Date: 20251127
Dockets: CI 22-01-35153 and CI 23-01-42875
(Winnipeg Centre)
Indexed as: 4818106 Manitoba Ltd. v. Shindico Limited Partnership et al.
Cited as: 2025 MBKB 146

COURT OF KING'S BENCH OF MANITOBA

(File No.: CI 22-01-35153)
B E T W E E N:

4818106 MANITOBA LTD.,	)	
	)	
plaintiff,	)	
	)	
- and -	)	
	)	
SHINDICO LIMITED PARTNERSHIP,	)	Simon Bieber
PRAIRIE VENTURES LIMITED PARTNERSHIP	)	Robert Trenker
and SHINDICO REALTY INC.,	)	Kathleen Glowach
	)	for the plaintiff;
defendants.	)	defendants/plaintiffs by
	)	counterclaim
(File No.: CI 23-01-42875)	)	
A N D B E T W E E N:	)	
	)	
SHINDICO BY ITS GENERAL PARTNER	)	Robert L. Tapper, K.C.
BAR DOUBLES CORPORATE FINANCE,	)	Jason D. Kendall
PRAIRIE VENTURES BY ITS GENERAL	)	Brian E. Roach
PARTNER PRAIRIE CORPORATE SERVICES,	)	for the defendants;
and SHINDICO REALTY INC.,	)	plaintiffs/defendants by
	)	counterclaim
plaintiffs/defendants by counterclaim,	)	
	)	
- and -	)	
	)	
4818106 MANITOBA LTD. and	)	
56236 MANITOBA LTD.,	)	
carrying on business under the name and	)	
style of ICI PROPERTIES,	)	
	)	Judgment Delivered:
defendants/plaintiffs by counterclaim.	)	November 27, 2025

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BOND J.

INTRODUCTION

[1] John Pearson, Sandy Shindleman and Robert Shindleman have been engaged together in the business of commercial property development and leasing for more than 20 years. During that time, they have acquired and developed large commercial properties in Manitoba, Saskatchewan and Ontario. They currently own seven properties together ("the co-owned properties"), with a total value of over $150,000,000.

[2] Because Sandy and Robert share their last name, for the sake of clarity, I will refer to them by their first names. For consistency, I will refer to Mr. Pearson as John.

[3] Discord has developed between John on the one hand and Sandy and Robert on the other, leading to this litigation. (Sandy and Robert are brothers, and their positions in this litigation are aligned.) There is considerable dispute between the parties regarding the nature of their legal obligations to one another, as well as in relation to the role each has played in the success of their business over the years. No written agreements governing the relationship between the parties with respect to the co-owned properties were ever executed. They now agree that the business relationship cannot continue, but cannot agree on how to divide their assets.

[4] John has brought this action seeking the Court's intervention in the dissolution of the business relationship and the distribution of the seven properties between the three parties in kind. He also argues that their business relationship, in relation to the co-owned properties, was a partnership and that the defendants breached their partnership agreement and breached their fiduciary duty to him, for which he seeks damages.

[5] When the action was initially filed, Sandy and Robert took the position that there was no need for the Court's intervention, but as the litigation unfolded they came to agree that the Court's intervention is now necessary. However, Sandy and Robert do not agree that the business relationship was a partnership, deny any liability for breach of agreement or fiduciary duty and reject John's proposed distribution of the co-owned properties. This judgment addresses these issues.

[6] This judgment also addresses a dispute between the parties regarding whether John's real estate brokerage company ICI Properties ("ICI") is entitled to a commission in relation to a sale of a parcel of land to Ironclad Developments Westfield Landling Holdings Inc. ("Ironclad").

[7] In these reasons, I will first provide some background regarding the parties' business relationship and the properties in issue, and some general comments about the testimony of the parties and their witnesses. I will then turn to address each of the following issues in turn.

ISSUES

[8] There are four issues in this case, namely:

1. Was there a partnership?
2. Did the defendants breach a fiduciary duty or agreement, and is the plaintiff entitled to damages?
3. How should the co-owned properties be distributed?
4. Is ICI entitled to commission on the Ironclad transaction, and if so how much?

BACKGROUND

[9] I will begin with some facts that are not in dispute.

[10] The plaintiff 4818106 Manitoba Ltd. ("4818"), is John's corporation. He is the president and director. John is a licensed real estate agent and real estate broker.

[11] Shindico Realty Inc. ("Shindico Realty") is a commercial real estate firm. Sandy is president and director, and Robert is vice president.

[12] In 1993, John, Sandy and Shindico Realty entered into a Memorandum of Understanding ("MOU") that established a real estate brokerage association between John and Shindico Realty, later adding John's company ICI. Pursuant to the MOU, John was provided with office space and administrative support by Shindico Realty in return for a percentage of the commissions he earned in his real estate business. John gave notice of termination of that agreement on January 21, 2022.

[13] Beginning in 2000, John through 4818, Sandy through a limited partnership (Shindico Limited Partnership) ("SLP") and Robert through a limited partnership (Prairie Ventures Limited Partnership) ("PVLP") (collectively the "co-owners") operated together in the business of real estate development. They purchased, developed, leased and sold commercial real estate in Manitoba, Saskatchewan and Ontario. During that time, they owned 10 properties together, three of which have since been sold.

[14] The majority of these properties were developed as retail centres encompassing one or more major retailers (such as Home Depot or Walmart) as an "anchor tenant" or as a "shadow anchor". A "shadow anchor" is a major retailer that is not a tenant but that occupies its own land adjacent to land developed as a retail centre. An anchor tenant or

shadow anchor draws customers to the area, such that other midsize and smaller retailers and other businesses want to locate at the retail centre.

[15] The three co-owned properties that have been sold are: Harbour Crossing located in Thunder Bay, Ontario; Sault Centre, located in Sault Ste. Marie, Ontario and sold in 2021 for $5,400,000; and Winkler Crossing located in Winkler, Manitoba sold in 2022 for $9,800,000. All properties sold at a profit. The net proceeds of each of the sales were divided between John, Sandy and Robert, each receiving one-third.

[16] Legal title for each of the remaining seven co-owned properties is held by a bare trust corporation, with each of the co-owners holding a one-third beneficial interest. As I discuss below, the parties presented competing expert opinion evidence regarding the value of the remaining seven co-owned properties. By way of background, the properties are described as follows.

[17] The property located at 221 Winnipeg Street North, Regina, Saskatchewan ("221 Winnipeg"), was purchased by the co-owners in or about 2000, for a total price of $2,835,000. Initially there was a fourth co-owner named Bob Akman, with each of the four co-owners holding a one-quarter beneficial interest. In 2018, the parties bought Mr. Akman's interest so that each of the co-owners now holds a one-third beneficial interest. Two tenant suites at 221 Winnipeg are currently leased. It is an income producing property.

[18] Corral Centre, in Brandon, Manitoba, is a mixed-use regional retail centre, encompassing 14 single-storey buildings. The site area is 31.69 acres. The land was purchased by the parties in 2004. Home Depot bought a portion of the Corral Centre site for a store, and the parties purchased and developed the remainder of the land into the

retail centre. It has been very successful, with a vacancy rate consistently close to zero. It is an income producing property.

[19] The Selkirk Crossing land was acquired from the City of Selkirk, Manitoba, in 2005 for approximately $295,000. It is a developed mixed-use retail centre with multiple single-storey buildings and consists of 6.6 acres. Walmart is a shadow anchor for the property. It is an income producing property.

[20] Selkirk Crossing North is a vacant piece of land of just under six acres, located across the street from Selkirk Crossing. The co-owners purchased it in 2007 for $650,000. It is a development property.

[21] The co-owners purchased 270 Peter Pond Road, Yorkton, Saskatchewan in 2007 for $260,000. It is adjacent to a Walmart Supercentre and consists of approximately 2.55 acres of vacant land ready for development. The land has been listed for sale since 2018, with an asking price of $749,000.

[22] The St. Vital Outparcels land in Winnipeg, Manitoba, owned by the three co-owners, is in the area of a commercial property owned by Sandy and Robert referred to as St. Vital Festival. John has no ownership interest in St. Vital Festival. The St. Vital Outparcels land is a development property. Sandy and Robert made a formal offer to purchase John's one-third interest from him, and he declined. John counter-offered to purchase Sandy's and Robert's interests in the property and they declined. Their respective offers suggest a value of approximately $1.3 million for this land.

[23] Westport is located on the western outskirts of Winnipeg, Manitoba. John began working on the Westport project in 2007. The co-owners acquired the 74.42 acres of land in a phased purchase between 2014 and 2021. Development plans for Westport

have featured retail stores, hotels, restaurants, offices, warehouses and multi-family residential buildings. The co-owners have sold parcels of the Westport land to developers of multi-family residential buildings, with 58.57 acres remaining in the co-owners' hands as of May 2024. It is a development property.

TESTIMONY - GENERAL COMMENTS

[24] John, Sandy, and Robert each testified at the trial. It will be helpful to make some comments regarding the credibility and reliability of their testimony, as well as that of other witnesses.

[25] I found John to be generally a credible witness who was doing his best to give accurate testimony. As I will explain below, there were instances where I found his assertions about his role in the development business to be somewhat overstated. However, contrary to the submissions of counsel for the defendants, I did not find John to be a dishonest witness. The defendants maintained that John is a liar who deliberately fabricated his testimony. I find no evidence to support that assertion. The defendants' attempts to paint John as a dishonest person were entirely unpersuasive. I was not concerned about John's credibility, even if on occasion I considered his perception of his role in the business to be exaggerated. There was no indication that he intended to mislead the Court.

