SUPERIOR COURT

(Civil Chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-119127-218

DATE: February 25, 2026

BY THE HONOURABLE LOUIS LACOURSIÈRE, J.S.C.

OBERON SECURITIES
Plaintiff

v.

CEATI INTERNATIONAL INC.
Defendant

JUDGMENT[1]

JL 3454

[1] La traduction a été demandée le 24 février 2026. Vu le délai annoncé pour sa livraison, le Tribunal n'a pas voulu retarder la signature du présent jugement vu les termes de l'article 324 C.p.c. La traduction suivra.

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WHEREFORE, THE COURT: 31

[1] Oberon Securities, LLC (Oberon) claims $3,608,385 from CEATI[2] International Inc. (CEATI). It alleges that it is entitled to this amount as fees for services provided to CEATI pursuant to a contract entered into on March 2, 2018 (the Agreement).[3]

1. The Parties

[2] Oberon is a New York City-based investment banking firm which provides M&A services, equity and debt financing and advisory services.

[3] At the relevant time, CEATI was providing services, directly or through third parties, to member organizations aimed at allowing them to share experiences and address issues pertaining to operation, maintenance and planning in the energy field. The business was created in the 1970s as the R&D division of the Canadian Electricity Association (CEA).

[4] When the CEA discontinued its research arm, Mr. Jacob Roiz, an engineer who was its Managing Director, acquired the assets and rights of the R&D division and rebranded the business.

[5] He was the CEO of CEATI at the relevant time and his son Elan,[4] an attorney, was its Executive Vice-President.

2. The Agreement

[6] On or about December 3, 2017, Walter S. Bailey, Managing Director of Oberon, met with Elan Roiz of CEATI to discuss ways to facilitate a transaction involving the company or its sale. Mr. Bailey, who holds an MBA from Columbia University, has been in the investment business since 1988 and was employed by Oberon from May 2017 to January 2022.

[7] On December 4, a “broad brush proposal” to advise on the proposed sale of CEATI was forwarded by Walter Bailey to Jacob and Elan Roiz. It provided a best scenario timeline of 16 weeks to close the deal, “contingent on our access to you, the availability of data, the speed at which certain third parties and counter-parties operate, as well as market conditions” …[5]

[8] On the same day, a first draft of the proposed agreement was sent by Oberon to Jacob Roiz.[6] This draft would be the subject of numerous negotiations over several weeks, mainly between Walter Bailey for Oberon and Elan Roiz for CEATI.

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2 P-7; Center for Energy Avancement through Technical Innovation.
3 P-2.
4 The name is at times spelled Ilan, notably in certain documents (e. g. P-17).
5 P-19, pp. 3 and 4.
6 *Id*., p. 5.

[9] On March 2, 2018, there was a meeting of the minds. The Agreement provided, *inter alia*:

i. that Oberon would be CEATI's exclusive financial advisor in relation to the sale or transfer of said company;[7]

ii. that Oberon would help in identifying and or contacting potential buyers and generally provide financial advice;[8]

iii. that CEATI would provide complete and correct information to Oberon, would advise of any discussion or inquiry concerning a possible transaction and would be solely responsible for the decision to accept a transaction;[9]

iv. a fee structure, including a retainer fee, a transaction fee, a provision describing a partial fee (25 %) payable to Oberon (the "Sellers Remorse Fee") should CEATI reject an offer with a transaction value of 8 times its EBITDA[10] and a provision for full payment of the fee should an agreement or a transaction be consummated within 12 months following the expiry of the Agreement (the Tail Period) with a party whom Oberon interacted with during the term of the Agreement;[11]

v. a term of twelve months from March 2, 2018, automatically renewed for subsequent fourteen (14) day periods until such time as cancelled by either party, with or without cause, upon thirty days written notice; automatic 30 day extensions of the term are also provided if CEATI is, at the time of the notice, in active conversations regarding a transaction initiated under the Agreement, the Agreement being, in such case, terminated when there are no longer any such active conversations;[12] and

vi. that it is governed by the laws of Quebec.[13]

3. <u>The Relevant Facts Leading to the Litigation</u>

[10] Oberon is claiming damages for a breach of the Agreement. The main facts which led to the litigation can be summarized as follows.

[11] As part of its mandate pursuant to the Agreement, Oberon, through its Managing Director, Mr. Harry Chevan, felt that Pamlico Capital (Pamlico), a North Carolina-based independent private equity firm, might have an interest in its client CEATI.

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7 P-2, art. 1.
8 *Id*., art. 2.
9 *Id*., art. 3.
10 Earnings Before Interest, Taxes, Depreciation, and Amortization.
11 P-2, art. 4.
12 *Id*., art. 7.
13 *Id*., art. 8.

[12] On October 22, 2018, Mr. Chevan sent a one-page document to Pamlico, entitled Project POWER, which is an anonymous executive summary of CEATI's business.[14]

[13] On or about November 1, 2018, a non-disclosure agreement (NDA) was executed by Pamlico.[15]

[14] Pamlico was one of approximately fifty prospects[16] eventually identified by Oberon as likely to be interested in CEATI. Out of those, eleven showed an interest, signed NDAs[17] and received a more comprehensive fifty-four page Confidential information memorandum on CEATI's business and investment potential.[18]

[15] On or about December 17 and December 20, 2018,[19] Pamlico submitted an "indication of interest" (IOI) followed by a revised IOI to Oberon.

[16] As Pamlico was one of the highest "bidders" among those who had submitted IOI's,[20] its bid was forwarded, along with others, to CEATI.

[17] This was the beginning of several dealings between Oberon, mostly through Walter Bailey, CEATI, mostly through Elan Roiz, and Pamlico, mostly through Avi Malkin.

[18] A Management presentation was prepared[21] by Oberon, with the active contribution of CEATI, to be used to introduce CEATI to prospective buyers and attract them.

[19] Discussions were held between Oberon and the Roizes in January 2019 to prepare practice/dry-runs of such presentations and to complement them, notably by retaining Quality of earnings (Q of E) providers (Oberon suggested BDO Canada LLP) and involving CEATI's accountant, Mr. Joe Havas of Ruby Stein Wagner (RSW),[22] as it was then known. These additional steps were taken notably because CEATI's financial statements were reviewed but not audited. Oberon feared that the type of accounting practices and financial book keeping used at CEATI might provoke questions from potential purchasers or investors, hence the need for an independent analysis of CEATI's financial situation.

[20] BDO was indeed hired by CEATI and, over time, release of information and communications issues arose between CEATI and BDO.

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14 P-3.
15 P-5.
16 The witnesses referred to those as « counter-parties ».
17 P-20, p. 1.
18 P-6.
19 P-7; P-8.
20 P-9A.
21 P-26.
22 D-1.

[21] A meeting between Oberon, CEATI and Pamlico was difficult to schedule. It finally took place on March 13, 2019, in Montreal[23] after a dinner the day before. The meeting was attended by Jacob and Elan Roiz, Scott Stevens, Jay Henry and Avi Malkin of Pamlico, Walter Bailey and Harry Chevan of Oberon and Mr. Terry Waters, an independent advisor to Pamlico.[24]

[22] On or about March 26, 2019, Walter Bailey learned that Pamlico had dropped out of the process and wrote, in an email to Elan and Jacob Roiz:

> […]
>
> 4) Pamlico has dropped out of the process following their meeting with you based primarily upon the following: (a) they would have to invest much more capital to get you going than they had previously believed, (b) replacement of management and lack of human capital resources is concerning and more costly than previously believed (estimated at US$ 1mm to US$ 2mm), and (c) did not feel the asset was worth anywhere near where they bid and therefore felt as though they should withdraw rather than insult.
>
> As previously discussed, this was a distinct risk. We continue to have Warren, Leeds, Incline and Wicks at bid levels believed to be greater than 10x 2018 Adj EBITDA. That said, I believe this should serve as a stark example that we are nowhere near the finish line…[25]

[23] Among the reasons for Pamlico dropping out: it felt that CEATI's management team was "thin" and that more meaningful investments would be needed.[26]

[24] The March 13 meeting was the last contact between Pamlico and Oberon. There were, however, other communications between Oberon and CEATI pertaining to potential suitors, notably Warren Equity Partners (Warren), one of the organizations alluded to in the March 26, 2019, email.

