

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mohajer v. Mohagheghi*,
2026 BCSC 693

Date: 20260417
Docket: S219691
Registry: Vancouver

Between:

Mohsen Kangarloo Mohajer aka Mohsen Mohajer

Plaintiff

And:

**Hojjat Mohagheghi, Somayeh Gholibeigi, 1255667 B.C. Ltd.,
and Alfa Pizza (1979) Ltd.**

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

W. Simpson

Counsel for the Defendants:

K. Seyedi

Place and Dates of Trial:

Vancouver, B.C.
October 14, 16-17 and 20-23, 2025

Place and Date of Judgment:

Vancouver, B.C.
April 17, 2026

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Introduction

[1] In this short trial, the plaintiff, Mohsen Mohajer, seeks to enforce an agreement he says was entered into with the defendant, Hojjat Mohagheghi, for 50 percent of the shares in the defendant, Alfa Pizza (1979) Ltd. (“Alfa Pizza”). Alfa Pizza operates a restaurant in Delta, British Columbia. The defendant numbered company, 1255667 B.C. Ltd., (“5667”), is a holding company that owns all of the issued and outstanding shares in Alfa Pizza. Additionally named as a defendant is Somayeh Gholibeigi, Mr. Mohagheghi’s wife, who currently holds 50 percent of the shares of 5667 along with her husband.

[2] Mr. Mohajer alleges that in July 2020, he and Mr. Mohagheghi entered into a joint venture agreement which included that he would own 50 percent of Alfa Pizza and Mr. Mohagheghi and his wife would own the other 50 percent.

[3] For the reasons that follow, I have concluded that Mr. Mohajer has not satisfied his onus of establishing that an agreement had been entered into with the essential terms of the agreement agreed upon.

Credibility and Reliability

Legal Principles

[4] The factors to be considered when assessing credibility were summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff’d 2012 BCCA 296, leave to appeal to SCC ref’d, 35006 (7 March 2013):

[186] Credibility involves an assessment of the trustworthiness of a witness’ testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness’ evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness’ testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v.*

S.(R.D.), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[5] Justice Mayer, as he then was, echoed these principles and provided further guidance in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739, aff'd 2020 BCCA 130:

[89] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the sincerity of a witness and the accuracy of the evidence that the witness provides. In some cases it becomes apparent that a witness has made a conscious decision not to tell the truth. In other cases, a witness may be sincere but their evidence may not be accurate for a number of reasons.

[90] Evaluating the accuracy of a witness' evidence involves consideration of factors including the witness' ability and opportunity to observe events, the firmness of their memory, their objectivity, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his pre-trial evidence by the time of trial or their testimony at trial during direct and cross-examination, whether the witness' testimony seems implausible, and the demeanor of a witness generally.

[91] An acceptable methodology for assessing credibility is to first consider the testimony of a witness on its own followed by an analysis of whether the witness' story is inherently believable in the context of the facts of the entire case. Then, the testimony should be evaluated based upon the consistency of the evidence with that of other witnesses and with documentary evidence, with testimony of non-party, disinterested witnesses being particularly instructive. At the end, the court should determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[92] Some additional factors which may impact credibility include the following:

- a) A series of inconsistencies, considered in their totality, may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' testimony: see paras. 57-59, 86 of *F.H. v. McDougall*, 2008 SCC 53, adopting the comments of Rowles J.A. at paras. 28-29 in *R. v. R.W.B.* (1993), 24 B.C.A.C. 1.
- b) Where a witness is found to have lied under oath, their credibility may be wholly undermined: *Le v. Milburn*, 1987 CarswellBC 2936 (W.L.) at para. 1; *Jones v. Jones*, 2008 BCSC 1401 at paras. 31, 32 and 60; *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 9.

- c) Collusion and deception between two or more witnesses in the course of a litigation may taint the entirety of a witness's evidence: *Bradshaw* at para. 190;
- d) Credibility will be undermined when a witness seeks to rely on false documents regarding the issues at trial: *Osayande v. Canada (Minister of Citizenship And Immigration)*, 2002 FCT 368 at paras. 19 and 21;
- e) Credibility will be undermined when a witness (or party) has failed to produce documents: *Bradshaw* at para. 188; *Pacific West Systems Supply Ltd. v. Vossenaar*, 2012 BCSC 1610 at paras. 84 to 86;
- f) Credibility will be in doubt when a witness's explanation defies business logic or common sense: *R. v. Storey*, 2010 NBQB 86 at para. 78; *Wang v. Wang*, 2017 BCSC 2395 at paras. 45-46 and 89-90; and
- g) Credibility may be impacted when a witness is evasive, longwinded and argumentative in their responses to questions: *Bradshaw* at paras. 191 to 192.