[26] Nor did I find John's manner of answering questions in cross-examination to undermine his credibility, as argued by the defendants. Witnesses may respond in many different ways to the stress of testifying in court and to the pressures of cross-examination. When he testified, John clearly wanted to get his point across and

avoid unintended concessions. But I did not find him to be deliberately evasive. In the main I found John's testimony to be credible and reliable.

[27] The plaintiff called Michelle Brady. Ms. Brady had worked closely with John while he worked with Sandy and Robert. She was an employee of Shindico Realty, but worked as John's executive assistant, pursuant to the brokerage association MOU. The tone of her testimony certainly displayed her loyalty to John. It did not, however, display any animus or ill feeling towards Sandy, Robert or Shindico Realty. I did not find Ms. Brady's testimony to be skewed by her allegiance to John. I found her testimony to be generally credible and reliable.

[28] Turning to the defendants' witnesses, I found Robert to be a credible witness in general. However, I found his testimony about how he, Sandy and John conducted themselves as they went about their business to be weak. Importantly, Robert had little or no recollection as to how certain decisions were taken or what discussions occurred between the three of them. Rather, he made bald assertions with little context. For example, one issue in the trial related to whether John, Sandy and Robert had agreed that major decisions would be made by the co-owners based on unanimity. Robert could not recall any discussion between them regarding how decisions would be made, and yet emphatically and repeatedly denied that he and Sandy had agreed to unanimity. He simply asserted "it was never meant to be that way".

[29] Further, I found Robert's assertion that he and Sandy included John in the ownership group because "we have a hard time saying no" to be disingenuous. It was apparent that Robert did not want to acknowledge John's contribution or value to the ownership group. I found this stance to undermine the reliability of Robert's testimony.

[30] Sandy's testimony suffered from similar frailties. Like Robert, he had no recollection of any discussion of the terms of the co-ownership of the properties but nevertheless asserted that there was no agreement to unanimity in decision making. I found Sandy to be evasive in cross-examination at times, taking opportunities to make disparaging comments about John rather than answering the question directly.

[31] Indeed, I found both Robert and Sandy to display animus towards John when they testified, such that it undermined the reliability of their testimony. As I will explain below, this was particularly evident in their testimony regarding the Ironclad commission dispute.

[32] The defendants called three additional witnesses: Ms. Leanne Fontaine, Chief Financial Officer at Shindico Realty; Mr. Kelly Smith, Vice-President of Asset and Property Management at Shindico Realty; and Mr. Justin Zarnowski, Shindico Realty's in-house counsel.

[33] Ms. Fontaine is a certified general accountant and a long-time senior employee of Shindico Realty, beginning as a property accountant in 2005, moving on to a managerial role in the accounting department overseeing a team of accountants. I found Ms. Fontaine to be a credible and straightforward witness. Her loyalty to Sandy, Robert, and Shindico Realty was evident, but in my view, it did not undermine her testimony.

[34] Mr. Smith is also a long-time current employee of Shindico Realty, having worked at the company from 1992 to 1997, and then returned in 2004. He began as a property manager, and later his role evolved to overseeing the property management department. He gave detailed testimony about his work as a property manager and about working with John in that capacity. Mr. Smith was clearly loyal to Sandy, Robert and Shindico Realty, but this did not undermine his testimony.

[35] Mr. Zarnowski's testimony is another matter. Mr. Zarnowski's role at Shindico Realty evolved over his years there from purely legal work as in-house counsel beginning in 2014 to more of a business role. In 2020, Sandy and Robert gave Mr. Zarnowski authority to communicate with John on their behalf and to make decisions on their behalf in relation to the co-owned properties. Mr. Zarnowski was a difficult witness. He was argumentative and aggressive, arrogant and disdainful. Under cross-examination he was more inclined to argue with plaintiff's counsel and challenge the plaintiff's position than to answer the question put to him. His animus towards John was clear and obvious, and it undermined his credibility as a witness.

[36] I will refer further to the testimony as I explain my reasons below.

ISSUE #1 - WAS THERE A PARTNERSHIP?

[37] The plaintiff says that the business relationship was a partnership pursuant to ***The Partnership Act***, C.C.S.M. c. P30 ("the ***Act***"). The defendants say it was not. They argued that they were merely co-owners of the properties. If the plaintiff's claim that the business relationship was a partnership succeeds, then pursuant to the ***Act*** the Court has the authority to divide the partnership assets between the former partners as sought by John, and clearly the parties owed a fiduciary duty to one another.

[38] The plaintiff argued that, although there was no written agreement between the parties, they had agreed that they would operate their partnership on the following terms: the partners would each contribute equal work to the business; major decisions would be made on a unanimous basis; and none of the partners would charge fees for their work, except that Shindico Realty would charge reasonable property management fees.

[39] The defendants argued that there was no partnership agreement between the parties, no ascertainable terms of any agreement, and no *consensus ad idem.* They denied any agreement to equal work, and argued that such a term would be too vague to be meaningful in any event. They argued that major decision-making in the co-ownership was always by way of majority rule, by default, because Sandy and Robert held two-thirds of the interests in the properties and were brothers who always acted together. They acknowledged that the only fees to be charged were Shindico Realty property management fees.

[40] For the reasons that follow, I find that the business relationship between John, Sandy, and Robert was a partnership. Although not reduced to writing, I find that the terms of the agreement were sufficiently certain to establish the partnership with a sharing of profits and expenses, and contributions to the success of the business by all parties. I agree with the defendants that the concept of equal work is vague, in particular in the context of the property development business where, as I understand it from the evidence, intangible contributions may benefit the business as much, if not more, than quantifiable hours of work, for example. However, I find that there was agreement that John, Sandy and Robert would each contribute to the business. In addition, contrary to the defendants' position, as I will explain, I find that there was agreement that major decisions would be made by way of unanimity. That the parties agreed not to charge fees, with only property management fees payable to Shindico Realty, is not in dispute.

The Law

[41] In the ***Act***, partnership is defined as follows:

Meaning of partnership 3 Partnership is the relation which subsists between persons carrying on a business in common, with a view of profit; but the relationship between members of an incorporated company or association is not a partnership within the meaning of this Act.	Sens de « société en nom collectif » 3 La société en nom collectif désigne la relation qui existe entre les personnes qui exploitent une entreprise en commun en vue de réaliser un bénéfice; cependant, la relation qui existe entre les membres d'une compagnie ou d'une association constituée en corporation n'est pas une société en nom collectif au sens de la présente loi.

[42] The ***Act*** also sets out some rules to be applied in determining whether a partnership exists:

Rules for determining existence of partnership 4 In determining whether a partnership does or does not exist, regard shall be had to the following rules: (a) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof; (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing the returns have or have not a joint or common right or interest in any property from	Critères de qualification 4 Pour établir l'existence des sociétés en nom collectif, les règles qui suivent sont prises en considération : a) la tenance conjointe, la tenance en commun, la copropriété, la propriété indivise ou partielle ne constituent pas, en elles-mêmes, une société en nom collectif quant à l'objet de ces formes de propriété, que les propriétaires partagent ou non les profits qui en découlent; b) le partage des recettes brutes ne crée pas, en soi, une société en nom collectif, que les personnes qui se les partagent aient ou non un droit ou intérêt conjoint ou un droit ou intérêt en commun dans

which, or from the use of which, the returns are derived;

(c) the receipt by a person of a share of the profits of a business is prima facie proof that he is a partner in the business; but the receipt of such a share, or of a payment contingent on, or varying with, the profits of the business, does not of itself make him a partner in the business, and, in particular

(i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such,

(ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such,

(iii) a person being the surviving spouse or a child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of that receipt a partner in the business or liable as such,

(iv) the advance of money by way of loan to a person engaged, or about to engage, in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business does not of itself

les biens dont les recettes proviennent;

c) la réception par une personne d'une partie des profits d'une entreprise constitue la preuve prima facie qu'elle est un associé dans cette entreprise; mais la seule réception de cette partie ou du paiement sujet ou proportionnel aux profits de l'entreprise ne fait pas de cette personne, en soi, un associé de l'entreprise. Plus particulièrement :

(i) la réception par une personne du montant d'une créance ou d'un autre montant déterminé par versement ou autrement, pris sur les bénéfices que réalise l'entreprise ne fait pas de cette personne un associé non plus qu'elle ne la rend responsable à ce titre,

(ii) le contrat qui prévoit la rémunération d'un préposé ou d'un mandataire d'une personne qui exploite une entreprise sur une partie des bénéfices de l'entreprise, ne fait pas de ce préposé ou mandataire un associé dans cette entreprise non plus qu'il ne le rend responsable à ce titre,

(iii) le conjoint survivant ou l'enfant d'un associé décédé qui reçoit, sous forme de rente, une fraction des bénéfices de l'entreprise dans laquelle le défunt était associé n'est pas, de ce seul fait, un associé dans cette entreprise, ni responsable à ce titre,

(iv) l'avance de fonds sous forme de prêt à une personne qui exploite ou s'apprête à exploiter une entreprise, selon un contrat

make the lender a partner with the person or persons carrying on the business or liable as such, if the contract is in writing, and signed by or on behalf of all the parties thereto,	prévoyant que le prêteur reçoit un taux d'intérêt proportionnel aux bénéfices ou une partie des bénéfices de l'entreprise, ne fait pas du prêteur un associé dans cette entreprise ni responsable à ce titre, si le contrat est fait par écrit et signé par toutes les parties au contrat, ou pour leur compte,
(v) a person receiving by way of annuity, or otherwise, a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.	(v) une personne qui reçoit sous forme de rente ou autrement une fraction des bénéfices de l'entreprise en contrepartie de la vente de l'achalandage de son entreprise n'est pas, de ce seul fait, un associé dans cette entreprise ni responsable à ce titre.

