IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yen v. Ghahramani,*
2025 BCSC 1778

Date: 20250915
Docket: S220213
Registry: Vancouver

Between:

Vincent Yen and 0756383 BC Ltd.

Plaintiffs

And

Frederick Ghahramani, 0751846 BC Ltd.,
airG Employee Share Ownership Plan Ltd., and airG Inc.

Defendants

And

Vincent Yen, Canfleet Logistics Ltd., StudyPug Inc.,
StudyPug Holding Inc., StudyPug USA Inc., StudyPug Holding (HK) Limited,
StudyPug (HK) Limited, Manitoulin Global Forwarding Inc.,
airG Services Inc., and Tai Management Ltd.

Defendants
by Counterclaim

Before: The Honourable Justice Basran

Reasons for Judgment

Counsel for the Plaintiffs and the Defendants by Counterclaim:	S. Warnett B.J. Cabott P. Burnham
Counsel for Frederick Ghahramani and 0751846 BC Ltd.:	J.D. Shields
Counsel for airG Inc.:	G.R. Cameron K.F. Milinazzo P. Mueller

No other appearances

Place and Dates of Trial:	Vancouver, B.C. September 3–6, 9–13 16–20, 23–27 October 7–11, 15–18, 21–25, 28 November 5–8, 12, 18–22, 2024
Place and Date of Judgment:	Vancouver, B.C. September 15, 2025

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Introduction

[1] In 2000, three engineering students at Simon Fraser University—Vincent Yen, Frederick Ghahramani, and Bryce Pasechnik—co-founded a business that eventually became airG Inc. ("airG"), a successful software company which specializes in content development for mobile phone applications.

[2] Mr. Pasechnik left airG in August 2004 and his shares were bought out by Mr. Yen and Mr. Ghahramani, equally.

[3] From August 1, 2004 to March 9, 2021, Mr. Yen and Mr. Ghahramani were the only directors of airG.

[4] Until February 2021, they collectively owned and controlled 88.74% of airG's common shares, which were divided equally between them. The remainder of the common shares were owned by angel investors and Rajesh Bhangu, the Vice President of Business Development of airG, who began working at airG in 2002.

[5] On four occasions between October 2011 and January 2020, Mr. Yen and Mr. Ghahramani, through companies they controlled, bought back an equal number of shares from the angel investors.

[6] In February 2021 Mr. Ghahramani, without involving Mr. Yen, entered into a share purchase agreement with two angel investors. This agreement provided Mr. Ghahramani with voting control of their shares. For the first time, Mr. Ghahramani and Mr. Yen controlled an unequal number of airG's shares.

[7] At a special shareholder meeting on March 9, 2021, Mr. Ghahramani used the additional voting control to remove Mr. Yen as a director of airG. Mr. Bhangu subsequently replaced Mr. Yen as a director.

[8] Based, in part, on an agreement that Mr. Yen and Mr. Ghahramani signed in 2015, Mr. Yen asserts that his reasonable expectations were breached when he was removed as a director of airG and was no longer paid a salary, in accordance with the agreement. Mr. Yen further asserts that, based on a verbal agreement and past

conduct, he and Mr. Ghahramani had an understanding that they were partners, and that they would equally participate in all share buybacks from the angel investors.

[9] Based on the purported breaches of his reasonable expectations, Mr. Yen seeks a remedy under both s. 214(1)(b) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 [*CBCA*], which would require this court to find that it is just and equitable to dissolve airG, and s. 241 of the *CBCA*, which would require this court to find that Mr. Ghahramani's actions were oppressive.

[10] Mr. Yen claims that a shotgun sale of Mr. Yen's and Mr. Ghahramani's respective shares is the most appropriate remedy in this case, and that Mr. Ghahramani should be ordered to make the first offer.

[11] Mr. Ghahramani disputes Mr. Yen's assertions and filed a counterclaim. Mr. Ghahramani asserts that it was Mr. Yen, not him, who breached the 2015 written agreement by misappropriating airG's resources to build StudyPug, an allegedly competing business of airG.

[12] airG also filed counterclaims against Mr. Yen, his holding company (0756383 BC Ltd.), and StudyPug. airG alleges, among other things, that StudyPug is a competing business, and that Mr. Yen used airG's property and resources for the benefit of StudyPug. airG further alleges that through this conduct, Mr. Yen breached the fiduciary duty that he owed to airG by virtue of being its director. airG also asserts that Mr. Yen used airG Services Inc. ("ASI"), a company that Mr. Yen owned and controlled, to improperly bill airG for personal expenses.

[13] For the reasons that follow, I dismiss all of Mr. Yen's claims.

[14] I find that Mr. Yen and Mr. Ghahramani were not partners. I also find that there was no agreement between them that all share buybacks would be done equally. At different times, each of them contemplated seeking support from the angel investors to oust the other and, ultimately, Mr. Ghahramani succeeded in doing so.

[15] Mr. Yen's removal as a director was not oppressive, nor did it violate his reasonable expectations. This is because Mr. Yen could not have reasonably expected that he would remain either a director, or an employee, of airG forever. Mr. Ghahramani did not oppress Mr. Yen; he legally outmanoeuvred him.

[16] The counterclaims in regard to Mr. Yen's work for StudyPug are also dismissed. I find that StudyPug was not a competitor of airG because their respective products and clients were different. However, StudyPug was unjustly enriched and is liable to pay airG $58,335 in respect of office equipment and the cost of renting office space from 2014 to 2017.

[17] airG's counterclaim in regard to Mr. Yen charging his personal expenses to airG is partially successful. I am satisfied that after Mr. Yen left the operational management of airG in 2012, he continued to improperly charge a range of personal and other expenses to airG through ASI.

[18] That being said, a portion of these expenses are barred by the statute of limitations. I, therefore, find that only expenses charged to airG after March 7, 2019 are actionable and, consequently, that airG is entitled to damages in the amount of $82,871 in respect of these improperly claimed expenses.

The Primary Parties

[19] The plaintiff, Mr. Yen, is a British Columbia based businessperson.

[20] The plaintiff, 0756383 BC Ltd. ("Yen Co."), is Mr. Yen's holding company. Yen Co. is incorporated under the laws of British Columbia and is subject to the *Business Corporation Act*, S.B.C. 2002, c. 57 [*BCA*]. Mr. Yen is the sole director and the directing mind of Yen Co.

[21] Yen Co.'s shareholders consist of Mr. Yen and the "Yen Family Trust No.1". Mr. Yen and his mother are the trustees of the Yen Family Trust No. 1. Mr. Yen is not a beneficiary of this trust.

[22] At the time of trial, Yen Co. owned 44.37% of the common shares of airG.

[23] The defendant, airG, is a corporation continued under the laws of Canada and is subject to the *CBCA*.

[24] The defendant, Mr. Ghahramani is a British Columbia based businessperson.

[25] The defendant, 0751846 BC Ltd. (“Ghahramani Co.”), is Mr. Ghahramani’s holding company. Ghahramani Co. is incorporated under the laws of British Columbia and is subject to the *BCA*. Mr. Ghahramani is the sole director and the directing mind of Ghahramani Co.

[26] Ghahramani Co.’s shareholders consist of Mr. Ghahramani and the “Ghahramani Family Trust No. 1”. Mr. Ghahramani and his father are the trustees of the Ghahramani Family Trust No. 1. Mr. Ghahramani is not a beneficiary of this trust.

[27] At the time of trial, Ghahramani Co. owned 48.58% and effectively controlled an additional 2.56% of the outstanding common shares of airG.

[28] The defendant, airG Employee Share Ownership Plan Ltd., is a company incorporated under the laws of British Columbia. This party did not participate in the proceedings.

[29] The defendant by counterclaim, ASI, is incorporated under the laws of British Columbia. Mr. Yen is the sole director and officer, as well as the directing mind, of ASI.

[30] airG Client Services Inc. (“ACSI”) is incorporated under the laws of British Columbia. Mr. Ghahramani is the sole director and officer, as well as the directing mind, of ACSI. ACSI is not a party to these proceedings but is involved in the matters before the court.

[31] Mr. Yen and Mr. Ghahramani characterize ASI and ACSI as their “sidecar companies”. These companies charged expenses to airG with a 15% markup. This facilitated additional remuneration for Mr. Yen and Mr. Ghahramani unbeknownst to airG and its other shareholders.

[32] The defendants by counterclaim, StudyPug Inc. and StudyPug Holding Inc., are incorporated under the laws of Canada. The defendant by counterclaim, StudyPug USA Inc., is incorporated pursuant to the laws of Nevada.

[33] Mr. Yen is a director of StudyPug Inc., StudyPug Holding Inc., and StudyPug USA Inc., which I will refer to collectively as "StudyPug".

[34] The defendants by counterclaim, Canfleet Logistics Ltd. ("Canfleet"), Manitoulin Global Forwarding Inc. ("Manitoulin"), and Tai Management Ltd. ("Tai Management"), are companies in which airG alleges Mr. Yen was involved. The claims related to these parties were abandoned at trial.

