at para. 69.

[148] The just cause assessment is contextual and requires a balance between the severity of the employee's conduct and the sanction imposed. It is an objective test viewed through the lens of a reasonable employer considering all relevant circumstances: *Lefebvre* at paras. 24–28.

[149] To be entitled to damages for wrongful dismissal, the terminated employee must prove that his dismissal was without reasonable notice and without just cause: *Chung v. Quay Pacific Property Management Ltd.*, 2020 BCSC 714 at para. 28.

[150] Prior to the SPA, Bella agreed to hire Walter as Hainle's general manager and chief winemaker. On December 29, 2016, Walter and Bella Valley signed an employment contract setting out the terms of Walter's employment. Those terms included that:

- a) Walter would be paid an annual salary of \$125,000;
- b) Walter would enter into a five-year non-competition agreement; and
- c) The term of Walter's employment was indefinite.

[151] Hainle asserts that fundamental to its decision to hire Walter was his claim as a world-class winemaker and the role his wines had played on the world stage. This claim, they say, turned out to be a complete misrepresentation which, in and of itself, would justify his dismissal for cause.

[152] Additionally, the defendants contend that not only are they entitled to rely on Walter's known misconduct during his employment to justify his dismissal, but also misconduct that occurred during his employment that was not discovered until

afterwards. This is referred to in the case law as “after acquired cause”: *Black Press Group Ltd. (Re)*, [2017] B.C.E.S.T.D. No. 74, 2017 CanLII 149793 at paras. 28–29.

[153] In their amended response to civil claim, the defendants cite nine reasons to justify Walter’s dismissal:

- a) Failing to provide quarterly financial and management reports to Bella despite requests that he do so;
- b) Producing “faulted” wines and failing to follow proper standards of care as a professional winemaker;
- c) Often being absent from the winery and failing to provide proper staff supervision;
- d) Jeopardizing the winery’s licence and ability to obtain BC VQA status by adulterating wines and by fraudulently producing documentation and wine labels suggesting that Hainle’s icewine was BC VQA certified when he knew it was not;
- e) Fraudulently “doctoring” or changing lab test results for the icewine in the December 2018 Shipment;
- f) Failing to implement or maintain proper standards of care including failing to net against bird predation and failing to harvest grapes at the optimal time;
- g) Fabricating overtime sheets;
- h) Taking funds from Bella Valley bank accounts without authorization and taking winery equipment for his personal use without authorization; and
- i) Being verbally abusive to the winery’s principals and staff.

[154] However, during her testimony, Bella cited only three reasons justifying her decision to terminate Walter’s employment:

- a) He was seen on CCTV trying to remove pre-SPA documents from the winery;
- b) She felt threatened by Walter telling her that he would not work any longer because he had not been paid his salary and consultant fee; and
- c) He was seen on CCTV at the winery when it closed.

[155] Additional grounds relied on during submissions include that:

- a) Walter attempted to force Bella to sign a new Gummow Road Property lease;
- b) Walter attempted to force Bella to sign an agreement related to a proposed “Royal Wine Club”;
- c) Walter refused to attend work during a critical bottling time;
- d) Walter took cash from the wine shop without permission and without accounting for it; and
- e) The wines Walter had produced and shipped to China were the subject of complaints, negative reactions and were unsaleable.

[156] Bella argues that, as Hainle’s general manager and chief winemaker, Walter owed Hainle a fiduciary duty, or, at the very least, a contractual duty of fidelity and loyalty that he breached, further justifying his dismissal: *Pan Pacific Recycling Inc. v. So*, 2006 BCSC 1337, at paras. 55–57; 63 [*Pan Pacific*]. She says that after Walter was terminated, it came to light that he:

- a) Misrepresented his background, qualifications and Hainle’s position on the world winemaking stage;
- b) Fraudulently prepared the Altered Lab Report and labels for the December 2018 Shipment to China;

- c) Produced faulty and adulterated wines;
- d) Failed to provide quarterly reports;
- e) Failed to properly adhere to wine making standards;
- f) Wrongfully paid himself overtime by fabricating overtime sheets;
- g) Took cash from Hainle's wine shop without accounting for it;
- h) Was threatening and abusive to Bella and Hainle's staff; and
- i) Jeopardized Hainle's manufacturing licence and its ability to obtain BC VQA status for its wines.

[157] Walter vehemently denies these allegations. In response, he says, first, that the defendants must be restricted to the grounds for termination as pleaded and that much of what they now rely on as grounds for dismissal, including after acquired cause, were never pleaded. Second, during her testimony, Bella did not mention after-acquired cause as a reason for Walter's termination.

[158] In further response, Walter asserts that the defendants:

- a) Led no evidence on the standards of care of a professional winemaker or that he produced faulted wines post-SPA and Bella did not lead this evidence as a reason for his termination;
- b) Failed to prove that he did not provide Bella with quarterly reports as required. Indeed, the evidence confirms, and Bella agrees, that he provided quarterly reports to her;
- c) Failed to prove that he took cash from Hainle's wine shop without accounting for it;
- d) Failed to prove that he was the one who prepared the Altered Lab Report as alleged;

- e) Abandoned their claim that he paid himself overtime based on fabricated overtime sheets or that he took cash to which he was not entitled and failed to account for it;
- f) Failed to prove he was abusive to Hainle's staff and principals;
- g) Failed to plead the grounds upon which it now seeks to rely for terminating Walter, such as insubordination, attempting to force Bella into signing a lease renewal and a wine club agreement. The insubordination now alleged took place years before Walter's termination and there was no evidence led that it formed the basis for his termination;
- h) Led no evidence that Hainle's manufacturing licence and its ability to obtain BC VQA status were jeopardized;
- i) Agreed that when Bella asked Walter to return the documents, he did so;
- j) Agreed that Walter was typically at the winery on weekends to check on wine tanks and barrels and to ensure there were no issues; and
- k) Tony's claim that he received complaints and negative reaction to the wines Walter made and shipped to China has not been proven.