[43] Clearly, mere co-ownership of property and the sharing of revenues of itself does not establish a partnership. To establish a partnership the plaintiff must demonstrate that the alleged partners were (1) carrying on business (2) in common and (3) with a view to profit. (See ***Spire Freezers Ltd. v. Canada***, 2001 SCC 11 (CanLII), [2001] 1 S.C.R. 391, at para. 15.)

[44] Carrying on business is broadly defined, characterized by the provision of goods or services, the occupation of time and effort, incurring liabilities to others, for the purpose of profit or livelihood. It has been held that even passive receipt of rent is sufficient to qualify as carrying on business in some circumstances. (See ***Backman v. Canada***, 2001 SCC 10, [2001] 1 S.C.R. 367, at paras. 19-20.)

[45] Intention to carry on business in common may be evidenced by a written partnership agreement (***Backman***, at para. 21). However, a partnership may be established without a written partnership agreement based on evidence that shows

the parties' intention to establish a partnership. The intention and the agreement can be inferred from the conduct of the parties on consideration of all the evidence. (See ***Harnum v. Green***, 2006 NLCA 46, 19 B.L.R. (4th) 236, at para. 12.) Equal sharing of the profits is a strong indicator of partnership, although it may not be determinative. (See ***Woronuk v. Woronuk***, 2015 ABQB 116, at para. 327; the ***Act***, ss. 4(c).)

[46] I must consider whether the objective evidence and surrounding facts, including what the parties actually did, are consistent with a subjective intention to carry on business in common with a view to profit (***Backman***, at para. 25). It is not necessary to find a specifically expressed intention to form a partnership. Evidence consistent with an intention to carry on business in common may include: the contribution of skill, knowledge or assets to a common undertaking; a joint property interest in the subject matter of the adventure; the sharing of profits and losses; the filing of income tax returns as a partnership; financial statements and joint bank accounts; as well as correspondence with third parties. (See ***Backman***, at para. 21, citing ***Continental Bank Leasing Corp. v. Canada***, 1998 CanLII 794 (SCC), [1998] 2 S.C.R. 298, at paras. 24 and 36.)

[47] The defendants relied heavily on ***Bass Clef Entertainments Ltd. v. Hob Concerts Canada Ltd.***, 2007 CanLII 17186 (ON SC), 31 B.L.R. (4th) 255, where no partnership was found to exist, arguing that the facts in that case were very similar to the facts in this case, and so the same conclusion should be reached. ***Bass Clef*** is an illustration of an assessment of particular factual circumstances to determine the substance of the business relationship in issue. While there may be some facts in common with this case, there are distinguishing features such that the same conclusion need not be reached. In particular, John, Sandy and Robert (through their companies

and the bare trust corporation described above) acquired together and owned significant assets. In addition, as I will explain, their partnership agreement though not written, contained ascertainable terms related to decision-making and the operation of their business together. These features were not found in ***Bass Clef***.

[48] Clearly, the determination will be fact-specific. The approach to be taken must be pragmatic and involve an analysis and weighing of the relevant factors in the context of all the surrounding circumstances. It requires consideration of the totality of the circumstances rather than a mechanical checklist approach (***Backman***, at para. 26).

Analysis

[49] I accept John's testimony, much of it uncontradicted, regarding how his business relationship with Sandy and Robert began and developed.

[50] John testified that in 1992 or 1993, he decided to leave the real estate business he had been working in to begin his own real estate brokerage. He approached Sandy with a proposal to establish a brokerage association. John entered into the MOU for a brokerage association with Shindico Realty and established his own brokerage, ICI. The MOU addressed the sharing of commissions on real estate transactions. John testified that between 1993 and 2000, he completed multiple real estate deals with large retailers; he was busy and successful.

[51] John testified that he had a vision for the future of the commercial real estate industry involving large box retail centres. He wanted to pursue this opportunity for commercial property development with large anchor or shadow anchor retail businesses that would draw customers and tenants. In about 1999 or 2000, John, Sandy and Robert discussed working together and developing properties and sharing costs and profits. John

testified that over the course of several conversations they came to an agreement that they would share costs and profits at one-third each, would each provide equal work on the projects, and that major decisions would be made on an unanimous basis.

[52] The first joint ownership with Sandy and Robert was 221 Winnipeg. John had been working with a commercial client that wanted to lease property there. He approached Sandy and Robert to buy the property and they added Bob Akman as a fourth owner. The land was purchased by the ownership group of four in or about 2000. John contributed his portion of the purchase price. (John, Sandy and Robert together bought out Mr. Akman's interest in 2018.)

[53] The next property purchased and developed by John, Sandy and Robert was the Corral Centre in 2004. John testified that he had identified the land as a potential location for a Home Depot store as he was working as agent for that company. Because the land area was more than Home Depot needed, he approached Sandy and Robert to purchase the remainder of the land and develop it. Sandy and Robert agreed, and so they purchased the property with each of the three co-owners holding a one-third interest. John described the work he did to develop the property, including the creation of a tentative site plan, the identification of potential tenants, obtaining necessary municipal and provincial government approvals, and arranging for the construction of roads, installation of services, and construction of buildings, et cetera. John described his role as being the main point of contact for these activities. John testified that he would keep Sandy and Robert informed of his activities, such as by copying them on e-mail communication. He also described discussing and reviewing these activities with Sandy and Robert, with all three of them involved in decision-making. All three would sign a

construction contract, for example. John confirmed that Sandy and Robert were involved when major decisions were made.

[54] John described a similar pattern involving himself, Sandy and Robert in the development of the other co-owned properties such as Selkirk Crossing, Harbour Crossing and Westport. When a potential development property was identified, the three would agree to its acquisition, the hiring of a general contractor, and so forth. John testified that the three co-owners would meet together periodically so that they could make major decisions when they were required to do so.

[55] There were no written agreements between the co-owners in relation to any of the properties they owned and developed. John explained that they had a friendly arrangement that was very cordial, that they were all very busy, and things were working well between them. Sandy and Robert also testified to a cordial working relationship and informal decision making.

[56] John, Sandy, and Robert were (and continue to be) sophisticated, experienced, and successful businessmen. They were engaged together in the business of property development. This business included the ownership of the properties in issue. But their engagement together involved more than passive ownership. Over the course of more than 20 years they acquired and developed multiple properties from green land into large retail centres. Their work produced significant profits that were shared between the partners.

[57] In their testimony, Sandy and Robert acknowledged that their ownership in and development of the properties was for profit, and that expenses and profits were shared between the co-owners. They also testified that the business benefited from the

long-standing positive reputation and business relationships established by Sandy, Robert and Shindico Realty. That is, they contributed the value of their experience, prominence in the industry, and established relationships to the common enterprise.

[58] I will turn to the mechanism of decision making for major decisions of the partners. As noted above, John has claimed that the partners agreed that major decisions were to be unanimous; Sandy and Robert claimed they operated by majority rule.

[59] John testified to meetings between the three co-owners upon the purchase of each new development property where unanimity in decision making was confirmed. I do have some reservations about John's testimony to the effect that prior to the purchase of each property, he had a meeting with Sandy and Robert where they discussed and agreed to the terms of their co-ownership of the property. Based on the manner in which John testified about these meetings, I am not convinced that he has a specific recollection of each and every one of these meetings, and who attended each time.

[60] However, I have a similar view of Robert's testimony to the effect that he was never at one of these meetings, that there were no such meetings and no such agreements; I am not persuaded that he has a clear recollection either. In my view, Robert's adamant assertion that he and Sandy did not agree to unanimity is based on his current view of their relationship and not on any recollection of their discussions.

[61] Similarly, Sandy testified that there was no agreement between the co-owners that decisions would be made based on unanimity, nor was there an agreement that they would be made by majority rule; in fact, he did not recall any discussion between the co-owners regarding how major decisions would be made.

[62] If I accepted Robert's and Sandy's testimony, the upshot would be that they and John never discussed purchasing the properties together, and they had no agreement regarding how they would proceed with co-ownership. Still, they insisted that decisions were to be made by majority rule, not unanimity. The defendants presented no evidence to demonstrate majority rule. There was no evidence of votes being taken for the purposes of making major decisions, for example.

[63] Looking to how the parties conducted themselves, as I have noted above, it seems that for many years the parties generally got along, and so decisions were made with all parties in agreement. None of the parties could point to examples of disagreement prior to termination of the brokerage association, but for one. John and Robert testified about a decision regarding re-financing the Corral Centre. John wanted to re-finance to take advantage of low interest rates at the time and Sandy did not; the partners did not proceed. John points to this as an example of the requirement for unanimity. The defendants point to it as an example of majority rule, because Robert agreed with Sandy. This example offers little assistance.

[64] What is telling, in my view, is John's testimony of a situation in April 2022, where Sandy and Robert did invoke their majority position to override his objection to a transaction in relation to the St. Vital Outparcels. The transaction involved the opportunity to submit a tender for development and lease to a government department. John was opposed because of concerns about the potential for recovery of building costs. Sandy and Robert were in favour of the proposal. The merits of the decision are not important. What is significant is that John identified this as the first occasion where Sandy and Robert invoked majority rule. Sandy and Robert sought John's approval, and

when he refused, they proceeded over his objections. Significantly, this occurred after John had given notice of termination of the brokerage MOU, an event that clearly upset Sandy and Robert. This lends support to John's position that unanimity was the norm, until this point.