[25] On April 22, 2020, Elan Roiz wrote to Oberon to cancel the Agreement (The Termination notice).[27] The cancellation was therefore effective as of May 22, 2020.

[26] The turn of events which triggered this litigation happened on February 19, 2021, when CEATI completed a transaction with Pamlico. A share purchase agreement was concluded with 9434-6483 Quebec Inc. (Quebec Inc.), a company controlled by Pamlico (the SPA).[28]

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23 P-27.
24 Examination out of court of Jay Henry dated March 31, 2023, p. 12.
25 P-10.
26 Examination out of court of Jay Henry dated March 31, 2023, p. 13.
27 P-11.
28 P-17.

[27] On July 29, 2021, Pamlico officially announced an investment in CEATI (The Pamlico announcement). Part of the announcement reads as follows:

> Pamlico Capital Invests in CEATI International
>
> Jul 29, 2021,
>
> | COMPANY | INVESTMENT TEAM |
> |---|---|
> | CEATI International, Inc. | Scott Stevens |
> | Montreal, QC | Jay Henry |
> | | Scotty Stevens |
> | | Claudia Kesala |
>
> Pamlico Capital ("Pamlico") announced that it has completed a growth investment in CEATI International ("CEATI"), a provider of research, peer networking, and benchmarking solutions for the electrical utilities market.
>
> CEATI is a member-driven organization whose specialized interest groups address mission-critical aspects of electric generation, transmission, and distribution tailored to utilities and government agencies. With the support of Pamlico, CEATI is investing in significant upgrades to its product, service, and operations that will increase the impact members receive from CEATI membership while retaining CEATI's commitment to delivering practical, impactful solutions. [29]

[28] It is through this announcement that Oberon first learned of the Pamlico investment in CEATI.

[29] The Pamlico announcement was followed by a demand letter dated September 28, 2021,[30] wherein Oberon claimed from CEATI damages arising, notably, from the fact that the transaction with Pamlico occurred within the twelve-month Tail Period provided for at article 4.5 of the Agreement.

4. The Proceedings

[30] On November 25, 2021, Oberon sued CEATI, alleging that it was owed USD $2.6 M[31] as a result of Pamlico's investment in CEATI.

[31] CEATI contests Oberon's claim. It argues that:

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29 P-12.

30 P-14.

31 The amount claimed was increased to USD $2.8 M in September of 2025, after Oberon was made aware of the terms of the SPA.

i. the Agreement was cancelled on September 23, 2019, rather than April 22, 2020;

ii. the Agreement could, in any event, be resiliated at any time pursuant to article 2125 of the *Civil Code of Québec*;

iii. there is no fee payable pursuant to the Tail Period provision of the Agreement;[32]

iv. if the Tail Period provision of the Agreement is applicable, which is denied, Oberon would only be entitled to 25 % of the fee;

v. in the event that the Tail Period provision of the Agreement does not apply, Plaintiff was not in any event the efficient cause of the Pamlico deal; and

vi. as Oberon breached its contractual obligations towards CEATI, including its duty to act in good faith and loyally, it cannot claim any fee from CEATI.

5. The Questions in Issue

[32] The questions in issue are the following:

a. What is the date of termination of the Agreement?

b. Is any fee due to Oberon under the Tail Period provision of the Agreement?

c. If no fee is due under the Tail Period provision of the Agreement, was Oberon the efficient cause of the Pamlico deal?

d. Does Oberon's negligence and bad faith in its execution of the Agreement preclude it from claiming a fee?

6. Discussion

a. What is the Date of Termination of the Agreement?

- **The Parties' Positions**

[33] CEATI claims that the Agreement was terminated on September 23, 2019.

[34] Oberon states that the termination took place on April 22, 2020.

- **Context**

[35] The date of termination of the Agreement is important in the context of the application of article 4.5 (the Tail Period provision) which reads as follows:

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[32] Art. 4.5.

> 4.5 Tail Period. Company shall pay fees to Oberon as set forth in this Section 4 with respect to any Transaction or other transaction, if during the Term (as defined below) of this Agreement or within twelve (12) months thereafter ("Tail Period"), a Transaction or other transaction is consummated or an agreement is entered into that subsequently results in a Transaction or other transaction with a party whom Oberon has interacted with during the Term. [33]

[36] Termination is defined in the Agreement:

> 7. Termination
>
> The term of this Agreement is twelve (12) months from the date hereof and shall automatically renew for subsequent fourteen (14) day periods until such time as cancelled by Company or Oberon (the "Term"); *provided, however*, that Oberon's Engagement hereunder may be terminated, with or without cause, by either the Company or Oberon upon thirty (30) days prior written notice to the other party; provided, however, in the event that at such time the Company is in active conversations regarding a transaction initiated under this Agreement, this Agreement shall be automatically extended for consecutive thirty (30) day periods until such time that the Company is no longer in any such active conversations whereupon this Agreement shall terminate.

[37] The Termination notice from Elan Roiz to Oberon, dated April 22, 2020,[34] reads as follows:

> Gentlemen,
>
> I hope all of you remain safe and secure.
>
> As I haven't heard back from you since the email below, and as I haven't heard back from Scott Bruckmann since that very brief text message exchange, I would kindly request at this time that you disconnect everyone from the data room.
>
> As well, while I believe the following has already been done, in order to ensure that no gaps remain and as per Section 7 of the agreement entered into between CEATI International and Oberon Securities, "The term of this Agreement is twelve (12) months from the date hereof and shall automatically renew for subsequent fourteen (14) day periods until such time as cancelled by Company or Oberon (the "Term"). Please take note that the Term is hereby cancelled by CEATI International as of today's date.
>
> […]
>
> [underlining added]

[38] The Agreement was, therefore, *prima facie*, terminated on May 22, 2020, 30 days following the written notice.

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33 P-2.
34 P-11.

[39] Why does Elan Roiz write “while I believe the following has already been done”? Because it is CEATI’s position that the Agreement was not terminated in April of 2020 but rather earlier, on September 23, 2019. Does the evidence support this position?

[40] While it is clear that Pamlico was out of the CEATI picture as of March 26,2019, Oberon continued to seek a transaction for its client with various interested parties. Among them was Warren, which forwarded to Oberon a letter of intent to acquire CEATI on June 3, 2019.[35]

[41] Warren was granted exclusivity to deal with CEATI, first to July 31, 2019,[36] and then to October 31, 2019.[37]

[42] From the very beginning, Mr. Bailey felt that Warren’s proposal was solid and met CEATI’s expectations. Some changes were made over time. While Mr. Bailey was aware that CEATI and Warren were talking, he did not take part in all of the discussions.

[43] On September 10, 2019,[38] Warren summarized in an email its proposal to CEATI. It also raised what it felt were items which negatively affected CEATI’s valuation. Warren requested that CEATI grant it immediate access to information and personnel in order to fulfill its “diligence requests”, with a view to closing a deal within 30 days.

