CITATION: Ironstone Product Development Inc. et al. v. Virtual Possibilities Inc. et al., 2026 ONSC 2127
COURT FILE NO.: CV-20-00649511-0000
DATE: 20260413

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
IRONSTONE PRODUCT DEVELOPMENT INC. and 2751458 ONTARIO INC., Plaintiffs	*Jeffrey Larry, Alysha Shore, and Pooja Patel*, for the Plaintiffs
– and –	
VIRTUAL POSSIBILITIES INC. and MARINER ENDOSURGERY INC., Defendants	*Jordan Diacur*, for the Defendants
	HEARD: February 17, 18, 19, 20, 23, and 24, 2026

AKAZAKI J.

REASONS FOR JUDGMENT

OVERVIEW

[1] The March 11, 2020, the declaration of the COVID-19 pandemic disrupted supply chains and sparked a run on the market for many commodities. Canadian government procurement officers immediately went on the hunt for millions of specialized surgical gowns to protect hospital workers in intensive care units from infected aerosol droplets. On March 24, one such federal procurement officer, Jeffrey Smallwood, contacted Mitch Wilson, President of Virtual Possibilities Inc. ("VPI"). VPI was the marketing arm of Hamilton's Mariner Endosurgery Inc., the patentee of LaparoGuard, an auxiliary aid for keyhole surgery. Its business was not general medical supply. However, VPI had just found and delivered hand sanitizer for the feds. Could it now find 9.4 million gowns? And deliver by the end of May?

[2] VPI did fulfil the gowns order and made $76,646,000 in gross profit.[1] At the trial of this action, Ironstone Product Development Inc. and 2751458 Ontario Inc. ("IPD" and "275") claimed a 19.4% cut.

[3] Despite his corporate leadership of VPI, Mr. Wilson, a former schoolteacher and recent M.B.A. grad, was new to business. Excited but nervous about the opportunity, he turned to Joel Ironstone, president of IPD. Mr. Ironstone was an engineer and operated IPD as a regulatory affairs and quality assurance consultancy (known to industry participants as "RAQA"). He had worked with Mr. Wilson on the launch of VPI-Mariner's main product. They had already started investigating a collaboration to source personal protective equipment ("PPE") such as masks. On March 24, Mr. Wilson texted Mr. Ironstone: "Gown suppliers – shall we tackle this?" After that, they dropped everything for the gowns order and made up the plan as they went along. In Mr. Wilson's case, he had also recently become a new father. Between this and the pursuit of the gowns, he was up all hours.

[4] When Mr. Smallwood informed him that the order would be for 9.4 million gowns, Mr. Wilson initially hoped the contract would be for a brokerage role that could yield a few million dollars in commission. It turned out the contract was going to be for supply and delivery, from factory dock to the government depot in Ottawa, and all technical and regulatory verification in between. Out of the $123 million contract price for the gowns, the government would front $50 million as a deposit and allow a further $5 million for transportation costs.

[5] Once they digested the scale of the order, Messrs. Wilson and Ironstone talked about profit split. Mr. Ironstone originally proposed a 50/50 split. Mr. Wilson found that ratio divorced from the actual risk they were each taking on. They eventually settled on an 80.6/19.4 split, with the larger portion of the reward to flow to VPI. In hindsight, Mr. Ironstone had staked nothing beyond his and his employees' sweat labour and expertise, whereas Mr. Wilson's risk was that VPI could incur financial outlays and liability for the return of the deposits, if it could not deliver the product in quantity and on time. It turned out that much of VPI's risk was likely more perceived than real, but neither of them would have known that going in. Neither fully understood what needed to be done at that time.