[159] I agree with these responses. By the spring of 2020, Bella was getting desperate because of the winery's financial woes. Hainle's performance had not met her and Tony's lofty expectations, and she was suffering from buyer's remorse. To salvage her investment, she hired Mr. Ingram and relied on his recommendations, one of which was to terminate Walter. Instead of speaking to Walter about her concerns, she privately arranged for the winery's locks to be changed and instructed Mr. Ingram to tell Walter that he was no longer permitted at the winery. Bella made no mention to Walter of her concerns or that she had hired Messrs. Ingram, Buchanan and Melville as consultants, that they were going to be testing his wines, or that she had hired Scott to replace him as Hainle's winemaker.

[160] Despite Walter's actions and behaviour towards the end of his tenure, including failing to come to work and briefly refusing to release wine stored at the Warehouse, I conclude that Walter was dismissed without cause and without reasonable notice. I find that Bella had simply lost faith in Walter as a general manager and winemaker and by the end of April 2020 had decided to replace him. After that decision, and well after this lawsuit commenced, Bella set out to manufacture various justifications for his dismissal upon which she now relies.

[161] I have already noted that, during Tony and Bella's initial visits to Hainle in October 2016 and indeed afterwards, Walter misrepresented his background, qualifications and Hainle's position on the world stage by embellishing Hainle's history and blatantly making up stories. But I have also noted that his misrepresentations had no material impact on their decision to purchase Hainle. Nevertheless, the defendants assert that Walter's "false credentials" justified his termination because, as Bella maintains, had she known the truth, she would not have hired Walter as Hainle's winemaker.

[162] I am not persuaded that is the case. Instead, I conclude that the main reason for Bella and Tony wanting Walter to stay was because Tony would be living in China and Bella, who would be living in Vancouver, had no experience whatsoever in winemaking or operating a winery. They felt it prudent to keep Walter so that the ownership transition would be as seamless as possible. At all times, Bella and Tony's focus was having Hainle produce as much wine as possible for re-sale in China at a substantial profit. What they failed to consider was that the typical wines Walter had been producing were not the types that necessarily appealed to the Chinese market and that Hainle's infrastructure would not support their expectations.

[163] The defendants have not proven that Walter's "false credentials" were the reason for their plans not working out.

[164] Respecting the defendants' fraud allegation, and as discussed later in these reasons, fraud is a serious allegation that requires a high level of proof in a clear and convincing nature: *Anderson v. British Columbia Securities Commission*, 2004

BCCA 7 at para. 29. While suspicious, the defendants have not proven that Walter was the one who prepared the Altered Lab Report or that Walter knowingly applied false labels on the wine bottles identifying them as “icewine” or “BC VQA” when they were not.

[165] Walter’s evidence was that he used the same labels he always had and that there was never an issue with the BC Wine Authority. Further, many of the wines about which the defendants complain remain on display at the wine shop and were sold as such long after Bella was aware of the issue to which she now complains.

[166] I agree with Walter’s position that the defendants have failed to prove the various allegations of misconduct against him, including fraud. Given this lack of proof, Hainle cannot now say that it had legitimate grounds to terminate his employment.

[167] On May 1, 2020, Bella hired Mr. Buchanan as a wine consultant who testified that it was clear to him that Walter would not be staying. Walter received no warnings, reprimands or other forms of discipline prior to his termination, nor was he given the opportunity to respond to Bella’s concerns or address his perceived performance issues. To the contrary, the documentary evidence supports that, until Messrs. Ingram, Melville and Buchanan arrived on scene, Walter performed his duties well and even exceeded what was expected of him.

[168] I find that by the spring of 2020, Bella had lost faith in Walter’s ability to manage the winery and produce the quality and quantity of wines that she and Tony wanted for the Chinese market, and she decided to steer the winery in a different direction. The winery was losing money, and she was becoming exasperated with having to continually invest capital into the operation to keep it going.

[169] While she was entitled to terminate Walter, she has not proven that she had just cause to do so. Accordingly, she was required to either give Walter reasonable notice of her intention to terminate his employment, or salary in lieu of notice. Given this finding, damages in lieu of notice must be assessed.

[170] Walter worked as Hainle's employee from April 27, 2017 through June 16, 2020 (slightly over 38 months). He claims damages of \$125,000 representing 12 months' salary in lieu of notice of termination. He argues that, as an employee with specialized employment skills, with a length of service of three years and two months, at age 61 and nearing the older end of the workforce spectrum, subject to a five-year non-competition agreement (with 18-months remaining) and in circumstances where replacement employment was not readily available, a notice period of 12 months is not unusual. Indeed, he argues, for persons with specialized skills at the upper end of the age spectrum where replacement work is not readily available, it is not unusual for the notice period to be 12 months or longer. In support, he refers to *Mackie v. West Coast Engineering Group Ltd.*, 2009 BCSC 1775; *Chung v. Quay Pacific Property Management Ltd.*; *Waterman v. Mining Association of British Columbia*, 2016 BCSC 921; *Sollows v. Albion Fisheries Ltd.*, 2017 BCSC 376; *Hill v. Johnson Controls L.P.*, 2006 BCSC 826; *Wright v. Chilliwack Community Services*, 2000 BCSC 972; and *Gillies v. Goldman Sachs Canada Inc.*, 2001 BCCA 683.