[65] There is some support for John's position in documents filed. E-mail messages showing efforts to draft a written agreement between the partners in 2001 and again in 2016 indicate that unanimity in decision making was contemplated. John points to these as indicating that unanimity was established as the partnership's decision-making mechanism, and was to be included in any written agreement between the partners. However, the defendants point to the fact that the draft documents were never signed as indicating that unanimity in decision making was not established. In my view, the draft documents support John's position rather than the defendants'. The drafts refer to unanimity as a requirement for the agreement, even though they were never signed.

[66] John now says that he would never have agreed to go into business with Sandy and Robert without unanimity in decision making because he could always be outvoted by the brothers. Sandy and Robert now say that they would never have agreed to unanimity because together they would always want to maintain control of ownership of the property. Both positions make some logical sense. Certainly, it seems clear on the evidence that Sandy and Robert acted in concert throughout. Indeed, Robert confirmed in his testimony that Sandy had authority to bind him in business transactions.

[67] In the end, on consideration of all of the evidence, I find that the decision-making mechanism for the partnership was unanimity.

Conclusion on Issue #1

[68] I conclude that John, Sandy and Robert were partners in a property development business wherein they identified property development opportunities, purchased land, and developed retail centres where they leased premises, and collected rent. Their unwritten partnership agreement included that they would all work on the development and leasing of the properties, collect no fees for their work and make major decisions by unanimity. They shared revenue and expenses. They each contributed skill and knowledge. They were carrying on business in common with a view to profit; it was a partnership.

[69] John gave notice to terminate the partnership on April 22, 2022.

ISSUE #2 – DID THE DEFENDANTS BREACH A FIDUCIARY DUTY OR AGREEMENT AND IS THE PLAINTIFF ENTITLED TO DAMAGES?

[70] Throughout the life of the partnership, property management for the co-owned properties was provided by Shindico Realty. As noted above, Sandy is the owner and president of Shindico Realty and Robert is vice-president. Shindico Realty charged the co-owners property management fees at a rate of 5 per cent of the gross revenue. There were, on occasion, additional fees collected, as well.

[71] It is not disputed that the parties agreed that they would charge no fees to the ownership group, except that the parties had agreed to the payment of *reasonable* property management fees to Shindico Realty.

[72] John now claims that the 5 per cent fees charged by Shindico Realty were not reasonable and that additional fees collected were not agreed to. John says that collection of the fees was contrary to the partnership agreement, and without his consent.

Further, John argued that Sandy was in a conflict of interest because his ownership interest in Shindico Realty meant that he stood to benefit from the fees charged to the co-owners. Therefore, John says, not only was the collection of the fees contrary to the partnership agreement, but it was also a breach of fiduciary duty owed to John by Sandy. He claims he is entitled to damages for breach of contract and/or breach of fiduciary duty on the part of Sandy, Robert and Shindico Realty. This issue will be addressed under four headings: 5 per cent property management fees; "accounting" fees; house take and Zarnowski fees.

5 Per Cent Property Management Fees

[73] Banking and accounting for the co-owned properties was handled by Shindico Realty's accounting department. Ms. Fontaine testified that each co-owned property was assigned an account within Shindico Realty's accounting system. Payment of property management fees in relation to the co-owned properties was effected by the payment of funds from each property's bare trust bank account to Shindico Realty on a monthly basis.

[74] Shindico Realty was able to collect the management fees directly from the co-owned properties' bare trust bank account without John's express agreement. However, there is no question that John was aware of the 5 per cent property management fees being charged in relation to the co-owned properties. The co-owners were provided with financial reports in relation to their properties. John received these reports. Ms. Fontaine testified that John monitored the financial situation in relation to the co-owned properties on an ongoing basis.

[75] John testified that he regularly expressed objection to the 5 per cent fees. He considered them to be excessively high. He said that the fees were charged over his

objections. The defendants say John demonstrated his agreement to the fees by paying them on an ongoing basis. That is, although he objected to the fees on occasion during their relationship, he also was aware of, and continued to pay, the fees.

[76] For the following reasons, I find that John is not entitled to damages in relation to the 5 per cent property management fees charged by Shindico Realty.

[77] As noted above, one of the terms of the partnership agreement was that the partners would not charge any fees for their work in relation to the co-owned properties and that the only fee to be charged would be *reasonable* property management fees charged by Shindico Realty. Even though both Sandy and Robert testified to having little or no actual recollection of discussions with John about the terms of their co-ownership of each of the properties, they did not deny that this was one of the terms. Sandy testified that the appointment of Shindico Realty as the property management company responsible for the co-owned properties was not the subject of discussion between the co-owners. Rather, he testified that it was simply presumed that Shindico Realty would be responsible for property management for the co-owned properties. Shindico Realty had always managed properties owned by Sandy and Robert, and it was assumed this would continue.

[78] The rate charged by Shindico Realty was consistently 5 per cent of gross revenue, except for one instance where the rate was changed from 5 per cent down to 4 per cent and then back up to 5 per cent in relation to the Corral Centre. This one instance of variation was explained by Ms. Fontaine, and I accept her testimony. She testified that that the change down to 4 per cent was an error and the change back up to 5 per cent was a correction of that error.

[79] There is some evidence that during their relationship, on occasion, John expressed some objection to 5 per cent the property management fee rate, complaining that it was too high. John's testimony to that effect is corroborated by some documents filed and by the testimony of Mr. Zarnowski, who wrote in an e-mail in 2021 that John complained about the fees every six months or so. Mr. Zarnowski confirmed in his testimony that this was accurate.

[80] However, John took no further steps to change the property management fee structure until he terminated the brokerage MOU in 2022. In his letter to Sandy and Robert, whereby he gave notice that he intended to terminate the brokerage association in accordance with the MOU, he also proposed that property management of the co-owned properties be put to tender and gave suggestions for other potential property management service providers. The proposal was not well-received; Robert described it as a knife in the back and akin to "Pearl Harbour". Regardless, this was the first time that John had proposed in any direct way that the management of the co-owned properties might be handled in a more cost-effective manner by one of Shindico Realty's competitors. Prior to this, John may have complained occasionally, but he otherwise acquiesced. That is, I find that he consented to the 5 per cent fee, albeit reluctantly.

[81] It should be noted that John had no complaints about the quality of property management service performed by Shindico Realty. Indeed, John had worked closely with Mr. Smith for a number of years, and testified that Mr. Smith was a good property manager, and that the services provided by Shindico Realty were good. John received the benefit of satisfactory property management services at the co-owned properties for many years.

[82] That Sandy is the owner of Shindico Realty, and Robert the vice-president, certainly raises the potential for a conflict of interest, as argued by the plaintiff. However, again, beyond occasionally expressing some objection to the 5 per cent rate, John took no steps to bring the issue to a head with his partners. Ultimately, I find that while he may have agreed reluctantly, he nevertheless agreed. I cannot find a breach of fiduciary duty. Further, I find that the 5 per cent fee was consistent with the partnership agreement.

[83] There was some evidence led at trial regarding what might generally be considered *reasonable* property management fees for commercial properties in the marketplace. The plaintiff called Ms. Debbra Holt, who was qualified to give expert opinion testimony regarding, among other things, the market rate for property management fees for retail centres, strip malls and multi-tenant industrial facilities. She testified to a range of property management fee rates for commercial properties, with 3 per cent being the norm in the marketplace. However, her opinion was based on somewhat limited information. She acknowledged that she was aware of property management fees of 5 per cent for some properties.

[84] The defendants called Mr. Jason Schellenberg who was qualified to give expert opinion evidence in the same area as Ms. Holt. He testified that 5 per cent was the usual rate for property management fees, however, his opinion was tainted by his reference to information provided to him by the defendants, and his sources of information were limited.

[85] Both experts agreed that generally property management fees charged would vary depending on the type of property involved and the array of services provided. Rates

may also be the subject of negotiations between property management service provider, landlord and tenant. Neither expert referred to any broad survey of the industry.

[86] Although there were weaknesses in the expert opinion evidence regarding what is a reasonable fee for property management in the marketplace for commercial properties, it is sufficient to conclude that the range of rates extends up to 5 per cent. While 5 per cent might be at the upper end of the range, it cannot be characterized as unreasonable.

[87] I conclude that the 5 per cent property management fees charged were *reasonable* fees as was agreed between the co-owners including John, and they were not collected without John's consent.

"Accounting" Fees

[88] The plaintiff says that Shindico Realty, at the direction of Sandy, improperly charged additional fees, on top of the 5 per cent property management fees, to the co-owners. The plaintiff says that Sandy set the amounts of these fees, and had them paid from the co-owned properties' accounts, without John's consent and in the absence of any agreement. The plaintiff alleges that this was done in clear breach of Sandy's fiduciary duty to John.

[89] These fees are identified as "accounting fees" in the general ledger related to the co-owned properties. Ms. Fontaine testified that although the fees were listed in the general ledger as accounting fees, they were in fact charged to recover the costs of Shindico Realty's accounting software, and the installation and management of security cameras. There was no evidence to contradict Ms. Fontaine's explanation, and I accept it.

[90] The evidence in relation to these fees from both the plaintiff and the defendants was limited. It appears that John raised no particular concern about these fees at the time that they were charged. They were disclosed in the financial reports that John received on a quarterly basis.

[91] From the limited evidence, I find these fees were charged for a legitimate reason, and in the usual course of business. In the end, I conclude that these fees would fall under the more general agreement of the co-owners to pay Shindico Realty reasonable property management fees. Similar to the 5 per cent property management fees, John acquiesced to the payment of these additional fees. John is a sophisticated professional and successful businessman engaged in commercial property development with his partners over the course of two decades. Other than some general complaints, he took no steps to address these fees with his partners.