[6] On the strength of reports that a factory in China called Jiangsu Guangda could supply the gowns meeting the specifications in sufficient quantities, Mr. Wilson informed Mr. Smallwood that VPI would agree to supply the gowns, including all logistics up to the Ottawa drop-off. At Mr. Ironstone's request, VPI entered the contract with the audit company, Eastbridge, for investigation and monitoring of the factory. On April 6, 2020, VPI signed back the supply agreement. On April 8, Mr. Ironstone advised Mr. Wilson that IPD's lawyer suggested a 1% up-front payment out of the deposit. Mr. Ironstone also sent Mr. Wilson a draft agreement prepared by the lawyer, with a yet-to-be incorporated numbered company to be VPI's counterpart. On April 9, 2020, Mr. Ironstone's lawyer

[1] From $148,553,000 in revenue from the government contract, less $71,907,000 in cost of the sale. The gross margin was 52%.

incorporated 275. As events unfolded further, VPI did not make the 1% advance payment or sign back the written agreement. Mr. Wilson faced opposition from his board of directors over Mr. Ironstone's cut of the profits and did not understand what he was committing to do to earn it.

[7] On April 9, the government deposited the $50 million to VPI's account. Later that day, Mr. Wilson discussed Mr. Ironstone's draft agreement with Rob Tyler, another member of VPI's board. This discussion prompted several email exchanges among Mr. Wilson and other members of the board. Excepting Mr. Wilson, the consensus emerged that the 80/20 split was too generous to Mr. Ironstone's company. Board members also expressed concern about the unexpected insertion of a shell company in place of IPD. Mr. Ironstone testified that this arose from the tax status of his wife, an American citizen. Mr. Wilson did not recall receiving this explanation. The board had several questions for Mr. Ironstone, which Mr. Wilson then conveyed to him. On April 10, 2020, Messrs. Wilson and Ironstone would have their last telephone call. Mr. Ironstone recalled that Mr. Wilson was very contrite and, at one point, offered to split his own portion of the VPI dividend with Mr. Ironstone. But, Mr. Wilson told him, the board had turned down the profit split.

[8] Although he did not respond to further calls from Mr. Ironstone, Mr. Wilson continued to advocate for keeping IPD involved. In an April 12 email to the board, he acknowledged the cut of profits promised to Mr. Ironstone was very high and accepted blame for having agreed to it as "an overreach." He also offered to waive his dividend as VPI/Mariner's largest shareholder, to make up for the loss to other shareholders.

[9] On April 13, 2020, David Chen, the contact in China co-ordinating with Guangda, informed Mr. Wilson that another factory had bought all the special fabric from Guangda's supplier for a higher price. Canada's 9.4 million gowns order, it turned out, was small potatoes compared to other countries' needs.

[10] With Guangda unable to fulfil the order, Mr. Wilson contacted Mr. Smallwood. Mr. Smallwood stated that, if VPI had not started to fulfill the order in 48 hours, he would put the contract back in a pool of other providers. Rob Tyler then connected Mr. Wilson to another consultant, Jane Qi. She had a source in China and was able to find an alternative supplier for the gowns, Jiangsu Sainty, although at $4.85 per gown, almost a dollar higher than the $3.90 VPI had negotiated with Guangda. VPI was able to fulfil the contract. It paid Ms. Qi a fixed fee for her services.

[11] In retrospect, VPI probably never needed IPD. In their minds, VPI's leadership blamed IPD for the debacle with Guangda, including the higher manufacturing cost of the gowns. Remorse on either point was not a legal excuse for breach of contract.

[12] On October 15, 2020, Mr. Ironstone's companies sued Mariner and VPI. They claimed expectation damages for breach of contract, quantum meruit, and/or unjust enrichment, in the amount of 19.4% of the gross profits, or $14,869,324. They alleged Mr. Ironstone and Mr. Wilson formed a binding contract to share the profits of the federal gown contract. The bargain entailed their combined efforts to "do what was necessary" to land the contract and

to fulfil its terms. By words and conduct, they had entered an agreement and had settled the essential terms of a service contract in which IPD or 275 would be compensated by a portion of the proceeds. VPI denied the claim. It also counterclaimed for the reduction in profits caused by the increased manufacturing costs.

