

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *JJETS Inc. v. Jeha*, 2025 NSCA 72**

**Date:** 20251017  
**Docket:** CA 537971  
**Registry:** Halifax

**Between:**

JJETS Inc. and John Sullivan

Appellants  
(Cross-Respondents)

v.

George Jeha, Elizabeth Jeha, and The Jeha Family Trust

Respondents  
(Cross-Appellants)

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**Judges:** Farrar, Fichaud and Gogan, JJ.A.

**Appeal Heard:** September 22, 2025, in Halifax, Nova Scotia

**Facts:** The Respondents sold their shares in Eye Catch Signs Limited to the Appellants for \$1.2 million. A major customer, Wilson Fuels, had a finite number of orders for LED signage, which was not disclosed to the Appellants before the sale. After the sale, the Appellants learned the project would soon end and claimed they would have offered less had they known this information (paras [1-3](#), [33-36](#)).

**Procedural History:**

- *JJETS Inc. v. Jeha*, [2024 NSSC 280](#): The trial judge found the Respondents breached the disclosure

obligations under the Share Purchase Agreement but dismissed the Appellants' claim for lack of proof of loss.

**Parties' Submissions:**

- Appellants: Argued the Respondents breached the Share Purchase Agreement by failing to disclose the finite nature of the Wilson Fuels project, which would have led them to offer a lower purchase price (paras [4](#), [43](#)).

- Respondents: Contended there was no breach of the agreement and that any non-disclosure was not material. They also argued that the Appellants failed to prove any loss resulting from the alleged breach (paras [47](#), [55-58](#)).

**Legal Issues:**

- Did the Respondents breach article 3.56 of the Share Purchase Agreement?

- Did the trial judge err in denying compensatory damages due to lack of proven loss?

- Should nominal damages be awarded?

**Disposition:**

- The appeal was dismissed.

- The cross-appeal was dismissed.

- Costs of \$15,000 were awarded to the Respondents.

**Reasons:**

Per Fichaud J.A. (Farrar and Gogan JJ.A. concurring):

The trial judge correctly found that the Respondents breached article 3.56 by failing to disclose the finite nature of the Wilson Fuels project, which could materially diminish the Appellants' appreciation of the company's value (paras [52-54](#)). However, the Appellants failed to provide evidence of the company's true value at the time of purchase, which was necessary to prove a loss. The assumption that the Respondents would have accepted a lower offer was unsupported by evidence (paras [61-91](#)). The court declined to award nominal damages as the Appellants did not request them (paras [92-94](#)).

***This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 96 paragraphs.***

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Respondents  
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**Judges:** Farrar, Fichaud and Gogan, J.J.A.

**Appeal Heard:** September 22, 2025, in Halifax, Nova Scotia

**Held:** Appeal dismissed and cross-appeal dismissed with costs of \$15,000 payable by the Appellants to the Respondents, per reasons for judgment of Fichaud J.A., Farrar and Gogan J.J.A. concurring

**Counsel:** Colin D. Piercey, K.C., Graeme Hiebert and Jennifer Taylor (factum only) for the Appellants (Cross-Respondents) JJETS Inc. and John Sullivan  
James D. MacNeil, Allison J. Godwin and Meghan Proudfoot (Articled Clerk), for the Respondents (Cross-Appellants) George and Elizabeth Jeha and The Jeha Family Trust

**Reasons for judgment:**

[1] George and Elizabeth Jeha founded and owned Eye Catch Signs Limited. The company designed, manufactured and sold commercial signage. By a Share Purchase Agreement, the Jehas sold their shares in the company to John Sullivan for \$1.2 million. Article 3.56 of the Agreement said:

... there are no facts which should reasonably be made known to the Purchaser which have not been disclosed herein, which might be reasonably expected to materially diminish the Purchaser's appreciation of the worth or profitability of the Company or which, if known by the Purchaser, might be reasonably expected to deter the Purchaser from completing the purchase of the Purchased Shares and the Transaction.

[2] A major customer of Eye Catch Signs was Wilson Fuels. Wilson Fuels would order remote-controlled LED price signage for its gas stations. As the number of Wilson Fuels' stations was finite, these LED orders were destined to end at some future date. Wilson Fuels had sent Eye Catch Signs a spreadsheet which listed the gas stations done and remaining to be done.

[3] Before the Share Purchase Agreement closed, the Jehas had notified Mr. Sullivan that Wilsons Fuels was a major customer, but had not given him the spreadsheet. After the closing, Wilson Fuels informed Mr. Sullivan the project would come to an end. Mr. Sullivan saw the spreadsheet. He says, had he known of the sunset for the Wilson Fuels' LED orders, he would have reduced the amount of his offer for the shares from \$1.2 million to a maximum of \$892,000.

[4] Mr. Sullivan sued the Jehas for breach of article 3.56. He claimed damages in the amount by which he would have reduced his offer, had he been aware the Wilson Fuels' project would soon end. The trial judge held the Jehas' failure to disclose breached article 3.56. The judge found, however, there was no proof the value of the company's shares was under the \$1.2 million Mr. Sullivan paid for them and, consequently, Mr. Sullivan had not proven a loss. The judge dismissed Mr. Sullivan's action [2024 NSSC 280].

[5] Mr. Sullivan appeals and the Jehas' cross-appeal. The issues are whether the Jehas breached article 3.56 and if they did, whether Mr. Sullivan has proven a loss caused by the breach. Lastly, assuming there is a breach but no proven loss, I will discuss whether to award nominal damages.

### *Eye Catch Signs*

[6] George Jeha is an engineer. His spouse Elizabeth has been a teacher. They grew up in Egypt and came to Canada in the 1980s.

[7] Upon their arrival in Halifax, Mr. Jeha began to work for a signage company. He noted local sign retailers obtained their product from Ontario. It occurred to him there was a market niche.

[8] In 1989, the Jehas established Eye Catch Signs Limited. Its shareholders were Mr. and Ms. Jeha and The Jeha Family Trust.