[Emphasis in original].

Positions of the Parties

[6] At trial, the personal parties each alleged that the other's evidence lacked credibility and reliability. In that regard, I am not persuaded that either of the main parties, being Mr. Mohajer and Mr. Mohagheghi, were deliberately attempting to mislead the Court. They both testified in a straight-forward manner.

[7] There are two aspects of Mr. Mohagheghi's evidence that raise concern and which require that I scrutinize Mr. Mohagheghi's evidence carefully.

[8] The first is incorrect evidence in one of Mr. Mohagheghi's affidavits. In his trial evidence, Mr. Mohagheghi testified to knowing Mr. Mohajer prior to when he started working at Alfa Pizza in 2018. He agreed on cross-examination that he had texted Mr. Mohajer in October 2018. He also knew that Mr. Mohajer had worked at Alfa Pizza when he started working there. Mr. Mohagheghi swore an affidavit on November 29, 2021, which was filed in the proceeding. He states at paragraph 10:

10. In any event, the previous owner of the Alfa Pizza Restaurant then introduced me to the Plaintiff, who had apparently worked at the Alfa Pizza Restaurant a few years earlier. ...

[9] The statement that the previous owner of Alfa Pizza introduced Mr. Mohajer to Mr. Mohagheghi is incorrect. Additionally, the use of the word “apparently” is misleading since Mr. Mohagheghi knew that Mr. Mohajer had previously worked at Alfa Pizza since his own evidence is that Mr. Mohajer had interviewed him and their work at Alfa Pizza overlapped for several days before Mr. Mohajer left to go up north. Mr. Mohagheghi did not provide a satisfactory explanation as to why he provided incorrect evidence in his affidavit.

[10] The second concern is Mr. Mohagheghi’s failure to produce relevant documents. His explanation for failing to produce documents was that, in some way, he viewed his communications with Ali Jafari, a chartered accountant, as personal communications and not documents and he did not see it necessary to disclose them. This is not an adequate explanation.

[11] Mr. Mohagheghi raised concern with Mr. Mohajer’s credibility. Mr. Mohagheghi alleged that Mr. Mohajer had fraudulently placed his and his wife’s names on a partnership agreement. I cannot conclude that this took place. It remains unclear to me how and when the parties’ names were placed on the partnership agreement, but I have found that this agreement was never finalized.

[12] Although I have concluded that I must scrutinize Mr. Mohagheghi’s evidence carefully, this case ultimately turns on Mr. Mohajer’s failure to establish the terms of any agreement entered into by the parties.

[13] I have no concerns with the credibility of any of the other witnesses called at this trial.

Background Facts

The Parties and Witnesses

[14] Mr. Mohajer came to Canada in his early twenties from Iran. He began working in the restaurant industry shortly after his arrival. In 1985, he began working for Alfa Pizza as a line cook. He became very close to the Goulas family who owned the restaurant. In approximately 1989, he moved to Ontario where he worked in

another restaurant and attended Algonquin College where he obtained a diploma in restaurant management. He attended the Toronto Metropolitan University (formerly Ryerson University) in Toronto for three years, obtaining a bachelor's degree in hospitality and marketing management. He returned to British Columbia at the end of August 2000 and began working in management positions, predominantly in various hotels. In September 2016, he returned to work for Alfa Pizza assisting in scheduling servers, ordering products, and helping out in the kitchen. In approximately 2018, he obtained a job managing the Best Western Chateau in Fort St. John. He says he was earning a salary of \$8,000 per month. Mr. Mohajer was doing this job when he was contacted by Mr. Mohagheghi.

[15] Mr. Mohagheghi immigrated to Canada in 2018 from Iran with his wife and two children. He has a bachelor's degree in the food industry. In Iran, he initially worked in the iron business as a representative of various steel companies. He later moved into working in the food industry and ultimately invested in Atawich, a food chain restaurant. He testified that he initially opened four branches in Tehran and then expanded up to 50 branches across Europe. Upon his arrival in Canada, he decided he wanted to get involved in a restaurant business. He ultimately ended up working for Alfa Pizza. Mr. Mohagheghi testified that he had limited English skills when he arrived in British Columbia. At trial, he testified with the assistance of a Farsi interpreter.