[92] I am not prepared to find that these fees constitute a breach of the partnership agreement or a breach of fiduciary duty by the defendants. I conclude that John is not entitled to damages for these additional fees charged in relation to the co-owned properties.

House Take

[93] In addition, I have concluded that John is not entitled to reimbursement of what was referred to as the "house take". It is not disputed that commissions were properly paid to Shindico Realty agents involved in leasing and sales in relation to the co-owned properties. Shindico Realty collected a portion of the commission pursuant to the usual agreement between Shindico Realty and its agents. This "house take" was intended to

cover the costs involved in the accommodation and administrative support provided by Shindico Realty to its agents.

[94] John does not object to the commission paid to Shindico Realty agents. He objects to the "house take" arguing it is a fee paid to Sandy and Robert contrary to their agreement to charge no fees. I do not accept his argument. Shindico Realty collected a portion of the commission paid to its agents in accordance with its arrangement with its agents. In my view, this cannot be equated to Sandy and Robert charging fees. It is not a violation of the agreement that there be no fees charged by any of the co-owners.

Zarnowski Fees

[95] I come to a different conclusion regarding what were referred to as the Zarnowski fees. These fees were purportedly for legal services provided by Mr. Zarnowski. They were only collected following John's termination of the MOU and his notice of termination of the partnership, in April 2022. They were initiated by Mr. Zarnowski who suggested to Sandy and Robert that John was benefiting from his legal services in relation to the co-owned properties without paying for them. The timing and manner in which the fees were initiated suggest that they were imposed more as a retaliatory action than anything else.

[96] In an e-mail exchange with Mr. Zarnowski, Sandy and Robert acknowledged that although the fees were to be charged in relation to the co-owned properties, they would only meaningfully impact John. As described by Mr. Zarnowski in his e-mail to Sandy and Robert, the new fees would result in only "one-third net recovery". In their testimony, Sandy and Robert both acknowledged that this meant that the fees would have no impact on them because the fees would be paid to Shindico Realty, Sandy's company. This

acknowledgment reinforces the inference that these fees were imposed not to ensure that Shindico Realty was compensated with reasonable fees for the property management services it provided but to make John pay.

[97] In addition, not only was John not consulted and his agreement to the fees not sought, but he was deliberately not notified that these additional fees would be charged. When Mr. Zarnowski instructed Shindico Realty's accounting department to begin collecting these fees from the ownership group he sent an e-mail to Ms. Fontaine advising that should John notice the fees and complain she should "send him my way".

[98] There is no justification for the collection of these fees from John. They were taken from the co-owned properties' account without John's agreement or knowledge. They are not encompassed within the reasonable property management fees that were part of the partnership agreement. John is entitled to damages in the amount of $22,000, that being the full amount charged.

Conclusion on Issue #2

[99] Based on the foregoing, I find that John is not entitled to damages in relation to property management fees charged by Shindico Realty, except in relation to purported legal fees referred to as the Zarnowski fees. In relation to the Zarnowski fees, John is entitled to damages of $22,000, plus pre-judgment and post-judgment interest at the statutory rate.

ISSUE #3 – HOW SHOULD THE CO-OWNED PROPERTIES BE DISTRIBUTED?

[100] All parties rely on the Court's broad discretion to fashion a remedy that is just and equitable (***2057552 Ontario Inc. v. Dick***, 2016 ONSC 329 at paras. 18, 21-22). None of the parties proposes a liquidation of the partnership assets as the preferred remedy.

[101] The plaintiff asks the Court to apportion the co-owned properties such that he would become the sole owner of Westport, Selkirk Crossing and Selkirk North; Sandy and Robert would be the joint owners of Corral Centre, 221 Winnipeg, St. Vital Outparcels and Yorkton.

[102] In their final submissions, the defendants asked the Court to order John to sell his interest in each of the co-owned properties to Sandy and Robert, for a price that is subject to a "minority discount" adjustment. In the alternative, they proposed two different forms of auction. Finally, the defendants proposed a distribution of the co-owned properties in kind, as a "very distant fourth option", with the plaintiff receiving 221 Winnipeg, Yorkton, and Selkirk Crossing, and Sandy and Robert holding Westport, St. Vital Outparcels, Selkirk North, and Corral Centre.

[103] For the following reasons, I have concluded that the distribution proposed by the plaintiff is the most equitable distribution of the partnership's assets, and the most appropriate remedy.

[104] First of all, I reject outright the defendants' proposal of any form of auction. The proposal of an auction was not contained in the defendants' pleadings, nor was it presented in their opening statement. It was proposed for the first time in the defendants' written closing argument. For that reason alone, this proposal should not be

given any further consideration. The plaintiff presented its case to address the identified issues in the litigation and can only do so with proper notice; the defendants cannot now at the eleventh hour seek a remedy of which the plaintiff had no notice.

[105] I have also determined that an order that John sell his share of the co-owned properties to the defendants at fair market value is not the proper remedy, whether it be subject to a minority discount as proposed by the defendants or otherwise. Such forced sale would leave John without any of the co-owned properties into which he has poured significant energy and effort for many years. In my view, an important outcome of an equitable remedy in this case would be to allow all three former partners to continue to engage in the business they have been involved in for the last 20 years, should they so choose. To force John to sell his share of the co-owned properties is unnecessary when distribution in kind is a reasonable option.

[106] As I will explain, I find that the expert opinion evidence supports the plaintiff's proposed valuations of the co-owned properties, such that the distribution he proposes is equitable and fair. I do not agree with the defendants' submission that the plaintiff "hopes to mislead this court into an inequitable distribution favouring itself". As I will explain, it was the defendants' expert witnesses who conceded error in their valuations, not the plaintiff's.

[107] I will explain my reasons under the following headings: the nature of the partnership; the reasons for the dissolution of the partnership; the valuations of each property; and tax consequences.

The Nature of the Partnership

[108] As noted above, for over 20 years, John, Sandy and Robert worked together as partners. They each contributed skills, knowledge, and effort to that partnership. They also each contributed the value of their experience in the industry and established business relationships with potential tenants and service providers. Each partner contributed value to their ongoing enterprise, and collectively they all benefited. John, Sandy and Robert each testified to cordial relations between them and decision making characterized by consensus; they got along for many years. They all shared in the profits generated by the development and leasing of the properties.

[109] I find the defendants' argument to the effect that the plaintiff's contribution to the properties is diminished because he borrowed money from Sandy to invest in the properties, sometimes covering his share of acquisition and construction costs, to be entirely without merit. Sandy loaned money to John so that he could invest in the acquisition and development of the Corral Centre, and subsequent properties, as a co-owner. Whether Sandy did this as a business decision or was motivated by generosity is irrelevant. John repaid the loans, with interest and fees. Sandy conceded that John repaid all money owed by 2009. The defendants' argument that John's beneficial ownership of one-third of the co-owned properties, and his receipt of his share of profits, is somehow a windfall because he borrowed money from Sandy to invest is of no merit.

[110] Further, I do not accept the defendants' argument that Sandy's and Robert's contributions to the success of the partnership's business were more significant than John's. I agree with the defendants that contributions can include not only work or effort, but also knowledge, skill, reputation, and business relationships. Quantifying the

contributions of each of the partners over the years is difficult. From the evidence, it is clear to me that John, Sandy and Robert all contributed to their collective success. Perhaps John overstated his role when he characterized himself as the "driving force" behind the business. It is nonetheless clear that John contributed significantly to the success of the development of the co-owned properties and the profitability of the partnership.

[111] During their testimony, Sandy and Robert tended to downplay the role that John played in the development of the various properties. However, I find that John contributed significant effort and value to the partnership business.

[112] Mr. Smith testified to working with John on property management matters in relation to the co-owned properties. He was cross-examined on a document that he prepared in 2022 that apparently sought to quantify John's contribution to, or involvement in, fulfilling various responsibilities in relation to co-owned properties. The document assigns percentages to various tasks, apparently intending to reflect John's level of involvement in them. When he testified, Mr. Smith resisted the suggestion that the document reflected John's "contribution" and preferred to use the term "involvement". Regardless, Mr. Smith's testimony shows that John was very much engaged in various aspects of the management of the co-owned properties such as leasing and development work, and contributed significantly to their success.

[113] Ms. Brady testified that John did much of the work regarding the co-owned properties. Ms. Brady assisted John with the preparation of documents and had access to his e-mail account and so was aware of his involvement in the development of the various co-owned properties. She testified that John would communicate with Robert and

Sandy, reporting to them and obtaining their approval for decisions to be made. John would update Sandy and Robert regularly about the work that he was doing.

[114] John, for his part, described himself as being the "driving force" behind the property development business. He testified that he was the "lead developer" in relation to the co-owned properties. The defendants took issue with this description of his role, with witnesses testifying that there was no such title as "lead developer." I did not take John's reference to being lead developer as a claim to a particular title. Rather, I interpret it as John's claim that he was taking the lead in work that was required to develop the properties. I do not believe John to be misleading in that regard.

[115] Having said that, John may have been overstating his role somewhat. Clearly others were engaged in the work involved in developing and managing the co-owned properties. Despite this overstatement, I nevertheless find that John was significantly, substantially and meaningfully involved in the development and management of the properties. His testimony was supported by documents tendered in evidence, as well as by the testimony of Ms. Brady.

[116] The defendants' witnesses gave no credible evidence to suggest that John was not actively involved in the development projects involving the co-owned properties on an ongoing basis. In some instances, they affirmed John's claim that he worked hard on the development of the co-owned properties. Mr. Smith acknowledged John's contributions, and even Mr. Zarnowski acknowledged that John worked hard at the development of Westport. John's hands-on role in the development of Westport was evidenced by his detailed, and uncontradicted testimony describing its layout, and the progress in

installation of services at the property. John's enthusiasm for the work was very much apparent in the way he testified.