[13] The evidence demonstrated that, after Mr. Wilson recruited Mr. Ironstone to collaborate on the procurement order, they came to terms on the share of net profits. The fact that they did not settle detailed terms beyond basic financial risk allocation reflected the venture into the unknown and the urgency to meet delivery targets starting in April and ending in May. It was not to be an open-term relationship requiring fine-hewn planning and task allocations of responsibility. The unsigned draft agreement did not demonstrate an agreement to agree, but rather the fact that nothing could be settled in advance beyond a simple bargain. The draft's only divergences from the bargain were Mr. Ironstone's request to operate through a new corporation and his insertion of gross profits instead of net. These points did not open an escape hatch for VPI. They were amendments to which VPI never agreed. I also find that Mr. Wilson had never stipulated that the bargain was conditional on his receipt of board approval. He may have honestly believed that he had said that to Mr. Ironstone, but the surrounding evidence contradicted that belief.

[14] In granting judgment in favour of IPD against VPI, I have organized and considered the issues in terms of three questions:

1. Was there a binding agreement that VPI breached?
2. Who were the parties to the agreement?
3. What damages flowed from the breach?

1. WAS THERE A BINDING AGREEMENT THAT VPI BREACHED?

[15] The law of contract engaged by the facts of this case require the court to determine whether the promises Mr. Wilson and Mr. Ironstone made to each other to collaborate and share the profits meet the criteria of a binding agreement. If the court finds such an agreement, VPI would have breached it by excluding Mr. Ironstone's further involvement in the gowns order and in the resulting profits.

[16] The courts' obligation to enforce parties' promises comes to Canadian contract law from the English common law. No system of private law enforces *all* promises. The common law of contracts is no exception. Enforcement requires promises to come within judicially established criteria signifying mutual intent to be governed by them and to expect the counterparty to rely on them. In this instance, the promises formed a commercial bargain, in that the agreement on a profit share formula arose from promises to contribute expertise and work toward the fulfilment of the gowns order. See S. M. Waddams, *The Law of Contracts, 8th Ed.* (Toronto: Thomson Reuters, 2022), at para. 119, and *Aluma Systems*

Inc., v. Resolute FP Canada Inc., 2019 ONSC 6293, at paras. 90-92, aff'd 202 ONCA 792 (C.A.).

[17] Mr. Wilson's text inviting Mr. Ironstone to help the procurement of surgical gowns, followed by further text exchanges between them confirming their agreement on the profit share in proportion with their undertakings and risks, constituted a meeting of minds for proceeding with the endeavour, on all points requiring agreement based on the state of knowledge. The promised undertakings and assumption of risks more than adequately consistituted consideration to bind the parties: *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, [2016] 1 SCR 851, at para. 40; *Fraser v. U-Need-A-Cab Ltd*. (1985), 50 O.R. (2d) 281 (C.A.), at page 282; and *Sojka v. Sojka*, 2023 BCCA 446, at paras. 15-27. Mr. Ironstone's mobilization of IPD's employees to help identify the Chinese intermediary and the transnational auditor, both accepted by Mr. Wilson to start the order process, sufficed to establish the reliance element of Mr. Ironstone's consideration for entering the contract.

[18] Once the court finds the parties agreed to all essential terms of a bargain, however rudimentary, the free market expects the court to enforce it as a contract if one party has relied on it and the other has breached its terms. Absent incapacity, coercion, fraud, or other privation of the freedom to contract, the court has no authority to refuse enforcement because of retrospective improvidence or doubt about the value of the bargain.

[19] Mr. Wilson hinted in his evidence that Mr. Ironstone took advantage of their divergent business experience. VPI also submitted that IPD ultimately brought nothing of value to the completed gowns order. Whatever the logic of these largely *ex-post* arguments, the court cannot impose its evaluation upon the relationship the parties freely entered: *AXA Insurance (Canada) v. Ani-Wall Concrete Forming Inc*., 2008 ONCA 563, 91 O.R. (3d) 481, at para. 30. The court cannot reorganize the parties' relations based on perceived "good business sense": *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 30 and 114-119.

[20] There was no executed written agreement. Indeed, the defendants submitted that the unsigned draft agreement was proof that the agreement to collaborate and share profits was no more than an "agreement to agree." An agreement to agree remains unenforceable until parties manifest agreement to be governed by all the essential provisions: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd*. (1991), 79 D.L.R. (4th) 97 (Ont. C.A.), at p. 104. Such a contingent agreement differs from an oral agreement that the parties later attempt to memorialize in writing, to avoid future misunderstanding. The importance of the formal document depends on the nature of the relationship. If the written terms can be regarded as formalities with additional provisions impliedly agreed, the absence of a signed agreement does not negate the existence of an enforceable oral agreement. However, if the details of the document are necessary to regulate the parties' business relationship, such as a Kernels Popcorn franchise in Hamilton's Jackson Square mall, there can be no meeting of the minds to form a binding contract: *Ibid.*, at p. 106.