[16] Meysam Salmanian, called by the plaintiff, also testified through a Farsi interpreter. As of the date of trial, he had been in Canada for about seven years. He had obtained an accounting and master's degree in Iran before coming to Canada. Mr. Salmanian met Mr. Mohagheghi about six years ago. He testified that he was supposed to become a 20 percent partner in Alfa Pizza, but that partnership did not occur.

[17] Ali Jafari, the chartered accountant called by the plaintiff, testified that he is a friend of Mr. Mohagheghi and also knows Mr. Mohajer. Mr. Jafari testified that Mr. Mohagheghi told him that he wanted to buy a restaurant with Mr. Mohajer. There

was some talk about a partnership. Mr. Mohagheghi sent him shareholder and partnership agreements that he asked Mr. Jafari to review. Mr. Jafari told him that it would be better for him to consult a lawyer about these documents. Mr. Jafari understood that Mr. Mohajer and Mr. Mohagheghi were partners.

[18] Bill Goulas, called by the plaintiff, helped operate Alfa Pizza from 1979 to December 2020. He originally interviewed Mr. Mohajer in 1985, after which Mr. Mohajer was hired to work in the restaurant. Mr. Goulas described the plaintiff as becoming a part of the Goulas family. His understanding was that Mr. Mohajer and Mr. Mohagheghi were buying the business together and Mr. Mohajer would be running the restaurant.

[19] Somayeh Gholibeigi, Mr. Mohagheghi's wife, called by the defendants, testified through a Farsi interpreter. She testified that she was not involved in the business affairs of her husband. She denies ever agreeing to give up her shares in 5667 to a third party.

Initial Contact Between the Parties

[20] Mr. Mohagheghi testified that he began working at Alfa Pizza in 2018. Mr. Mohajer testified that it was the summer of 2018 and Alfa Pizza was trying to recruit a pizza cook. A recruiting company called and arranged an interview with Mr. Mohagheghi. Mr. Mohagheghi testified that Mr. Mohajer contacted him and confirmed that he could work there. A couple of days later, after Mr. Mohagheghi started working, Mr. Mohajer left to work in Fort St. John. Mr. Mohagheghi kept in contact with Mr. Mohajer, asking him to assist him with getting a work permit.

[21] The parties kept in contact after Mr. Mohagheghi left for Fort St. John. Text messages between them from October 2018 were produced. In January 2019, Mr. Mohagheghi recommended an accountant to Mr. Mohajer to have his tax return done. In January 2020, Mr. Mohajer and Mr. Mohagheghi were together for dinner and, in March 2020, Mr. Mohagheghi purchased some Iranian food for Mr. Mohajer. They had dinner together again in July 2020. During the July 2020 visit, Mr.

Mohagheghi told Mr. Mohajer that he wanted to discuss business and showed him some potential restaurants.

Purchase of Alfa Pizza

[22] In approximately July 2020, Mr. Mohagheghi incorporated 5667 with the intent to purchase a restaurant. He was looking at a number of restaurants and spoke to Mr. Goulas about this. Mr. Goulas advised that he was considering retirement and suggested they look at Alfa Pizza as well. At the initial meetings Mr. Mohagheghi had with Mr. Goulas, Mr. Mohajer was not present. Mr. Mohagheghi says he used his daughter as an interpreter.

[23] Mr. Mohagheghi testified that after he received an offer of sale from Mr. Goulas, he contacted Mr. Mohajer to recommend that he “be near me”. Mr. Mohagheghi’s plan was to run a restaurant business and then branch out and franchise it. He wanted Mr. Mohajer to work with him so Mr. Mohajer could grow the industry.

[24] Mr. Mohagheghi claims that Mr. Mohajer was interested in coming to Vancouver since his relationship with his girlfriend had dissolved. He denies that he made any promises of ownership to Mr. Mohajer.

[25] Mr. Goulas advised that the purchase price was \$250,000. In August and September 2020, Mr. Salmanian approached Mr. Mohagheghi and indicated that he wanted to go into the restaurant business with him. Mr. Mohagheghi testified that he was not interested in having Mr. Salmanian as his partner since he did not need his money and Mr. Salmanian had no experience in the food industry.

[26] There is a dispute in the evidence. Mr. Mohagheghi claims that at a meeting that took place between himself, Mr. Mohajer, and Mr. Salmanian in September or October 2020, he told Mr. Salmanian that Mr. Mohajer was intending to come in as a partner. Mr. Mohagheghi says that it was Mr. Mohajer that told Mr. Salmanian that the price for the business was between \$580,000 to \$600,000.