[9] Over the next two decades, Eye Catch Signs designed and manufactured interior and exterior signs for commercial and retail use. The fabrication occurred in a 10,000 sq. ft. leased facility in Halifax with up to 20 trained staff. Mr. Jeha had an entrepreneurial instinct. Eye Catch Signs developed and sold braille and tactile signage under the proprietary trademark “Brilliant Touch”, using Mr. Jeha’s invention and patent for a braille indicator. The company outsourced the manufacture, then supplied LED signage for gas stations, remote-controlled at head office to accommodate frequent gas price changes.

[10] The company’s customers, at various times, included Wilson Fuels, Automatic Disability Access Systems (ADAS) (a distributor for signage in Australia), Disney, St. F.X. University, the Nova Scotia Community College, and the Halifax Regional Municipality. For a time, Eye Catch Signs had a standing arrangement to provide braille and tactile signs for all federal government buildings in Canada. The company sold architectural and wayfinding signs and signage for construction projects. Eye Catch Signs marketed in Atlantic Canada, the UK, USA, Norway and Australia.

[11] In 2011, Ms. Jeha decided to discontinue her endeavours in the signage business and return to teaching. In 2012, the Jehas considered selling the company.

[12] The Jehas were long-standing clients of Deloitte Inc. for accounting and tax work. In September of 2012, Paul Fudge of Deloitte began to advise the Jehas on a possible sale of the company. Based on Deloitte’s accumulated material and the information from the Jehas, Mr. Fudge prepared a Confidential Information Summary initially in 2012 and updated in 2013 (“2013 Summary”) to acquaint potential purchasers with Eye Catch Signs’ business.

[13] The 2013 Summary included:

**5. Loyal customer base**

Management estimates that over 80% of sales come from repeat customers.

Eye Catch sells to a diverse list of customers with limited customer concentration risk.

**6. Strong financial results**

Eye Catch has a good financial position with negligible debt.

Recent results have been strong with normalized EBITDA of \$358,000 (2011), \$180,000 (2012), \$542,000 (2013) and management is budgeting for \$425,000 in 2014.

[14] EBITDA is an acronym for earnings before interest, taxes, depreciation and amortization. It approximates usable cash flow. A normalized EBITDA adjusts for one-off earnings or expenses.

[15] The 2013 Summary described Eye Catch Signs' customer base:

**Customer Base**

Eye Catch customers can be divided into three types:

- **Resellers:** Sign manufacturers/agencies/construction companies who buy products from Eye Catch and resell them. The reseller adds value by providing installation services for the signs on site;
- **End Users:** Institutions such as universities, hospitals, schools, government agencies. Architects and designers often influence these customers; and
- **Distributors:** Eye Catch currently sells in Australia through an exclusive distributor.

...

- The Company has approximately 150 active clients which generate between 850-1,150 transactions annually;
- Management estimates that approximately 80% of its business comes from repeat customers;
- Management estimates that approximately 50-60% of its sales are architectural signs and the remainder accessible signs; and
- Eye Catch provides its products to a diverse list of customers with limited concentration risk, with no customer representing more than 14% of total sales in the most recent year.

[16] The 2013 Summary discussed financial performance:

**Financial results**

- Historical sales have been in the range of \$1.7 M to \$2.7 M in the five years ending April 2012. Gross profit has ranged from 37%-53%.
- Over time, management have refined its market. Since 2009, the Company has focused on pursuits where it can obtain its target margin and utilize its core strengths, as opposed to pre-2010 when the Company chased some large, low margin architectural signage products outside Atlantic. This change in focus explains the historical fluctuations in sales and margins, along with the lag effect of the US recession experienced in fiscal 2010.
- Management believes that the recent years and the 2013 budget best represent the range of future prospects from the current business that is primarily focused on the accessible market and local architectural signage opportunities.
- The 2013 budget includes growth due to increased demand for tactile maps, banking and ticket machine overlays. In addition, management is forecasting sales growth due to obtaining new customers, a US recovery and the continuation of strong contract order size.

...

**Normalized EBITDA**

- EBITDA has been adjusted/normalized for the fair market value of owner-manager salary and various other adjustments for one-time and non-recurring expenses.
- The 2014 budget includes minimal growth and is based on the year to date events and maintaining the 2013 standards.
- From 1999 to 2013, Eye Catch has only incurred two years of losses. One from the legacy issues of the 2008 recession, and the other due to a failed new general manager who did not work out as anticipated.

[17] The 2013 Summary stated the unadjusted EBITDA and “adjusted” (normalized) EBITDA for 2011, 2012, 2013 and 2014 to date. Unadjusted EBITDA was: \$340,876, \$106,614, \$405,375 and projected \$398,500 for 2011, 2012, 2013 and 2014. The adjusted EBITDA was: \$358,662, \$180,220, \$542,304 and projected \$424,786 for 2011, 2012, 2013 and 2014 respectively.

***The Sale of Shares***

[18] The Appellant John Sullivan is a chartered accountant. He obtained his accounting designation in 1986 and has worked in the private sector, concentrating

on accounting, treasury operations, mergers and acquisitions and finance. In 2013, Mr. Sullivan was the director of finance and corporate secretary of Amirix Systems Inc., a high-growth manufacturing firm.

[19] In late 2013, after a planned exit from his prior employer, Mr. Sullivan focused on acquiring his own manufacturing business. In January 2014, he learned of Eye Catch Signs. He contacted Mr. Fudge of Deloitte and, after Mr. Sullivan signed a non-disclosure agreement, Mr. Fudge emailed him the 2013 Summary. Mr. Sullivan had prior experience with such material.

[20] Mr. Sullivan testified Eye Catch Signs' loyal customer base was "very important" and "very valuable". He was impressed by the 80% sales from repeat customers, by the limited concentration risk which indicated the business was not unduly dependent on a particular customer, and by the EBITDA.

[21] Mr. Sullivan acknowledged knowing nothing about the signage business. He did not formally engage a consultant in the business to assist his analysis of the company's value and determination of a share price.