[44] On September 11, 2019, Walter Bailey expressed to the Roizes that he was hoping for acceptance of the Warren proposal and wished to be involved in the timing of a response to the proposal.[39]

[45] On the same day, Elan Roiz responded to the Warren email. Mr. Bailey was not consulted on said response. While mentioning the wish to conclude a transaction with Warren, Mr. Roiz expressed disagreement with several issues raised in the September 10 email, including the alleged weakness of CEATI’s internal controls and financial reporting systems.[40]

[46] Mr. Roiz requested further explanations on the Warren position:

> In an effort to conclude our discussions and settle on the price, we would be grateful for a detailed explanation as to (i) how you have arrived at the $18.3M figure for cash; (ii) why the recurring interest revenue on the cash balance is being wholly disregarded in your calculation of EBITDA, and (iii) why you are proposing a lower multiple (8x, compared to 11x) for the proposed earn out (which you are capping at $6.0M).

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35 P-22.
36 *Id.*, p. 31.
37 *Id*., p. 47.
38 *Id.*, p. 51.
39 *Id*., p. 57.
40 *Id.*, p. 61.

[47] At this point, Oberon, through Mr. Bailey, felt that Warren's offer was very attractive. On September 13, he sent to Jacob Roiz a document, termed *Final Warren Proposal Discussion*, meant to further clarify Warren's offer:

> Jacob,
>
> Please see this attached document which outlines and further clarifies the final proposal from Warren. I got on phone with them this afternoon and received clarification that this is their offer and they regret any confusion related thereto. This offer, obviously subject to your acceptance, is predicated they can begin their final documentation and final review immediately (with full access to employees and approved customer contacts).
>
> As you know, we have all (both you and us) endeavored to push this as far as we can and we now have very clear confirmation this is as far as we can go. To that end, I included an analysis of all the historical LOIs so that you can see we are actually better with this proposal, despite the back and forth, than all others historically.
>
> While I know this may not be what you want, it is what we have and I believe we should respond to them ASAP. As you are planning on leaving town, that would require you prescribing specific instructions with Elan and you executing document before departure.
>
> I/we are available to discuss further at your convenience.
>
> Walter[41]

[48] Elan Roiz considered this communication as somewhat of an ultimatum, calling for a yes or no answer.[42]

[49] Mr. Bailey continued to press for more feedback from CEATI.

[50] There were more communications between Mr. Bailey and CEATI on September 20, asking for an acceptance or a rejection of Warren's final proposal.[43]

[51] These exchanges concluded with a September 23, 2019, email, 13:27, from Elan Roiz to Harry Chevan (The September 23 email):

> At this point, I don't think there is anything left to discuss. I thought I was being reasonable with my ask of an escrow account, and even my willingness to become an equity partner and a secondary lender. Unfortunately, perhaps they saw the later offer as weakness. I must now refocus my energies on operating this business and do not have the time, energy or desire to reengage in this process.
>
> Scott and my father seemed to have a good working relationship. Perhaps they will reengage when they return from their trips. However, I wouldn't count on it. My father was

41 D-13.
42 Examination out of court of Elan Roiz dated October 27, 2022, p. 61.
43 D-15, p. 2.

> pretty shocked and disgusted with the arbitrary cash position they presented, and views it in a very poor light.
>
> Regards,
>
> Elan[44]

[52] This is the email which, for CEATI, constitutes a termination notice as per article 7 of the Agreement.

[53] There is also another relevant email of the same date from Elan Roiz to Warren:

> Gentlemen,
>
> Thank you for your offer and for participating in this process. We appreciate that it has taken longer than any of us would have liked. Unfortunately, we cannot reconcile your current cash position with what we believe to be the true and accurate position. As such, we must respectfully decline your offer.
>
> We wish you all the very best in your future endeavors and acquisitions.
>
> Sincerely,
>
> Jacob & Elan Roiz[45]

[54] What happened afterwards?

[55] As of September 23, Warren was the last prospective purchaser or investor still involved in the process. However, Warren reinitiated discussions with CEATI.

[56] On October 29, 2019, Mark Bottini, a vice-president of Oberon working with Messrs. Chevan and Bailey, wrote to Jacob and Elan Roiz. After referring to Warren's ongoing due diligence process and potential next steps, he wrote:

> […]
>
> Please feel free to utilize Oberon in whatever capacity most aides you in this process. Unless otherwise instructed, we will perform the following actions: (1) communicate to CEATI remaining items via updated tracker (updated tracker versions will be sent to CEATI and Warren upon ongoing receipt of new information), (2) receive due diligence items from CEATI/Joe Havas, (3) upload and update CEATI data room with corresponding items, (4) manage data room participants, and (5) inform Warren Equity of completed

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44 D-16.
45 D-17.

> items and relay any new requests to CEATI. Please let us know if you would like Oberon to take on any additional responsibilities.[46]

[57] Later on that day, Elan Roiz replied:

> Mark, thank you, However, we do not need Oberon for items #1 or #5 (as it relates to relaying any new requests to CEATI). These items should be directly communicated by Warren to CEATI.
>
> Regards,
>
> Elan[47]

[58] The evidence reveals that there were ongoing interactions, principally conducted between Warren and CEATI, and that Oberon was kept informed, notably through the information transmitted and updated on the CEATI data room at Oberon.[48]

[59] For Walter Bailey, it is not at all unusual, in similar circumstances, that parties which have been introduced and are negotiating will continue to interact without Oberon's constant involvement.

[60] Given the passage of time, Mr. Bailey wrote to the Roizes on January 30, 2020, expressing hope that discussions were moving along and offering assistance.[49] He did not recall receiving an answer.

[61] On March 10, 2020, Elan Roiz wrote to Mr. Bottini:

> Hi Mark,
>
> I hope you're doing well.
>
> As we were unable to conclude an agreement with WEP, kindly disconnect the data room.
>
> Regards,
>
> Elan[50]

[62] On March 20, 2020, Mr. Bottini reached out again to Elan Roiz to explain that, given the COVID context, there might be an opportunity to reengage with Warren. In the negative, he suggested that all data room services be shut down.[51]

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46 P-23, p. 1.
47 *Ibid.*
48 *Id.*, pp. 19, 23, 42, 47.
49 *Id.*, p. 51.
50 D-20, p. 2.
51 *Id.*, p. 1.

[63] On March 24, 2020, Mr. Bailey wrote once again to the Roizes, after speaking with Scott Bruckmann of Warren, suggesting that CEATI was interested in resuming discussions.[52] A further effort by Mr. Bottini, on March 27, to incite the Roizes to reach out to Mr. Bruckmann, did not produce results.[53]

[64] The lack of tangible progress brought Elan Roiz to ask, on April 22, 2020, that everyone who had access to the CEATI data room at Oberon be disconnected and to formally cancel the Agreement.[54]

- **Analysis**

[65] What is the date of the notice of termination of the Agreement: September 23, 2019, or April 22, 2020?

[66] While this is essentially a question of fact, rather than of interpretation, it is nevertheless useful to refer at this time to key principles of interpretation of contracts, frequently referred to by both parties, as expressed by the Supreme Court of Canada:

> [34] The first step in interpreting a contract is to determine whether its words are clear or ambiguous. The purpose of this step, which some authors refer to as the clear act rule (*règle de l'acte clair*), is to prevent judges from departing, deliberately or unexpectedly, from a clearly expressed intention of the parties. In short, a judge must defer to a clear contract. This step thus "'serves as a bulwark' against the risk of an interpretation that deviates from the true intention of the parties and subverts the scheme of their agreement".
>
> [35] Although this step is based first and foremost on a reading of the words themselves, it is not necessarily limited to that in every case, as there may be situations in which a contract's language is not faithful to the parties' common intention. Indeed, "[w]hen considered in the context of the agreement's other clauses or of the circumstances in which it was concluded, the seemingly clear words of a clause may [sometimes] prove to be ambiguous and to be inconsistent with the scheme of the contract, the true intention of the parties". Likewise, a clause that might be perceived to be ambiguous may be perfectly clear when considered in its context.
>
> [36] If the words of the contract are clear, the court's role is limited to applying them to the facts before it. If, on the other hand, the court identifies an ambiguity, it must resolve the ambiguity by proceeding to the second step of contractual interpretation. The distinction between these two steps can be difficult to see, but it is fundamental. At the first step, the judge might, for example, consider the context of the conclusion and performance of the contract in order to confirm that its language is clear. In principle, however, the judge should not have recourse to the principles of interpretation set out in arts. 1425 to 1432 of the Code. In this sense, the interpretation of the contract is more superficial at the first step than at the second.