[27] This is disputed by both Mr. Salmanian and Mr. Mohajer. Mr. Salmanian testified that Mr. Mohagheghi told him that the purchase price was about \$600,000. Mr. Mohajer testified that he did not discuss any dollar amount with Mr. Salmanian. He claims it was Mr. Mohagheghi that told Mr. Salmanian the price was between \$500,000 to \$600,000.

[28] Ultimately, Mr. Salmanian did not participate in any partnership or business with Mr. Mohagheghi. This is supported in the evidence.

[29] Mr. Mohajer has a different recollection of why he came back to Vancouver. He testified that at the end of August or September 2020, he received a phone call from Mr. Mohagheghi who said that he had talked to Mr. Goulas and that Mr. Goulas was refusing to sell him the restaurant since he believed that Mr. Mohagheghi could not manage it. Mr. Goulas suggested that this would be a good business for Mr. Mohajer to do with Mr. Mohagheghi. Mr. Mohajer then agreed to entertain the request that he purchase Alfa Pizza with Mr. Mohagheghi, talk with Mr. Goulas, and move back to Vancouver to enter into a partnership. Mr. Mohajer testified that he contacted Mr. Goulas who said he was not going to sell unless Mr. Mohajer had a 50 percent interest in the business. He claims that Mr. Goulas said he would not sell Alfa Pizza to Mr. Mohagheghi because he would “destroy the business”.

[30] Mr. Mohajer testified that Mr. Mohagheghi offered to pay for the business and that Mr. Mohajer would bring his experience and knowledge and they would work together. Mr. Mohajer claims that Mr. Mohagheghi told him that he had a company ready and would make an adjustment with 50 percent of the shares to him and 25 percent each for Mr. Mohagheghi and his wife. Mr. Mohajer agreed that there were no emails, text messages, or any documents outlining this proposed plan.

[31] Mr. Mohajer arranged to find a replacement for his position at his place of work at the time and began packing his furniture to bring to Vancouver at the beginning of September 2020. Upon his arrival, he initially stayed at Mr. Mohagheghi’s house.

[32] On September 21, 2020, Mr. Mohagheghi received a text message from Mr. Darabi, a lawyer, referencing the letter of intent which states: "Once you and Mohajer review and approve it you can [sic] forward it to the other side".

[33] On September 23, 2020, an unsigned draft letter of intent was sent to Alfa Pizza by 5667 offering to purchase the assets of Alfa Pizza for \$280,000. The names of Mr. Mohagheghi and Mr. Mohajer appeared as signatories for 5667. Mr. Mohajer testified that Mr. Goulas agreed to receive \$200,000 and that he would finance the remaining \$80,000.

[34] Mr. Mohagheghi testified that the only reason he assigned Mr. Mohajer as a director with signing authority for 5667 was because Mr. Mohajer told him that when a company in Canada was Canadian controlled, it would be eligible for a lesser tax of around 12 percent, whereas if the person controlling the business is non-Canadian, the tax would be 25 percent. At that time, Mr. Mohagheghi was neither a permanent resident nor a Canadian citizen. This was the reason Mr. Mohajer was given signing authority for 5667.

[35] Mr. Mohajer testified that Mr. Mohagheghi told him he had a company and he had added Mr. Mohajer as a director.

[36] On December 8, 2020, 5667, as purchaser, agreed to purchase the shares of Alfa Pizza from Angela Goulas, as vendor, for \$255,000. The purchase price was to be paid via:

- a) a \$10,000 deposit on September 23, 2020;
- b) a bank draft for \$165,000 on December 8, 2020; and
- c) the balance of \$80,000 payable by 11 equal monthly installments of \$6,600 beginning on January 1, 2021, with a final payment of \$6,740.

[37] All of these payments were made by Mr. Mohagheghi. Mr. Mohajer did not contribute any monies for the purchase of Alfa Pizza.

[38] The share purchase agreement was signed by Ms. Goulas and by Mr. Mohagheghi and Mr. Mohajer as the authorized signatories of 5667.

Draft Shareholder Agreements and Partnership Agreements

[39] Mr. Jafari says Mr. Mohagheghi sent him an email dated October 18, 2020 attaching a draft partnership agreement with Mr. Mohagheghi, Ms. Gholibeigi, and Mr. Mohajer listed as partners. On October 19, 2020, Mr. Mohagheghi emailed Mr. Jafari a draft shareholder agreement. Mr. Mohajer testified that these documents were provided to him by Mr. Mohagheghi.