[22] The exchanges that led to the eventually agreed price of \$1.2 million were:

- In late January 2014, at Mr. Sullivan's request, Mr. Fudge sent him Eye Catch Signs' financial statements for fiscal 2011, 2012 and 2013. Mr. Sullivan asked for an explanation of the EBITDA's "normalization". Mr. Fudge detailed Deloitte's process and steps to normalize the EBITDA.
- On February 2, 2014, by a Letter of Intent, Mr. Sullivan offered \$900,000 for Eye Catch Signs' shares. That number came from multiplying the company's EBITDA by a capitalization multiple of 2.5 to 3.5. The multiple is a measure of risk. Mr. Sullivan arrived at 2.5 to 3.5 on his own, assisted by his internet research.
- Mr. and Ms. Jaha rejected Mr. Sullivan's offer of \$900,000.
- Mr. Sullivan persisted with inquiries to Mr. Fudge about Eye Catch Signs' financial situation, to which Mr. Fudge responded with information.
- On February 13, 2014, Mr. Sullivan emailed Mr. Fudge that he could offer \$1.1 million but he needed further data for his lender. The requests included a list of fixed assets over \$25,000 and permission to have a professional appraiser view Eye Catch Signs' premises.

- On February 26, 2014, Mr. Sullivan and his appraiser, Mr. Elliott Offman met Mr. and Ms. Jeha at Eye Catch Signs' offices. Mr. Offman catalogued the assets. Mr. Jeha explained the company's workflow production software and showed Mr. Sullivan the camera installations on the premises.
- On February 28, 2014, Mr. Sullivan sent Mr. Fudge a new letter of intent that offered \$1.1 million. On the same day, Mr. Sullivan emailed Mr. Fudge to request further explanation of the EBITDA normalization, 2014 to date statements and balance sheet, the projected April 30, 2014 income statement and balance sheet and two years of financial projections.
- On March 1, 2014, Mr. Fudge sent Mr. Sullivan various documents that responded to some of Mr. Sullivan's requests. He said Ms. Jeha was working on compiling further information.
- On March 3, 2014, Mr. Fudge emailed Mr. Sullivan to say the offer of \$1.1 million was not agreeable to the Jehas.
- On March 4, 2014, Mr. Fudge sent Mr. Sullivan a letter of intent with a counteroffer of \$1.25 million.
- On March 7, 2014, Mr. Fudge emailed to Mr. Sullivan documents responding to Mr. Sullivan's outstanding requests. These included forecasted revenues and a predicted EBITDA of \$333,899 for the year ending April 30, 2014.
- Mr. Sullivan found the predicted EBITDA concerning because it was lower than the previous year's EBITDA of \$405,375.
- On March 13, 2014, Mr. Fudge sent Mr. Sullivan an adjusted EBITDA analysis for 2008-2010 that Mr. Sullivan had requested. Mr. Sullivan said this information appeared to answer his questions about the company's uneven performance in those earlier years.
- On March 17, 2014, Mr. Sullivan sent Mr. Fudge a letter of intent that offered \$1.2 million.
- Mr. and Ms. Jeha accepted this offer.

[23] After the agreement on price, the exchange of information continued.

[24] A few days after March 17, Mr. Sullivan asked Mr. Fudge more questions. Mr. Fudge replied with an email of March 25, 2014, that attached:

- An estimate of the forecasted EBITDA for the year ending April 30, 2014 (projecting a year-end EBITDA of \$351,174, up from the estimate of \$333,899 provided to Mr. Sullivan on March 7).
- Lists of work orders to be finished and billed for March-April 2014 (\$175,688 for March and \$217,648 for April). The March list included seven jobs totalling \$84,811 coded “WIFU”, for Wilson Fuels. The April list included eight jobs totalling \$88,592 coded “WIFU”.
- An anonymized list of the top five customers for 2012, 2013 and 2014 to date. In 2013, Customer A represented 25% of sales and Customer C 10%. In 2014, Customer C jumped to 33%. Though not named on the list, Customer C was Wilson Fuels.

[25] The trial judge found Mr. Sullivan then called Mr. Fudge to inquire about the “top five” list and Mr. Sullivan:

... recalled Mr. Fudge telling him that ECS had redesigned the signage for Wilson Fuels and that that was a continuing relationship. Mr. Sullivan did not ask for any other details about the work being done for Wilson’s, or its sustainability.

[trial decision – 2024 NSSC 280, para. 54]

[26] On March 28, Mr. Sullivan sent Mr. Fudge a list of several items for discussion at a meeting scheduled for April 1. The list included:

**Products**

What does Eye Catch have?

Any areas where the company should grow/invest (e.g. LED, awnings, etc.)

**Production**

Discussion of margins per product type

Capacity per product type

...

**Sales Bid – Fulfillment**

Discussion of customer identification, tender, award process

Management of fulfillment

Areas where George Jeha would check, manage

[27] On April 1, 2014, Messrs. Sullivan and Fudge and the Jehas met for 90 minutes at Deloitte’s offices for the discussion.

[28] Mr. Sullivan's financier, Roynat, wished to review the financial data. This would take several weeks and delayed the closing.

[29] On April 25, 2014, Mr. Fudge sent Roynat a "Fiscal Year 2014 Estimate". The spreadsheet included an updated EBITDA of \$376,859 (higher than the earlier estimates of \$333,899 and \$351,174) and 2014 work orders totalling \$235,586.03.