[21] The plaintiffs' case theory consisted of a narrative of contract formation starting on March 24, 2020. On that date, Mr. Wilson recruited Mr. Ironstone for help on the gowns order. They then agreed to collaborate and to do what was necessary to secure and fulfil the gowns order. VPI would enter any third-party contracts for the manufacture and shipment of the gowns and the inspection of the facility. Once the government deposit came in, it was safe to assume that VPI would continue to incur the financial risk as the holder of the up-front payment. Mr. Wilson originally envisaged a brokerage arrangement. Once the nature and extent of the federal procurement order became evident, Mr. Ironstone steered Mr. Wilson toward a 50/50 split of profits. Mr. Wilson acquiesced to the concept but thought the equal split did not reflect the fact that his company was taking on all the financial risk. There was no dispute that, on April 2, 2020, they arrived at the 80.6/19.4 split. The SMS text messages from that date even contained Mr. Wilson's algebraic formula for the split:

> **Wilson:** 5x + 1.2x = net profit, where 5x is Mariner and IPD is 1.2x and x is the proceeds to each of us as individuals.
>
> **Ironstone:** I'm ok with above if mariner takes the financing and insurance risk etc.
>
> **Wilson:** Yes I think it's a great split. You and I get paid, our employees get a great bonus and I keep my relentless shareholders happy and the right PPE goes to our healthcare frontlines

[22] At trial, these witnesses correlated the text messages and voice calls logged in both their mobile phone service records. Their accounts of the subject matter of these discussions were mostly *ad idem*. The evidence diverged on two points: Mr. Wilson's need for board approval and Mr. Ironstone's rationale for the new company as VPI's counterparty.

[23] Mr. Wilson testified that he mentioned to Mr. Ironstone that he would need board approval for the profit share arrangement. He also testified that Mr. Ironstone should have known that board approval was necessary, because of VPI's refusal, at the time of developing LaparoGuard to take on debt to obtain a Scientific Research and Experimental Development ("SHRED") tax credit. Mr. Wilson endured lengthy cross-examination whether he told Mr. Ironstone that the investors had balked at the idea, or whether it had been the board. Mr. Wilson could have used those labels interchangeably. Nothing turned on the nomenclature. I very much got the sense that, in Mr. Wilson's mind, the two groups overlapped enough to be identical, for corporate governance purposes.

[24] Mr. Ironstone testified that he did not recall Mr. Wilson placing such a caveat on their agreement.

[25] For the purposes of contract formation, it did not matter whether Mr. Ironstone remembered hearing Mr. Wilson impose the condition of board approval. If Mr. Wilson stated the condition, that would have made the agreement subject to VPI board approval. Mr. Ironstone's lack of recollection was evidence of the non-communication of the caveat but

was not conclusive. Because the limitation of authority would have been an essential term, no contract for Mr. Ironstone's compensation could have been agreed until Mr. Wilson confirmed board approval. Moreover, the express limitation of authority would have overridden any apparent authority based on the nature of the transaction: *Jensen v. El Rancho Trailer (South Trail Mobile Ltd.)* (1972), 28 D.L.R. (3d) 233, at pp. 235-236; *Westcom TV Group Ltd. v. CanWest Global Broadcasting Inc*. (1996), 27 B.C.L.R. (3d) 291 (S.C.), at para. 7.

[26] Between these witnesses, Mr. Wilson likely tipped the scale as being more credible than Mr. Ironstone. This did not mean I was bound to accept Mr. Wilson's recollection on every point. Both sides of the lawsuit acknowledged that April 2020 was a tumultuous time, for the world and for these individuals. Mr. Wilson agreed he operated with little sleep, both because of the demands of the gowns order and because was a new father. Memory does not operate like a filing cabinet. Like most brain activity, recall is largely logical. It was possible for Mr. Wilson to have formed an honest present recollection of having expressed his limitation of authority without having communicated it to Mr. Ironstone. There were three grounds for disbelieving Mr. Wilson's recollection.