[171] Walter's management position at Hainle and his age militate in favour of a notice period on the higher end of the range. Additionally, the fact that the non-competition agreement barred him from competing directly or indirectly with the winery business, the only business he had been engaged in since 2007, also militates in favour of a higher notice period.

[172] Conversely, his approximately 38 months of employment after the SPA prior to his termination militates in favour of a shorter notice period. The plaintiffs did not argue that Walter's total period of employment, both before and after the SPA, should be considered.

[173] While a dismissed employee has a duty to mitigate his or her damages by seeking reasonable alternate employment following termination, Hainle did not plead that Walter failed to mitigate his losses. Further, Walter was not cross-examined on the issue of mitigation. A party alleging a failure to mitigate is required to plead

mitigation and failure to do so is fatal to the claim: *Volovsek v. Boisvenu Alter-Ego Trust #1*, 2021 BCCA 179 at para. 46.

[174] All things considered, I accept Walter's submission he is entitled to a period of 12 months' salary in lieu of notice, or \$125,000, plus pre-judgment interest from June 16, 2020.

Issue #5 – Is Hainle in breach of a Consulting Agreement with WTJ Inc.?

[175] Yes.

[176] The evidence on this issue is hotly contested.

[177] WTJ Inc. claims damages for breach of the Consulting Agreement with Hainle representing unpaid consulting fees of \$125,000 per year (\$10,416.66 per month). Walter says that as general manager and chief winemaker, he had signing authority over Bella Valley's chequing account and, to Bella's knowledge and with her consent, he issued monthly cheques to WTJ Inc. for consulting fees in accordance with the Consulting Agreement. He maintains that a written consulting agreement was signed by both WTJ Inc. and Hainle but says he left his copy behind when he was locked out and the defendants have failed to produce it in this litigation. Bella denies the existence of any such agreement.

[178] Bella says that Walter negotiated a "generous" salary of \$125,000 per year to be its general manager. She contends that if Walter was to be paid an additional \$125,000 through WTJ Inc., it would have been reasonable to expect that the parties' lawyers would have drafted a consulting agreement and it would have been signed along with the SPA and Employment Contract. Bella and Tony assert that in November 2016 when the initial net profit sharing arrangement was made, Walter said that he needed to get accounting and legal advice on the best method of receiving his net profit share, even suggesting at one point that it be paid to him in China or Germany. Bella says that after the Employment Contract was signed, Walter approached Tony and her with the proposition that, to reduce income taxes,

he had been advised that he should not take his portion of the profit from the sale of the Inventory directly, but rather in the form of consulting fees through WTJ Inc.

[179] For his part, Walter says he only agreed to continue working at Hainle after the SPA on the basis that he would be paid \$250,000 to be split \$125,000 to him as an employee, and \$125,000 to WTJ Inc. as a consultant fee. To prove the existence of the Consulting Agreement, Walter points to a series of WeChat text messages and email exchanges where Bella wrote:

April 12, 2017:

For the consulting agreement as you agreed, we'll do that after the transfer finished and when your consultant company name is definite. The agreement will be signed between Hainle and your consultant company, then it is the way Hainle pay the consultant fee accordingly. Tony and I can guarantee on that we'll use your consultant company to offer the consultant service by the annual fee CAD125000 per year. Then plus the salary Hainle pay you, ttl CAD 250000 per year.

April 14, 2017:

What Tony and I have promised to you, we will follow. You know even we misunderstand the payment amount for General Manager before, but when we get clear o that, Tony still agreed to have another consultant service agreement that will pay \$125,000 to your consultant company as the General Manager position duty, and it's a better way for u to deal with the income tax by split into 2 parts, it's a good result for you.

April 14, 2017:

In our meeting April 4th, Walter, Tony and I we found out there's misunderstanding for the cost to pay for General Manager position, and we have agreed: the original employee agreement will keep being available, but we'll have another management (sic) consultant agreement after the closing, the agreement will be between Hainle and Walter's consultant company, as Deep Creek will change the name after closing, the consultant service annual fee will be \$125,000, the agreement will be signed by that time when his company name settle down(sic). Its' a good way for tax-efficient consideration for Walter. The company consultant fee \$125,000 plus the salary \$125,000 as the the (sic) employee, ttl\$250,000. It's a good income for Walter as he expected. From the 2016 finance statement. I noticed the net profit from Hainle is \$72117.89, compare with \$250,000, it's a huge difference. I think Walter will have a good life after he sells the winery, as besides this part, he still has the net profit sharing.

June 6, 2017:

Walter Huber, wine maker\$125000/per year, \$10416.67/per month employee
Winery management consulting fee pay to WTJ \$125000/per year,
\$10416.67/per month

[180] These communications authored by Bella are telling and, in my view, conclusive. The agreement Bella and Tony reached with Walter was that he would work as Hainle's general manager and chief winemaker for a total of \$250,000 per year, \$125,000 of which was to be paid pursuant to the Employment Contract, and \$125,000 was to be paid to WTJ Inc.

[181] WTJ Inc. has proven the existence of the Consulting Agreement wherein it was to be paid \$125,000 annually.

[182] Commencing in May 2017, WTJ Inc., submitted monthly invoices to Bella for \$10,937.50 which were paid. Bella was aware of these payments but testified that they were intended as "advances" on Walter's share of the net profits from the sale of the Inventory and were not consulting fees. She says that these payments continued until July 2018 when Bella told Walter that, due to Hainle's dire financial circumstances, he could no longer take advances on his profit share. The last WTJ Inc. invoice that was paid was on March 31, 2018.

[183] As previously discussed, Hainle was far less lucrative than Bella and Tony expected it would be, causing a significant drain on their other resources. Cash flow was tight, and Bella was struggling to pay expenses, including Walter's wages and WTJ Inc.'s consulting fees. There simply was not enough money to go around.

