SUPREME COURT OF NOVA SCOTIA

Citation: *Chen v. 3317552 Nova Scotia Limited*, 2026 NSSC 115

Date: 20260414
Docket: Hfx No. 516202
Registry: Halifax

Between:

Yao Chen

Applicant

v.

3317552 Nova Scotia Limited, a body corporate

Respondent

DECISION

Judge:	The Honourable Justice Scott C. Norton
Heard:	April 7 and 8, 2026, in Halifax, Nova Scotia
Decision:	April 14, 2026
Counsel:	John T. Boyle and David Biddle, for the Applicant Douglas Schipilow and Kaisla Richardson, for the Respondent

By the Court:

Introduction

[1] The applicant seeks repayment of an alleged shareholder loan from the respondent. The respondent admits that a small amount in issue was a shareholder loan but submits that a substantial portion of the amount was a capital investment in the respondent company.

[2] The proceeding was originally filed as an action on July 6, 2022. A defence and counterclaim were filed on August 31, 2022, and the counterclaim was defended and then dismissed by Consent Order. The action was converted to an Application in Court by consent order filed June 25, 2025.

[3] At the hearing of the Application, the court inquired into the validity of two affidavits filed by the respondent, purporting to be sworn by Chun Liu and Yichun Jin. The affidavits were, on their face, sworn remotely by counsel for the respondent via MS Teams video conference platform. Counsel was in Dartmouth, Nova Scotia. The affiants were said to be in Shanghai, China, although the affidavits do not state the residence of the affiants in their text. It is not clear on the face of the affidavits if they were signed personally by the affiant. No advance permission was sought by the respondent for the filing of affidavits in this form. The court reminded counsel that, aside from the special permission granted for the attestation of affidavits during the Covid-19 pandemic, there is no *Civil Procedure Rule* or provision of the *Evidence Act* that permits the remote attestation of an affidavit.

[4] Further, the respondent sought permission for these affiants to be cross-examined via MS Teams. Again, no advance permission from the court was sought by the respondent to do this until the week before the hearing.

[5] The court inquired of counsel as to what authority they believed to be acting under in obtaining the affidavits in this manner. Counsel advised that they thought that it would be permitted as an exception due to necessity since the witnesses were in China. Counsel acknowledged that they did not consider whether they required consent of the other party or permission from the court to proceed in this manner. Counsel adopted the procedure for obtaining affidavits permitted by the court during the pandemic as an exception. Counsel acknowledged knowing that this exceptional procedure had been discontinued by the court.

[6] Further, it became apparent that the proposed affidavit of Chun Liu was prepared by enlisting the assistance of the major shareholder and director of the respondent to act as translator during the Teams conference. The affidavit does not disclose on its face that it was prepared with the assistance of a translator. Counsel also acknowledged not speaking to Liu before preparing the affidavit. When asked where the content of the affidavit was obtained, counsel could not recall but thought it was from notes in the file.

[7] I reluctantly permitted the affidavits to be tendered as evidence, primarily because the applicant consented. I wish to make it abundantly clear to members of the bar that this procedure is not permitted by the *Evidence Act* or the *Rules*, is not favoured by the court and in future cases should only be permitted in exceptional circumstances, upon reasonable notice to the other parties, and with advance permission from the hearing judge.

[8] Similarly, permission must be obtained in advance from the hearing judge to have a witness attend to testify by video. It is not a decision at the option of counsel or the witness. It is exceptional and must be requested from the hearing judge with reasonable notice to the opposing parties.

[9] At the hearing, and during the cross-examination of the affiant Chun Liu, the respondents withdrew his affidavit. I observe that it became obvious that there were substantial issues with the reliability of the evidence.

[10] In my view, the entire approach of the respondent in obtaining and seeking to present these two affidavits as evidence in this hearing was not the standard of practice expected from counsel.