[30] In May 2014:

- Mr. Sullivan joined Mr. Jeha on a call to ADAS, the Australian disability access distributor, to negotiate a new distributorship agreement with an agreed annual revenue quota of \$300,000.
- Mr. Sullivan and the Jehas met with Eye Catch Signs' key personnel to brief them on the sale of the business and Mr. Sullivan met individually with these members of staff.
- Mr. Fudge sent Mr. Sullivan an email with the estimated income statements for May and projections for June. Mr. Fudge noted one projected revenue item was down because the customer had chosen a third party, but significant receivables were due for payment by Wilson Fuels. The June projections included work orders of \$191,109.85 of which \$30,623.20 comprised three jobs for Wilson Fuels. The document noted further work orders "waiting for approval" included five jobs for Wilson Fuels totalling \$101,118.02.
- Mr. Fudge's email invited Mr. Sullivan to ask any questions. Mr. Sullivan had no questions about the Wilson Fuels work or its sustainability.

[31] On June 2, 2014, the transfer of Eye Catch Signs' shares closed. The Appellant JJETS Inc. is Mr. Sullivan's holding company that acquired the shares of Eye Catch Signs. The parties signed the Share Purchase Agreement. The Share Purchase Agreement included the following provisions that are featured in this litigation:

- Article 3, titled "Vendors' Representations and Warranties", says:  
The Vendors jointly and severally represent and warrant to the Purchaser as follows, and acknowledge and confirm that the Purchaser is relying upon the accuracy of each of the following representations and warranties in connection with the purchase of the Purchased Shares and the completion of the Transaction hereunder:

...

**3.56 Disclosure.** The Vendors have made or caused to be made due enquiry with respect to each of the representations, warranties and statements contained in this Agreement and in each of the Schedules, certificates, documents and other writings referred to herein or furnished to the Purchaser hereunder. No representation or warranty contained in this ARTICLE 3, and no statement contained in any Schedule, certificate, list, summary or other disclosure document provided or to be provided to the Purchaser pursuant to this Agreement, or in connection with the Transaction, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact which is necessary in order to make the statements contained therein not misleading. The Vendors have no knowledge of any facts and there are no facts which should reasonably be made known to the Purchaser which have not been disclosed herein, which might be reasonably be expected to materially diminish the Purchaser's appreciation of the worth or profitability of the Company or which, if known by the Purchaser, might be reasonably expected to deter the Purchaser from completing the purchase of the Purchased Shares and the Transaction. [underlining added]

- Article 5.1(f) says:

**5.1 Survival of Vendors' Warranties.** The representations and warranties made by the Vendors and contained in this Agreement, or contained in any document or certificate given in order to carry out the Transaction, will survive the Closing of the purchase of the Purchased Shares provided for herein and, notwithstanding such Closing or any investigation made by or on behalf of the Purchaser or any other Person or any knowledge of the Purchaser or any other Person, shall continue in full force and effect for the benefit of the Purchaser, subject to the following provisions of this Section:

...

(f) No investigation made by or on behalf of the Purchaser at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the Vendors in or pursuant to this Agreement. No waiver by the Purchaser of any condition, in whole or in part, shall operate as a waiver of any other condition. [underlining added]

[32] I have underlined the passages that the trial judge's reasons (paras. 87 and 103) underlined for emphasis. Her reasons on the point are discussed below, paras. 52-54.

*Mr. Sullivan Learns Details of the Wilson Fuels Project*

[33] Eye Catch Signs' work for Wilson Fuels is critical to the issues on this appeal. The trial judge's findings on the project were:

**Background to the Wilson's Gas Pricers Project**

[79] As noted earlier, Wilson's was a longtime customer of ECS [Eye Catch Signs]. In 1990, Wilson Fuels hired ECS to provide large exterior pylon signs for its gas stations in Atlantic Canada. ECS continued to do work for Wilson's every year, to varying extents.

[80] Elizabeth Jeha explained that ECS did many different projects for Wilson's over the years, starting with the pylon signs. As Wilson Fuels expanded, ECS did other projects for them, including installing canopies for their gas stations, providing signage for the Wilson's Go! Convenience stores, and setting up LCD screens inside the convenience stores that displayed advertising. The LCD screen project started in approximately 2009 and was ongoing in 2014 at the time of the sale of ECS to Mr. Sullivan.

[81] In May 2012, Janet MacLeod at Wilson Fuels contacted George Jeha about updating the gas pricer signage for the six Wilson's gas stations in the Halifax metro area. ECS came up with designs for LED gas pricers for each station. Once Wilson's approved the designs, the signs were manufactured and installed.

[82] In May 2013, Wilson Fuels provided ECS with a list of 25 stations in PEI and New Brunswick where it wanted to install LED gas pricers.

[83] On August 7, 2013, Eric Noel at Wilson's sent an email to George Jeha stating:

Hi George

Here is a working spreadsheet of the sites we want price signs

Have a look and let's chat again soon

[84] Attached to the email was the unnumbered list of 73 Wilson's stations across Atlantic Canada which John Sullivan found after he purchased the company.

[85] Over the course of fiscal 2013 and 2014, ECS provided LED gas pricers for the bulk of the stations on the list. A significant portion of the stations were completed from January to May 2014, in the lead up to the sale. Although Mr. Sullivan alleged that the Jehas "rushed" to have ECS complete as many stations as possible while they still owned the company, the evidence is clear that it was Wilson's that dictated when the stations would be done. Typically, a Wilson's representative would contact ECS about doing a batch of stations. ECS would provide Wilson's with a design and quote for each station, which Wilson's would then review. Sometimes Wilson's would ask ECS to remove stations from the list, add more stations, or put stations "on hold". For example, on September 30,

2013, Eric Noel sent the following email to Meghan MacAulay at ECS with the subject “NS Priority List & Updates”:

Meghan

Let’s move forward (give priority) with the following sites: 111, 144, 149, 169, 175, 178, 181, 188, 251, 295, 296, 309

Site 128 – proceed – and would like some additional work done here, please coordinate with our Area Manager Steve Perry directly ...

Let’s put the following sites on hold: 106, 113

Let’s remove these sites from the list: 120, 127, 226, 360, 391, 394.

Thanks. I should have an update on the NB/PEI territory soon.

[86] I find that there was no overarching contract with Wilson Fuels governing the entire Gas Pricers Project, nor was there any specific end date for completion of all the stations on the spreadsheet.