[40] Mr. Mohagheghi testified that he received these documents from Mr. Mohajer and he sent the documents to Mr. Jafari to read and explain the contents to him. Mr. Mohagheghi says that he was shocked when Mr. Jafari translated the documents to him. He claims he contacted Mr. Mohajer and told him that “this contract is an absolute lie..., how, even in your imagination, to all yourself put this way”. Mr. Mohajer offered to send him another one and Mr. Mohagheghi asked if he had spoken to his girlfriend about getting some funds and that Mr. Mohajer should do that first before sending another contract. These documents were never signed by any of the parties.

[41] Clause 6 of the draft partnership agreement is significant. It required each of the partners to contribute cash or property as a capital contribution with Mr. Mohagheghi and Ms. Gholibeigi contributing \$50,000 and Mr. Mohajer contributing \$100,000.

[42] Mr. Mohajer has not made a capital contribution of \$100,000.

[43] Mr. Mohajer testified that after the draft letter of intent was sent on September 23, 2020, he spoke to Mr. Mohagheghi about arranging for a shareholder agreement. He says that Mr. Mohagheghi suggested that, instead of using a lawyer, they save money and download something from the internet. Mr. Mohajer downloaded something and emailed it to Mr. Mohagheghi while he was in Fort St.

John. A copy of this email from Mr. Mohajer to Mr. Mohagheghi was not produced at the trial.

[44] According to Mr. Mohajer, the plan was that they would review the shareholder agreement when he moved down to Vancouver. They were going to then talk to a lawyer or notary to have it notarized. This did not happen. Mr. Mohajer testified that he and Mr. Mohagheghi signed a shareholder agreement, but Mr. Mohagheghi's wife did not sign it. It is not clear to me on the evidentiary record what shareholder agreement Mr. Mohajer says he signed with Mr. Mohagheghi but not with Mr. Mohagheghi's wife.

[45] On November 13, 2020, there is a text message sent by Mr. Mohajer to Mr. Mohagheghi enclosing a copy of Mr. Mohajer's electronic signature and initials. Mr. Mohajer testified that he sent this electronic signature to Mr. Mohagheghi at his request.

[46] In evidence is an email dated November 19, 2020, sent by "vancouverfood2020@gmail.com" to Ronald Argue, a lawyer at Munro & Company, with the subject line "Business documents". Mr. Mohajer believes he sent this email. Attached to the email is a shareholder agreement between Mr. Mohagheghi, Ms. Gholibeigi, Mr. Mohajer, and 5667 dated October 15, 2020 ("Draft Shareholder Agreement"). The Draft Shareholder Agreement contains the signatures of Mr. Mohagheghi, Ms. Gholibeigi and Mr. Mohajer and states that it was signed on October 15, 2020.

[47] The evidence surrounding the execution of the Draft Shareholder Agreement is confusing.

[48] It appears that it is Mr. Mohajer's electronic signature that was placed on the Draft Shareholder Agreement. The electronic signature and the signature on the Draft Shareholder Agreement match precisely. Mr. Mohajer denies that there was a discussion about agreeing that his electronic signature could be used on the Draft Shareholder Agreement. Mr. Mohajer claims that he did not see the Draft

Shareholder Agreement and it is not his signature, although he testified that this was the version of the agreement he had downloaded and emailed to Mr. Mohagheghi.

[49] Mr. Mohagheghi specifically denies signing the Draft Shareholder Agreement. He testified that he believes that the document was “100%... a forgery”. Ms. Gholibeigi also denies that she signed the Draft Shareholder Agreement. She testified that she had never seen the document before.

[50] A review of the Draft Shareholder Agreement supports that, despite it being signed, it was only a draft since key provisions are missing or incomplete:

- At paragraph 5, under the heading “Warranties”, the number of shares issued to Mr. Mohagheghi, Ms. Gholibeigi, and Mr. Mohajer is incomplete;
- Paragraph 8 refers to a “JOE SMITH”;
- Paragraph 10 refers to the corporation’s auditor as “TBA”;
- Paragraph 20 refers to dispute resolution, but the province having jurisdiction is not complete; and
- Paragraph 58, an entire agreement clause, and paragraph 59, a jurisdiction clause, are incomplete. They both end mid-sentence.

5667 Banking and Corporate Records

[51] On December 8, 2020, Mr. Mohajer and Mr. Mohagheghi signed consents to act as the directors of Alfa Pizza. Mr. Mohajer testified that after closing the deal, they attended a Bank of Montreal branch and were told that the bank manager required the consents to be signed.