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52 P-23, p. 55.
53 *Id*., p. 59.
54 P-11.

> [37] The cardinal principle that guides the second step of the interpretation exercise is that "[t]he common intention of the parties rather than adherence to the literal meaning of the words shall be sought". In this exercise, it is necessary to consider intrinsic aspects of the contract, such as the words of the clause at issue and the other clauses, in order to ensure that each of them is given a meaningful effect and that each is interpreted in light of the others. The interpretation of a contract also requires consideration of the nature of the contract and of the context extrinsic to it, including the factual circumstances in which it was formed, how the parties have interpreted it, and usage. [55]
>
> [references omitted]

..*

[67] CEATI claims that the September 23 email constituted a valid notice of termination. It argues that the context in which it was sent shows that there was no longer a potential purchaser as of that date and, therefore, no mandate left for Oberon to fulfill.

[68] CEATI argues that Walter Bailey's emails of September 13[56] and 17[57] refer to "final proposals" from Warren, his September 20[58] email to the fact that Warren "officially stopped working on this deal" and his email of September 22[59] to the fact that "you have this proposal or you have nothing". For CEATI, these all suggest that it was the end of the road for the relationship between Oberon and CEATI.

[69] CEATI also refers to Elan Roiz's other September 23 email,[60] sent at 9:40, to the effect that "I don't think there is anything left to discuss" and it insists on the September 23 email from Elan Roiz which states to Warren that CEATI must "respectfully decline your offer".[61]

[70] CEATI also argues that, in applying the rules of the *Civil Code of Québec*, it was entitled to terminate the Agreement at any time and had no obligations towards Oberon that went beyond those provided for by the Code.[62]

..*

[71] The Court understands CEATI's position that it took some time, after September 23, 2019, for Oberon to reappear on the scene, with Warren, notably by giving Warren access to its data room.

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55 *Uniprix inc.* c. *Gestion Gosselin et Bérubé inc.*, 2017 SCC 43 [*Uniprix*].
56 D-13.
57 D-14.
58 D-15.
59 D-21.
60 D-16.
61 D-17.
62 Arts. 2098, 2125 and 2129 CCQ.

[72] However, if CEATI felt that there was no object to the Agreement after the end of September 2019 impasse in the negotiations with Warren and that there was therefore no reason for the Agreement, why did it not explicitly state so at that time?

[73] CEATI always had the option to terminate the Agreement, with or without cause, upon thirty (30) days prior written notice.

[74] Article 7 is clear. It is one of the few provisions of the draft agreement initially proposed by Oberon to CEATI on December 4, 2017, which was accepted as is, without modification.[63]

[75] The Agreement was negotiated between sophisticated parties, notably by Elan Roiz, who had been a member of the Quebec Bar since 2006 and had experience in contract negotiations. In fact, several modifications to the initial agreement were suggested by Mr. Roiz between December 4, 2017, and March 2, 2018, the date on which it was finalised.[64]

[76] In the Court's view, CEATI's argument is tantamount to pleading that the combination of the September 2019 temporary breakdown in negotiations with Warren and the lesser involvement of Oberon thereafter constitutes at least an implicit notice of termination.

[77] The Court does not subscribe to this position.

[78] The Agreement provides for a written notice of termination with or without cause. The terms are clear. There is no ambiguity in article 7 of the Agreement. Both parties agreed that it could be terminated upon thirty (30) days written notice, the length of the notice being subject to extensions in the event of ongoing conversations regarding a potential transaction initiated under the Agreement.

[79] There is no such clear and written termination notice on September 23, 2019.

[80] The Court adds that, while the evidence does suggest that there was a temporary cessation of negotiations between CEATI and Warren in September 2019, there were discussions between them afterwards, on occasions initiated by Oberon, which could still have led to a transaction. There is little doubt that Oberon was still hoping for a transaction to intervene after September 2019. It had an interest in keeping discussions alive or reinitiating them, notably as the Agreement had not been terminated. For its part, CEATI would obviously have been very partial to a transaction taking place after September 2019.

..*

63 P-19, p. 33.
64 *Id*.

[81] The Court will now deal with the relevance of article 2125, raised by CEATI, which is in the chapter *Contract of enterprise or for services*, of the *Civil Code of Québec*, and reads as follows:

> 2125. The client may unilaterally resiliate the contract even though the work or provision of service is already in progress.

[82] CEATI argues both that article 2125 CCQ takes precedence over article 7 of the Agreement and that, as a consequence of its application, the only damages to which Oberon would be entitled are those mentioned at article 2129 CCQ:

> 2129. Upon resiliation of the contract, the client is bound to pay to the contractor or the provider of services, in proportion to the agreed price, the actual costs and expenses, the value of the work performed before the end of the contract or before the notice of resiliation and, as the case may be, the value of the property supplied, where it can be put into his hands and used by him.
>
> For his part, the contractor or the provider of services is bound to repay any advances he has received in excess of what he has earned.
>
> In either case, each party is liable for any other injury that the other party may have suffered.

[83] Article 2125 is meant to allow one party, the client, to resiliate a contract unilaterally, without cause, because of the special nature of the obligations incurred[65] in contracts of enterprise or for services, the client often being in a position of weakness. The option of unilateral resilation is not open to the contractor or service provider.[66]

[84] Article 2125 CCQ is not of public order and parties can derogate from it as long as they do so unequivocally.[67]

[85] In the Court's view, by agreeing to terms of termination defined and tailored to the specific nature of the Agreement, CEATI clearly waived its right to subsequently change its position and claim, at any time, that the Agreement can be resiliated in the manner provided for by article 2125, with the consequences set out in article 2129 CCQ. Article 7 of the Agreement already provides that it can be resiliated without cause and, in the Agreement, each party has also freely and consensually agreed on the consequences of the resiliation.

[86] The provisions of the *Civil Code of Québec* on the resiliation of contracts of enterprise or for services have no bearing on the issue of the termination of the Agreement. The terms of the Agreement prevail.

[87] The Agreement was therefore terminated on April 22, 2020, effective May 22, 2020.

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65 Pineau, Jean, Burman, Danielle et Gaudet, Serge. *Théorie des obligations*, 5e éd, Montréal, Thémis, 2023, para. 1052.

66 Art. 2126.

67 *Société canadienne des postes* c. *Morel*, [2004] R.J.Q. 2405 (C.A.), para. 46.

b. Is Any Fee Due to Oberon under the Tail Period Provision of the Agreement?

- **The Parties' Positions**

[88] CEATI argues that the real intent of the parties never was to allow Oberon to claim a fee for the mere reason that, at one point, it was instrumental in CEATI simply interacting with a prospective purchaser. For CEATI, the parties meant Oberon to benefit from a fee if, and only if, further to concrete and tangible efforts on its part, a counter-party concluded a transaction, after the term of the Agreement, because of Oberon's work and efforts.

[89] The gist of CEATI's argument regarding the common intention of the parties is that it never intended to agree to paying such a potentially large fee for the simple fact that a party interacted, ever so briefly, in this case from November 2018 to March 2019, with Oberon.