Facts

[11] In 2018, five individuals decided together they would purchase a property and operate a gas station. On May 24, 2018, they incorporated 3317552 Nova Scotia Limited (“331”) to purchase the property. The original shareholders were Yao Chen (40 shares), Yichun Jin (20 shares), Xi Kang (20 shares), and Chun Liu (20 shares). With the knowledge of the others, Mr. Chen held 20 shares for the benefit of Johnny Yang.

[12] The initial share subscription was for fully paid and non-assessable common shares in the capital of 331 at a price per share of $1. Non-assessable means that the

shareholders were not obligated to contribute further capital beyond the initial purchase price. All the shareholders obtained their shares in the same manner.

[13] The day after incorporation, May 25, 2018, Mr. Yang sent the other shareholders a text referencing their initial investment requiring a "loan agreement" to protect it. 331 was considering obtaining a loan from a fuel provider for its contemplated gas station, and he wanted to ensure their shareholder loans took priority.

[14] However, 331 did not secure a gas station. 331 used the funds to purchase the property and operate a convenience store that it is still currently operating. No shareholder loan agreement was ever drafted.

[15] Between May 28, 2018, and September 14, 2018, the shareholders made owner deposits totalling $500,000. Each of the deposits was shown on the general ledger of 331 under the heading "Loans from Shareholders". In the same ledger, the "Common Shares" were shown to have a value of $1.

[16] The initially deposited funds remained under the heading of "Loans from Shareholders" in each of the following years. Similarly, the "Common Shares" were shown to have a value of $1.

[17] On February 14, 2019, Mr. Chen ostensibly transferred 20 shares in 331 to Mr. Kang. These were the shares that Mr. Chen held for Mr. Yang. Mr. Chen did not receive any funds related to this sale. Mr. Kang paid Mr. Yang directly. The parties did not complete any valuation of 331 or the shares at this time. The purchase price was simply set at the amount of the original deposit that Mr. Yang made through Mr. Chen. Subsequently, Mr. Yang was not involved in 331.

[18] In May 2019, Mr. Chen initially requested repayment of his shareholder loan. At that point, Mr. Chen had loaned 331 an additional $21,647.46 to assist with various expenses. 331 has repaid Mr. Chen $8,000, leaving a net additional loan amount of $13,647.46.

[19] On June 20, 2022, 331 confirmed its refusal to return any of the money Mr. Chen advanced.

[20] On October 5, 2022, Yujin Xin, the spouse of Mr. Kang, purchased 20 shares of 331 from Mr. Liu for $80,000 and 20 shares of 331 from Mr. Jin for $80,000. As

such, Ms. Xin and Mr. Kang together currently own 80 shares of 331 and Mr. Chen owns the remaining 20 shares of 331.

Positions of the Parties

[21] Mr. Chen asserts that the $100,000 deposit was a shareholder loan that is repayable within a reasonable period. He says that 18 months would have been a reasonable period. It has been 7 years since Mr. Chen first requested payment, and he claims interest at 5% since December 1, 2020. In addition, he claims that the $13, 647.81 is a shareholder loan that is due and payable.

[22] The respondent acknowledges that the $13,647.81 is a shareholder loan that is due and payable. As to the $100,000, it says that this amount was an equity investment and as such is not repayable by 331.

Issues

[23] The only issue before the court is whether the $100,000 deposit was a shareholder loan or an equity investment.

Law and Analysis

[24] The parties agree on the legal principles. The question of whether the $100,000 advanced to 331 was a loan or an equity investment is a question of fact.

[25] There is no written agreement concerning the terms of the $100,000 payment. In these circumstances the court must endeavour to determine the intentions of the parties by assessing the objective evidence of the factual matrix or context underlying the negotiations, but not the subjective evidence of the intentions of the parties. The court should interpret the contract to accord with sound commercial principles and good business sense, and to avoid commercial absurdity. Where the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity. *Jorna & Craig Inc. v. Chiasson*, 2020 NSCA 42, at para. 35; *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53.