[52] On December 14, 2020, Mr. Mohajer signed a certificate and authorization to the Bank of Montreal confirming that Mr. Mohajer and Mr. Mohagheghi were both authorized signatories on behalf of Alfa Pizza. On the same day, Mr. Mohajer signed a Bank of Montreal document titled “Ownership Attestation” which sets out the

ownership of 5667 as 50 percent for Mr. Mohajer, 25 percent, changed in handwriting from 50 percent, for Mr. Mohagheghi, and 25 percent for Ms. Gholibeigi. There is a further Bank of Montreal document, an agreement for business banking, that states it was signed by both Mr. Mohajer and Mr. Mohagheghi on December 14, 2020. This appears to support that both Mr. Mohajer and Mr. Mohagheghi were both present at the Bank of Montreal on December 14, 2020.

[53] A bank document titled “Regulatory Customer Summary Report”, dated December 17, 2020, sets out that Mr. Mohajer had a 50 percent ownership, Mr. Mohagheghi had a 25 percent ownership, and Ms. Gholibeigi had a 25 percent ownership in 5667.

[54] On February 9, 2021, Mr. Mohajer and Mr. Mohagheghi attended at TD Canada Trust to sign some banking documents. In a bank document titled “Small Business Banking Ownership Structure Template”, which is not signed by either party, there is a section setting out that 5667 is owned 50 percent by Mr. Mohagheghi and 50 percent by Mr. Mohajer. Ms. Gholibeigi’s name appears but with no ownership percentage. There is another copy of the same document which has handwritten changes to the ownership, changing the ownership of 5667 to 33.4 percent for each of the named individuals. There are some initials beside the handwritten changes which Mr. Mohagheghi testified are Mr. Mohajer’s initials.

[55] There were no corporate documents prepared for 5667 supporting any transfer of shares to Mr. Mohajer. The following documents do not exist:

- A share purchase/transfer agreement;
- A directors’ resolution;
- A central security registry (“CSR”) entry supporting any shares owned by Mr. Mohajer;
- Meeting minutes; and

- Shareholder consents.

Operations of Alfa Pizza

[56] In the fall of 2020, Mr. Mohajer returned to the Lower Mainland and began working at Alfa Pizza. He was paid a salary of \$6,000 a month. Mr. Mohajer testified that he and Mr. Mohagheghi agreed to each take a \$6,000 monthly paycheque. In addition, Mr. Mohajer says that they received tips at the end of each month which were split between them. A transaction report for Alfa Pizza from January 1 to October 15, 2021, lists various employees and includes Mr. Mohajer receiving payments on four occasions for his share of the tips. This transaction report also references an employee loan to Mr. Mohajer for \$2,000. Mr. Mohajer does not deny receiving the \$2,000 but does not recall what it was for. There is no reference to any amounts being paid to Mr. Mohagheghi for tips on the transaction report.

[57] On November 3, 2021, a lawyer for Alfa Pizza wrote a letter to Mr. Mohajer terminating his employment immediately for cause. The allegations were that Mr. Mohajer had, without authorization, made withdrawals from Alfa Pizza's bank accounts in the amount of \$13,500 on August 20, 2021 and \$14,000 on October 7, 2021. Mr. Mohajer testified that in respect to the \$13,500, there was a discussion with Mr. Mohagheghi that they would both be withdrawing money from the bank account since Mr. Mohagheghi was purchasing furniture and Mr. Mohajer had to pay back some money for the car he had purchased from Mr. Mohagheghi in 2020. Mr. Mohajer agrees that he withdrew the \$14,000 without discussing it with Mr. Mohagheghi. He did so because he found out that Mr. Mohagheghi had withdrawn \$80,000 from the account and the only remaining funds was \$14,000.

[58] Mr. Mohagheghi disputes that there was an agreement that Mr. Mohajer could withdraw either of the sums.

[59] Mr. Mohajer testified that he left Alfa Pizza at the beginning of December 2021.

Legal Principles

[60] It is settled law that a binding contractual relationship requires that the parties reached *consensus ad idem* on essential terms, meaning that there was a “meeting of the minds” on all essential matters relating to it: *Berthin v. Berthin*, 2016 BCCA 104 at para. 48, citing *Frolick v. Frolick*, 2007 BCSC 84.