Facts

airG's Formation, Governance, and Shareholders

[35] Mr. Yen and Mr. Ghahramani met and became friends while studying engineering at Simon Fraser University in the late 1990s.

[36] After working together on a class project, they sought to commercialize the car alarm they had developed. For this purpose, in 1999, they registered a formal partnership called Smart Sense Innovations.

[37] In 2000, Mr. Yen and Mr. Ghahramani created a demo link with a number of mobile games they had developed. They presented this demo link to Telus, which inadvertently launched it to all of their customers. Virtually overnight, Mr. Yen and Mr. Ghahramani's mobile games site went from zero to 50,000 clicks per day.

[38] After the Telus launch, Bryce Pasechnik, a classmate of Mr. Yen and Mr. Ghahramani became involved in the business. Together, the three of them signed an agreement with Telus via a company previously incorporated by Mr. Pasechnik named Left Field Systems. Left Field Systems became what is now known as airG.

[39] In 2000, airG was incorporated in British Columbia under the *BCA*. Mr. Yen and Mr. Ghahramani joined Mr. Pasechnik as directors on November 27, 2001.

[40] In 2002, airG was continued under s. 187 of the *CBCA*. Upon continuation, Mr. Yen, Mr. Ghahramani, and Mr. Pasechnik each held an equal number of shares in airG. Mr. Ghahramani was appointed the President and Managing Director of airG. Mr. Pasechnik was appointed the secretary. Mr. Yen was not appointed as an officer.

[41] Beginning in 2002, and as of the date of trial, airG's bylaws:

1) Provide that directors are elected and removed by a majority vote of airG's shareholders;

2) Permit the removal of a director at a Special General Meeting;

3) Allow for shareholders to vote via a proxy; and

4) Do not limit the number of directors.

[42] airG's Bylaws provide that "the shareholders of the Corporation may, by ordinary resolution passed at a special meeting of shareholders, remove any director or directors from office and a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed".

[43] airG's constating documents do not provide that Mr. Yen, or anyone else, has the perpetual right to remain a director of airG. Nor do they require Mr. Ghahramani, or any other shareholder, to vote that Mr. Yen be made, or retained as, a director.

[44] The articles of airG provide that a shareholder may not sell, transfer, or otherwise, dispose of their shares in airG without the prior approval of the Board of Directors as expressed by a resolution of the Board of Directors.

[45] Mr. Ghahramani has remained airG's President and Managing Director from his appointment in 2002 until the present day. In this capacity, he also serves as the Chair of the Board. airG's bylaws provide that the Chair has a second tie-breaking vote in the event of a tie at a director's meeting, but neither Mr. Yen nor Mr. Ghahramani were aware of this provision until around 2021.

[46] While Mr. Yen, Mr. Ghahramani, and Mr. Pasechnik were given an equal number of shares in airG upon its continuation, over time, the relationship between the three deteriorated. On August 1, 2004, Mr. Pasechnik ceased being a director and officer of airG and has had no further involvement in airG's operations.

[47] On July 1, 2005, Mr. Pasechnik entered into an agreement to sell his airG shares to 726679 BC Ltd. (later, Bassyria Investments Ltd.). Mr. Ghahramani was the controlling mind of 726679 BC Ltd. Unbeknownst to Mr. Pasechnik, Mr. Yen and Mr. Ghahramani agreed to split the cost, proceeds, and benefits of this deal evenly on a 50-50 basis.

[48] From Mr. Pasechnik's departure in 2004 until Mr. Yen's removal in 2021, Mr. Yen and Mr. Ghahramani were the only directors of airG. During this time, Mr. Yen and Mr. Ghahramani, or companies they controlled, equally owned approximately 89% of the common shares of airG. Accordingly, airG's employees understood that airG was owned and operated by Mr. Yen and Mr. Ghahramani.

[49] Between 2000 and 2009, Mr. Yen and Mr. Ghahramani participated in the business of airG on a full-time basis. They ran the business informally and did not have regular directors' or shareholders' meetings. For example, between 2006 and 2021, neither of them called a formal directors' meeting.

[50] In October 2011, May 2014, January 2016, and February 2020, Mr. Yen and Mr. Ghahramani—or companies associated with Mr. Yen and Mr. Ghahramani—purchased shares from the angel investors. On each of these occasions, they purchased precisely equal amounts of shares. Mr. Yen and Mr. Ghahramani referred to each of these purchases as "share buybacks".

[51] The share buybacks were funded by Mr. Yen and Mr. Ghahramani personally or through their respective holding companies, not by airG. The shares went to their respective holding companies. As a result, prior to February 2021, Mr. Yen and Mr. Ghahramani beneficially owned and controlled an equal number of airG shares.

[52] On February 12, 2021, Mr. Ghahramani purchased the voting rights to airG shares held by two angel investors. For the first time, Mr. Yen and Mr. Ghahramani owned differing interests in airG.

The Yen-Ghahramani Agreements

[53] In 2009, 2012, and 2015, Mr. Yen and Mr. Ghahramani signed agreements regarding their ownership of and compensation from airG. Lum Chan, airG's Vice President of Finance, was provided with a redacted version of the 2015 Agreement but otherwise, these agreements were not provided or disclosed to any employee, shareholder, or other stakeholder of airG, including its corporate counsel.

The 2009 Agreement

[54] By December 2009, Mr. Yen and Mr. Ghahramani's relationship soured. Mr. Ghahramani decided to take a sabbatical from airG and left its day-to-day operations to Mr. Yen.

[55] On December 22, 2009, prior to Mr. Ghahramani leaving on his sabbatical, Mr. Yen and Mr. Ghahramani executed a document entitled "Side Letter Agreement between Frederick Ghahramani and Vincent Yen" (the "2009 Agreement").

[56] The 2009 Agreement was addressed to their wives and summarized the verbal agreements made by Mr. Yen and Mr. Ghahramani. The purpose of the 2009 Agreement was to bind their estates in the event that one of them passed away or became incapacitated.

[57] A section of the 2009 Agreement dealt with the purchase of Mr. Pasechnik's airG shares. The 2009 Agreement stipulated that, notwithstanding Mr. Pasechnik's desire to sell his shares solely to Mr. Ghahramani, Mr. Yen and Mr. Ghahramani agreed that they would purchase, own, and economically benefit from Mr. Pasechnik's shares equally on a 50-50 basis.

[58] Similarly, the 2009 Agreement affirmed that any funds arising from three "international tax reduction structures" would be owned 50-50 by Mr. Yen and Mr. Ghahramani.

The 2012 Agreement

[59] In June 2012, Mr. Ghahramani returned from his sabbatical and took over operational and strategic control of airG. The parties agreed that they could not work together, so Mr. Yen stepped away from airG's day-to-day functions.

[60] On June 15, 2012, Mr. Yen and Mr. Ghahramani executed a letter entitled "Continued Partnership Understanding – Vince & Fred" that confirmed their understanding regarding their "continued business partnership" (the "2012 Agreement"). This document is mistakenly dated June 15, 2011, but all parties agree that the 2012 Agreement was made on June 15, 2012.

[61] In the 2012 Agreement, the parties agreed that Mr. Yen and Mr. Ghahramani:

1) would each receive annual salaries of $250,000;
2) could expense $4,000 per month on their American Express cards;
3) would equally split all direct and indirect profits from airG 50%-50%;
4) would both remain employees of airG unless they formally resigned, agreed to terminate their compensation, and resigned from the Board of Directors;
5) would not engage in, be employed by, perform services for, participate in the ownership, management, control or operation of, or otherwise be connected with, a competing business during their employment or for one year after their termination;
6) would continue to refer to one another as partners;
7) stated that "in the spirit of partnership, they will both strive to maximize the revenues, enterprise value, and profits of airG"; and
8) stated that "in the spirit of partnership, on a go-forward basis, they will attempt to make their best efforts to put aside all personal and professional 'baggage' and just move on in an effort to aggressively generate the most amount of money possible from the airG undertaking."

The 2015 Agreement

[62] By August 2015, Mr. Ghahramani had been running airG's day-to-day operations for over three years without Mr. Yen's involvement. Mr. Ghahramani believed that the company's profitability was owing to his efforts, and he perceived that Mr. Yen's time away had been longer than his own sabbatical. Accordingly, he sought to renegotiate the terms of the 2012 Agreement.