[26] These concepts of contractual interpretation were more recently affirmed in the specific context of assessing whether a shareholder advance was properly construed as a loan or capital contribution by the British Columbia Court of Appeal in *Broer v. Multiguide GmbH, 2023 BCCA 134.*

[27] The Court in *Broer* concluded that where no formal agreement existed, it is necessary and appropriate to consider the surrounding circumstances, at para. 53:

> [53] In my view, there is no merit to the appellants' argument that the judge erred by considering the "surrounding circumstances" beyond this period of time. From a contractual interpretation standpoint, in the absence of any written agreement formalizing the parties' intentions, it was appropriate for the judge to consider the parties' subsequent negotiations. This Court in *De Cotiis v. Viam Holdings Ltd*., 2010 BCCA 368, explained the flexibility a court has in considering evidence of surrounding circumstances, including post-contractual circumstances, when interpreting oral agreements:
>
> > [21] ... As G.H.L. Fridman notes in *The Law of Contracts in Canada* (5th ed., 2006) "[i]n the case of a completely oral contract there is greater flexibility in the nature of the evidence that is admissible to prove the contents of the contract and the meaning of the language used by the parties." (At 440.) This flexibility follows intuitively from the recognition that oral contracts must often be construed without the key interpretive tool used to understand written contracts — the words of the agreement.

[28] Looking at the factual matrix as a whole, I find on the balance of probabilities that the deposits were shareholder loans. I base this on the following findings of fact:

(a) 331 was incorporated on May 24, 2018, after the Agreement of Purchase and Sale was signed for the gas station property. Yet the share capital structure was for a total capitalization of $100, with each shareholder subscribing for 20 shares at a value of $1 per share (the applicant holding 20 shares on behalf of Mr. Yang). Each shareholder signed a subscription that date confirming this consideration. Mr. Chen was the sole director and Mr. Chen, Mr. Jin, and Mr. Kang were all appointed officers of 331.

(b) No additional shares were ever issued. In cross-examination, Mr. Kang, the sole director of 331, agreed that the company's records were accurate.

(c) The Articles of Association for 331 only permit capital increases through the issuance of further shares and requires shareholder ratification – neither of which occurred. Articles 50 to 54A only permit the increase of capital through the issuance of new shares. Article 70 permits the directors to borrow money without the need for a resolution. The respondent argued that Articles 50-54A are permissive and Article 70, read broadly, could permit the shareholders to "raise" money other

than by borrowing without issuing shares. With respect, this reading would make Articles 50 to 54A meaningless. Further, the *Companies Act*, RSNS 1989, c. 81, only grants directors certain powers, which do not include increasing the capital of the company. Otherwise, the directors only have the powers granted through the Articles of Association: see R. Miedema, *Nova Scotia Companies Act and Commentary* (Lexis-Nexis Canada Inc., Markham Ontario, 2025), at p. 65; *Link v. Link*, 2020 NSSC 293, at paras. 36-38.

(d) The initial deposit was $80,000 from each shareholder on May 28, 2018. The shareholders decided they needed additional funds to operate the company, and each made an additional $20,000 deposit between May 28 and September 14, 2018. No changes were made to the shareholdings or the share value.

(e) On May 25, 2018, the day after the incorporation and before the deposits were made, Mr. Yang wrote to the shareholders recommending that they register a loan agreement to protect their investment to ensure a priority position over other loans, in particular a loan anticipated from the fuel company they were negotiating with to operate a gas bar. No one responded disagreeing with the characterization of their deposits as a loan. Mr. Jin contended during his cross-examination that he did not see this text. Mr. Chen, Mr. Kang, and Mr. Yang all say that it was a text chain among all the shareholders. On this point and any other uncorroborated evidence from Mr. Jin, I prefer the evidence of Mr. Chen.

(f) After the text exchange the shareholders advanced their deposits to 331 in the total amount of $500,000.