[90] In support of its argument, it relies, in addition to the *Uniprix* interpretation principles referred to above,[68] on articles 1425, 1426, 1427 and 1432 of the *Civil Code of Québec*:

> 1425. The common intention of the parties rather than adherence to the literal meaning of the words shall be sought in interpreting a contract.
>
> 1426. In interpreting a contract, the nature of the contract, the circumstances in which it was formed, the interpretation which has already been given to it by the parties or which it may have received, and usage, are all taken into account.
>
> 1427. Each clause of a contract is interpreted in light of the others so that each is given the meaning derived from the contract as a whole.
>
> […]
>
> 1432. In case of doubt, a contract is interpreted in favour of the person who contracted the obligation and against the person who stipulated it. In all cases, it is interpreted in favour of the adhering party or the consumer.

[91] CEATI also argues that the conditions necessary for the Tail Period provision to apply are not met. In its view, article 4.5 would only apply had a transaction been entered into during the Tail Period by CEATI directly with Pamlico. In this particular case, the transaction was concluded with a distinct entity, i.e., Quebec Inc.[69] CEATI therefore argues with conviction that if the parties had meant "party", in article 4.5, to mean party and its affiliate or subsidiary or agent, they would have stated so. Quebec Inc. being an entity which is distinct from Pamlico is not therefore a party under the Tail Period provision.

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68 See para. 66.
69 P-17.

[92] CEATI finally claims that, if it owes a fee to Oberon, it cannot reasonably be 100 % of the fee determined on the purchase price as per the SPA.[70] It argues that the Tail Period provision is an abuse of right because it is a commission on a transaction, the SPA, in which Oberon played no part. It claims that the most Oberon could receive, if entitled to a fee, is the one provided for at article 4.3 of the Agreement, on the offer by Warren rejected by CEATI in September 2019.

[93] Oberon replies that the terms of the Tail Period provision are clear and require no interpretation.

- **Context**

[94] Before dealing with the arguments, it is worth providing additional context.

[95] Prior to its dealing with Oberon in 2018, Pamlico had no idea that CEATI even existed.[71] In fact, Pamlico invests mostly in U.S. companies, around forty (40) at the time of the hearing, and little in Canadian companies, three (3) at the time of the hearing.

[96] In September 2020, Pamlico realized that CEATI had not been purchased, so it sought to revive discussions with CEATI and did not go through Oberon:

> …, we assumed with the passage of time that they weren't involved anymore and, you know, it's much easier to have conversations directly with owners than through intermediaries. [72]

[97] On September 22, 2020, Jay Henry, of Pamlico, reached out to CEATI:

> Jacob,
>
> I hope everything is great. It has been a while since we last spoke! We'd love to hear how things are going for you and compare notes on how our membership-based peer network model investments (World 50 and BNI) have adapted and performed during the pandemic. Do you have some time over the next week or two for a catch-up-call?
>
> Talk soon!
>
> Jay Henry[73]

[98] World 50 and BNI, two companies with similar business models to CEATI's, had performed well during Covid and Pamlico felt that CEATI may have done well also, hence the approach to Jacob Roiz. Moreover, Pamlico had also developed a good relationship with Mr. Alex Johnson, an executive with experience in the syndicated research membership-based business model, such as CEATI's,[74] who could manage that type of

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70 *Ibid*.
71 Examination out of court of Jay Henry dated March 31, 2023, pp. 8 and 10.
72 *Id.*, p. 24.
73 U-11, p. 16.
74 Examination out of court of Jay Henry dated March 31, 2023, p. 22.

business. In fact, Mr. Henry mentioned that Mr. Johnson's performance in the business reassured Pamlico that the "talent gap" in management at CEATI, which was a concern that led it to cease negotiations on March 26, 2019, was less of an issue and that Pamlico now had "a leadership answer" with Mr. Johnson.

[99] The Court found Mr. Henry's testimony very credible. He is still a principal of Pamlico and is currently on the board of CEATI.[75] He answered questions candidly, did not shy away from saying that he did not remember facts or events and seemed eager to enlighten the Court.

[100] CEATI itself did not take steps to solicit the interest of Pamlico nor did it seek the help of a new advisor to assist in the discussions. The people involved in the Pamlico transaction were CEATI's lawyer and its regular accountant.[76]

[101] Mr. Henry confirmed that there were no discussions between Pamlico and CEATI during the negotiations leading to the purchase regarding the Agreement or CEATI's obligations under the Agreement. On its part, CEATI never mentioned to Oberon that negotiations were taking place with Pamlico as of September 2020.

[102] There were, however, in the email exchanges leading to the agreement between CEATI and Pamlico, references to the extension of the NDA signed earlier by Pamlico[77] and to the fact that the preferred transaction structure was, as outlined in the 2018 process letter supplied by Oberon, a stock purchase.[78]

[103] Mr. Henry acknowledged that, in September 2020, Pamlico was certainly familiar with the CEATI business and "was not starting from scratch" as the previous steps accomplished in 2018-2019 were useful.

[104] He mentioned that Pamlico created Quebec Inc. for a simple purpose, i.e., as a distinct entity to execute the purchase. He added that it is both typical for Pamlico to proceed in this way and customary to do so in the business.

[105] Pamlico's letter of intent to acquire 100% of the equity interest of CEATI was accepted by Jacob Roiz on or about December 20, 2020.[79]

[106] As mentioned above, on February 19, 2021, the SPA[80] was concluded between the shareholders of CEATI and Quebec Inc., which was formed on the recommendations of Pamlico's attorneys.[81] Pamlico CEATI Holdings, LP is the majority shareholder of Quebec Inc.

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75 *Id.*, p. 5.
76 Examination out of court of Elan Roiz dated October 27, 2022, pp. 109-110.
77 U-11, p. 8.
78 *Id.*, p. 9.
79 U-2, p. 75.
80 P-17.
81 Examination out of court of Jay Henry dated March 31, 2023, p. 37.

[107] The parties agreed to keep the terms of the SPA confidential.[82]

[108] There can be no doubt that Pamlico made the investment into CEATI to acquire its shares.[83] In fact, the Notice to the Purchaser section of the SPA provides that it be sent to Pamlico in Charlotte, North Carolina.[84]

[109] The executive referred to in the September 22, 2020, memo from Jay Henry to CEATI, Mr. Alex Johnson, was hired as CEO of CEATI beginning on March 21, 2021. Mr. Henry did not recall why the announcement of Pamlico's investment in CEATI was delayed from February 2021 to July 2021.[85]

- **Analysis**

[110] It is fundamental to refer to what the parties defined in the Agreement as the Scope of Engagement, which includes a definition of "transaction":

> I. Scope of Engagement
>
> This letter agreement ("Agreement") confirms the terms upon which CEATI International Inc., a Canadian corporation domiciled in the Province of Quebec, (the "Client") engages Oberon Securities, LLC ("Oberon"), to act as its exclusive financial advisor in relation to one or a series of Transactions (as defined below) by the Company (the "Engagement"). For purposes of this Agreement, the "Company" shall be defined as Client together with all subsidiaries, affiliates, successors and other controlled units, either existing or formed subsequent to the execution of this agreement, to exclude any affiliates above CEATI International Inc. formed for estate or tax planning purposes. The "Company" shall also be deemed to include any acquisition vehicle to be organized to effect the Transaction and the other investors in that acquisition vehicle. The Company agrees to use its reasonable best efforts to cause the acquisition vehicle upon its formation, and each other investor in such vehicle as a condition to participation in the Transaction, to agree in writing to be bound (jointly and severally with the Company) by the terms of this Agreement including the indemnity provisions following consummation of the Transaction.
>
> For purposes of this Agreement, Transaction shall be defined as entering into a sale or other transfer, directly or indirectly and whether in one or a series of transactions, of all or a significant portion of the assets or any securities (whether by way of tender or exchange offer, negotiated purchases or otherwise) of the Company or one its subsidiaries to a counter-party, or any merger, consolidation, reorganization, recapitalization, business combination or any other extraordinary corporate transaction involving a change in control of the Company/or one of its subsidiaries to a counter-party, regardless of the form or structure of the transaction ("Transaction"). For the avoidance of doubt, it is understood and agreed that Company seeks to effect an all cash sale of a controlling stake, however should the Transaction, if accepted by the Company in its sole discretion, take the form of a non-controlling investment rather than involving a change of control, it is agreed such non-

82 *Id.*, p. 35.
83 *Id.*, p. 36.
84 P-17, p. 31.
85 Examination out of court of Jay Henry dated March 31, 2023, p. 37.