[27] First, Mr. Wilson came across as a very conscientious professional. His speech and writing tended to be punctuated by personal affirmations. The text exchange reproduced above was an example. Had he mentioned to Mr. Ironstone that he needed board approval before entering an agreement in which VPI would carve away a portion of profits, there would have likely been a written affirmation of the point in any of the message exchanges. There was none.

[28] Second, in the April 12 email after the VPI board objected to Mr. Ironstone's split, Mr. Wilson told his board that he bound VPI to the profit split, without obtaining board approval:

> A major sticking point is determining compensation for parties involved, particularly Ironstone. While it's definitely opportunistic and a rich fee proposed by Ironstone, I too was being equally opportunistic when I wrangled this contract and brought it to the Board's attention. And while a ~20% cut of profits as proposed by Ironstone is very high, *it also rests entirely on my own responsibility for agreeing to it, without confirming with the Board first.* This was an overreach of my abilities as Mariner's President. The same speed I recognized as a crucial advantage to get the gown contract in place was a disadvantage when I tried to lock down the rest of the supply chain with Ironstone's help. I accept that the Board may desire to formally reprimand me on this matter, and I'll understand.
>
> [emphasis added]

[29] Third, in the same email report to the board, Mr. Wilson offered a waiver of his annual dividend or capital allotment, to boost the profit shares of the other shareholders. This level of generosity would effectively have made him the sole loser from the entire deal, even

though he was the originator of the opportunity and the one working the hardest to land the plane load of gowns in Ottawa. This documented contrition and strange generosity would have been completely out of place, if he were able to tell the board not to worry, because he had told Mr. Ironstone about his limited authority.

[30] The evidence of VPI's refusal to take on a loan to obtain a SHRED tax credit did not persuade me that Mr. Ironstone ought to have known Mr. Wilson needed approval for a collaboration contract on the gowns order. Taking on additional debt load and the fulfilment of a supply contract are very different corporate acts. Mariner's internal "Limits of Authority Policy", to which Mr. Wilson referred as part of the corporate minute book, made borrowing a board decision. Payments over $5,000 required approval of one of the officers, of which Mr. Wilson was one. There was no specific requirement to obtain board approval of a profit-share agreement. A similar policy document for VPI did not appear in evidence, but I took Mr. Wilson's evidence to mean he felt governed by the Mariner policy for his operational role in both entities.

[31] This allocation of authority between the board and the officers was typical of most businesses. A board of directors' primary role in a company is to manage risk, whereas the officers' role is to execute tasks and transactions. Despite Mr. Wilson's stated fear that the government could sue VPI for damages if VPI failed to complete the order, the most likely downside beyond the return of the $50 million deposit would have been the unrecoverable payments to the inspectors and intermediaries of a few tens of thousands of dollars. All things considered, the scale of the order might have blurred the fact that all executive projects and transactions involve some risk of upfront costs.

[32] It was reasonable for Mr. Ironstone to assume that Mr. Wilson either had the authority to enter the profit share agreement or did not need it. In the urgency of the moment, both parties could rely on the indoor management rule, as codified in the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, s. 19. See also: *Froom v. Lafontaine*, 2023 ONCA 519, 168 O.R. (3d) 102, at para. 46. One must also remember that it was Mr. Wilson who reached out to Mr. Ironstone for the collaboration. Mr. Ironstone had the right to assume either that this recruitment was part of Mr. Wilson's ordinary authority, or that Mr. Wilson was acting reasonably in step with his board's approval or expectations. It would have been easy for Mr. Wilson to have punched out a text advising Mr. Ironstone of any limitation on his authority. He never did so.