[63] Mr. Yen and Mr. Ghahramani executed a document entitled "Ongoing Business Partnership Agreement" dated August 16, 2015 (the "2015 Agreement"). This 2015 Agreement:

1) reduced Mr. Yen's annual salary to $100,000 and increased Mr. Ghahramani's annual salary to $500,000;

2) permitted each party to submit $24,000 per annum in personal expenses on their American Express cards, to be paid by airG;

3) required each party to record their personal expenses in a way that would maximize airG's ability to pass a CRA audit;

4) stated Mr. Yen and Mr. Ghahramani agreed to divide the proceeds of three enumerated "shady" deals 50-50. This term was included in a section entitled "Shady Deals";

5) stated that both would remain employees of airG, and that their employment could only be terminated by submitting a formal written resignation to airG, terminating all of the financial benefits described in this agreement, and formally resigning as a director of airG and its related companies; and

6) stated that neither party would engage in, be employed by, perform services for, participate in the ownership, management, control or operation of, or otherwise be connected with, a competing business during their employment or for one year after their termination.

[64] The 2015 Agreement also contained a term which divided the annual year-end bonus, as follows:

> […] the Annual Year End Bonus shall be divided between the parties such that if the Annual Year End Bonus is:
>
> (a) less than $3 million, then Vince shall receive 50%; or

> (b) greater than $3 million and less than $5 million, then Vince shall receive 45%;
>
> (c) greater than $5 million and less than $7 million, then Vince shall receive 40%;
>
> (d) greater than $7 million and less than $9 million, then Vince shall receive 35%;
>
> (e) greater than $9 million, then Vince shall receive 30%;
>
> Notwithstanding the generality of the foregoing, in all cases (a) through (e) above, fredG [*sic*] shall receive the remainder of the Annual Year End Bonus after the above prescribed amounts have been paid to Vince.

[65] This end of year bonus was not disclosed to other shareholders. Mr. Yen and Mr. Ghahramani justified this bonus by conceptualizing themselves as “extra special shareholders”. The bonus amounts were calculated, in part, to keep airG’s profit under the small business limit and to qualify for certain tax credits.

[66] Within two weeks of signing the 2015 Agreement, Mr. Yen and Mr. Ghahramani discovered that they disagreed about the interpretation of the annual year-end bonus clause. Mr. Yen believed that it would apply incrementally such that if the bonus was $6 million, he would receive 50% of the first $3 million, 45% of the amount between $3 million and $5 million, and 40% of the amount between $5 million and $6 million.

[67] Mr. Ghahramani interpreted the annual year-end bonus clause differently. He believed that the lower percentage would apply to the entire annual year end bonus. For example, if the total year end bonus was $6 million, Mr. Yen would receive 40% of this total amount.

[68] In September 2015, Mr. Ghahramani drafted a subsequent version of the 2015 Agreement that accorded with his interpretation of the annual year-end bonus clause, but he and Mr. Yen never agreed on its terms and, thus, did not execute it. The 2015 Agreement is therefore the last executed written agreement between Mr. Yen and Mr. Ghahramani.

[69] Over the subsequent years, Mr. Ghahramani repeatedly tried to convince Mr. Yen to renegotiate and revise the 2015 Agreement. Mr. Yen adamantly refused

Mr. Ghahramani's propositions on this issue. In response, Mr. Ghahramani's communications with Mr. Yen became increasingly insulting, abusive, and threatening.

From 2012 to 2020

[70] Mr. Yen left airG's operations in 2012 and remained largely absent from the company until early 2021 when he started agitating to return. During the intervening nine years, there is virtually no evidence that he meaningfully engaged with Mr. Ghahramani on airG's products, vision, or strategy. Mr. Yen was not even aware of airG's structure and the operation of its various subsidiaries during this time.

[71] From 2012 to 2020, Mr. Ghahramani directed the strategic and day-to-day operations of airG. During his stewardship, airG's revenue more than tripled from $20 million to over $63 million and its pre-tax profits increased six-fold.

[72] Notwithstanding this success, in each of the fiscal years between 2016 to 2019, the year-end bonus was less than $3 million. Accordingly, it was split 50-50 between Mr. Yen and Mr. Ghahramani, consistent with past practice. Given that the bonus was not over $3 million, the disagreement about the correct interpretation of the 2015 Agreement's bonus clause was not relevant.

[73] From 2012 to 2019, between bonuses and the parties' base salaries, Mr. Yen received approximately $12 million in compensation and Mr. Ghahramani received $15 million, respectively.

2020: airG's Successful Fiscal Year and its Consequences

[74] In 2020, airG had an unprecedentedly successful year. In this year, airG's revenue was $63,227,575.

[75] During the 2020 fiscal year, Mr. Yen was not involved in airG's operations. He did not know its top five customers, countries by revenue, or products. Although at trial Mr. Yen purported to be responsible for airG's finance operations, this characterization is based solely on the fact that airG's finance team was employed

by Mr. Yen's sidecar company, ASI. In practice, Mr. Yen did little other than approve annual financial statements and share transfers, neither of which he would do unless he received his annual year-end bonus.

[76] On September 2, 2020, two days after airG's 2020 fiscal year end, Mr. Ghahramani authored an email to Mr. Yen with the subject line "Appealing to your greed – M&A and Angels". In this email, Mr. Ghahramani wrote:

> Vince,
>
> We need to meet and sort some things out WELL BEFORE the auditors come into the office next month.
>
> This is going to be our last chance to arbitrage the angels before this stellar year's numbers hit their purview.
>
> Otherwise the opportunity will be lost.

[77] In his testimony, Mr. Yen stated that he interpreted this email exchange as describing Mr. Ghahramani's intention to "front-run" the angel investors by buying back their shares before they found out how profitable airG was in fiscal year 2020. Mr. Ghahramani maintains that his objective was to convince Mr. Yen to meet with him in person to discuss and agree on the interpretation of the bonus clause in the 2015 Agreement.

[78] As a consequence of airG's profitable 2020 fiscal year, the annual year-end bonus exceeded $3 million for the first time. As a result, the contentious provision dealing with the division of the annual bonuses in the 2015 Agreement became relevant. Based on Mr. Ghahramani's interpretation of the 2015 Agreement, he expected to receive approximately $6 to $7 million. Mr. Yen disagreed.

[79] Mr. Ghahramani tried unrelentingly to convince Mr. Yen to agree with his interpretation of the bonus clause. During a February 9, 2021 meeting, Mr. Yen countered with a proposal that the 2020 profits be distributed as dividends to all shareholders. The result of such a dividend pay out would be that Mr. Yen and Mr. Ghahramani would receive the same financial benefit from the successful 2020 fiscal year.

[80] Mr. Ghahramani perceived Mr. Yen's position on dividends to be highly prejudicial to his own interests. By 2020, he had shepherded airG over the preceding decade and believed that the successful 2020 fiscal year was his opportunity to cash in on airG's success.

[81] I am convinced that the 2020 fiscal year was a tipping point for Mr. Yen and Mr. Ghahramani. Their inability to agree on the bonuses led to the final rupture in Mr. Yen and Mr. Ghahramani's business relationship and, consequently, Mr. Yen's eventual removal from the airG Board of Directors.

The Tutto Meeting and Recruitment of Mr. Bhangu

[82] On January 21, 2021, Mr. Yen received airG's draft financial statements for the 2020 fiscal year, which ended on August 31, 2020. They reflected airG's most successful financial performance in its history. On the following day, Mr. Yen asked Dejan Mirkovic, airG's former Vice President of Business Development and a friend of Mr. Yen, and Mr. Bhangu, to arrange what the parties refer to as the "Tutto Meeting".

[83] Mr. Yen, Mr. Bhangu, and Mr. Mirkovic attended the Tutto Meeting on January 22, 2021. The parties spoke for approximately three hours, one hour at an office in Yaletown then two hours at the Tutto Restaurant. However, Mr. Mirkovic was not present during the entire Tutto meeting. Therefore, his evidence of what was, and was not discussed, is not reliable. Additionally, in light of my credibility findings, which are discussed below, where Mr. Bhangu's evidence about the Tutto Meeting conflicts with the evidence provided by Mr. Yen, I prefer Mr. Bhangu's evidence.

[84] At the Tutto Meeting, Mr. Yen sought to learn from Mr. Bhangu what was driving airG's increased revenue. He also wanted a status update on airG's products, to learn more about the potential mergers and acquisitions opportunities that Mr. Ghahramani had mentioned, and to know if Mr. Bhangu had kept in contact with Don McPherson, one of the angel investors. Mr. Yen also suggested that he wanted to come back to airG and "be the boss".

[85] From these discussions, Mr. Bhangu understood that Mr. Yen intended to approach the angel investors and rally them against Mr. Ghahramani. Mr. Yen also discussed the possibility of paying out the 2020 profit as dividends to shareholders.

[86] After the Tutto Meeting, Mr. Bhangu called Mr. Ghahramani and provided him with a summary of the meeting. Mr. Ghahramani subsequently summarized the discussion in an email that Mr. Bhangu testified accurately reflected the discussion he had with Mr. Yen. This email summary states that Mr. Yen said the following at the Tutto Meeting:

> 1) that he is a customer acquisition expert and can come back to airG to "clean up" the business, and "trim the fat";
>
> 2) that he would have outsourced development ten years ago; and
>
> 3) that he is going to approach the angels and rally them against Mr. Ghahramani, so that he can come back and be the boss.