> controlling investment shall be deemed a Transaction. This Agreement will be deemed to be effective as of the date set forth above. [86]

[111] In the search of the common intent of the parties, CEATI refers the Court to changes made to articles 4.4 and 4.5 of the Agreement during the negotiations. In its view, these changes show that Quebec Inc. was not meant by the parties to be covered by the Tail Period provision.

[112] An earlier version of article 4.4 reads as follows:

> 4.4 Other transactions. Company agrees that during the Term of this Agreement or the Tail Period that it shall not pursue or enter into any transaction (other than a Transaction) that has materialized through the involvement of Oberon without first entering into a mutually satisfactory addendum to this Agreement memorializing the compensation for Oberon. [87]

[113] This article was removed at CEATI's request,[88] with a view to better protect its interest.

[114] Elan Roiz had initially refused the Tail Period. Mr. Bailey asked that it be included in the Agreement as it was, in his view, common, "the usual template clause at Oberon being 24 months".

[115] The Tail Period provision was amended during the negotiations, notably to add, at the end, "with a party whom Oberon has interacted with during the Term".

[116] Earlier versions[89] of the Tail Period provision read as follows:

> 4.5 Tail Period. Company shall pay fees (including warrant grants) to Oberon as set forth in this Section 4 with respect to any Transaction or other transaction, if during the Term (as defined below) of this Agreement or within twelve (12) months thereafter ("Tail Period"), a Transaction or other transaction is consummated or an agreement is entered into that subsequently results in a Transaction or other transaction. [90]

[117] The concluding words of the final form of the article "with a party whom Oberon has interacted with during the term" were added with a view, in Mr. Bailey's words, to accommodate Mr. Roiz.

[118] CEATI argues that those changes were made to protect it from an overly broad and general reading of article 4.5 and to ensure a balance between the rights of the parties, with any ambiguity having to be interpreted in its favour. The Tail Period provision is there, in its view, strictly to prevent CEATI from terminating the Agreement and avoiding paying a fee for genuine and real work done by Oberon.

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86 P-2.
87 P-19, p. 8.
88 *Id.*, pp. 227 and 232.
89 December 4, 2017; February 7, 2018.
90 P-19, pp. 8 and 62.

[119] CEATI adds that there is also an ambiguity as to which "party" would be covered by article 4.5 of the Agreement because:

a) there is no definition of "party" in article 4.5;

b) Quebec inc is a wholly owned subsidiary of Pamlico but is not Pamlico;

c) the parties chose to refer to CEATI or one of its subsidiaries in article 1 of the Agreement, meaning that the absence of definition of "party" in article 4.5 is meant to refer to the party, Pamlico, and not its subsidiary or other entity in its stead;

d) the NDA executed by Pamlico on November 1, 2018, drafted by Oberon, referred to "an affiliate controlled by, or under common control with",[91] leading to the conclusion that when the parties intended to add to the meaning of words, they did so.

..*

[120] The SPA was concluded during the Tail Period.

[121] With all due respect for the opposing view, the notion of "interaction" may be wide in scope but the concept is clear and not ambiguous.

[122] The word "interact" means "to communicate with somebody, especially while you work, … or spend time with them"[92] or "to act upon one another".[93] But is it even necessary to refer to a dictionary definition?

[123] In the Court's view, the parties meant for a transaction which occurred within the Tail Period to be compensated if it was concluded with a party whom Oberon interacted with during the term of the Agreement. The words are clear.

[124] CEATI invites the Court to imply in the word "interacted" a notion, be it in terms of duration or of relevancy of said interaction, which is not mentioned in article 4.5.

[125] The qualification of the nature of the interaction has not been specified by CEATI and Oberon. With the benefit of hindsight, it may be that CEATI wishes that an "interaction" which lasted from October 22, 2018, to March 26, 2019, and involved several exchanges of emails and documents, a dinner and one meeting would not trigger the payment of a substantial fee, especially if it led to a transaction several months after the

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91 P-5, art. 13. **Assignment**. Except for an assignment or delegation by a Party to an affiliate controlled by, or under common control with, that Party, neither Party may assign this Agreement or any of its rights or interests hereunder, nor delegate any work or obligation to be performed hereunder, without the prior written consent of the other Party. Except as expressly permitted hereby, any attempted assignment or delegation in contravention of this provision shall be null and void and of no force or effect.

92 *Oxford Learner's Dictionaries Online* (Oxford University Press, 2026) « interact ».

93 *Merriam-Webster Thesaurus Dictionary Online* (Merriam-Webster, Incorporated, 2026) « interact ».

end of the Agreement. However, the words are clear. To hold otherwise would be to depart from what is a clearly expressed intention of the parties.

[126] Is this a situation in which the language of the article is, in the words of the Supreme Court,[94] "not faithful to the parties' common intention?" The Court does not think so. There is no indication in other articles of the Agreement or in the circumstances of its negotiation that produces this kind of doubt as to what was really meant by the term "interacted".

[127] CEATI also claims that the real purpose of the Tail Period provision was to prevent it from terminating the Agreement in order to avoid paying a fee for work genuinely done, and deserving of a fee, by Oberon.

[128] This is likely one of the ends sought by the parties in agreeing to the terms of article 4.5. However, this legitimate purpose does not take away from the clearly expressed intention of CEATI and Oberon: fees are payable to Oberon if, within twelve months of the end of the Agreement, a transaction occurs with a party Oberon interacted with during the term of the Agreement.

..*

[129] What of the meaning of the word "party" in article 4.5 of the Agreement?

[130] It is true that Oberon and CEATI did not see fit to specify that the word "party" could be extended to mean, in this case, not only Pamlico but an entity created by it or under its guidance.

[131] A strict interpretation of the word "party" would *prima facie* exclude Quebec Inc., the party involved in the SPA, because there was never any interaction between Oberon and Quebec Inc. Was the common intent of Oberon and CEATI to restrict the meaning of the word "party" in such a way? The Court does not think so. Adopting such a strict interpretation would render the Tail Period provision completely toothless.

[132] The Court understands the common intention of the parties to be that Oberon is entitled to a fee if a party introduced by it during the term of the Agreement concludes a transaction with CEATI during the Tail Period. There were some fifty prospects approached by Oberon to transact, eleven signed NDA's and one of them eventually delivered: Pamlico.

[133] Concluding that the party itself, and not an entity of its own creation established in the ordinary course of business, is the only one capable of triggering the obligation to pay under article 4.5 of the Agreement would defeat the purpose of the article and distort the intent of the parties. One only has to look at the wording of the Pamlico announcement[95] of July 29, 2021, to be convinced that the argument is not founded: "Pamlico Capital

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94 ***Uniprix***, *supra*, note 55, para. 66.

95 See par. 27; P-12.

Invests in CEATI International". Quebec Inc. was a party under the terms of article 4.5 of the Agreement.