[34] Wilson Fuels’ LED signage project was a significant source of Eye Catch Signs’ revenue.

[35] In August 2014, Mr. Sullivan and George Jeha met with Eric Noel and Dave Collins of Wilson Fuels. The trial judge’s reasons say:

[67] ... According to Mr. Sullivan, Mr. Noel and Mr. Collins announced that the Wilson’s LED signage program was concluding and that there was only one more station left to be done. Mr. Sullivan said he felt “concussed” and like his ears were ringing upon hearing this news because he knew by then how material the Wilson’s business had been to ECS’s financial results. He testified that as he and Mr. Jeha drove away from the meeting, Mr. Jeha said, “Oh well, signage programs come and signage programs go.”

[36] Mr. Sullivan testified that, shortly after this meeting, he located in Eye Catch Signs’ files a 2013 spreadsheet from Wilson Fuels that listed 73 gas stations where Wilson Fuels wished to install LED gas price signs and identified the gas stations done and to be done. The spreadsheet had not been disclosed to him before the closing.

[37] As it turned out, Wilsons Fuels continued as a significant customer of Eye Catch Signs for years afterward. The trial judge found:

[77] Although Mr. Sullivan testified that the Wilson Fuels Gas Pricers Project was to conclude in September 2014, he conceded that Wilson’s subsequently came back to ECS requesting LED gas pricers for a few more stations. In fiscal

2015, Wilson's was ECS's second biggest customer, behind ADAS, and was responsible for \$225,535.75 in revenue. In fiscal 2016, ECS earned \$183,556.66 in revenue from Wilson's. There was also evidence from former ECS employees Tim Stott and John Morse that, to the best of their recollection, ECS did a few LED gas pricers for Wilson's in the 2016 to 2018 time period.

[38] According to Mr. Sullivan's cross-examination, Eye Catch Signs did work for Wilson Fuels of about \$183,500 in 2016, approximately \$80,000 in 2017 and \$54,000 in 2018.

[39] In fiscal 2015, Eye Catch Signs had a loss before tax of \$122,681. According to Eye Catch Signs' financial statements, the company's net income was \$175,955 in fiscal 2016, \$148,205 in 2017, and \$134,564 in 2018.

[40] In September 2021, Mr. Sullivan sold Eye Catch Signs.

### *The Litigation*

[41] In September 2016, Mr. Sullivan and JJETS Inc. sued Mr. and Mrs. Jeha and The Jeha Family Trust for breach of contract and tortious misrepresentation.

[42] The trial proceeded in the Supreme Court of Nova Scotia over eleven days in February and March 2024. Justice Ann Smith presided.

[43] Mr. Sullivan claimed: (1) before the closing on June 2, 2014, the Jehas failed to disclose that the Wilson Fuels' LED gas price project would come to an end and, (2) had Mr. Sullivan known that fact and, in particular, the details on the spreadsheet, his offer to buy the shares would have been significantly lower than \$1.2 million. Mr. Sullivan recalculated the EBITDA, applied his multiplier, and concluded his offer would have been between \$768,000 and \$892,000 (depending on variables in the EBITDA), meaning he overpaid by \$308,000 to \$432,000.

[44] On September 19, 2024, Justice Smith issued a decision (2024 NSSC 280). The judge dismissed the claim with costs. She held:

- The Jehas' failure to disclose the details of the Wilsons Fuels' project materially breached their affirmative contractual duty to disclose under article 3.56 of the Share Purchase Agreement.
- However, in the absence of evidence as to the value of the company, Mr. Sullivan and JJETS Inc. failed to prove a loss.

[45] On October 23, 2024, the Supreme Court issued an Order dismissing the claim and ordering costs of \$137,232.05 payable by Mr. Sullivan and JJETS Inc. to the Jehas.

[46] On October 25, 2024, Mr. Sullivan and JJETS Inc. filed a Notice of Appeal to the Court of Appeal. They say the judge erred by finding there was no proof of a loss.

[47] On November 15, 2024, Mr. and Mrs. Jaha and The Jaha Family Trust filed a Notice of Cross-Appeal. They submit the judge erred by finding a breach of article 3.56 and by finding any non-disclosure of the Wilson Fuels details was material.

[48] The Court of Appeal heard the matter on September 22, 2025.

### *Issues*

[49] The appeal concerns proof of loss while the cross-appeal concerns the breach of contract. As it makes sense to start with breach, I will address the cross-appeal first. The issues are:

1. Did the judge err by finding there was a breach of article 3.56? (the cross-appeal)
2. Did the judge err by denying compensatory damages because there was no proven loss? (the appeal)
3. Should there be nominal damages?

### *Standard of Review*

[50] The Court of Appeal applies correctness to issues of law, including those extractable from issues of mixed fact and law, and palpable and overriding error to issues of fact and mixed fact and law with no extricable legal issue. A palpable and overriding error is a clear error that affected the outcome. *Housen v. Nikolaisen*, 2002 SCC 33; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, paras. 52-76; *Gwynne-Timothy v. McPhee*, 2005 NSCA 80, paras. 31-34.

[51] An alleged error of contractual interpretation that turns on the surrounding circumstances is an issue of mixed fact and law that is reviewable for palpable and overriding error: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, paras 42-61.

***First Issue: Did the Jehas Breach Article 3.56?***

[52] Article 3.56 is quoted above (para. 31). The trial judge construed article 3.56 as follows:

[97] ... Article 3.56 is titled “Disclosure” and implicitly recognizes that the vendors are the best and the only source of information about ECS’s business and finances.