[184] I accept Walter's evidence that Bella Valley owes WTJ Inc. \$10,416.67 per month from April 1, 2018 through May 31, 2020, for a total of \$270,833.42 (26 months x \$10,416.67 per month).

Issue #6 – Did Hainle breach either the Written Lease or the Oral Lease? If so, what damages flow, if any?

[185] On Rosa's behalf, Walter contends that the Oral Lease replaced the Written Lease and is valid and enforceable. Walter says that Bella agreed to it on Hainle's behalf and Bella admitted that the agreed upon rent has not been paid from May 2019 to January 2021, when Hainle ceased using the Gummow Road Property and the Warehouse. He submits under the Oral Lease, Hainle agreed to pay \$25,000 per

year plus GST, no payments were made and claims damages in the amount of \$45,937.50 plus pre-judgement interest representing unpaid lease payments from May 2019 through January 2021.

[186] In evidence is a written set-off agreement dated June 6, 2019 (the “Set-Off Agreement”) purporting to set-off what Walter agreed he owed to Hainle against what Hainle agreed it owed Rosa for renting the Gummow Road Property for the two-year period of April 2017 through April 2019 at \$25,000 plus GST per year. In the Set-Off Agreement, Walter agreed owing Hainle \$49,662.78 and Hainle agreed it owed \$52,500 under the Oral Lease. The net amount owing by Hainle was the difference of \$2,837.22 and Walter was provided a cheque in that amount.

[187] While not disputing that he entered into the Set-Off Agreement, Walter says it is not relevant to Rosa’s claim for rent because the Set-Off Agreement addresses debts (including monies owing under the Oral Lease) for the period before April 2019 and Rosa is claiming rent from and after May 2019.

[188] The ASF includes the admission that on February 2, 2002, Hainle, as tenant, entered into the 20-year triple-net Written Lease, the terms of which required Hainle to pay all utilities, property taxes, maintenance costs and all applicable provincial and federal taxes. The Written Lease expired on February 2, 2022.

[189] The Written Lease was never disclosed or made known to Bella and she was not aware of its existence until 2020 when, through Mr. Sommerey, Walter demanded that Hainle sign a new lease for the Gummow Road Property and Bella refused.

[190] In my view, Walter’s failure to disclose the Written Lease to Bella while persuading her to agree to the Oral Lease for \$25,000 per year is a non-disclosure of such a nature that it amounts to a fundamental misrepresentation. Walter was Rosa’s agent and therefore Rosa is not entitled to rely on it. The Oral Lease is unenforceable.

[191] Regardless, Walter, as her agent, agreed to reduce rent by the amount he owed Hainle. Accordingly, Rosa's claim must be confined to what was owing from 2017 through 2022 under the Written Lease which was binding on both her and Hainle until it expired in February 2022. Under it, Hainle was obliged to pay rent in the form of annual expenses only: *Canada Square Corp. Ltd. v. Versafood Services Ltd.*, (1981) 34 OR (2d) 250, 1981CanLII 1893 (O.N.C.A.).

[192] In fact, in the amended notice of civil claim, Rosa seeks only to rely on the Written Lease requiring Hainle to pay only utilities and taxes as rent, claiming those costs for the 2019 and 2020 years. She does not rely on, or even mention, the Oral Lease in her pleadings.

[193] The lease invoice for the Gummow Road Property in 2020 shows utilities and other expenses of \$3,731.58 (or \$311 per month rounded). This is the only evidence of annual expenses under the Written Lease. Extrapolating that amount for the years May 2017 through the end of January 2021, I assess Hainle's rent payments should have been \$13,995 (\$311 per month x 45 months). Under the Set-Off Agreement, Hainle, in effect, paid Rosa a total of \$25,000 plus GST per year for years May 2017 through April 2019, for a total of \$52,500. It, as such, overpaid Rosa for rent.

[194] Rosa's claim for unpaid rents under either the Written Lease or the Oral Lease is dismissed.

[195] Hainle seeks to set off that amount against monies it alleges Walter owes it. This will be discussed below.

Issue # 7 - Respecting the Counterclaim, is Walter guilty of fraud and/or fraudulent misrepresentation and if so, what damages flow, if any?

[196] To summarize the defendants' counterclaim, they claim various heads of damage, plus punitive and aggravated damages, because:

- a) Fundamental to Bella and Tony's decision to purchase Hainle and hire Walter as its general manager and chief winemaker, was what turned out

to be Walter's false claims regarding both his wine making abilities and Hainle's reputation in the world of wine making, and wine awards;

- b) Walter misrepresented the quality of the Inventory by actively concealing its condition;
- c) The Inventory did not match the description of wine contained in it and was of unmerchantable quality and therefore the statutory conditions contained in the *Sale of Goods Act* were fundamentally breached;
- d) The wine Walter shipped to China, including wine from the Inventory, was unsaleable;
- e) In order that icewine shipped to China in December 2018 would appear to comply with the Regulations and BC VQA standards for icewine, Walter fraudulently produced the Altered Lab Report;
- f) Walter's inability to produce saleable wine has damaged Hainle's reputation and has caused ongoing business loss;
- g) Walter breached the fiduciary duty he owed to Hainle, or alternatively the duty of fidelity and loyalty by falsifying records, deceiving its principals as to the quality of the Inventory and adulterating wine; and
- h) Walter and WTJ Inc. took money from Hainle Vineyard's bank accounts without consent and to which they were not entitled.

[197] The counterclaim seeks an award of damages against Huber Inc. in the range of \$2.383 million and against Walter for between \$376,770 and \$745,270.