..*

[134] Finally, CEATI claims that it does not owe the fee provided for by article 4.5 of the Agreement because the article is abusive. It suggests that, if any "commission" is payable, it is that of article 4.3 of the Agreement, which reads as follows:

> 4.3 Sellers Remorse Fee & Break up fees, If during the Term of this Agreement or the Tail Period the Company rejects a bona fide, written offer for a Transaction with a Transaction Value of eight (8.0) times the latest twelve-months' earnings before interest, taxes, depreciation and amortization ("EBITDA") as recorded by the Company as of the most recent fiscal quarter for which there are closed Financial statements or greater, the Company shall pay Oberon 25% of the fee payable as if the Transaction were consummated (the "Sellers Remorse Fee"). The Company shall pay the Sellers Remorse Fee within thirty (30) days of the receipt of the rejected written offer. A bona fide offer shall represent an offer in cash or the unrestricted or non-restricted publicly traded stock of a company with a market capitalization of 250% of the aggregate consideration offered.[96]

[135] For CEATI, there is something quite illogical and abusive in the comparison of the consequences of articles 4.3 and 4.5 of the Agreement.

[136] In compensation for the extensive efforts engaged in with Warren, over a longer period of time, which led to a rejected transaction, Oberon would have been entitled to a 25 % Sellers Remorse Fee. For a much lesser involvement with Pamlico, the fee owed as per the Tail Period provision is 100%.

[137] The argument is somewhat attractive but does not convince the Court.

[138] The Remorse fee is meant to compensate Oberon despite a **rejected** *bona fide*, written offer. This decision is strictly CEATI's to make.[97] The Tail Period fee is meant to compensate Oberon for a transaction which **occurred** in the circumstances provided at article 4.5.

[139] Whether the fees payable in each circumstance seem, in retrospect, reasonable or not, this is the deal between the parties.

c. If No Fee is Due under the Tail Period Provision of the Agreement, was Oberon the Efficient Cause of the Pamlico Deal?

[140] As a fee is due under the Tail Period provision of the Agreement, the issue of whether Oberon was the efficient cause of the Pamlico deal does not arise.

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96 P-2.

97 Art. 3.7 of the Agreement.

d. Does Oberon's Negligence and Bad Faith in its Execution of the Agreement Preclude it from Claiming a Fee?

- **The Parties' Positions**

[141] CEATI argues that the negligence and bad faith of Oberon in the performance of its obligations under the Agreement constitute a "fin de non recevoir" and preclude it from entitlement to the payment of any fee.

[142] Oberon replies that there is no evidence of negligence and bad faith on its part.

[143] The Court of Appeal summarized as follows the theory of "fin de non recevoir":

> [9] Comme la Cour l'a récemment rappelé, sous la plume de notre collègue le juge Schrager, la fin de non-recevoir permet notamment de constater l'irrecevabilité d'une action par ailleurs bien fondée afin de sanctionner le comportement répréhensible de la partie demanderesse, y compris en cas de manquement au devoir d'agir de bonne foi:
>
> > [51] La fin de non-recevoir sanctionne le comportement déloyal ou non coopératif par le rejet de la demande autrement bien fondée en droit, ou du moyen de défense, formulé par l'auteur même du problème. Le comportement répréhensible n'a pas à être une faute au sens habituel du terme. Il n'a pas non plus à être nécessairement malicieux. L'évaluation du comportement répréhensible se fait en considération des principes de bonne foi et d'équité.
> >
> > [52] La Cour a par ailleurs reconnu dernièrement que les tribunaux utilisent de plus en plus la fin de non-recevoir dans des situations variées lorsque les principes de la bonne foi et de l'équité le justifient pour sanctionner un comportement répréhensible, notamment en matière d'obligations. Baudouin, Jobin et Vézina concluent à ce propos que:
> >
> > > […] les tribunaux disposent d'un pouvoir d'appréciation substantiel pour appliquer cette règle d'équité avec à-propos, et sont en mesure de l'étendre à de nouvelles situations qui se présentent devant eux, assurant ainsi une meilleure justice contractuelle.
> >
> > « Une personne, qu'elle soit créancière ou débitrice, ne doit pas tirer profit de sa mauvaise conduite. »[98]
>
> [references omitted]

[144] CEATI's argument revolves mainly, but not exclusively, around Oberon's alleged lack of cooperation and loyalty toward CEATI in the context of the serious negotiations which took place with Warren in September 2019.

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98 *9378-1417 Québec inc.* c. *Groupe Ilqueau inc.*, 2023 QCCA 351.

- **Context**

[145] In the Court's view, one has to consider CEATI's argument of "fin de non recevoir" after taking a step back and considering all the circumstances, including the ends sought by each party when signing the Agreement. Why did CEATI feel abandoned and treated with disrespect?

[146] First of all, there had been some heated discussions in January 2019 between Mr. Bailey and Elan Roiz about the hiring and projected fees of BDO,[99] Oberon suggested Q and E providers. Jacob Roiz also expressed his displeasure with the expected fees. About a month later, it became obvious that the fees would be higher than foreseen. This was a source of tension.

[147] Elan Roiz expressed disappointment with Pamlico pulling out of the picture in March of 2019, as it was the initial highest bidder.[100] However, Mr. Roiz did not lay the blame on Oberon for this turn of events, although he felt that it could have done more to keep Pamlico interested.

[148] The involvement of BDO and its request, in April 2019, to be given more financial data, which would help bridge perceived gaps in CEATI's financial information as understood by CEATI and BDO, was later the subject of other serious discussions.[101]

[149] More difficult exchanges, involving notably BDO, Oberon, CEATI's accountant and the Roizes regarding financial data and projections occurred in May 2019.[102] The discussions revolved notably around the fact that BDO would only perform more work on the figure reconciliations if incremental fees were paid.

[150] Mr. Bailey most probably informed BDO of CEATI's disappointment in its inability to reconcile figures. He was not sure. He mentioned, however, that he had no authority to ask BDO to change its professional opinion. So, in the end, all parties potentially interested in acquiring CEATI had a BDO report on its finances which was not final but "with a draft stamp" on it: "the playing field was level for all interested parties" would be Mr. Bailey's position on this.

[151] Mr. Bailey acknowledges that there were many moments of tension "all around" during the negotiations because of his suggestions to CEATI, the timing of responsiveness and the need for CEATI to react promptly. Mr. Bailey suggested that being on the same team does not mean there will not be tensions.

[152] At this stage, the Court chooses to comment on Mr. Bailey's credibility. It sees how his behaviour could, at times, be perceived as somewhat lacking in "nuances" by Mr. Roiz. However, he appeared to the Court to be very frank and direct. He was not afraid to say

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99 D-3.
100 Examination out of court of Elan Roiz dated October 27, 2022, p. 55.
101 D-8.
102 D-9.

that he did not recollect phone calls or conversations, even if recollecting them may have helped his former employer's position. When asked if he had hung up on Mr. Roiz in May 2019, he stated immediately "I may have", without pausing to consider the impact of his answers.

[153] As for the Warren negotiation, CEATI, through Elan Roiz, expressed that Oberon, through Mr. Bailey, was only interested in getting a deal and receiving its fee. He felt that Mr. Bailey was putting too much pressure on CEATI to agree to the Warren offer despite the fact that said offer, in his view, was not final, was not clear and did not contain the financial details necessary to allow CEATI to make an informed decision.

[154] In September 2019, Warren had had exclusivity to deal with CEATI since July 31. For Elan Roiz, it had been a bumpy road since then with Warren.[103] CEATI was presented in September 2019 with what Mr. Bailey felt was a final offer from Warren. Mr. Roiz received this as an ultimatum.[104]

[155] In retrospect, it was not a final offer as Warren reached out later to CEATI and continued discussions directly with it, at a slower pace.[105] This episode of tension between Mr. Bailey and Mr. Elan Roiz in the negotiations is a very good illustration of what the latter perceived as a lack of loyalty and good faith on the part of Oberon, Mr. Bailey in particular.