[87] In his testimony, Mr. Bhangu recalled that Mr. Yen was uncharacteristically "bragging" and "peacocking" during this meeting, and that he promised to "take care" of Mr. Bhangu regardless of what happened. Mr. Bhangu interpreted this as an attempt to encourage Mr. Bhangu to support Mr. Yen's ambitions to return to airG.

[88] Mr. Bhangu's testimony is supported by a January 25, 2021 email that Mr. Yen sent to Mr. Chan. In this email, Mr. Yen mused about returning to run airG and potentially fire half of its employees. Mr. Yen's intention to return to airG is also supported by a February 4, 2021 email that Mr. Yen sent to Michael Kader, airG's corporate counsel, in which he said he "intended to get a lot more involved with the organization this year".

[89] Mr. Bhangu testified that he probably would have left the company if Mr. Yen returned to run it.

Mr. Yen and Mr. Ghahramani's Overtures to Angel Investors

[90] On January 25, 2021, Mr. Chan wrote to Mr. Yen strategizing on how to potentially obtain the support of a majority of airG's shareholders. Mr. Ghahramani was not included in this email.

[91] On February 9, 2021, Mr. Yen and Mr. Ghahramani attended an in-person Board of Directors' meeting. Mr. Yen surreptitiously recorded this meeting. On the recording, Mr. Yen adamantly denied the existence of the 2015 Agreement. These statements enraged Mr. Ghahramani.

[92] On February 10, 2021, Mr. Yen emailed Bruce Tattrie, an angel investor, to request a "30-minute chat". The subject line of this email was "corporate governance".

[93] On February 12, 2021, three days after the Board of Directors' meeting, Mr. Ghahramani met with Mr. McPherson, one of the angel investors. The outcome of this meeting was that on February 16, 2021, Mr. Ghahramani and Mr. McPherson agreed that Mr. Ghahramani, using a company he controlled, would purchase the voting rights of the airG shares held by Mr. McPherson and his wife, Lesley McPherson, for $1.1 million. Doing so provided Mr. Ghahramani with enough votes to remove Mr. Yen from the airG Board of Directors.

[94] Also on February 16, 2021, Mr. Yen wrote to Mr. McPherson requesting a 30-minute chat. He followed up on this email on February 25, 2021. In this February 25, 2021 email, he specified that he was hoping to discuss the "corporate governance at airG". At this point, Mr. Yen did not know that Mr. Ghahramani had already acquired the voting rights to the McPhersons' shares.

[95] On March 1, 2021, before Mr. Yen received the Notice of Special Meeting, Mr. Yen also contacted Mike Volker, an angel investor that he had not spoken to in at least a decade to touch base "particularly around airG and its governance".

[96] At this time, Mr. and Mrs. McPherson collectively owned 233,333 shares of airG; Mr. Tattrie owned 158,333 shares in airG; and Mr. Volker owned 7,143 shares.

airG's Board of Directors' Meeting and Special Meeting

[97] On March 1, 2021, Mr. Ghahramani directed that a Notice of Special Meeting be delivered to the shareholders of airG. The Notice of Special Meeting stated that, at the meeting, the shareholders would be asked to:

> 1. consider and, if thought appropriate, pass an ordinary resolution to remove Vincent Yen as a director of [airG]; and
> 2. in the event Vincent Yen is removed as a director of [airG], fill the vacancy created by such removal by electing, by ordinary resolution, Raj Bhangu as a director of [airG].

[98] Mr. Yen learned of the Notice of Special Meeting on March 1, 2021.

[99] The special meeting occurred on March 9, 2021. At this meeting, Mr. Yen advised that if he were removed as a director, he would commence litigation. He spoke of a potential liquidation of airG and an equitable division of its assets via a public, disruptive, and expensive process that could threaten the existence of airG in its current form.

[100] A majority of the voting shareholders, including Mr. Ghahramani and Mr. Bhangu, voted to remove Mr. Yen as an airG director and replace him with Mr. Bhangu.

[101] Mr. Tattrie voted against both resolutions because he correctly anticipated that these actions would result in litigation.

[102] Two days after removing Mr. Yen from the airG Board of Directors, Mr. Ghahramani caused airG to pay himself a $600,000 bonus that Mr. Yen had previously objected to. While Mr. Yen had objected to this bonus on February 28, 2021, he had previously proposed that Mr. Ghahramani receive a bonus of $1.4 million on the condition that he would receive a bonus of $772,000 for himself.

[103] Under Mr. Ghahramani's interpretation of the 2015 Agreement, he (Mr. Ghahramani) would have been entitled to a bonus of over $6 million.

[104] On March 30, 2021, an external compensation consultant company, Western Compensation & Benefits Consultations ("WCBC"), advised airG that Mr. Ghahramani's bonus for the 2020 fiscal year should be $1.9 million.

[105] Including the $600,000 bonus, Mr. Ghahramani's actual compensation for the 2020 fiscal year was approximately $1.1 million. Therefore, Mr. Ghahramani's actual compensation for the 2020 fiscal year was significantly less than the compensation recommended by WCBC and less than 20% of the compensation that he would have received under any interpretation of the bonus clause contained in the 2015 Agreement.

[106] The WCBC consultants also advised that Mr. Bhangu's compensation should be increased. His compensation ultimately doubled to $1.4 million and was backdated to September 1, 2020, the start of the 2021 fiscal year, in line with the recommendations of the WCBC.

Mr. Yen's Conduct After His Removal from the Board of Directors

[107] At airG's next annual general meeting, on February 25, 2022, Mr. Yen brought forward a motion requesting that he be elected as a director of airG. Aside from Mr. Yen, no other voting shareholder supported this motion, and it was therefore rejected.

[108] Similarly, at an airG special general meeting on December 1, 2023, Mr. Yen brought another motion to rejoin the airG Board of Directors. Again, he was the only voting shareholder who supported this motion, and it was rejected.

[109] In May 2024, more than three years after Mr. Yen had been removed from airG's Board of Directors, he sent emails to several of airG's competitors and clients in which he described airG's revenue, EBITDA (earnings before interest, taxes, depreciation, and amortization), and products. Mr. Yen claimed that the purpose of

these emails was to seek a “strategic partner” to assist him in purchasing Mr. Ghahramani’s shares.

airG’s Current Governance

[110] After Mr. Yen was removed as an airG director, Mr. Ghahramani directed that airG regularize its business operations. It retained independent directors, engaged external compensation consultants, and now holds regular board meetings. Mr. Yen and Mr. Ghahramani are not compensated in accordance with the 2015 Agreement.

[111] Mr. Ghahramani continued to buyback shares from angel investors. In February 2021, he entered into share purchase agreements with Mr. and Mrs. McPherson, and another angel investor, Douglas Whorrall. Mr. Ghahramani purchased these shares for $10.50 per share and provided these angel investors with the financial information about airG’s profitable 2020 fiscal year before buying back their shares.

[112] Mr. Tattrie, one of the angel investors, testified that the 2020 financial information was not pivotal in his decision to accept the share buyback offer because he was content with the $10.50 per share purchase price.

[113] Audited financial statements were not provided to the angel investors prior to any of the four share buy-backs which occurred between October 2011 and January 2020. For each of these previous share buy-backs, angel investors were offered the same $10.50 per share consideration.

[114] On March 16, 2021, the other defendant in this action, airG Employee Share Ownership Plan Ltd., was incorporated. This plan also purchased back shares from angel investors.

[115] The current shareholdings of airG are as follows:

1) Ghahramani Co.:	48.58%
2) Yen Co.:	44.37%
3) Bruce Tattrie:	2.77%

4) airG Employee Share Ownership Plan Ltd.: 2.56%
5) Mr. Bhangu: 1.44%
6) Horton Trading Ltd.: 0.14%
7) Michael Volker: 0.14%

[116] Mr. Tattrie, Mr. Volker, and Horton Trading Ltd. are angel investors.

[117] The shareholders have never had a shareholders' agreement in place. Their shared objective was to build the business and then sell it to monetize their ownership interests.

[118] In January 2022, Mr. Yen filed the Notice of Civil Claim that commenced this litigation.

Issues

[119] Addressing the plaintiffs' claims requires the court to consider the following:

1) Was there an equal share ownership agreement between Mr. Yen and Mr. Ghahramani?
2) Did Mr. Yen have a reasonable expectation that he was entitled to a permanent airG directorship position?
3) Are airG's resources being used against Mr. Yen in this litigation?
4) Is it just and equitable to liquidate and dissolve airG?
5) Were Mr. Ghahramani's actions oppressive towards the plaintiffs?

[120] Addressing the counterclaims requires this Court to consider:

1) Are the counterclaims barred by the operation of the British Columbia *Limitation Act*, S.B.C. 2012, c. 13 [*Limitation Act*]?
2) Did Mr. Yen and/or ASI improperly expense airG for personal expenses?
3) Did StudyPug compete with airG?