[198] Walter denies all the defendants' allegations.

[199] Fraud allegations against Walter are central to the defendants' defence and counterclaim. The elements of civil fraud are set out in *0895625 B.C. Ltd. v. Ascent Developments Corp.*, 2014 BCSC 1722 at para. 18, as follows:

1. A false representation made by the defendant to the plaintiff;
2. The defendant made the false statement:
 - (a) knowingly,
 - (b) without belief in its truth, or
 - (c) recklessly, careless whether it be true or not;
3. The defendant intended to induce the plaintiff to act; and
4. The plaintiff did act on the representation and suffered a loss.

[200] There must be proof of fraud and, as noted in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at paras. 18–21:

[19] ...the false statement must “actually [induce the plaintiff] to act upon it”....
[T]ort law requires proof that “but for the tortious conduct of the defendant, the plaintiff would not have sustained the injury complained of”.

[20] Finally, this Court has recognized that proof of loss is also required...

[201] The Court of Appeal recently commented on the applicable standard of proof when considering allegations of fraud in *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*, 2023 BCCA 70. Fraud allegations must be proven on a balance of probabilities; however, the quality of the evidence required is commensurate to the seriousness of the allegations: paras. 162–163.

[202] This sentiment was echoed in *Continental Insurance Co. v. Dalton Cartage Co.*, [1982] 1 S.C.R. 164 at p. 170, 1982 CanLII 13, in which the Supreme Court of Canada stated:

There is necessarily a matter of judgment involved in weighing evidence that goes to the burden of proof, and a trial judge is justified in scrutinizing evidence with greater care if there are serious allegations to be established by the proof that is offered.

[203] The Court then went on to reference Lord Denning’s words in *Bater v. Bater*, [1950] 2 All E.R. 458 at 459, that the standard of proof when considering fraud “does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion”. The Court continued at p. 171:

I do not regard such an approach as a departure from a standard of proof based on a balance of probabilities nor as supporting a shifting standard. The question in all civil cases is what evidence with what weight that is accorded to it will move the court to conclude that proof on a balance of probabilities has been established.

[204] While I conclude that Walter was responsible for the mislabeling of icewines shipped to China, there is no evidence that by doing so he jeopardized Hainle's business, licencing, or its ability to obtain BC VQA status. The BC Wine Authority issued no warnings or reprimands, nor did it levy any fines or penalties. It also did not instruct Hainle to remove the improperly labelled wines from its shelves.

[205] In respect of the defendants' fraud claims:

- a) I have already found that Hainle has failed to prove that Walter is the one who prepared the Altered Lab Report. While I conclude that he arranged for the "icewines" shipped to China to carry the "BC VQA Okanagan Valley" indicator on the labels, the defendants have failed to prove that they have suffered damages as a result;
- b) Although the defendants allege that Walter displayed "ignorance" of basic winemaking principles, they led no evidence of the standards required to be a winemaker. This allegation has not been proven;
- c) Although the defendants allege that Walter created false certificates of origin for the four wine shipments to China, there is no evidence that, even if the certificates were false, they had any impact on the wine shipments. This allegation has not been proven; and
- d) Although I conclude that Walter misrepresented his background and credentials and embellished Hainle's history, I have already found that Bella and Tony did not rely on them because they had already made up their minds that they were going to purchase Hainle. In any event, the defendants do not seek to set aside the SPA and have led no evidence quantifying any loss they say resulted from those misrepresentations.

i. Loss of Wine Sales and the Production of Faulted/Adulterated Wines

[206] This claim is based on the defendants' allegation that the quality of wine Walter shipped to China from the Inventory was not the same as the wine he served to them in October 2016. In effect, they allege their agreement to purchase the Inventory was a sale by sample within the meaning of the *Sale of Goods Act*, RSBC 1996, c. 410. They assert that, unbeknownst to them, much of the wine comprising the Inventory was faulted at the time of the SPA and was not in saleable condition.

[207] They also point to Walter's suggestion to them early on that the retail value of the Inventory was \$183 million, which he later revised down to \$92 million. They argue that these valuations were, to Walter's knowledge, wildly overstated and nonsensical. They assert that Walter was fully aware, yet failed to disclose, that much of the Inventory was faulted and unsaleable. Indeed, they suggest, this is the reason after the SPA that he held back wines and/or blended unsaleable wines for export. They contend that it wasn't until May 2020 when Bella was given unrestricted access to the Inventory that she discovered that much of it was either marginally saleable or not saleable at all. To dispose of it, she had to sell it at heavily discounted prices.

[208] The evidence the defendants point to in support includes:

- a) The seller's warranty section of the SPA stating that "...all of the inventory of the Company, including finished goods, work in progress, raw materials and packaging, is in reasonably good and saleable condition considering the inherent nature of wine and wine vinegar products which is always at some risk of alteration or spoilage";
- b) Some of Hainle's customers returned wines as being unpalatable;
- c) Mr. Sharma's testimony that there were visible faults with some of the wines, including mold and "floaties";

- d) The May 2020 quality assessment performed by Mr. Buchanan, and Scott, showed that several of the Inventory wines were unsaleable or marginally saleable;
- e) Walter controlled access to the Warehouse and only chose to release select wine for sale; and
- f) Walter discouraged sales of Inventory wines.

[209] The defendants' argument that Walter breached the warranty in the SPA fails to consider that, under the terms of the SPA, the Inventory was to be in reasonably good and saleable condition as of the date of the SPA, not years later. The defendants have not established that any of the Inventory was faulted in April 2017. They took no steps to test any of the Inventory until May 2020 when Mr. Ingram, Mr. Buchanan and Scott prepared "tasting notes" on an incomplete spreadsheet and only of wines that were suspected to be "off". None of these witnesses qualified as experts and as such their opinions on the quality of the wines they tasted are admissible only for their subjective views and are not reflective of the objective quality of the Inventory in April 2017.