[61] In *Berthin*, the British Columbia Court of Appeal addressed the principles regarding consensus and certainty on essential terms:

[47] Of course, the terms in question must be enforceable — i.e., must have a definite as opposed to uncertain meaning such that a court can order either for damages or for specific performance in the event of breach. There is no doubt that courts will “lean heavily against finding contracts void for uncertainty” (*Copperart Pty. Ltd. v. Bayside Developments Pty. Ltd.* (1996) 16 W.A.R. 396 (S.C., Full Court) at 399, quoted in S.M. Waddams, *The Law of Contracts* (5th ed., 2005), 42 at fn.128). Thus Madam Justice D. Smith stated in *Frolick v. Frolick*, *supra*:

An effective agreement requires a meeting of the minds of the parties. An enforceable contract requires a consensus between the parties on all of the essential terms of their agreement. It is the responsibility of the parties, not the court, to clearly express those essential terms so “that their meaning can be determined with a reasonable degree of certainty”: *Scammell and Nephew Ltd. v. Outston*, [1941] A.C. 251.

If the parties fail to reach a meeting of the minds on the essential terms of their agreement, or fail to express themselves in such a fashion that the meaning of the terms they agreed upon cannot be reasonably divined by the court, then the agreement will fail for lack of certainty. However, the requirement of certainty of the terms is always balanced with the reality of transactional negotiations. Parties may intentionally leave gaps in the terms of an agreement to provide for future or mutually satisfactory accommodations. In those circumstances, the court should not apply the doctrine of certainty so rigidly so that the intentions of the parties to create a binding agreement are thwarted.

Lambert J.A. observed in *Griffin v. Martens* (1988), 27 B.C.L.R. (2d) 152 (C.A.) at ¶4: “As long as the agreement is not to be constructed by the court, to the surprise of the parties, or at least one of them, the

courts should try to retain and give effect to the agreement that the parties have created for themselves."

[Emphases added at paras. 30-32.]

[62] The inquiry into whether there was a meeting of the minds requires an objective approach. This Court explained the rationale for the objective approach in *Timberwolf Log Trading Co. Ltd. v. Columbia National Investments Ltd.*, 2011 BCSC 864:

[66] In Swan, Reiter and Bala, *Contracts: Cases, Notes & Materials*, 6th ed. (Markham: Butterworths, 2002) at pp. 392 and 393, the authors state:

... No legal system can require that there be an actual "meeting of the minds", for that would provide too much of an incentive to those who would like to contract with their "fingers crossed". The requirement that a subjective agreement exist would permit one party to stay with a contract only so long as it suited its convenience; when it did not, the party could claim that it had never really agreed to the other's terms.

[63] The doctrine of *consensus ad idem* is fundamentally related to the doctrine of mutual mistake. The relationship between the two was articulated by the Court of Queen's Bench for Saskatchewan in *Cozart v. Cozart*, 2007 SKQB 160:

[48] In mutual mistake, both parties are mistaken, but do not share their mistake. In that sense, it is quite different from common mistake. It arises in situations where the parties are operating at cross purposes and the question is whether they have, in fact, reached an agreement. In other words, has there been a *consensus ad idem*? Fridman, *The Law of Contract in Canada, supra*, comments at page 250-251:

In mutual mistake the issue would seem to be: what would a reasonable person infer from the words and conduct of the parties? If, despite their different mistakes, it would appear to the outside world that the parties were in agreement as to a contract and its terms, then a contract would exist at common law. As it was put in one Canadian case, "mutual assent is not required for the formation of a valid contract, only a manifestation of mutual assent. ... Whether or not there is a manifestation of mutual assent is to be determined from the overt acts of the parties." [*Walton v. Landstock Invts. Ltd.* (1976), 72 D.L.R. (3d) 195 at 198] ...

Such instances of mistake may be regarded in two ways. In the first place, it could be said that as long as there was an apparent correspondence of offer and acceptance, the inward, secret beliefs of one or both parties were irrelevant. Objectively speaking, the parties have arrived at a *consensus ad idem*, which is the foundation of contract at common law. Hence, even if parties have been mistaken, a court may be able to find that they have in

effect validly contracted, either by the appearance of agreement, or by some kind of estoppel, arising from the belief that was induced in one party by the language or acts of the other party. However, if no such *consensus* can be discovered, for example, where there is an obvious ambiguity about the terms of the purported contract, no objectively ascertained agreement can be inferred or concluded...

Positions of the Parties

[64] Mr. Mohajer asserts that there was a joint venture agreement entered into to acquire the restaurant business. He submits that it was an oral agreement with the terms being that they would be equal shareholders, participate equally in managing and operating the business, and Mr. Mohajer would repay half of Mr. Mohagheghi's cash contribution. He agrees there is no email setting out what the terms were. He points out that there would be no credible reason why the various partnership and shareholder agreements would exist bearing his name unless an agreement existed.