Credibility and Reliability of the Witnesses

Legal Principles

[121] Credibility refers to the honesty or truthfulness of a witness' testimony and reliability refers to its accuracy. Both must be assessed in the context of the evidence as a whole: *R.C.T. v. A.K.T.*, 2023 BCSC 654 at para. 7.

[122] In *Yang v. Duralia*, 2020 BCSC 806, the British Columbia Supreme Court reviewed a number of authorities and then summarized the law relating to credibility and reliability, as follows:

> [45] In summary, the assessment of a witness's credibility and reliability must include a critical assessment of the witness's evidence in the context of the evidence as a whole. This involves an assessment of whether the witness's evidence is at odds with other evidence in the case, and whether the testimony is implausible or improbable, having regard to the surrounding circumstances. The real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions. A trier of fact must also bear in mind that an apparently honest, confident or convincing witness may not necessarily be an accurate witness.

[123] Witnesses who have a stake in the outcome of the litigation often put forward a version of events that favours their legal position. In these circumstances, the most reliable evidence as to what actually happened will likely be found in contemporaneous documentation, the evidence of independent witnesses, and the actions of the witness at the time the events unfolded: *Wu v. Sun-Gifford*, 2001 BCSC 191 at paras. 28 and 29.

[124] Contemporaneous documents created at the time of the events "provide the most accurate reflection of what occurred, rather than memories that have aged with the passage of time, hardened through this litigation, or been reconstructed"*: Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 188, aff'd 2012 BCCA 296, leave to appeal ref'd [2012] S.C.C.A., 2013 CanLII 11302 (S.C.C.).

Positions of the Parties

[125] The plaintiffs submit that both Mr. Ghahramani and Mr. Bhangu are neither credible nor reliable witnesses so where their evidence conflicts with contemporaneous documentation or the evidence of other witnesses, the latter should be preferred.

[126] The plaintiffs assert that, among other things, Mr. Ghahramani lacks credibility because he falsely denied he and Mr. Yen's friendship and partnership, and because he failed to voluntarily disclose deliberate attempts to evade taxes.

[127] Regarding Mr. Bhangu's credibility, the plaintiffs submit that his testimony must be considered in light of Mr. Bhangu's past business conduct, which included bribing client officials to maintain business relationships with airG. Mr. Yen also asserts that Mr. Bhangu's substantial increase in compensation after Mr. Yen was removed as an airG director is proof that Mr. Bhangu's actions were motivated by financial gain.

[128] The defendants submit that Mr. Yen's evidence is neither credible nor reliable. They assert that Mr. Yen repeatedly lied under oath, both in his oral testimony and in his affidavit, regarding improperly claimed personal expenses. They say that his testimony reveals that he will say or do whatever he perceives to be in his own pecuniary interests.

Credibility Assessment

[129] The evidence clearly establishes that Mr. Ghahramani and Mr. Yen operated airG dishonestly. They treated airG as their own personal banking machine from which they withdrew funds with blatant disregard for their fiduciary and legal obligations to the company and for airG's obligations to other shareholders, employees, and stakeholders. Their level of entitlement was breathtaking. They convinced themselves that they were "extra special shareholders" and, accordingly, could act with impunity.

[130] For example, Mr. Ghahramani and Mr. Yen engaged in highly questionable, and probably illegal, business practices including bribing client officials, lying to the Canada Revenue Agency ("CRA") about their incomes, and falsifying invoices in order to obtain large amounts of cash. They knew they were engaging in illegal conduct and took steps to avoid detection. For example, one section of the 2015 Agreement is entitled "Shady Deals". "Shady" is a charitable characterization of conduct that was, on its face, both illegal and dishonest.

Mr. Ghahramani

[131] On the whole, Mr. Ghahramani's evidence is generally credible albeit occasionally obtuse and self-serving. For example, he repeatedly asserted that Mr. Yen requested to terminate his (Mr. Yen's) $100,000 salary from airG. This is not supported by the evidence. During the February 9, 2021 Board of Director's meeting, Mr. Yen sought third party review of his and Mr. Ghahramani's salaries. He did not say that he no longer wanted a salary from airG.

[132] Mr. Ghahramani also occasionally slanted his testimony to serve his own purposes. For example, his evidence on the extent of his knowledge of Mr. Yen's involvement with Canfleet is inconsistent. At trial, he suggested that he did not know that Mr. Yen helped launch Canfleet, but email evidence demonstrates that Mr. Ghahramani knew that Mr. Yen was assisting his aunt in setting up Canfleet and knew that some of airG's employees completed various tasks for the company.

[133] Importantly, however, Mr. Ghahramani made reasonable concessions at trial. He recognized that he and Mr. Yen conducted themselves illegally in the past. He admitted that their compensation arrangements were contrary to airG's interests and those of its other shareholders and that he and Mr. Yen behaved like greedy and immature tech geeks.

[134] In 2000, their company became successful, virtually overnight, and its growth and profit continued to grow rapidly. In the wake of the profitable 2020 fiscal year, Mr. Ghahramani stated that he realized he and Mr. Yen could not continue working

together as the directors of airG and that their years of working in concert to subvert their legal and fiduciary obligations had to end.

[135] After removing Mr. Yen, Mr. Ghahramani took a series of steps that regularized and normalized airG's business operations. He retained external compensation consultants and complied with their recommendations. He also brought in external directors who now function as directors alongside himself and Mr. Bhangu. I cannot comment on airG's adherence to its other legal obligations, but these actions align with those of a properly run company.

[136] On the whole, Mr. Ghahramani's evidence is generally credible, albeit occasionally obtuse and self-interested. With some notable exceptions, Mr. Ghahramani testified in a manner that assisted the Court's understanding of the relevant events. His recounting of the relevant circumstances accords with most of the documentary evidence. Most importantly, his evidence is consistent with a logical, rational, and commercially reasonable understanding of the events that led to Mr. Yen's removal from the airG Board of Directors

[137] Having said this, there is no doubt that the language Mr. Ghahramani used in his written correspondence with Mr. Yen was vile, insulting, abusive, and occasionally threatening. In light of these communications, Mr. Ghahramani's protestations that Mr. Yen would not communicate or respond to him ring hollow.

Mr. Yen

[138] The credibility of Mr. Yen's evidence was poor. His testimony was self-serving and largely motivated by his own financial interests. He failed to make reasonable concessions regarding his personal expenses and, instead, clung to a narrative that is largely divorced from reality.

[139] Mr. Yen expensed countless personal expenses to airG. When confronted with details of these transactions, he provided self-serving and often contradictory explanations.

[140] For example, Mr. Yen expensed a $6,552 “Diva Lite”, which is a professional quality light fixture that is often used in photo or film production. In 2023, Mr. Chan, airG’s Vice President of Finance, and a close friend and business associate of Mr. Yen, provided evidence at an examination for discovery that this item was Mr. Yen’s personal expense.

[141] When confronted with Mr. Chan’s statement at trial, Mr. Yen claimed that he used this device for “Facebook marketing activities as part of being an airG director”. When confronted with the fact that neither he nor ASI were responsible for airG’s marketing, Mr. Yen eventually conceded that this was a personal expense.

[142] Additionally, after Mr. Yen was removed as a director of airG and ASI was provided a notice of termination from airG, Mr. Yen purchased a $874 router for his residence and expensed it to airG. Mr. Yen dishonestly described needing the router to close out airG’s fiscal year end. Mr. Yen is not an accountant. He was not involved in “closing out” airG’s fiscal year end. Mr. Chan confirmed that neither he nor Mr. Yen closed out airG’s fiscal year end. Mr. Yen manufactured this narrative on the stand to explain previous dishonest conduct. It was a lie to explain a previous lie.

[143] Amusingly, Mr. Yen also claimed a baby monitor and a nanny camera as an airG business expense. He testified that this was for security purposes to protect airG information. I do not accept his explanation. Again, Mr. Yen manufactured an explanation to try to justify claiming clearly personal expenses to airG.

[144] Yet, another example of Mr. Yen’s deceit is his explanation about why he refused to meet with Mr. Ghahramani in January and February of 2020. Mr. Yen claimed that he was aware that there was a virus spreading in China during those months, so he wanted to avoid in-person meetings. However, during this period, Mr. Yen regularly expensed restaurant bills to airG. In response to these receipts, Mr. Yen meekly testified that he did not eat in the restaurants but instead got take-out. When confronted with a receipt from a cocktail bar, he acknowledged that he was not getting cocktails to go.

[145] Mr. Yen also failed to admit that he delayed signing airG's financial statements until his bonus compensation demands were met. The documentary evidence shows that he delayed signing in 2018, 2019, and 2021.