[98] The exceptionally broad wording of Article 3.56 supports the view that it requires active and extensive disclosure. Article 3.56 does not merely confirm that the information provided to date, or in the SPA, is accurate. Nor does it simply confirm that the vendors have no knowledge of any facts which should reasonably be made known to the purchaser and which, if known to the purchaser, might reasonably be expected to deter the purchaser from completing the transaction. It goes much further, confirming that “[t]he Vendors have no knowledge of any facts *and there are no facts* which should reasonably be made known to the Purchaser” and which “might be reasonably expected to materially diminish the Purchaser’s appreciation of the worth or profitability of the Company ...” . [trial judge’s italics]

[99] By using such broad language, the parties have allocated to the Jehas the risk that there *are* facts, known or unknown to them, which should have been disclosed to the purchaser and which might be reasonably expected to materially diminish his appreciation of the worth or profitability of ECS, whether or not that information could reasonably be expected to deter John Sullivan from completing the transaction. [trial judge’s italics]

...

[103] But should Article 3.56 be interpreted to apply to material information that John Sullivan ought reasonably to have discovered during the due diligence process? In my view, the answer is “yes”. I reach this conclusion for two reasons. First, Article 3.56 must be interpreted in light of Article 5.1(f), which states: [article 5.1(f) is quoted above, para. 31].

[104] Article 5.1(f) speaks directly to the parties’ intention that the scope of the representation and warranty contained in Article 3.56 not be limited by any due diligence investigations by or on behalf of the purchaser.

[105] The other reason that Article 3.56 should not be interpreted as applying only to information that could not reasonably have been discovered through due diligence is that the successful negotiation of an exceptionally broad disclosure warranty is, in itself, a form of due diligence by the purchaser.

...

[107] By executing an agreement that included Article 3.56, the parties chose to allocate to the vendors the risk that there were material facts which were not disclosed to Mr. Sullivan that his due diligence failed to uncover.

[53] There is no extrinsic evidence respecting the negotiation of the wording in article 3.56. We are left with its plain meaning. Article 3.56 plainly requires that the Jehas affirmatively disclose facts that could reasonably be expected to materially diminish Mr. Sullivan's appreciation of the Eye Catch Signs' value or profitability. The judge made no error in her interpretation to this effect.

[54] The trial judge found the Jehas breached article 3.56:

[113] In my view, the Jehas' failure to disclose the details of the Wilson's Gas Pricers Project was a breach of Article 3.56. ...

[114] While there was no set end date for the Gas Pricers Project, the Jehas knew that in August 2013, Wilson's had provided ECS with a spreadsheet listing the stations that it wanted to outfit with LED gas pricer signs. The Jehas also knew or ought to have known that ECS would have completed most of the stations on that list by the time Mr. Sullivan would be taking over the company. This information should reasonably have been disclosed to John Sullivan prior to the execution of the SPA on June 2, 2014.

[115] I find that the details of the Wilson's Gas Pricers Project – including ECS's substantial reliance on profits from a single customer in fiscal 2014 and the existence of the almost-completed list of stations – if known to a prospective purchaser, might reasonably be expected to materially diminish the purchaser's appreciation of the worth or profitability of the company. It is reasonable to expect that this information would raise serious concerns about the sustainability of ECS's financial results, including EBITDA, and materially diminish the purchaser's appreciation of the company's worth or profitability as a result.

[116] In reaching this result, I recognize that John Sullivan ought to have raised questions about the nature of the work being performed for Wilson's, and its sustainability, as part of his due diligence. His counsel acknowledged during closing submissions that his client could have asked those questions. Mr. Sullivan's failure to "dig deeper", however, does not change the fact that the Jehas were aware of material information that they failed to disclose to him, contrary to their representation and warranty under Article 3.56 of the SPA.

[117] I would also like to emphasize that my finding that the defendants breached Article 3.56 should not be construed as a finding that George or Elizabeth Jeha actively concealed material information from Mr. Sullivan in an effort to deceive him. In my view, the Jehas simply failed to appreciate their disclosure obligations under the SPA.

[55] On the cross-appeal, the Jehas make the following submissions.

[56] First, their factum urges:

26. When a party is making a warranty in relation to disclosure, the promising party is only able to promise to disclose the knowledge they have ...

...

27. The interpretation of Article 3.56 of the SPA that was made by the trial judge created a commercial absurdity whereby disclosure obligations would be requiring parties to disclose information they may not have, or even know of, to be able to then obtain said information and produce it. ...

[57] With respect, this submission misses the mark. The trial judge found (para. 114) the Jehas knew of the sunset prospects associated with the Wilson Fuels' LED project. They had Wilson Fuels' spreadsheet which listed the remaining gas stations to be done. This case is not about "information they may not have, or even know of".

[58] Second, the Jehas submit the judge erred by finding the information would "materially" diminish the purchaser's appreciation of Eye Catch Signs' value and profitability. They say the spreadsheet was a working list, not contractual, and was always open to change.

[59] It is correct the spreadsheet was a working list, non-contractual, open to revision and, in fact, was revised. However, the trial judge accepted the spreadsheet's information would have changed Mr. Sullivan's appreciation of value and would have reduced his offered price for the shares. That satisfies article 3.56. The judge's finding of fact was supported by Mr. Sullivan's testimony. The judge made no palpable and overriding error.

[60] I would dismiss the Jehas' cross-appeal.

***Second Issue: Loss and Compensatory Damages***

[61] The judge's reasons say:

[120] The difficulty for John Sullivan is that he failed to provide the court with evidence of the true value of ECS at the time it was purchased.

...

[124] John Sullivan must prove his damages. Without evidence on valuation, he has not established that he suffered a loss as a result of the Jehas' failure to disclose the details of the Wilson Fuels Gas Pricers Project – whether the claim is framed in contract or tort. The claim for breach of contract is dismissed.

[62] On the appeal, Mr. Sullivan challenges this ruling.

[63] I preface the analysis by noting there is no issue whether the Jehas committed tortious negligent misrepresentation. Mr. Sullivan's Statement of Claim pleaded both breach of contract and tortious misrepresentation. However, the trial judge made no finding that the Jehas had offended the standard of care in tort. Neither did Mr. Sullivan's submissions in the Court of Appeal address the tortious standard. Rather, both the trial judge's reasons and Mr. Sullivan's appellate submissions relied exclusively on the more stringent contractual standard of affirmative disclosure demanded by article 3.56. At the appeal hearing, in response to a question from the panel, Mr. Sullivan's counsel acknowledged that tortious liability was not on the table.