[210] The wine experts, Messrs. Pender and Wise, agreed that their opinions reflected the wines as of March and April 2024 only. Mr. Pender agreed that it would be impossible to opine on what the wines would have been like in April 2017, and he could not say when the wines would have crossed the line from "saleable" to "unsaleable". Both experts also agreed that the enjoyment of wine is a subjective experience, which is amplified by the fact that they reached different conclusions regarding wine quality after tasting wines of the same vintage. While I accept that by May 2020, some of the wine in the Inventory was well past its shelf-life and was unsaleable, this finding does not assist the defendants because there is no persuasive basis to conclude that, other than the wines Walter noted as "bad" in the January 2017 spreadsheet he prepared, any of the Inventory was faulted in April 2017.

[211] Respecting customers returning wines and some wines having visible faults, I am not persuaded that the fact that some customers did not like some of Hainle's wines taints the entire Inventory, especially since there is no evidence of the state of the Inventory at the time of the SPA and the expert testimony that all wines have a shelf life, some shorter than others.

[212] The defendants' allegation that the mislabeling of icewine sent to China as "VQA approved" prevented Bella Crafts from being able to sell the wine has not been proven. First, the BC Wine Authority has no jurisdiction outside of British Columbia and second, other than Bella and Tony's evidence on the point, which I do not accept, the defendants led no admissible evidence that the mislabeled icewine could not be and was not sold in China.

[213] The four wine shipments to China occurred on July 6, 2017, September 9, 2017, January 3, 2018, and December 7, 2018. Bella and Tony would have known after the wine shipments to China whether the wine was saleable. If, as they suggest, it was not saleable, it would have been illogical for Tony and Bella to have drafted and then signed the May 2019 Agreement wherein they continued to agree that Walter was entitled to be paid for the Inventory.

[214] I turn again to the defendants' allegation that it was Walter who "doctored" the Penticton Lab Report by fraudulently preparing the Altered Lab Report. While I am satisfied that the lab report was in fact falsified under suspicious circumstances, I cannot be satisfied that it was Walter who was the culprit for the following reasons:

- a) First, there is no evidence that Walter dealt with the electronic copy of the Penticton Lab Report. Indeed, the evidence is in conflict as to whether Walter was included in the email attaching the Penticton Lab Report. The covering email from Penticton Wine Lab's was not produced by the defendants;
- b) Second, both Bella and Aileen testified that Walter often did not check his emails, which was one of their complaints against him;

- c) Third, documents in the defendants' possession and control that would resolve the mystery as to who prepared the Altered Lab Report, namely all emails and documents related to the issue including the native formats of Word documents containing metadata, were never produced. This was despite a July 31, 2024, court order that the defendants do so; and
- d) Fourth, it is evident that anyone with even a basic knowledge would know what needed to be changed to comply with the Regulations.

[215] Accordingly, based on the evidence presented and, again, although suspicious, I cannot be satisfied on a balance of probabilities that it was Walter who altered the Penticton Lab Report.

[216] In the result, the defendants have failed to prove the allegations of fraud against Walter and those claims are dismissed.

ii. Warranty that the Inventory was of Merchantable Quality

[217] Pointing to the covenants in the SPA, the defendants allege that the wine in the Inventory was not of merchantable quality.

[218] However, there is no evidence, let alone proof, of what varietals they say are unsaleable, in what quantity, what efforts were made to sell the wine or other proof that could lead to a claim that the wine was of unmerchantable quality.

[219] Aside from the experts, who again only commented on 11 bottles of wine they were given in March and April 2024, there is no admissible evidence of the quality of the Inventory at any time, let alone at the time of the SPA. As the experts confirmed, wine quality can change over time and depends on many factors including the type of wine and how it is stored.

[220] Furthermore, Bella and Aileen testified that in May 2020, most of the wine from the Inventory that remained stored in the Warehouse was deemed "good" and they moved it to Mission Bottle for storage. That wine continued to be sold into 2022.

[221] The defendants' claim under this head fails.

iii. Breaches of Fiduciary Duty and/or Duty of Fidelity and Loyalty

[222] The defendants contend that Walter's conduct during his employment gives rise to a damage claim against him for losses related to wines that could not be sold.

[223] This claim was dealt with earlier. The admissible evidence regarding the quality of the wines in the Inventory and the wines Walter produced after the SPA are from the expert evidence in April 2024, seven years after the SPA. Even if I were to accept the assessment conducted by Messrs. Buchanan and Ingram in April 2020, that assessment concluded that only a portion of the Inventory was unsaleable.

[224] The defendants say Walter was a fiduciary because:

- a) He had the ability to exercise discretion and power;
- b) He had the ability to exercise that discretion or power to affect Hainle's interests; and
- c) Hainle was vulnerable to or at the mercy of Walter's discretion or power,

(*Pan Pacific* at paras. 67, 68).

[225] Alternatively, they argue that Walter owed Hainle a duty of good faith and fidelity and that because he was unfaithful to Hainle, he should be answerable to it in damages: *Pan Pacific* at para. 57.

[226] All employees owe a duty of loyalty and fidelity to their employers. Fiduciary duties only arise when the employee: i) has the ability to exercise some discretion or power; ii) can unilaterally exercise that discretion or power so as to affect the employer's legal or practical interests; and iii) the employer is peculiarly vulnerable to or at the mercy of the employee holding that discretion or power: *England Securities Ltd. v. Ulmer*, 2023 BCCA 241 at para. 47; *Zoic Studios B.C. Inc., v. Gannon*, 2015 BCCA 334, at para. 22.