[146] Mr. Yen denied that Mr. Chan gave him private advice on how to deal with Mr. Ghahramani. An email exchange between Mr. Yen and Mr. Chan, using their personal, non-airG, email addresses, shows that this is exactly what Mr. Chan did. When confronted with this email, Mr. Yen offered a meaningless distinction about how Mr. Chan offered him "comments" not "advice". Mr. Yen also tried to justify his previous denial by rationalizing that he was entitled to this advice because, at the time, Mr. Chan reported to Mr. Yen and Mr. Chan was paid by ASI. This is a mischaracterization. Mr. Chan was airG's Vice President of Finance. Although he was paid through ASI, Mr. Yen's sidecar company, he reported to the president of airG, Mr. Ghahramani, not to Mr. Yen.

[147] The evidence also suggests that Mr. Yen asked Mr. Chan for accounting and tax advice for his other companies. This advice was used, in part, to avoid or evade tax. For example, Mr. Yen asked Mr. Chan in an email for advice on whether his aunt, Ms. Yen, should take a dividend from her company. He was clearly asking Mr. Chan for tax and/or accounting advice. This was done using airG's email accounts, during airG's work hours, and using airG's computer infrastructure.

[148] While floundering under the weight of questions on this issue, Mr. Yen provided a nonsensical excuse that the core business hours of airG were from 10 a.m. to 2 p.m., so it was permissible for airG employees to work for others, including Mr. Yen's other companies, outside of these hours. On this topic, Mr. Yen equivocated, resisted making reasonable admissions, and sidestepped answering clear questions.

[149] One of the illicit practices Mr. Yen and Mr. Ghahramani engaged in was that they created phony invoices payable to offshore third parties, in exchange for bags of cash. airG paid these invoices to the offshore third parties, who, in turn, delivered bags of cash to the airG offices for Mr. Yen and Mr. Ghahramani. During Mr. Yen's

examination for discovery, he denied setting up these deals with the third parties but email and text correspondence show that he did. At trial, Mr. Yen unconvincingly testified that he simply forgot about negotiating with these third parties for bags of cash.

[150] These discrete examples demonstrate Mr. Yen's inability and/or unwillingness to testify honestly. He made virtually no effort to comply with his obligation to tell the truth and instead tended to double down on previous mistruths. I find that his evidence was entirely motivated by his own self-interest, and accordingly, I reject his evidence unless it is corroborated by documentary or other independent evidence.

Mr. Bhangu

[151] I reject the plaintiffs' submission that Mr. Bhangu's evidence must be viewed in light of his alleged character flaws and past misconduct. Using that methodology would provide no assistance in assessing the credibility of any of the main witnesses as Mr. Yen, Mr. Ghahramani, and Mr. Bhangu all engaged in a range of dishonest business practices throughout their tenures at airG.

[152] The evidence suggests that Mr. Bhangu was not privy to the illicit financial arrangements concocted by Mr. Yen and Mr. Ghahramani. When presented with this information, he accurately described Mr. Yen's and Mr. Ghahramani's arrangement as "ripping off the other shareholders by having both their hands in the cookie jar". While Mr. Bhangu was not aware of the arrangement between Mr. Yen and Mr. Ghahramani, I, nevertheless, find that Mr. Bhangu's evidence is not credible.

[153] I reject Mr. Bhangu's evidence that he was not aware of Mr. Ghahramani's plans to remove Mr. Yen until the week before the March 9, 2021 special meeting. Mr. Ghahramani spoke to Mr. Bhangu about Mr. Bhangu becoming a director of airG on February 17, 2021. In the following weeks, the two of them frequently communicated by email and messaging applications about the events that led to Mr. Yen's removal as a director.

[154] I also reject Mr. Bhangu's evidence that Mr. Ghahramani did not know that Mr. Yen worked with StudyPug. On March 14, 2018, during a chance encounter with Robert Boyes, a former airG employee who Mr. Yen recruited to work at StudyPug, Mr. Boyes told Mr. Bhangu that StudyPug was doing well. Email correspondence from this date shows that Mr. Bhangu passed along this information to Mr. Ghahramani. In response, Mr. Ghahramani wrote "bring me chess books in prison when I murder [*sic*] that chink". The only plausible explanation for this correspondence is that Mr. Ghahramani knew that Mr. Yen worked with StudyPug and was angry about his success at that company.

[155] Overall, Mr. Bhangu's testimony was partial to the interests of Mr. Ghahramani and, given its inconsistency, I find that it provides me with limited assistance in resolving the issues in this litigation.

Was there an Equal Share Ownership Agreement between Mr. Yen and Mr. Ghahramani

Positions of the Parties

[156] Mr. Yen asserts that he and Mr. Ghahramani had an oral agreement that they would maintain equal share ownership of airG. I will refer to this alleged agreement as the equal share ownership agreement, or the "ESOA". Mr. Yen points to the four equal share buybacks from angel investors as proof of this agreement's existence.

[157] Mr. Ghahramani submits that there was no ESOA between him and Mr. Yen. He asserts that while the four buybacks were done equally, there was nothing that precluded either of them from buying shares to the exclusion of the other.

Findings of Fact

[158] In 2002, Mr. Yen and Mr. Ghahramani entered into private placement subscription agreements whereby each received their initial shares in airG. A number of third parties also received airG shares via private placement subscription agreements. The private placement subscription forms did not refer to an ESOA.

[159] In 2002, airG's bylaws were also drafted. The bylaws stated that the Chair of the Board, in this case, Mr. Ghahramani, had a second vote in the event of a tie at a director's meeting.

[160] None of the three written agreements between Mr. Yen and Mr. Ghahramani reference an ESOA. The 2009 Agreement states that Mr. Yen and Mr. Ghahramani intend for a number of corollary companies, such as Bassyria Investments, to be owned evenly. However, this agreement does not contain or reference an ESOA in relation to airG.

[161] Neither the 2012 Agreement nor the 2015 Agreement reference or detail the parties' respective shareholdings in airG. Nothing in the agreements prohibits either of them from acquiring more airG shares or proxies than the other.

[162] The 2015 Agreement also contains an entire agreement clause which reads "[t]his Agreement will constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings […]".

[163] In October 2011, May 2014, January 2016, and February 2020, Yen Co. and Ghahramani Co. purchased shares from the angel investors in equal amounts. None of the documents surrounding these buy backs indicate an ESOA. The parties' behaviour around the buy backs also does not suggest the existence of an ESOA.

[164] In late 2015, Mr. Ghahramani proposed proceeding with a share buyback. Mr. Yen initially declined to participate but, two weeks later, changed his mind and agreed to purchase an equal number of shares. The two therefore bought back an equal number of shares in January 2016. At no point during their discussions or deliberations regarding this buyback did Mr. Yen refer to an ESOA.

[165] In December 2017, Mr. Yen and Mr. Ghahramani disagreed about whether they ought to receive a bonus. Mr. Ghahramani was opposed to a bonus payment whereas Mr. Yen wanted one. On December 18, 2017, Mr. Yen sent an email to Mr. Chan which read:

> Looks like it's board/AGM time. I will send another email next week, with a plan to reach out to Don et al early Jan.
>
> I gave it more thought, Fred's direction does not have much of a future. It will be more of the mediocrity year in and year out. Best we get a proper board and governance in, clean up the company, and cash out while we still can.
>
> It's kind of silly, Fred ***need*** to talk to me, because it's my vote that keep him in power. I don't need to talk to him. But I am realizing that he's not that bright to realize that
>
> [Emphasis in original.]

[166] This email, especially the portion which reads “Looks like it’s board/AGM time” suggests that, as early as 2017, Mr. Yen contemplated seizing control of airG from Mr. Ghahramani. The reference in the email to “Don” is a reference to Don McPherson, one of the angel investors in airG.

[167] In early January 2021, during another round of discussions regarding a share buyback from the angel investors, Mr. Yen wrote the following to Mr. Ghahramani:

> Hi Fred. My constraint is purely financial. I simply don’t have the funds readily available to do so.

At no time did Mr. Yen indicate that Mr. Ghahramani was barred from purchasing the angel investor’s shares himself, nor did he refer to an ESOA.

[168] During the February 9, 2021 Board of Directors’ meeting, Mr. Ghahramani told Mr. Yen that he would buy back some of the angel investors’ shares on his own if Mr. Yen did not have the requisite funds. In response to this comment, Mr. Yen made no reference to an alleged ESOA. Recall that unbeknownst to Mr. Ghahramani, Mr. Yen was recording this discussion.

[169] As discussed above, around the time of this meeting, both parties were also taking active steps to secure the support of the angel investors to oust the other.

[170] In January 2021, Mr. Yen met with Mr. Bhangu and Mr. Mirkovic at the Tutto Meeting where he openly discussed his desire to rally the angel investors against Mr. Ghahramani so that he could return to “be the boss” of airG.

[171] Between February 2021 and March 2021, Mr. Yen emailed three angel investors, namely Mr. Tattrie, Mr. McPherson, and Mr. Volker. In these emails, he proposed to speak with the investors to discuss airG's corporate governance.