[156] CEATI felt that some legitimate questions about Warren's offer were not answered[106]. On the other hand, Oberon was of the view that all the elements were present for CEATI to conclude a transaction far above CEATI's expectations when the Agreement was signed.[107]

- **<u>Analysis</u>**

[157] The following extract of Elan Roiz' examination out of Court summarizes his position on the manner in which Oberon failed to fulfill its obligations under the Agreement:

[103] *Id*., p. 60.
[104] *Id*., p. 61.
[105] *Id*., pp. 65 and 66.
[106] D-12, p. 1, para. 5; D-21, pp. 2 and 3.
[107] D-21.

Page 79	Page 80
[…]	A- Yes. Q- Okay. And for what reasons? A- For the reasons that it became, I would say evident to us or apparent to us, that they didn't have necessarily our best interest. They were seemingly trying to conclude a transaction and get their commission, not necessarily conclude the best transaction. The way they were operating, the way they were communicating with us. The way Mr. Bailey, predominantly spoke with us, indicated to us that they wanted to get the deal done. it doesn't matter the price at this point, it doesn't matter if they can get a few million dollars more for their client. They want to get their commission, close the book, have their earn-outs and call it a day, and they'll be satisfied.
And now, I'm asking, did you... did... without communicating it to them, did you consider that they had failed to fulfill their obligations?	Q- Okay. So you had a sense from, you said, was it Mr. Bailey? Is that the name that you mentioned there? A- Yeah, more so, certainly Mr. Bailey, between the two (2) of them, he was certainly the more aggressive between Mr. Chevan and Mr. Bailey, who were two (2) main points of contact, he
Page 81 was certainly the more aggressive. But at the end of the day, they're both representing Oberon Securities. [108]	

[158] Elan Roiz did not say that Oberon breached any particular obligation under the Agreement but said that it was not acting in good faith.[109]

[159] In his view, Oberon was more interested in keeping a good relationship with Warren and other people around the table, such as BDO, than with CEATI or the Roizes, with whom it would not be dealing again.[110]

..*

[160] The Court does not find that the conduct of Oberon in the performance of its obligations under the Agreement supports the application of a "fin de non recevoir".

[161] The evidence relating to the exchanges between Oberon and CEATI, the nature of the relationship between Elan Roiz and Walter Bailey and the latter's behaviour towards CEATI does not lead to the conclusion that Oberon did not adequately execute its obligations towards CEATI, nor does it show bad faith on its part.

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[108] Examination out of court of Elan Roiz dated October 27, 2022, pp. 79 to 81.
[109] *Id*., p. 126.
[110] *Id*., pp. 125 and 126.

[162] CEATI and Oberon consented to be bound by the Agreement after several months of negotiations. They both had a purpose in mind: to achieve the best possible transaction.

[163] It was CEATI's first foray into this type of agreement; it is Oberon's business. The stakes were very high for CEATI, because it meant, for the Roizes, selling a business that meant so very much to them on the best possible terms. As for Oberon, it had the opportunity of successfully completing a potentially lucrative mandate.

[164] In the Court's view, much, if not all of what aggravated CEATI, especially Mr. Elan Roiz, in the course of execution of the Agreement, was the product what the Court finds constituted a normal negotiation, with its ups and downs.

[165] The involvement of BDO is a good example. It was introduced in the picture in January 2019 at Oberon's suggestion to reassure potential purchasers on CEATI's financial situation. CEATI did not appreciate the assumption that it needed outside help to convey to potential purchasers the right picture of its quality of earnings, revenues, expenses, accounts receivable and other similar data. It nevertheless accepted Oberon's suggestion. Right from the beginning, there were issues regarding reasonableness of fees. Later, in May 2019, additional fees were requested for BDO to complete their "book". This was a further aggravation.

[166] CEATI found Oberon partial to BDO's demands and felt abandoned by Oberon. The Court does not agree with this position. While BDO was hired at the suggestion of Oberon, it had a mandate to fulfill and there is nothing Oberon could, or should, have done to influence BDO.

[167] The negotiations with Warren in September 2019 also gave rise to serious differences of opinions between Oberon and CEATI, especially between Mr. Bailey and Mr. Elan Roiz.

[168] Both parties felt close to achieving their ends. Oberon thought that its client was as close as possible to negotiating a good deal, after weeks of hard work. On the other hand, CEATI was not satisfied with Oberon's efforts to answer its questions.

[169] The Court finds, on the basis of all of the evidence, that, after many significant efforts, both parties felt pressure. In Oberon's case, the pressure was not to lose a good deal. In CEATI's case, it was to improve the deal.

[170] The Court does not agree with CEATI that the use of the word "final" by Oberon to describe an offer by Warren was an ultimatum. With all due respect, it is not unusual that this type of language is used in a difficult negotiation to create some movement on the other side.

[171] Elan Roiz may have felt "bulldozed" by Mr. Bailey. The Court understands that. On the other hand, it does not agree with the view expressed by CEATI that this manner of

conveying Warren's position is the equivalent of Oberon abandoning its client in the search of a deal "at all costs".

[172] Putting itself in the situation of the parties in September 2019, at the height of intense negotiations, the Court does not consider that Oberon was disloyal or was not fulfilling its obligations towards its client. Hanging up on one's client is not acceptable; however, the Court sees this behaviour as a regrettable but forgivable consequence of the rise of emotions at a tense moment.

[173] Finally, while it is not an essential factor in its ruling, the Court notes that CEATI never complained to Oberon about a failure to fulfill its obligations under the Agreement or any lack of loyalty or good faith.

[174] The evidence does not show a behaviour or a conduct on the part of Oberon in the performance of its obligations pursuant to the Agreement which would justify the application of the doctrine of "fin de non recevoir".

7. Damages and Fees

[175] There is an agreement between the parties that, should the Plaintiff's claim be granted in its entirety, the amount of the fee owed under the Agreement is USD $2,860,619, which was $3,608,385 CAD on February 19, 2021.

[176] Plaintiff claims reimbursement of all extrajudicial fees it incurred with interest and legal indemnity provided for article 1619 CCQ as of the date of the judgment.

[177] Article 5 of the Agreement reads as follows:

> (…) In addition, the Company agrees to pay for all costs, expenses, and legal fees, as incurred, associated with or arising out of Oberon's enforcement of any of the fee or expense provisions of this Agreement.

[178] The fees and disbursements of Oberon's lawyers from August 2021 to September 11, 2025, amount to $212,976.47[111]. They should be reimbursed.

WHEREFORE, THE COURT:

[179] **GRANTS** the Plaintiff's Application;

[180] **CONDEMNS** Defendant to pay to Plaintiff the amount of three million six hundred and eight thousand three hundred eighty-five dollars ($3,608,385) with interest at the legal rate and the legal indemnity provided for at article 1619 CCQ as of February 19, 2021;

[181] **CONDEMNS** Defendant to pay to Plaintiff the amount of two hundred twelve thousand nine hundred seventy-six dollars and forty-seven cents ($212,976.47) with

[111] P-28.

interest at the legal rate and the legal indemnity provided for at article 1619 CCQ. as of the date of the judgment;

[182] **WITH COSTS,** against Defendant.

_____

LOUIS LACOURSIÈRE, J.S.C.

Me Matthew Mc Laughlin
Ms. Juliette Oger-Chambonnet (stagiaire)
KRB Avocats inc.
For the Plaintiff

Me Eric Lalanne
Me Audrey-Ann Trudeau
De Grandpré Chait s.e.n.c.r.l.
For the Defendant

Date of hearing: September 8, 9, 10 and 11, 2025