[227] While it is true that Walter was Hainle’s general manager and chief winemaker, the evidence is clear that Bella was always “hands on” and was the only person who exercised authority over major decisions, such as purchasing bulk wines, renovating the winery, and pricing of wines. All major decisions rested with Bella who took an active role in Hainle’s operations and, almost daily, kept a close watch and control over Hainle’s business and finances. Walter did not have the ability to affect Hainle’s legal or economic interests. Those decisions were Bella’s.

[228] I conclude that Walter did not have a fiduciary relationship with Hainle. Neither have the defendants proven a breach of loyalty and fidelity nor any damages that may have flowed as a result.

iv. Claim for Monies Owing to Hainle

[229] Hainle seeks payments totalling \$64,271.36. This claim will be dealt with under Issue #8 below.

v. Hainle’s Damages Claim

[230] Hainle calculates its damages claim starting with Walter’s January 2017 inventory count showing there were 6,646 cases (79,752 bottles). It next compares that to the 2023 inventory counts prepared by Ms. Montgomery showing 3,708 cases (44,500 bottles) stored at both the Mission Bottle and other warehouse facilities.

[231] Respecting bulk wine that it says was not of a quality that could be bottled, Hainle points to the 27,641 liters of bulk wines sold to third-party wineries in 2020 that fetched at total of \$56,026.50. It then converts the bulk wine to bottles using what it says is the standard 750 ml bottle, to the equivalent of 36,855 bottles. At \$10 per bottle price, it translates that into \$368,550 and at \$20 per bottle, it translates that into \$737,100. It then deducts the \$56,026.50 received for a net loss of \$312,500 to \$681,000.

[232] Hainle next points to Walter’s 2016 claim that the market value of the Inventory was in the order of \$92 million. Given that the inventory contained 79,752 bottles, the average retail value per bottle would be \$1,154, which it points out is a

gross exaggeration. Even using one-tenth of the per bottle value, or \$115.00, the Inventory would be worth over \$9.1 million ($\$115 \times 79,752$) or at one-twentieth of the per bottle value, or \$57.50, the Inventory would be worth over \$4.58 million ($\$57.50 \times 79,752$). It argues this is a benchmark that can be used to assess Hainle's damages.

[233] In addition, Hainle projects the cost to dispose of the 44,300 bottles of wine at Mission Bottle at the quoted cost of \$7.45 per bottle exceeds \$330,000 plus GST.

[234] Further, it points to losses it says it incurred from reduced case lot pricing and wine returned by customers and the cost of warehousing unsaleable wine estimated at \$40,000.

[235] Lastly, it claims losses from the wines exported to China that either remain in a bonded Chinese government warehouse or are otherwise unsaleable. Hainle admits these losses are difficult to calculate.

[236] In sum, Hainle claims that Huber Inc. owes it over \$380,000 made up of the Mission Bottle storage fees (\$330,000 plus GST), wine refunds of \$13,278.32, and wine disposal costs of \$27,000, plus over \$2 million for the Inventory that is unsaleable. In addition, Hainle claims that Walter owes between \$376,770 and \$745,270 for wine resale losses.

[237] Respecting their claim for breach of warranty under the SPA, I have previously decided that the claim was not proven:

- a) First, breach of warranty under the SPA was not pleaded;
- b) Second, no evidence was led that the Inventory was faulted as of April 2017. The only admissible evidence is that of the experts who both agreed they could only comment on the quality of the wine that they tasted, when they tasted it in April 2024, and not what the wines were like in April 2017, seven years earlier. Further, they agreed that some of the wines that they considered "off" would still appeal to a niche market;

- c) Third, the evidence is that the winery's customers generally liked the wine that they purchased at the wine shop and wines from the Inventory were sold at the wine shop continuously until at least 2021;
- d) Fourth, the defendants allege that Walter knew some of the wines in the Inventory were not saleable but did not disclose this knowledge to Bella or Tony. They did not identify which or how many wines they allege were not saleable;
- e) Fifth, Hainle sold wines from the Inventory and wines Walter made after the SPA as an employee using grapes from its own vines, and using grapes and bulk wines obtained from third parties. The defendants have made no effort to distinguish between the two. Although Hainle acknowledges that some of the Inventory was sold after the SPA (some at discounted prices) there is no evidence of how much;
- f) Sixth, there is no evidence, other than the evidence that Walter disclosed in the pre-SPA spreadsheet provided to Bella as "bad", that Walter knew that some of the wines in the Inventory were unsaleable; and
- g) Seventh, in May 2020, Hainle moved all the wine it considered good (based on the May 2020 assessment by Messrs. Buchanan, Ingram and Melville) from the Warehouse to Mission Bottle. This move involved most of the Inventory then remaining at the Warehouse which Hainle continued to sell.

[238] Respecting disposal cost, even if disposal costs were established – and they have not been – there is no reliable evidence of the number of bottles being stored at Mission Bottle. Respecting customer returns, Hainle says that \$13,278.32 is made up of "returns" of unpalatable wine by customers. There is no admissible evidence supporting this claim, only a compilation of hearsay emails.

[239] The defendants also claim that wine exported to China was not saleable. However, there is no satisfactory proof of this allegation. The defendants led no

evidence about what steps were taken to sell the wine in China or produce an inventory of what wines remain in storage. They led no persuasive evidence of sales, or lack of sales, import documentation, inventory counts, proof of sales or otherwise. Nor was any evidence led that the “icewine” labels prevented sales in China. Tony’s evidence on these points was not convincing.