[172] In February 2021, Mr. Ghahramani and Mr. McPherson agreed that Mr. Ghahramani would purchase the voting rights associated with Mr. McPherson's and Mrs. McPherson's airG shares. Thus, providing Mr. Ghahramani with enough votes to remove Mr. Yen from airG's Board of Directors.

Discussion

[173] Mr. Yen and Mr. Ghahramani conducted the first four share buybacks equally, but this was not because of an explicit agreement requiring them to do so. Instead, the evidence suggests that although airG's bylaws provided that the chairman of the Board of Directors, in this case, Mr. Ghahramani, had a second casting vote in the event of a tie at a director's meeting, it seems that Mr. Ghahramani and Mr. Yen were unaware of this at the time the four equal share buybacks occurred.

[174] Therefore, it appears that Mr. Yen and Mr. Ghahramani erroneously believed that, as the only two directors, any transfer of shares needed to be approved by both of them. They seemed to believe that either of them had the ability to veto any proposed buyback, and they therefore purchased shares equally to avoid such a veto.

[175] It was only after Mr. Ghahramani removed Mr. Yen as a director, that Mr. Ghahramani realized that he had a second deciding vote if there had been an impasse between him and Mr. Yen on an issue that required the approval of the Board of Directors.

[176] For a period of time, Mr. Yen and Mr. Ghahramani may have believed that they were required to do share buybacks equally in order to avoid the other's veto. Such an incorrect assumption does not constitute an explicit agreement between Mr. Yen and Mr. Ghahramani that they were required to always maintain equal ownership of airG as between themselves.

[177] Mr. Yen and Mr. Ghahramani also entered into three written agreements: in 2009, 2012, and 2015 respectively. These agreements dealt with many aspects of their ownership of and compensation from airG. None of these agreements reference the existence of an ESOA.

[178] I also do not accept that Mr. Ghahramani and Mr. Yen had an implicit agreement that their shareholdings in airG would always remain equal. I am satisfied that if there had been an ESOA, it would have been reduced to writing in one or more of the principal parties' covert written agreements.

[179] The alleged ESOA was also not included in either airG's articles or bylaws, and its existence was not communicated to airG's shareholders, employees, or legal counsel. Tellingly, Mr. Yen did not refer to the existence of this agreement in either the February 9, 2021 Board of Directors' meeting or in the March 9, 2021 special meeting.

[180] Furthermore, Mr. Yen's actions are inconsistent with him believing there was an ESOA. Mr. Yen began discussing going to the angel investors in 2017, expressly stated his intention to turn the angel investors against Mr. Ghahramani at the 2021 Tutto meeting, and took steps to contact three angel investors to discuss airG's "corporate governance".

[181] Mr. Yen argues that he reached out to the angel investors about corporate governance because he wanted to protect them from Mr. Ghahramani, who was trying to "front-run" the angel investors by buying back their shares at a lower price without disclosing the successful 2020 fiscal year. To support this argument, Mr. Yen points to the email where Mr. Ghahramani wrote "[t]his is going to be our last chance to arbitrage the angels before this stellar year's numbers hit their purview".

[182] I do not accept Mr. Yen's submissions.

[183] As a preliminary issue, Mr. Ghahramani's actions do not suggest an intention to "front-run" investors. On February 11, 2021, Mr. Ghahramani sent an email to several angel investors, disclosing the draft financial numbers for airG's 2020 fiscal

year. This disclosure included a “topline” revenue of $62.2 million, a net revenue of $27.7 million, and an anticipated profit of between $6 and $10 million. Mr. Chan, the Vice President of Finance at the time, testified that these numbers were accurate.

[184] Conversely, Mr. Yen’s conduct suggests that he was unconcerned about buying back shares without full financial disclosure. Contrary to Mr. Yen’s evidence in direct examination, the angel investors did not receive audited financial statements prior to the 2011, 2015, or 2020 share buybacks completed equally by Mr. Yen and Mr. Ghahramani. Furthermore, on January 3, 2021, Mr. Yen agreed to proceed with a share buyback from a group of angel investors, without providing them audited financial statements for the 2020 fiscal year.

[185] Although Mr. Yen contacted a number of angel investors to discuss “corporate governance”, there is no evidence that he told any of them that they were being “front-run”. I am satisfied that Mr. Yen’s overtures with Mr. Tattrie, Mr. McPherson, and Mr. Volker, demonstrate Mr. Yen’s desire to obtain their support in order to depose Mr. Ghahramani and return to a leadership position at airG. Mr. Yen would not have taken these steps if he thought he was bound by an ESOA.

[186] After discovering that Mr. McPherson had sold his voting rights to Mr. Ghahramani, Mr. Yen also threatened to sue Mr. McPherson. This belies the existence of an ESOA between Mr. Yen and Mr. Ghahramani because if one had been in place, Mr. Yen would have no need to sue Mr. McPherson. Instead, he could have sued Mr. Ghahramani on the terms of the purported ESOA.

[187] Mr. Ghahramani argues that there was no ESOA between himself and Mr. Yen. His actions in negotiating a deal with Mr. and Mrs. McPherson and ousting Mr. Yen as a director are consistent with this belief.

[188] After reviewing the evidence, I find that there is no documentary or testimonial evidence that credibly suggests Mr. Yen and Mr. Ghahramani turned their minds to an agreement that they would always own an equal number of shares in airG. Prior to 2021, repurchasing shares in equal number was their practice, but it was not a

binding obligation. Beyond these equal buybacks, the parties conduct does not suggest that they believed an ESOA existed.

[189] I am convinced that the narrative surrounding Mr. Ghahramani purportedly front running the angel investors was a fabrication designed to bolster Mr. Yen's legal position. For the aforementioned reasons, I find that there was no ESOA between Mr. Yen and Mr. Ghahramani.

Did Mr. Yen Have a Reasonable Expectation that he was Entitled to a Permanent airG Directorship?

Legal Principles

[190] In the case *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 [*BCE*], the Supreme Court of Canada ("SCC") described the "reasonable expectations" of corporate stakeholders as follows:

> [62] As denoted by "reasonable", the concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. In the context of whether it would be "just and equitable" to grant a remedy, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.
>
> [63] Particular circumstances give rise to particular expectations. Stakeholders enter into relationships, with and within corporations, on the basis of understandings and expectations, upon which they are entitled to rely, provided they are reasonable in the context […]. These expectations are what the remedy of oppression seeks to uphold.
>
> [64] Determining whether a particular expectation is reasonable is complicated by the fact that the interests and expectations of different stakeholders may conflict. The oppression remedy recognizes that a corporation is an entity that encompasses and affects various individuals and groups, some of whose interests may conflict with others. Directors or other corporate actors may make corporate decisions or seek to resolve conflicts in a way that abusively or unfairly maximizes a particular group's interest at the expense of other stakeholders. The corporation and shareholders are entitled to maximize profit and share value, to be sure, but not by treating individual stakeholders unfairly. Fair treatment — the central theme running through the oppression jurisprudence — is most fundamentally what stakeholders are entitled to "reasonably expect".

[191] The SCC went on to state that in determining whether a reasonable expectation exists, courts may consider "general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have taken to protect itself; representations and agreements; and the fair resolution of conflicting interests between corporate stakeholders": para. 72.

[192] Reasonable expectations are "assessed by what is 'objective and contextual', rather than only according to the stakeholder's own expectations. The expectations must be realistic. Expectations may evolve over time and not be static.": *Radford v. MacMillan*, 2017 BCSC 1168 at para. 119, aff'd 2018 BCCA 335

[193] That is not to say that the subjective expectations of the individual are not considered at all. In *Jaguar Financial Corporation v. Alternative Earth Resources Inc.*, 2016 BCCA 193, the BC Court of Appeal (BCCA) stated:

> [113] The reasonable expectations of the shareholders are assessed in a two-stage process. First, the subjective expectations of the complainant must be established. Second, an objective analysis of the complainant's expectations must be conducted to determine whether the expectations were reasonable.

[194] In *Vassilaki v. Vassilakakis*, 2024 BCCA 15, the BCCA clarified the confines of a reasonable expectation in the context of an oppression remedy claim:

> [27] […] for the purposes of the shareholder oppression remedy, the "actual expectations" of a shareholder are not conclusive. Rather, the shareholder oppression analysis concerns itself with "reasonable expectations", which are those "arising out of the web of statutory provisions, articles or bylaws, contractual terms, familial and personal relationships and other contextual factors": *1043325* [*Ontario Ltd. v. CSA Building Sciences Westerns Ltd*., 2016 BCCA 258] at paras. 55–56.
>
> [28] In *Callahan v. Callahan*, 2022 BCCA 387, Justice Newbury for the Court provided further guidance to explain the precondition for a s. 227 remedy. The expectations of a person seeking relief under s. 227 must be *reasonable in the corporate context in which they arise*: para. 39, emphasis in original. The concept of reasonable expectations is objective and contextual: para, 39, citing *BCE* at para. 62.