(g) In the general ledger maintained by an employee of 331, the deposits were recorded from the outset in an account titled “Loan from Shareholders”. Additional deposits into and payments out of this account were acknowledged by the respondent witnesses to be in respect of shareholder loans.

(h) 331 engaged an outside accounting firm, Golden Touch Accounting Services Inc. (“Golden Touch”), to prepare unaudited year end financial statements. The statements are stated to be prepared in accordance with Canadian general accepted accounting principles. The balance sheet for each year end from 2019 to 2024 stated the “owner’s equity” to be $1

and, consistent with the general ledger, stated the deposits to be "due to shareholders" with the following note to the statement:

> "amounts due to shareholders are non-interest bearing with no fixed terms of repayment."

(i) As of late 2018 Mr. Kang took over the day-to-day operations of 331. In cross-examination he agreed that he supervised the employee doing the bookkeeping. He received the annual financial statements from Golden Touch. He never instructed them to change the accounting of the deposits or the common share value. He further acknowledged that the amount due to shareholders had been reduced from $462,000 at year end 2019 to $358,000 in 2024 while he was the sole director of the company. Mr. Kang had a duty as director to report any significant error in the financial statements pursuant to the *Companies Act*.

[29] The lack of an interest rate, maturity date, and formal written loan agreement does not require a finding that the deposits were an equity investment: *Broer, supra*. Having admitted that the $13,647.81 advanced by the applicant is a shareholder loan, and there being no evidence or contention that this advance had an interest rate, maturity date or written agreement, 331 must acknowledge that these factors are not determinative.

[30] I find that the facts of this case are substantially similar to the facts in *Broer*, *supra*. At para. 74 of the trial decision (2022 BCSC 852), the trial judge found the advances recorded as shareholder loans in the financial statements recorded the clear agreement of the parties:

> [74] Notwithstanding there does not appear to have been a substantive discussion of the legal character of the initial contributions at the April 22, 2015 shareholder meeting, the MTI financial statements for 2014 were signed by both Mr. Kraus and Mr. Broer, and clearly characterized the initial contributions as "Loan from shareholders". The 2014 financial statements clearly identify the initial contributions as shareholder loans, and that these financial statements were finalized in April 2015, at a time well before any dispute arose as to the classification of the funds. I find the 2014 financial statements recorded the clear agreement of the shareholders that the initial contributions were properly characterized as shareholder loans. I also note this occurred at a time when Mr. Broer and Mr. Kraus were in significant conflict, and in the process of separating their German business interests, so I do not find it believable that Mr. Broer merely signed whatever was put in front of him.

[31] The British Columbia Court of Appeal upheld this decision. I similarly find that the financial records are the most compelling objective evidence before me. While the absence of a shareholder's agreement or other document defining the deposits would be helpful, the absence of such an agreement is not probative of whether the deposits were in the nature of loans or investments: *Glacier Creek Development Corp. v. Pemberton Benchlands Housing Corp.*, 2007 BCSC 286, at para. 45.

[32] The respondent asserted that the share purchase agreements of Mr. Liu and Mr. Kang's wife, Ms. Xin, were more reliable objective evidence than the accounting records. With respect, I disagree. It is clear on the face of these agreements that they were prepared in contemplation of this litigation. They are evidence only of the subjective intentions of the parties to them. They do not provide objective evidence of the purpose of the deposits made in 2018.

Conclusion

[33] I find that the $100,000 deposit made by the applicant was a shareholder loan along with the admitted loan of $13,647.81. This total amount shall be repaid to Mr. Chen. The respondent did not take issue with the claim that simple interest should be payable at 5% on this total sum from December 1, 2020 (18 months after demand) to the date of payment.

[34] If the parties are unable to agree on costs, they will file, within three weeks of receipt of this decision, their written submission and any evidence, not to exceed 10 pages, double spaced, setting out their respective positions. Books of authorities are not necessary.

[35] The applicant shall prepare the order accordingly.

Norton, J.