[117] Each of the parties has a genuine and ongoing interest in commercial property development generally, and in the co-owned properties in particular. All three have dedicated themselves to these business endeavours over many years. Moreover, all parties have an obvious interest in continuing to share in the income generated by their properties. The distribution proposed by the plaintiff recognizes that some of the co-owned properties are income generating properties while others are development properties and ensures that all parties receive both types of property. The defendants' proposal results in Sandy and Robert owning all of the co-owned properties and leaves John with none. To the extent that a fair and equitable distribution of the co-owned properties is possible, a distribution in kind treats all parties fairly.

The Reasons for the Dissolution of the Partnership

[118] The beginning of the end of the partnership was John's letter of January 2022, wherein he gave notice that he wished to end the real estate brokerage association that had begun in 1993. In that letter, he also suggested that property management services for the co-owned properties should be put to tender. As noted above, the letter was not well received, and was perceived, at least by Robert, to be an insult and a betrayal. Robert acknowledged that up to that point, the relationship had been good. After that date, it deteriorated quickly.

[119] Although the defendants did not attempt to establish a hidden or nefarious motive on John's part for ending the brokerage association, they suggested that John was not honest about his reasons. John testified that he had decided to end the brokerage

association, in part, because of concerns about his reputation in the business community, related to media coverage of allegations of corruption leveled against Sandy, Robert and Shindico Realty.

[120] As I indicated during the trial, it is neither necessary nor appropriate for me to make any finding in relation to the validity, or otherwise, of the allegations of corruption that form the basis of John's concerns. That there were allegations reported in the media is beyond dispute. I find that John's desire to distance himself was and remains genuine. His concerns about reputational harm related to media coverage of allegations of corruption related to Sandy and Robert were not fabricated. I find that John's reasons for ending the brokerage association, and ultimately the partnership were genuine and not unreasonable.

[121] The defendants made much of emails sent from John's email account in 2014 in which the writer alleges that an article about Sandy, Robert and Shindico Realty printed by the Winnipeg Free Press is untrue and criticizes the newspaper's editors for failing to publish a different article. I accept John's testimony that initially he stood by his partners, as one would stand by family members. John was loyal to his partners at first. However, I accept John's testimony that Sandy, Robert and Shindico Realty continued to be the subject of negative press, and his concerns grew. His ultimate determination that he wished to separate himself from Shindico Realty and pursue his business on his own was genuine.

[122] There is no need for me to decide who bears responsibility for the breakdown in the partnership between John and Sandy and Robert. There were some changes occurring in the years 2020 to 2022 that perhaps contributed to their difficulties.

[123] John brought his son Brennan into his real estate brokerage business. Brennan was not seen by Sandy and Robert to be a good addition. Sandy and Robert both testified to the effect that Brennan did not fit in; he did not seem to be working very hard.

[124] Around 2020, Sandy and Robert discontinued direct communication with John and instead had Mr. Zarnowski communicate on their behalf. In fact, Sandy and Robert gave Mr. Zarnowski *carte blanche* to act on their behalf. Mr. Zarnowski clearly harboured an animus towards John. It was evident in his dealings with John and in his e-mail correspondence, and it was evident in his testimony.

[125] By way of example, John and Mr. Zarnowski both testified about a difficult and angry conversation that occurred between Mr. Zarnowski on the one hand and John and his son Brennan on the other regarding a business decision in November 2020. John acknowledged that the conversation became heated. Shortly after that heated conversation, John made an effort to apologize to Mr. Zarnowski, offering an explanation for his anger and intemperate language. He told Mr. Zarnowski about several significant personal pressures he was experiencing at the time. In his testimony, Mr. Zarnowski disdainfully dismissed John's effort to explain his conduct as a tactic employed by John to get people to feel sorry for him. Based on the evidence, I find John's concerns about continuing to work with Mr. Zarnowski to be genuine.

[126] There is nothing about John's decision to end the partnership that is dishonest, self-serving or intended to hurt Sandy and Robert. Obviously, the dissolution of the partnership, and the resulting distribution of the co-owned properties, means that Sandy and Robert will be deprived of ongoing involvement in the development of and beneficial ownership of some of the properties. There is no suggestion, however, that John's

decision is motivated by a desire to harm Sandy, Robert, Shindico Realty or their interests. The relationship as an ongoing partnership – engagement in business in common with a view to profit – is no longer viable.

Valuation and Distribution of the Properties

[127] Distribution in kind is a reasonable option because there are multiple co-owned properties which allows for distribution of equitable value, and fair distribution of income and development properties.

[128] I agree with the plaintiff that his proposed distribution would result in three positive outcomes: keep complementary properties together; give each side a fully developed income producing property, as well as properties with the potential for development; and split of the value of the co-owned properties at approximately 33.3 per cent of the value to John and approximately 66.6 per cent of the value to Sandy and Robert collectively. Further, distribution of the co-owned properties in kind minimizes the tax liability implications for all of the parties.

[129] It is agreed that the St. Vital Outparcels are essentially part of the St. Vital Festival development which is owned already by Sandy and Robert. It makes sense for Sandy and Robert to own both. It is also agreed that Selkirk Crossing and Selkirk Crossing North are complementary properties. It makes sense for John to own both. Further, John wishes to retain ownership of Selkirk Crossing and Selkirk Crossing North, in part because they are properties that he worked on developing when his late brother was a planner for the City of Selkirk. He feels a particular connection to the properties.

[130] Selkirk Crossing is an income producing property. Selkirk Crossing North and Westport are development properties. 221 Winnipeg and Corral Centre are income

producing properties. St. Vital Outparcels and Yorkton are development properties. Again, the plaintiff's proposal gives each of the parties both income producing and development properties.

[131] It is not disputed that Corral Centre is the most highly valued single property, with a history of almost continuous full occupancy, with long-term established tenancies. The parties agree that the property generates significant profits of about $3 million per year, and has potential to maintain its value. Sandy and Robert want to retain ownership of Corral Centre, and John's proposal would result in Sandy and Robert jointly owning the property.

[132] Westport is the next highest in value and is in active development. Both sides of this litigation seek to include it in their portfolio. However, while Sandy and Robert may view Westport as a Shindico Realty property, the evidence demonstrates that John has been very much personally involved in the acquisition and development of the property.

[133] The plaintiff's proposed distribution is not exactly equal in terms of property values. The plaintiff acknowledges that the distribution he proposes would leave him with slightly more than one-third of the value of the co-owned properties. The total value, he says is $151,715,000. One-third would be $50,571,667. His proposed portion (Selkirk Crossing, Selkirk Crossing North and Westport) would be $51,450,000, a difference of $878,333. According to the expert evidence of Mr. Jeremy Bomhof, chartered professional accountant and partner at PricewaterhouseCoopers, the total net value of the portfolio after mortgages and taxes, is $96,668,286. Mr. Bomhof testified that the value of Westport, Selkirk Crossing and Selkirk Crossing North together is $33,117,082, approximately $894,320 more than one-third of the total value of the portfolio.

[134] The parties presented expert opinion evidence in relation to the valuation of the co-owned properties, as well as the tax consequences of the distribution of the co-owned properties as proposed by the plaintiff, and sale of the plaintiff's interest to the defendants as they propose. I will turn first to the valuation evidence.

[135] The plaintiff called Ms. Holt, whose testimony I referred to above in relation to property management fees. Ms. Holt is a director with Altus Group, with more than 30 years of experience in commercial, industrial and investment property appraisal. She holds credentials from the Appraisal Institute of Canada as a professional property appraiser.

[136] The defendants called Mr. Schellenberg, whose testimony I also referred to above in relation to property management fees. Mr. Schellenberg is a director at Red River Group, with almost 20 years of experience in commercial, industrial and investment property appraisal. He too holds credentials from the Appraisal Institute of Canada as a professional property appraiser.

[137] Both Ms. Holt and Mr. Schellenberg were qualified to give expert opinion evidence in commercial real estate valuation. The expert appraisal reports of both Ms. Holt and Mr. Schellenberg were extensive and detailed. Each of the experts prepared an appraisal report in relation to each of the seven co-owned properties and a rebuttal report responding to each of the other's reports.

[138] Ms. Holt and Mr. Schellenberg more or less agree on the total value of the portfolio. Ms. Holt values the portfolio at $151,715,000 and Mr. Schellenberg values it at between $151,740,000 and $152,640,000. Even at its highest the difference is less than 1 per cent.

[139] In relation to three of the seven properties (Yorkton, St. Vital Outparcels, and Selkirk Crossing North) the appraisals of Ms. Holt and Mr. Schellenberg were close to the same. They differ however in relation to four of the properties in issue: Westport, Corral Centre, 221 Winnipeg, and Selkirk Crossing. I will address each in turn.

[140] Before turning to the evidence regarding the appraisal of each property, I will begin with some general comments.

[141] Overall, I found Ms. Holt to be a reliable and credible witness. Ms. Holt has extensive experience in commercial real estate appraisal and is clearly well-qualified to offer the opinion evidence that she did in this case. She carefully and persuasively explained her approach and conclusion in relation to each property. She adjusted her opinion where she considered it appropriate after reviewing Mr. Schellenberg's reports and explained those adjustments. She stood firm when her testimony was challenged and her testimony was not undermined in cross-examination.