[64] The Jehas' liability is sourced in contract, not tort. We are dealing with the contractual, not the tortious, approach to damages.

[65] One contractual remedy would be to rescind the Share Purchase Agreement, return the shares to the Jehas and the \$1.2 million to Mr. Sullivan. However, rescission is available only when *restitutio in integrum* is possible: Jason W. Neyers, et al., *Fridman's The Law of Contract in Canada* (Toronto: Thomson Reuters, 2024), 7<sup>th</sup> ed., #23,17, pages 1045-47. Mr. Sullivan operated the company for seven years, then sold it in 2021. He cannot return the shares. *Restitutio* is impossible. Neither has rescission been sought.

[66] The parties are left to compensatory damages.

[67] What principles govern compensatory damages for breach of contract?

[68] Damages for breach of contract reflect the plaintiff's expectation interest. In *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, para. 27, Major J. for the Court adopted the long-standing principle approved by Rinfret J. in *Haack v. Martin*, [1927] S.C.R. 413, at p. 416:

The rule of the common law is that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed.

To the same effect: *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 S.C.R. 12, at page 25, per LaForest and McLachlin JJ. for the majority; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, para. 50, per Brown J. for the majority; *Fridman's The Law of Contract in Canada*, #22.21, page 958.

[69] In *Bank of America*, Justice Major continued:

29 To award the plaintiff damages equal to the value of the contract as if it had been performed on time, the court must first determine the dollar value of the promise to the plaintiff at the time the obligation was to have been performed, and then apply the appropriate interest rate and method of calculation to account for the time during which the plaintiff was not paid what was rightfully due. [Justice Major's underlining]

[70] I will apply these principles. If the Jehas had complied with article 3.56, what would have happened?

- In the Share Purchase Agreement, the Jehas did not warrant an amount of corporate or share value, future profit or EBITDA, a capitalization multiplier or an indefinitely continuing customer profile. Rather, they represented the information material to Mr. Sullivan's assessment of profit and value would be disclosed. The breach is their failure to disclose that the Wilson Fuels project had a limited lifespan, as shown on Wilson Fuels' spreadsheet.
- To comply with article 3.56, the Jehas would have disclosed to Mr. Sullivan the contents of the spreadsheet before Mr. Sullivan signed the Share Purchase Agreement on June 2, 2014. Mr. Sullivan would have learned the LED work at Wilsons Fuels' remaining stations was projected for completion in the near future.
- Mr. Sullivan says, had he known that information, he would have offered no more than \$892,000 for the shares, *i.e.* \$308,000 under the \$1.2 million he paid on June 2, 2014. This figure is presented in the loss calculation report of Mr. Sullivan's expert, Brian Keough, at page 17.
- However, the Jehas had rejected Mr. Sullivan's higher offers of \$900,000 in early February, 2014 and \$1.1 million on March 3, 2014. (above, para. 22).

- Clearly, if Mr. Sullivan offered only \$892,000, the Jehas similarly would have rejected his offer. The sale of shares to Mr. Sullivan would not have happened.
- In that event, Mr. Sullivan would have saved \$1.2 million, but he would not have acquired the shares of Eye Catch Signs.
- Hence, Mr. Sullivan’s loss from breach of contract is \$1.2 million less the value of Eye Catch Signs’ shares. As Justice Major noted in *Bank of America*, the valuation is at the date the obligation was to have been performed, *i.e.* by the closing on June 2, 2014.
- This means to calculate the loss, the judge had to determine the value of the shares on June 2, 2014.

[71] Mr. Sullivan’s approach assumes the sale of shares would have proceeded at a price of at most \$892,000. The assumption is mistaken. Not a smidgen of evidence suggests that the Jehas, having rejected \$1.1 million, would have sold for \$892,000.

[72] The judge’s reasons say:

[120] The difficulty for John Sullivan is that he failed to provide the court with evidence of the true value of ECS at the time it was purchased. [above, para. 61]

[73] Mr. Sullivan’s factum to the Court of Appeal, para. 95, submits the judge’s requirement that Mr. Sullivan prove the “true value of ECS at the time it was purchased” is “unfounded”. That point is central to Mr. Sullivan’s submission on the appeal. With respect, I disagree. The unfounded premise is Mr. Sullivan’s assumption the Jehas would have sold the shares for only \$892,000.

[74] Did the judge have evidence to calculate the company’s value as of June 2, 2014?

[75] There was testimony from Mr. Sullivan and his expert Brian Keough, and the Jehas’ expert Chris Polson, and reports from Messrs. Keough and Polson. I will summarize their evidence.

[76] **Mr. Sullivan:** Mr. Sullivan explained how he derived the price he paid for the shares. He started with a normalized EBITDA, which his testimony characterized as “an opinion of any given person, and it’s really in the eyes of the beholder”. He multiplied the EBITDA by a capitalization multiplier “in the 2 1/2 to

3 1/2 range”. The multiplier measures risk, which is a matter of opinion, for which Mr. Sullivan said he was assisted by his internet research. Multiplying the EBITDA by the multiplier came to the amounts of his offers, which opened at \$900,000 and, with negotiation, moved to \$1.1 million and concluded at \$1.2 million. The judge (para. 121) found the multiplier for the price of \$1.2 million was reverse engineered as 3.12.

[77] After Mr. Sullivan learned the Wilson Fuels project would end, he deleted from the EBITDA profit sourced with Wilson Fuels, applied his same multiplier and came to a lower number that he says he would have offered, had he known the details of the Wilson Fuels project. That number is reflected in Mr. Keough’s report.