[240] The defendants make no effort to distinguish between damages sought for breach of contract, misrepresentation, fraud or breach of fiduciary duty. Tort damages attempt to put the claimant, so far as money can do, in the same position they would have been in had the wrong not been committed. Contract damages attempt to put the claimant in the position they would have been in had the contract been performed. The onus is on the claimant to prove, on a balance of probabilities that the loss would not have occurred “but for” the wrongful act.

[241] Respecting Bella Valley’s claim against Walter as an employee, the law seems clear that an employer cannot claim damages against an employee for losses or damages suffered by the employee’s error, incompetence or simple negligence. Something more than simple negligence is required, and damages are only recoverable if the loss is directly connected to the breach. Damages for which the employer is partially responsible are not recoverable: *Movassaghi v. Steels Industrial Products Ltd.*, 2012 BCSC 1663.

[242] Although not specifically pleaded, the defendants are really saying that Walter was negligent in making wine. To prove negligence, evidence of the standard of care in making wine would have been required. There is no such evidence and therefore negligence has not been made out.

[243] Respecting Hainle’s damage claim for between \$312,500 and \$681,000, for loss of wine sales, this relates entirely to the bulk wines Walter produced after the SPA and that were sold after Walter’s termination, some of which were BC VQA approved. The defendants’ quantification relates to the agreement between Walter, Bella and Tony valuing the Inventory in accordance with the Inventory Valuation Formula. This wine was produced pre-SPA. The defendants led no evidence such

as market price, business records showing prior sales, a business plan or estimate of anticipated sales. Its damages calculation also fails to account for production costs that change over time.

[244] In sum, even if their counterclaim was allowed, the defendants have failed to meet their onus to prove their damages claim.

Issue # 8 – Is Hainle Entitled to claim a set-off?

[245] I have previously discussed the Set-Off Agreement signed by Bella and Walter wherein Walter agreed that Hainle could set off unpaid rents owing to Rosa against monies Walter agreed he owed to Hainle.

[246] During submissions and for the first time, the defendants sought to rely on an email from Mr. Ingram to Walter dated January 26, 2021, which included a spreadsheet breakdown of amounts totalling \$64,271.38 that they contend Walter owes for such things as phone and hydro bills, taxes paid to CRA by Hainle on Walter's behalf, a wood-chipper and cash missing from the wine shop with no corresponding bank deposit. They seek to be able to set-off that amount against monies Hainle may owe Walter. Neither the email nor the spreadsheet was put to Walter or any other witnesses and, other than the email being in evidence as a document, there was no evidence led about it.

[247] Citing *RPS Construction Ltd. v. Goraya*, 2009 BCCA 288 at paras. 28–31, Walter argues that the defendants cannot claim a set-off because set-off was not pleaded.

[248] I note however, that in the amended counterclaim the defendants allege:

That Walter "...took funds from the defendants to which he was not entitled";
and

That Walter and WTJ Inc. "...are indebted to the plaintiffs [sic] for funds taken without consent by them ostensibly for consulting fees and the defendants seek an accounting from them.

[249] While it is true that “set-off” was not specifically plead in either the response to civil claim or counterclaim, the defendants nevertheless have sued Walter for monies taken to which he was not entitled.

[250] The Set-Off Agreement attaches a spreadsheet breaking down the amount claimed by Hainle against Walter totalling \$49,662.78. During cross-examination, Walter agreed with the numbers and confirmed that he owed Hainle the amount claimed. This is the only evidence before me on the point.

[251] I am persuaded that Hainle may use the Set-Off Agreement that Walter has already agreed to, namely that he owes Hainle \$49,662.78. Hainle is entitled to set this sum off against the amount owing to Walter under his wrongful dismissal claim.

X. Summary, Final Orders and Conclusion

[252] In sum, I attribute much of what occurred leading up to this lawsuit to Bella and Tony’s business naivety. Before agreeing to purchase Hainle, they failed to conduct any due diligence into its ability to produce the quality and quantity of wines for which they were hoping. The existing winery equipment and other facilities were old, run down and inadequate for their needs, and they made no effort to inspect Hainle’s financial statements or business records before committing to its purchase. Beyond tasting a few samples of wines Walter offered during their initial visit, no qualitative testing of the Inventory was conducted.

[253] In any event of what I conclude were Walter’s “sales pitches”, many of which were either exaggerated or plainly false, and regardless of Bella’s reluctance, Tony had determined the purchase was going ahead.

[254] In sum, Tony, Bella and Bella Valley are the authors of their own misfortune.

[255] I make these orders:

- a) Huber Inc. is granted judgment against Bella Valley for \$2,020,000 representing the agreed upon value of the unpaid Inventory;

- b) Walter is granted judgment against Hainle for wrongful dismissal in the amount of \$75,337.22 (\$125,000 - \$49,662.78 owed by Walter to Hainle under the Set-Off Agreement) representing the net damages in lieu of 12 months' notice of termination;
- c) WTJ Inc. is granted judgment against Hainle in the amount of \$270,833.42 for breach of the Consulting Agreement from April 30, 2018, through June 16, 2020;
- d) Rosa's claim for breach of either the Written Lease or Oral lease is dismissed; and
- e) Each respective plaintiff is entitled to pre-judgment interest on their judgment amounts from and after June 20, 2020, in accordance with the *Court Order Interest Act*, RSBC 1997, c. 79.

[256] The defendants' counterclaim is dismissed.

XI. Costs

[257] At counsel's request, submissions on costs were deferred pending receipt of these reasons. The parties have leave to address costs through written submissions to be provided to Supreme Court Scheduling within thirty (30) days of the date of these reasons.

"G.P. Weatherill J."