[142] Mr. Schellenberg also has extensive experience in real estate appraisal and has the necessary qualifications to give expert opinion as he did in this case. However, I found there were weaknesses in his evidence identified during cross-examination. For example, Mr. Schellenberg initially stated that where his reports used the term "client" it was a reference to the law firm Tapper Cuddy LLP, but on cross-examination, he conceded that the reference was to both Tapper Cuddy LLP and Shindico Realty, and conceded that information he used in preparing his reports was supplied to him by Shindico Realty. He conceded that he did not verify information provided to him by Shindico Realty. In cross-examination on Bulletins of the Appraisal Institute of Canada providing guidance to members on best practices, Mr. Schellenberg had to concede that

having failed to obtain lease documentation in relation to the properties where there are tenants (Corral Centre, 221 Winnipeg, and Selkirk Crossing), less reliance should be placed on his report. As noted below, Mr. Schellenberg did not verify information provided by Shindico Realty to the effect that servicing at Westport was complete. He attributed this to a misunderstanding and admitted that he made limited efforts to verify the information. I found that these and other flaws in Mr. Schellenberg's evidence addressed below weakened the reliability of his testimony.

Westport Valuation

[143] I find that I prefer Ms. Holt's valuation of the Westport property. Her approach to the appraisal was by way of direct comparison whereby she looked for sales of relatively similar properties in the marketplace and used them to ascertain an estimated value for Westport. In doing so, she valued the Westport property at $28,425,000.

[144] Mr. Schellenberg took a land subdivision development approach to valuing Westport, reaching an ultimate value of $49,400,000 or $50,300,000 depending on whether a pending transaction proceeded or not. This valuation approach involves estimating the revenue that the subdivided property is capable of generating if each lot is sold individually on a fully serviced basis, deducting from that revenue the cost of the servicing and management while the lots are waiting to be sold, and an appropriate amount for a developer's profit and a discount rate to arrive at a net present value.

[145] In cross-examination, Mr. Shellenberg acknowledged that he had failed to take into account approximately $12 million of servicing costs in his analysis. He had based his initial assessment of the value of Westport on the assumption that the 23 subdivided lots had already been serviced to the lot line, meaning that essential services like water,

electricity, gas, sanitary sewage, and drainage had already been installed. However, John's uncontradicted and unchallenged evidence established that substantial portions of the property remained entirely un-serviced. Based on Ms. Holt's evidence, the estimated cost for servicing would be approximately $12 million. Her estimate was based on current estimated per acre servicing costs. There was no other evidence presented regarding the cost to achieve the fully serviced lots upon which Mr. Shellenberg's estimate was based.

[146] I agree with the plaintiff's submission that Mr. Schellenberg's failure to confirm that all of the lots were fully serviced to the lot line impacts the overall reliability of his expert opinion testimony. With respect, it was incumbent on Mr. Schellenberg to confirm the status of the servicing to the property in accordance with the Appraisal Institute of Canada's Professional Excellence Bulletin. Mr. Schellenberg conceded as much, and testified that he had done nothing to confirm Westport’s servicing, other than driving by the site.

[147] In addition, Mr. Schellenberg did not account for financing costs for the installation of the necessary servicing, nor the administrative costs associated with holding and managing the property over the course of its development. Ms. Holt estimated that the cost of those expenses would amount to approximately $2.5 million.

[148] In addition, Mr. Schellenberg did not account for a developer's profit, which is a standard component of the land subdivision analysis. In cross-examination, he testified that he did not include the developer's profit because he thought that servicing was complete and so the risk associated with the project had largely been eliminated. He

conceded that had he known the true state of the servicing, he may have applied a developer's profit that would reduce the value of the land.

[149] In the result, Ms. Holt's evidence was that Mr. Schellenberg's analysis underestimated the total cost of readying the lots for sale by about $16 million. Her uncontested evidence was that with appropriate adjustments, applying Mr. Schellenberg's subdivision development approach would produce a valuation of approximately $31-$32 million for Westport.

[150] In addition, Ms. Holt testified that Mr. Schellenberg's estimated sale prices for the lots at Westport were well above market value and were based almost exclusively on comparable sales that were for multi-family residential development. It was her opinion that the land at Westport would likely be used for commercial development, in part because multi-family residential buildings had already been constructed on site, and more were already planned. She testified that based on her experience, the Westport development property would require more retail amenities in place before any more multi-family development would likely proceed. She also pointed out that even if the site could accommodate more multi-family residential development, at least some commercial development would be expected, and in her opinion the majority of the property would not reasonably be developed as multi-family.

[151] I accept Ms. Holt's testimony regarding the flaws in Mr. Schellenberg's analysis, and I accept her valuation of Westport at $28,425,000.

Corral Centre Valuation

[152] Ms. Holt valued the Corral Centre at $76.3 million. Mr. Schellenberg valued it at $63 million. Both Ms. Holt and Mr. Schellenberg relied on a discounted cash flow analysis

to appraise Corral Centre. This analysis involves estimates of future cash flow from the property, applying a discount rate to achieve an estimated present value of that future cash flow. Both experts agreed that this was the appropriate approach for appraisal of this property.

[153] One of the factors that must be taken into consideration in valuation of the property is upcoming necessary repairs. There was evidence that the parking lot and the roofs of certain of the Corral Centre's buildings would require replacement in the next few years. The costs were estimated to be $21 million, and both experts assumed that the full amount would be recovered from tenants over a period of years. However, Mr. Schellenberg omitted future tenant recoveries for a period of three years in his analysis, amounting to a shortfall of $6.4 million in the recoveries. In cross-examination, he conceded that it would be fair to account for that amount in the valuation.

[154] In addition, the terminal capital rate ("TCR") and discount rates ("DR") chosen by Mr. Schellenberg resulted in a lower valuation of the property. Simplified, the TCR and DR both account for the risk associated with investment in the property.

[155] I accept Ms. Holt's testimony to the effect that the Corral Centre is a low-risk investment with a very low risk profile. The centre has two anchor tenants (Walmart and Safeway) and one shadow anchor (Home Depot). It has a well-established very low vacancy rate. I accept that Ms. Holt's chosen TCR and DR are more appropriate for this property. Indeed, her evidence on these rates was not challenged in the defendants' cross-examination at trial.

[156] Moreover, in identifying the applicable DR for his analysis, Mr. Schellenberg included within his comparable properties, a property that can only be described as an

outlier. The property is a Walmart store located in Flin Flon, Manitoba. This property had a discount rate of 23 per cent, much higher than the remainder of Mr. Schellenberg's comparables, which ranged from 6.5 per cent to 7.5 per cent. The Flin Flon property is quite dissimilar to the Corral Centre which is a regional retail centre, located in an area of a much higher population, and has multiple stores, including three anchor tenants, and a very high occupancy rate over a long period of time. The inclusion of this comparable clearly skewed the comparable range, and Mr. Schellenberg had difficulty explaining its inclusion.

[157] Ultimately, I prefer Ms. Holt's valuation of the Corral Centre at $76,300,000.

221 Winnipeg Valuation

[158] Ms. Holt estimated the value of 221 Winnipeg, in Regina, at $20,625,000. Mr. Schellenberg estimated it to be $15,600,000.

[159] The plaintiff raised two concerns about Mr. Schellenberg's opinion. First, it was argued that Mr. Schellenberg's reliance on assistance from Mr. Peter Lawrek, an appraiser based in Saskatchewan who did not testify, weakened his opinion. Second, it was argued that Mr. Schellenberg's choice of comparable properties in assessing potential rental revenues evidenced a bias in favour of the defendants.

[160] Regarding the first argument, I am not particularly concerned about Mr. Schellenberg's reliance on Mr. Lawrek's work. Mr. Lawrek assisted Mr. Schellenberg in identifying possible comparable properties. He was not called to testify and therefore could not be cross-examined on his choice of comparables. However, no substantive concerns were raised about the comparables chosen, and the features of those properties were set out in Mr. Schellenberg's report. While Mr. Lawrek identified the properties,

Mr. Schellenberg chose them, relied on them, and presented them in his report explaining his opinion.

[161] Regarding the second argument, however, I agree with the plaintiff that Mr. Schellenberg's choice of comparables in relation to anticipated rental revenue, could be seen as being motivated by a desire to favour the defendants. Mr. Schellenberg chose two properties that had not been identified by Mr. Lawrek, were somewhat dated (2020 and 2019), and were lower than any of the other comparables. Mr. Schellenberg acknowledged that these were the only comparables that supported his $10 per square foot estimate. He offered no explanation for including these comparables and acknowledged that without them, the anticipated rent would be $12 per square foot, consistent with Ms. Holt's opinion. The difference in the per square foot market rate amounts to a $2.5 million difference in the valuation of the property.

[162] In the end, I find that I prefer Ms. Holt's opinion of value for the 221 Winnipeg property.

Selkirk Crossing Valuation

[163] Ms. Holt valued Selkirk Crossing at $20,900,000. Mr. Schellenberg valued it at $17,100,000. As he did in relation to the Corral Centre appraisal, Mr. Schellenberg again failed to account for tenant recoveries of repair costs for a period of three years. When the recoveries are taken into account, Mr. Schelleberg's appraisal would approach that of Ms. Holt. Again, based on the evidence, I prefer Ms. Holt's appraised value.

Conclusion on Valuation of the Properties

[164] In the final analysis, where the expert evidence diverges in relation to the valuation of the properties, I prefer Ms. Holt's opinion, and rely upon it.

[165] As noted above, Mr. Bomhof gave evidence regarding the net value of the properties after deducting mortgages and corporate income taxes that would be triggered by the disposition of the properties. For the purpose of his opinion he assumed that Ms. Holt's valuations represented the fair market value of the properties. Based on his analysis, the total net value would be $96,668,286, and the plaintiff's proposed distribution would result in the plaintiff receiving properties with approximately one-third of that value, and the defendants sharing properties with approximately two-thirds of the value.