[78] **Mr. Keough:** Mr. Keough testified he adjusted the EBITDA by “alleged balance sheet deficiencies pointed out by Mr. Sullivan”. Mr. Keough testified he performed no independent investigation respecting these alleged financial statement deficiencies. Mr. Keough applied Mr. Sullivan’s multiplier derived from the price of \$1.2 million. Mr. Keough offered no opinion whether that or any other multiplier was appropriate for a valuation. Mr. Keough then multiplied the adjusted EBITDA by the multiplier and came to amounts that his report, Chart 11, says “Mr. Sullivan Should Have Paid” instead of \$1.2 million. Those amounts are \$768,000 to \$892,000, depending how the EBITDA is adjusted.

[79] Mr. Keough agreed he had not provided a valuation. He testified:

Q. ... but I want to be clear, because I don’t want to get into semantics, but – and, and to your credit, you acknowledge in writing this is not a valuation report, correct?

A. That’s correct.

[80] The judge found that Mr. Keough had not provided evidence of valuation. Her reasons say:

[121] The expert report filed by John Sullivan and authored by Brian Keough, a chartered business valuator, is not a valuation report. In other words, Mr. Keough was not asked to determine the value of ECS, independent of Mr. Sullivan’s own assessment that the business was worth a 3.12 multiple of EBITDA. ...

[81] **Mr. Polson:** Mr. Polson has prepared hundreds of expert valuation reports in a litigation context. He spoke to Mr. Keough’s method. He testified Mr. Keough’s conclusion derived from “arithmetic without analysis or support” and Mr.

Keough's report was not a valuation but a "a calculation report", which affords "certainly the lowest degree of assurance provided under our professional standards".

[82] Mr. Polson disputed Mr. Keough's premise that the Jehas would have sold at a price under \$1.2 million.

[83] As to Mr. Sullivan's losses, Mr. Polson's report (paras. 82 and 86) said, on the assumption the Jehas would not have sold for under \$1.2 million, "the losses suffered by the Plaintiffs as a result of the Alleged Misrepresentations would be \$nil". Similarly, he testified that, on the same assumption, "there would be no losses or no damages". As I have discussed, in my view Mr. Polson's assumption is warranted.

[84] As to valuation, Mr. Polson testified:

... In my experience, small private businesses often, like this one, often trade at EBITDA multiples closer to five.

...

... But what we have here is a business that is effectively being priced, already, at a discount from what you might typically see for a business of this size.

A capitalization multiplier of five applied to an EBITDA of \$240,000 would yield a value of \$1.2 million.

[85] Mr. Polson's report and testimony emphasized that a valuation is done as of a specific date, in this case the closing on June 2, 2014, and hindsight information after the valuation date is not relevant.

[86] That postulate is apposite here. Signage is not a fungible office supply to be constantly replenished. Signage usually is a fixture, installed and left. A supplier of signage would predict that, at some moment, its customer will have its needed signage, and the signage company should find a new customer. Mr. Jeha succeeded with that endeavour. It is unclear whether Mr. Sullivan was as adept. In any case, the performance of Eye Catch Signs under Mr. Sullivan's management is retrospect that does not affect the valuation of June 2, 2014.

[87] Mr. Polson concluded:

Q. And then if we just turn over to page 24, which is the end of your report ...

A. Mm-hmm.

Q. ...paragraph 96 says,

The flaws in the Keough Report’s estimated normalized EBITDA together with, with its inappropriate reliance upon hindsight information when adjusted – when adjusting ECS’ sale price renders its conclusions unreliable for the purposes of estimating losses in this matter.

So based upon reviewing your report in preparation for today and sitting in and hearing Mr. Keough’s testimony, does anything in paragraph 96 change?

A. No. That continues to be my opinion.

[88] Mr. Polson’s cross-examination did nothing to blunt his views.

[89] **Summary:** Mr. Keough expressed no view on the multiplier that represents risk, he adjusted the EBITDA based on Mr. Sullivan’s instruction without performing an independent analysis, then he multiplied. The judge correctly concluded that Mr. Sullivan’s witnesses “failed to provide the court with evidence of the true value of ECS at the time it was valued”.

[90] The evidence of value was from Mr. Polson. He expressed the view that the multiplier should be “closer to five” which, when multiplied by what he considered to be an appropriate EBITDA, would resemble the \$1.2 million paid by Mr. Sullivan.

[91] The judge made no error in her conclusion that Mr. Sullivan had not proven a loss. I would dismiss Mr. Sullivan’s ground of appeal that requests compensatory damages.

### ***Third Issue: Nominal Damages***

[92] A breach of contract without proof of compensatory damages normally supports an award of nominal damages to signify the breach: *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239, paras. 32-33; *Place Concorde East Limited Partnership v. Shelter Corporation of Canada*, 2006 CanLII 16346 (ONCA), 270 D.L.R. (4<sup>th</sup>) 181, para. 68.

[93] Neither Mr. Sullivan’s Notice of Appeal nor the Order Requested in his factum requested nominal damages, as an alternative. At the appeal hearing, the panel asked Mr. Sullivan’s counsel for his position on nominal damages, if Mr. Sullivan’s submission for compensatory damages is unsuccessful. Counsel’s reply

offered no affirmative uptake for nominal damages. I will take that as a message Mr. Sullivan's appeal is about compensatory damages, not a nominal award. To allow an appeal, even for nominal damages, the appeal court should hear a request on the point from the appellant.

[94] For that reason, I would not allow the appeal to substitute an award of one dollar.

### *Conclusion*

[95] I would dismiss both the appeal and cross-appeal.

[96] Though success was mixed, the complexity of, and effort for the issues on the appeal substantially exceeded that for the cross-appeal. Consequently, I would award a net amount of costs to the Jehas as the successful respondents on the appeal, after a downward adjustment because of their unsuccessful cross-appeal. Counsel for both parties generally agreed the tariff for appeal costs, at 40% of trial costs, would yield an unadjusted amount of about \$30,000. I would adjust that amount and award \$15,000, all-inclusive, as costs of the combined appeal and cross-appeal, payable by Mr. Sullivan to Mr. and Ms. Jeha.

Fichaud J.A.

Concurred: Farrar J.A.

Gogan J.A.