[33] Mr. Wilson also had ample opportunity to slow down Mr. Ironstone's expectations. Instead, he kept Mr. Ironstone going, by working out details of their collaboration while the two of them worked on the deal. On April 8, 2020, Mr. Ironstone informed Mr. Wilson that his lawyer was working on a written agreement and required VPI's full corporate name. Mr. Wilson responded by spelling out the name. A few minutes later, Mr. Ironstone stated that his lawyer would like a "small amount up front or held in trust." Mr. Wilson stated, "That's fine. It'll have to come from the deposit." When Mr. Ironstone proposed 1%, Mr. Wilson responded, "Yes, that's fine. When you guys are ready send bank details." All these interactions signalled Mr. Wilson's authority to enter and execute the agreement.

[34] The unsigned—indeed, incomplete—draft agreement also demonstrated that all the essential points of the agreement had already been settled. Stripped of legal boilerplate, the substance was not much more than could fit the back of an envelope. The defendants pointed out that it disclosed no real downside risk on Mr. Ironstone's part beyond his mobilization of IPD staff time. The VPI board criticized the draft agreement, because it did not allocate to Mr. Ironstone's company any specific tasks or roles. The board members felt justified in asking these questions. Mr. Wilson, having been taken down a notch or two, abided by the board's insistence that the agreement spell out what Mr. Ironstone had to bring to the enterprise. Both men knew, however, that they were in uncharted territory, both for themselves and for most commercial enterprises entering the COVID-19 procurement stream for emergency resources.

[35] Even the proposed insertion of a newly formed company did not necessarily mean that IPD was not a contracting party. The defendants insinuated that the purpose of that eleventh-hour switch was Mr. Ironstone's attempt to insulate himself from having to pay out employee bonuses if the profits were diverted to a shell company. Mr. Ironstone testified that he intended to pay IPD a management fee of 20%, from which the employees would receive a 20% profit share. Mr. Ironstone did involve some of his staff in the project. Had he cut his IPD employees out of the profits, he likely would have no staff left to operate the company. Even if Mr. Ironstone had attempted to avoid having to pay large employee bonuses, the point would have been immaterial to the formation of a contract between VPI and IPD.

[36] The plaintiffs countered the attack on Mr. Ironstone's credibility and business ethics by inviting the court to construe the VPI board's attempts to rein in Mr. Wilson's dealings with Mr. Ironstone as seizing on the production of the draft agreement to renege on the profit-sharing deal and to cut Mr. Ironstone out. A party claiming damages for breach of contract need not prove such intention. I did not construe the board's questions as encouraging Mr. Wilson to cut Mr. Ironstone out. There was room to criticize the board for requiring Mr. Ironstone to fill in details regarding his role in the overall effort, because the two protagonists knew they were finding out those details as they went along. However, I do not construe the technocratic interrogatories of the leadership of a medical devices company as bad faith. Indeed, after Mr. Wilson left the questions with Mr. Ironstone, one was left with the impression that the board could either approve the deal or try to reopen the negotiations to get Mr. Ironstone to accept a lower percentage.

[37] Beyond this point, what led to the radio silence was the shock of Guangda's news that the textile supply had been bought up by another manufacturer. There was no evidence or means to verify this event, beyond the fact that Guangda lost the opportunity to sell the gowns to Canada. In the litigation, VPI blamed Mr. Ironstone for the event and counterclaimed damages for the opportunity cost represented by the higher manufacturer's price per gown. This position was obliquely inconsistent with VPI's defence, that Guangda's sourcing by a contact obtained by an employee of IPD was more of a find than a product of labour or expertise. Rule 25.06(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, tolerates these narratives. I draw no inference from the inconsistency, beyond observing that corporate behaviour need not be rational or consistent. Mr. Ironstone

did not promise that Guangda could deliver. Had he remained inside the knowledge circle, he and Mr. Wilson would have had the task of finding a replacement factory within the same 48-hour constraint.

[38] The agreement between Mr. Ironstone and Mr. Wilson to collaborate in the gowns order and to share the profits between their respective companies constituted a binding agreement. It was not purely an oral agreement. Some of it was in writing, because the texts captured the essential terms. The fact that there were only two points of agreement—to collaborate and to share profits—did not imply the agreement was incomplete. Neither side knew even in rough terms what their labours would entail. A government contract to supply millions of scarce medical supplies in about a month's time, during the Covid-19 lockdown, had no blueprint. Unlike the financial minutiae of a long-term franchise agreement for a popcorn store, our collaborators in the gowns deal had no time to spare on the details but all the luxury of a huge margin of error to make substantial profit. If collaboration and a division of the spoils were the two points of agreement, that was all they needed in the circumstances to have a binding contract.