Tax Consequences

[166] The breakdown of the partnership and the consequent distribution of the assets, in any manner, inevitably results in tax consequences. Tax consequences can be an important consideration for any business decision. For the decision that I have to make, tax consequences are only one of the factors to be considered, and in my view, of limited importance, given other more important factors. Having said that, contrary to the defendants' argument, they are not entirely irrelevant.

[167] The defendants relied on ***Jo Lynne Enterprises Ltd. et al. v. Dallo Enterprises Ltd. et al.***, 2000 BCSC 1676, 11 B.L.R. (3d) 276, in arguing that, having taken steps to dissolve the partnership, John should not be permitted to invoke tax consequences as a consideration in the distribution of assets. I do not read the case as standing for that proposition. In ***Jo Lynne Enterprises***, the Court is considering whether the partnership should be wound up and its assets sold. The Court notes that no other "fair and just settlement … has been proposed" and states that the possibility of adverse tax consequences "is not a matter which should influence the court greatly"

(at paras. 34-35). In concluding that an order for winding up the partnership and a sale of its assets was appropriate, the Court then orders that any sale will be postponed until the new year because all parties agreed that there would be tax advantages to doing so. If there is a principle that emerges from the reasoning in ***Jo Lynne Enterprises***, it is that tax consequences upon dissolution of a partnership involving the disposition of property cannot be avoided, and such consequences may be given only limited weight in the Court's decision.

[168] To explain the potential tax consequences of the remedies proposed in this case, both the plaintiff and the defendants presented expert evidence. The plaintiff presented expert evidence of Mr. Bomhof. The defendants relied on Gayle Callis, of BCS Financial Forensics Ltd.

[169] The qualifications of Mr. Bomhof and of Ms. Callis were conceded by the parties, and I am satisfied they were qualified to provide opinion evidence regarding the estimated tax liability that would flow from the proposed disposition of the co-owned properties. Of necessity, both experts relied on assumptions regarding the value of the properties.

[170] Both Mr. Bomhof and Ms. Callis agreed that liquidation of all properties on the open market would result in the greatest tax liability for all parties.

[171] Ms. Callis' estimate of tax liability flowing from the liquidation of all properties to a third party is significantly lower than Mr. Bomhof's. The reason for this discrepancy is that Ms. Callis' analysis is in relation to the corporate entities only. She assumes that a corporate entity would pay out dividends to take advantage of the refundable dividend tax, reducing its tax bill. Mr. Bomhof pointed out, however, that this is only part of the picture, because the person in receipt of the dividend would then be liable for tax on the

dividend. In cross-examination, Ms. Callis conceded the omission in her estimates. I accept Mr. Bomhof's opinion that the total taxes on disposition of all properties to a third party (assuming a 50 per cent capital gains inclusion rate) would be about $32 million.

[172] Further, I accept the opinion of Mr. Bomhof that with the distribution proposed by John, the total estimated tax owing will be $13.2 million with $8.1 million borne by John's company, and $2.5 million for each of Sandy's and Robert's companies. While the buy-out proposed by Sandy and Robert would result in a lower tax bill overall ($10.66 million), it would be borne by the plaintiff alone. The plaintiff's proposed distribution provides for a more equitable distribution of the tax burden.

Conclusion on Issue #3

[173] In the final analysis, I find that the plaintiff's proposed distribution of the properties is the most equitable remedy. It allows for a fair distribution of income and development properties, and keeps complimentary properties together. It equitably divides the value of the assets, as well as the tax burden of the dissolution of the partnership between the parties. It fairly accounts for the contributions made by each of John, Sandy and Robert to the partnership and its assets. It is a fair and just remedy.

ISSUE #4 - IS ICI ENTITLED TO THE COMMISSION ON THE IRONCLAD DEAL?

[174] Finally, I turn to the dispute over the commission on the Ironclad deal.

[175] In July 2021 (about 6 months before John terminated the brokerage association pursuant to the MOU) the parties agreed to certain commissions in relation to property sales from the co-owned properties. (This was a change to the partnership agreement.) In particular, by an exchange of emails, it was agreed that ICI would receive a 1 per cent

commission on the sale of three acres of land at Westport to Ironclad for the purpose of building multi-family residential buildings. When the sale was about to close in 2023, Sandy and Robert refused to allow ICI to receive the 1 per cent commission, insisting that ICI was entitled to only half of the 1 per cent commission, and telling John he would have to sue to collect anything further.

[176] John did sue, filing a small claim. Ultimately, the parties agreed that the claim should be consolidated with this action. Sandy and Robert (through their respective limited partnerships) and Shindico Realty filed an action in this court claiming that John and ICI were not entitled to any commission. John and ICI discontinued the small claim and defended the action in this Court, and counterclaimed.

[177] John says that the 1 per cent commission agreement was reached at the time that he was working on the Ironclad deal and ICI was the listing agent for the co-owned properties, including Westport. He relies on the agreement set out in the email exchange in July 2021. John testified that it had been previously agreed that he would be entitled to a commission as the listing broker set at 2 per cent for land sales of that price range. However, later, Sandy and Robert refused to allow the 2 per cent and said they would only allow 1 per cent. John reluctantly agreed, and then when he invoiced for 1 per cent, Shindico Realty insisted that it receive a 30 per cent split, based on the brokerage association MOU. Again, it seems John reluctantly agreed at that time.

[178] Ultimately, ICI was paid half of 1 per cent ($18,627) and so that the sale to Ironclad could close, the remaining amount in dispute ($7,450) was placed in a law firm's trust account pending resolution of the issue.

[179] In his testimony, John took the position that he is entitled to the 1 per cent with no split with Shindico Realty. However, in his counterclaim he seeks only the $7,450 held in trust.

[180] In their testimony, both Sandy and Robert took issue with John's claim for *any* commission on the Ironclad deal. However, they were not consistent.

[181] Robert testified that John should be entitled to nothing because he did not work on the deal. He then said that Shindico Realty would be entitled to 50 per cent of the 1 per cent commission sought because Shindico Realty was entitled to the "house take" based on the brokerage association MOU between Shindico Realty and ICI. He was then contradicted by his testimony given at discovery where he said that the 50/50 split was simply a number that he and Sandy had identified as fair, with no reference to the brokerage association MOU.

[182] In his testimony, Sandy at first acknowledged that the 1 per cent commission was in fact 50 per cent of the 2 per cent commission that had been generally agreed to, and that the 50/50 split was based on Shindico Realty taking a 50 per cent brokerage override. But he then stated that John was only entitled to half of the 1 per cent, based on the 50 per cent override that was set out in the brokerage association MOU. He said that negotiation of the Ironclad deal began before the brokerage association was dissolved and therefore the MOU still applied. When taken to the statement of defence filed in response to John's small claim action, where the defendants took the position that there was no agreement to any commission that would apply to the Ironclad transaction, Sandy offered no explanation for that pleading in the face of the email exchange that referred to the agreement to 1 per cent commission to ICI on the Ironclad transaction.

[183] In his testimony, Mr. Zarnowski said that the agreement that ICI would receive 1 per cent commission was entered into when the brokerage association was still in place, and would have been subject to the commission splits governed by the MOU. He further stated that Sandy and Robert were claiming for the return of the amount already paid to John because after the brokerage association was dissolved, John was no longer entitled to any commission, and in any event, he had not worked on the transaction.

[184] However, Mr. Zarnowski was contradicted by an email he wrote on July 7, 2021, where he stated that John had "done the work as the listing agent" and that this should be acknowledged with a fee. Mr. Zarnowski also acknowledged that in 2020, John had proposed a change to the co-ownership arrangement with Sandy and Robert whereby he would now be charging a commission on transactions related to the co-owned properties. He acknowledged that this proposal had been accepted by Sandy and Robert.

[185] The testimony of, and positions taken by, each of Sandy, Robert, and Mr. Zarnowski in relation to the Ironclad commission are difficult to reconcile. They are inconsistent, and without any principled basis.

Conclusion on Issue #4

[186] I am satisfied that pursuant to John's agreement with Sandy and Robert, ICI is entitled to commission as the listing broker on the Ironclad sale. I do not accept the testimony of Sandy, Robert or Mr. Zarnowski to the effect that John did not work on the sale. That assertion is contradicted by Mr. Zarnowski's email of July 7, 2021. I accept John's testimony that he did work on the sale.

[187] I find that there was an agreement that ICI would be entitled to a 1 per cent commission on the Ironclad sale. John's testimony to that effect is supported by the July

2021 email. As a result, I am satisfied that ICI is entitled to the $7,450 held in trust, as well as pre-judgement and post-judgment interest at the statutory rate.

CONCLUSION

[188] For the foregoing reasons, I conclude as follows:

a) John, Sandy and Robert were partners; their business was a partnership.

b) John is not entitled to damages in relation to property management fees charged by Shindico Realty, except in relation to purported legal fees referred to as the Zarnowski fees. In relation to the Zarnowski fees, John is entitled to damages of $22,000, plus pre-judgment and post-judgment interest at the statutory rate.

[189] The partnership properties will be distributed as follows:

a) Westport, Selkirk Crossing and Selkirk Crossing North to John; and

b) 221 Winnipeg, Corral Centre, St. Vital Outparcels and Yorkton to Sandy and Robert.

[190] John is entitled to payment of the Ironclad commission in the amount of $7,450 plus pre-judgment and post-judgment interest at the statutory rate.

[191] Costs may be spoken to, if not agreed.

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Bond J.