[65] Mr. Mohajer asserts that the fact that he did not receive shares is not determinative since there were no share certificates issued to anyone until September 30, 2021, when a lawyer was asked to create a CSR. This CSR was created after the dispute between the parties had already arisen.

[66] The defendants submit that this case turns on two foundations of proof of share ownership, neither of which the plaintiff has met. The first is the legal corporation foundation, which is some valid act from the corporate issuing or transferring shares, evidence of the price/consideration fixed and actually paid, entry in the CSR, and written notice of share/transfer, together with ordinary minute book updates. The second is the legal contractual foundation, which is a concluded bargain with essential terms memorialized in a subscription/share purchase/transfer agreement duly executed by the parties, supported by proof of payment, contemporaneous instructions to counsel/accountants, and performance consistent with ownership.

[67] The defendants argue that the burden is on the plaintiff to prove these two foundations which, they say, he has not. The defendants say that the plaintiff has failed to provide clear, convincing, and cogent evidence to support that there was

any agreement between the parties in the nature of a partnership agreement. The defendants say that there are no contemporaneous corporate records, and that after-the-fact “understandings”, the casual use of the word “partner”, and a disavowed copy document or bank forms are not sufficient evidence.

Analysis

[68] I will first address the use of bank documents. I put no reliance on the bank forms to support that a joint venture agreement was entered into. I accept that the records are business records as defined in s. 42 the *Evidence Act*, R.S.B.C. 1996, c. 124. However, I am not persuaded that any weight should be given to the various share interests recorded in the bank forms. I note that there are three different shareholdings set out, ranging from a 50/50 split between Mr. Mohajer and Mr. Mohagheghi with Ms. Gholibeigi being excluded, to a 33.3 percent split between the three of them. Additionally, since Mr. Mohagheghi was not fluent in English in late 2020 and early 2021, which is when these bank forms were created, it appears that the information provided to the bank officials must have come from Mr. Mohajer.

[69] In my view, the outcome of this case rests on whether Mr. Mohajer has met his onus of proving that a joint venture agreement was entered into in which he was to be provided 50 percent of the shares in 5667. There is no written document that sets out all the essential terms. There is no contemporaneous documents confirming the terms. Mr. Mohajer has failed to produce any email or text which confirms any of the terms agreed to.

[70] There is the evidence that Mr. Mohagheghi agreed to appoint Mr. Mohajer as a director of 5667. Mr. Mohagheghi has provided an explanation of why he did this. The fact that Mr. Mohajer had signing authority for 5667 does not, in my view, translate into an agreement that he was to receive 50 percent of the shares of that company. Mr. Mohajer agrees that he made no capital contribution to the purchase of Alfa Pizza. Mr. Mohagheghi exclusively paid for the purchase of Alfa Pizza. Further, the fact that Mr. Mohajer received tips as an employee does not support

that he was an owner in the business, but supports that he was being treated as an employee, like the other employees who received tips.

[71] There is evidence that the parties used the term “partners” and others understood that they were in some type of partnership together. However, I am not prepared to find that this evidence supports that a partnership agreement had been entered into. I adopt the reasoning in *Rockwell v. Fay*, 2009 BCSC 935 at paras. 91-92, that the fact that the word “partner” was used does not establish that a partnership agreement in a legal sense ever existed.

[72] On the evidence before me, I am unable to find that the parties reached a *consensus ad idem* on the material terms of an agreement. The Draft Shareholder Agreement did not address the number of shares to be issued, a material term of any partnership agreement. Mr. Mohajer’s evidence was that the parties intended to seek the advice of a lawyer on the terms of an agreement and he agrees that that never happened. Mr. Mohajer made no financial contribution to the purchase of any shares. It is unclear to me on the evidence how he was going to pay for 50 percent of the shares he says he was entitled to receive.

[73] As I have concluded that Mr. Mohajer has not met his onus to establish that a joint venture agreement was entered into, the action must fail.

Order

[74] The plaintiff’s action is dismissed.

[75] The parties have leave to provide written costs submissions on the following schedule:

1. The defendants will file and serve their costs submissions on the plaintiff within 60 days of these Reasons;
2. The plaintiff will file and serve his reply costs submissions within 30 days from receipt of the defendants’ costs submissions; and

3. The defendants will file and serve any reply to the plaintiff's costs submissions within 14 days.

[76] If either party wishes to make oral costs submissions, they should explain why that is necessary in their written submissions. Upon my review of the written submissions, I will advise counsel whether an oral hearing, if one is requested, will be granted.

“Forth J.”