2. WHO WERE THE PARTIES TO THE AGREEMENT?

[39] The subject of the Ironstone entity in the formal contract emerged after Mr. Ironstone forwarded a copy of his lawyer's draft agreement. Because of Mr. Wilson's April 8 advice, VPI's full corporate name appeared already.

[40] Where parties are organizing business arrangements, lack of agreement about the identity of the contracting parties would not be fatal to the agreement, if their identity is not particularly essential: *Marble & Granite Imports Ltd. (Plutonic Marble & Granite) v. Jahanroshan*, 2012 ABQB 706, at para. 27.

[41] The documentary evidence and that of Mr. Wilson demonstrated that he only intended to do business with IPD. There was no evidence that Mr. Ironstone ever communicated the name of the 275 entity to Mr. Wilson. In the unusually curtailed timeline of events, there was no opportunity for the identity of Mr. Ironstone's company, as the counterparty to VPI, to become a material point in completing the formalities of the agreement. As of April 9, 2020, I would construe the blank space in the draft agreement and the incorporation of 275 to have been at most Mr. Ironstone's attempt to change the agreement they had already reached. Accordingly, I find that IPD was VPI's counterparty. The action by 275 therefore must be dismissed. Similarly, the claim against Mariner must also be dismissed. Unless cause be shown in the costs submissions of the parties, 275's action and the action against Mariner must be dismissed without costs.

3. WHAT DAMAGES FLOWED FROM THE BREACH?

[42] The two essential terms of the contract were that VPI and IPD would collaborate to fulfil the gowns order and to split the profits 80.6/19.4. VPI breached the agreement to share the profit by refusing to pay IPD its 19.4%. The only point of divergence on the value of this share was whether the profits should be calculated as gross or net. The word "net" appeared in Mr. Wilson's text message of April 2, to which Mr. Ironstone agreed. The fact that the word "gross" appeared in the draft agreement prepared by Mr. Ironstone's lawyer was of no moment. Just as the absence of a text on the board authority issue was evidence against Mr. Wilson's version of events, his text stating the percentage of "net" profits was evidence of both his and Mr. Ironstone's understanding of the bargain.

[43] Both witnesses and counsel accepted that the main difference between the two profit concepts was that gross was before tax and net was after tax. I am not sure that was altogether correct, but that was the evidence of the parties' understanding. Accepting this as the difference, counsel agreed during closing submissions that the distinction would have made no difference to VPI but would have resulted in a significantly lower recovery for IPD. This differential is of no concern to the court. Having agreed to an allocation of net profits, IPD is bound by that formula.

[44] The internal records of VPI showed net profits for the combined hand sanitizer and gowns contracts as $53,225,000. There is no precise way of separating the two deals, beyond the fact that the sanitizer contract yielded gross profits of $672,000 at a 68% ratio and did not cause the 52% overall gross margin to budge a single percentage. I therefore calculate the net profits for the sanitizer at $494,163, leading to a net profit for the gowns at $52,730,837. 19.4% of that figure is $10,229,782.

CONCLUSION AND COSTS

[45] IPD is therefore entitled to damages payable by VPI in the amount of $10,229,782. Prejudgment interest shall run from the date of breach. Because VPI was prepaid a large portion of the revenue, there is no ready method of calculating the prejudgment interest. I will leave it to counsel to settle an amount, for the purpose of the formal order, before inviting submissions on the appropriate calculation.

[46] At the conclusion of the trial, I thanked counsel for both sides for their advocacy and case preparation. I encourage the parties to settle the costs of the action and expect their counsel to lead their clients to an appropriate number. If required, counsel for the plaintiffs may submit an updated bill of costs and make submissions of no more than three pages, within 20 days hereof. Defence counsel may make responding submissions, with the same page restriction, within 14 days thereafter.

Akazaki J.

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