[195] In the context of oppression remedy claims, courts must be cautious when assessing whether a director's conduct rises to the level of being unfair or

oppressive, as directors' business decisions are entitled to deference so long as they lie within a range of reasonable alternatives: *BCE* at para. 40.

Positions of the Parties

[196] Mr. Yen maintains that he and Mr. Ghahramani owned and operated airG as incorporated and equal partners, and that, based on past practice and the 2015 Agreement, he reasonably expected to remain a director of airG until he chose to resign. He therefore argues that Mr. Ghahramani breached his reasonable expectation by removing him as a director. He also argues that Mr. Ghahramani's decision to remove him constituted oppressive conduct.

[197] Mr. Ghahramani and airG maintain that there was no agreement which permitted Mr. Yen to remain a permanent director of airG. They also argue that Mr. Yen's assertion that he had the right to remain a permanent director of airG is not objectively reasonable in the context of a properly functioning company.

[198] airG submits that it was not a party to the three (namely, 2009, 2012, and 2015) Yen-Ghahramani Agreements, nor are the Agreements in its best interests. airG, therefore, argues that it is not bound by the Agreements.

Findings of Fact

[199] Mr. Yen relies on past conduct and the 2015 Agreement to ground his claim.

[200] Mr. Yen especially drew the court's attention to sections 4.1 and 4.2 of the 2015 Agreement, which read as follows:

> **4.1 Employees of airG Incorporated**
>
> For the avoidance of doubt, as to the current date of this agreement, and on an ongoing basis, both fredG [*sic*] and Vince agree that they are and continue to be Employees of airG Incorporated (either directly or through its side-car companies airG Client Services and airG Services), and that said employment (hereinafter "Employment") can only be terminated as defined in Section 4.2 below.
>
> **4.2 Termination of Employment**
>
> For the avoidance of doubt, on a go-forward basis, fredG [*sic*] and Vince may only terminate their Employment at airG by doing all of the following detailed in (a) and (b) below (hereinafter a "Full Termination"):

> (a) submitting a formal written resignation letter to the company and officially terminating all of the financial benefits received under Section 1 and Section 3 herein; and
>
> (b) submitting a formal resignation letter to the company to cease being a director of airG incorporated and all of its applicable subsidiaries and sidecar companies;

[201] These provisions do not expressly indicate that Mr. Yen would be either a director or an employee of airG forever.

[202] Mr. Yen and Mr. Ghahramani understood that the terms of the 2015 Agreement were prejudicial to the other airG shareholders and probably contrary to income tax laws. Their understanding of this fact is apparent in their communications.

[203] On August 21, 2015, Mr. Ghahramani sent an email to Mr. Yen which discussed the terms of the 2015 Agreement. The email reads:

> […] just so we understand each other, what our arrangement enables is for you and me to not be treated like shareholders, but to get treated like owners of a family business or really "extra special shareholders". If we were just normal shareholders there would be no ayse deals, and there would certainly be no year end split of profits in the structure that we've built.
>
> It's possible that we've been doing it so long that we've taken it for granted but if we ran airg "correctly" the only way to get cash into our jeans would be to dividend money into dorian and cra's jeans too. Which is something neither of us want to do [...]
>
> […]
>
> We are negotiating how to *continue* fucking the minorities and cra under our current "partnership" that we've arranged as special shareholders.

[204] Dorian was one of the first angel investors in airG.

[205] In a February 17, 2021 email, Mr. Ghahramani wrote that he was “willing to transition from our current ‘partnership’ arrangement to a regime of proper corporate governance […]”. He summarized that he sees the transition “as an exercise in transitioning for our past (partnership) to our future (proper corporate governance)”.

[206] In response, Mr. Yen wrote that:

> My goal is not to 'win', it's pretty clear that the past is not working, or legally viable. In fact, our past are very significant liabilities […] If we are serious about an exit, it's clear that we absolutely need to immediately clean up our corporate structure (sidecar) and put clear and fair board level resolutions in place that can withstand a M&A due diligence.

[207] In December 2015, Mr. Yen and Mr. Ghahramani exchanged a series of emails discussing the possibility of signing, what they referred to as, a “secret side letter agreement”. This letter was never signed, however, in this exchange, Mr. Ghahramani advised Mr. Yen that his cousin, a lawyer, had advised him that “any agreement that requires the other party to do something illegal is in and of itself unenforceable”.

[208] While Mr. Yen relies on the 2015 Agreement to ground his ESOA claim, he also testified that, following the December 2015 email, he formed the understanding that the 2015 Agreement was not legal or enforceable. During a February 2021 Board of Directors’ meeting, Mr. Yen also repeatedly reiterated that there was no 2015 Agreement.

[209] Given the above, I am satisfied that Mr. Yen and Mr. Ghahramani understood that treating airG as their personal piggy bank was improper, and potentially illegal.

Discussion

[210] In deciding whether Mr. Yen had a reasonable expectation that he was entitled to be a permanent director of airG, this Court must consider:

1) Whether Mr. Yen and Mr. Ghahramani were partners;
2) Whether the 2015 Agreement can be interpreted to mean that Mr. Yen was entitled to remain a director until he steps down; and
3) If there was evidence to ground Mr. Yen’s expectation of being a permanent director, whether his expectation was reasonable.

[211] While Mr. Ghahramani frequently referred to Mr. Yen as his “partner” in airG, I do not accept that he intended to suggest that they operated airG as a partnership, in the legal sense of the word, nor do the actions of the parties suggest that they

operated airG as a partnership. Since its inception, airG has been an incorporated company with a number of minority share and option holders. I, therefore, find that airG was never operated as a partnership between two individuals.

[212] I accept that the 2015 Agreement sets out an expectation that Mr. Yen and Mr. Ghahramani's employment, compensation, and directorship in airG could only be terminated by their choice. However, in accordance with *BCE*, Mr. Yen's expectation is not conclusive. Instead, this Court must assess the objective reasonableness of the expectation in light of the factors enumerated in *BCE*, including accepted commercial practices.

[213] I find that Mr. Yen's asserted expectations are not objectively reasonable. They are little more than a wish list of manifestly unreasonable and illicit expectations which were secretly negotiated and designed to subvert the interests of airG and its other stakeholders.

[214] The compensation arrangement described in the 2015 Agreement essentially appropriates all of airG's profits, above the small business limit and the amounts needed to qualify for certain tax credits, solely to Mr. Yen and Mr. Ghahramani. This deprived airG and the other shareholders of airG of the benefit of these profits, based on the rationale that Mr. Yen and Mr. Ghahramani were "extra special shareholders".

[215] I have no difficulty in concluding that the 2015 Agreement was kept secret from airG's corporate counsel and its other stakeholders. Mr. Yen and Mr. Ghahramani knew that this agreement was illegal because, among other things, it breached the fiduciary obligations they owed to airG as its directors.

[216] I agree with airG's submission on this point that a "clandestine side agreement between two individuals is not a compact between the shareholders capable of supporting a reasonable expectation". Mr. Yen's expectations cannot be considered reasonable when they were enshrined in a document that breached his fiduciary obligations.

[217] Furthermore, airG is not a party to the 2015 Agreement nor are airG's other shareholders. It would be wrong to impose upon the company, and its other shareholders, a requirement that Mr. Yen be a permanent director. Such a permanent position would also be contrary to airG's constating documents, as airG's bylaws state that "directors shall be elected by the shareholders".

[218] I find that Mr. Yen's position on the 2015 Agreement is incoherent. He repeatedly stated that this agreement did not exist and that it is unenforceable due to illegality. On this basis, Mr. Yen opposes Mr. Ghahramani's position that the 2015 Agreement governs the allocation of the bonuses from the 2020 fiscal year. Nevertheless, Mr. Yen also asks this Court to enforce that agreement and deem him to be a perpetual director.

[219] This Court will not countenance an agreement that enables directors to act contrary to the duties owed to their company. When considered in light of the facts and circumstances of this specific case, it is clear that Mr. Yen's expectation that he was entitled to a perpetual directorship position is not objectively reasonable.

Are airG's Resources Being Used Against Mr. Yen in this Litigation?

Positions of the Parties

[220] Mr. Yen asserts that the dispute between himself and Mr. Ghahramani is properly characterized as a shareholder dispute and, as such, airG ought to have remained neutral.

[221] Mr. Yen also asserts that airG's corporate resources have been unfairly or prejudicially weaponized against him either at the direction of Mr. Ghahramani, or in support of Mr. Ghahramani's position. He also claims that airG is funding Mr. Ghahramani's litigation expenses.

[222] Mr. Ghahramani and airG deny these allegations. airG also asserts that it has a right to defend itself because Mr. Yen advanced litigation that imperils its existence.

Findings of Fact

[223] airG and Mr. Ghahramani are represented by different counsel, from different law firms.

[224] airG's litigation costs are covered by insurance. airG has not used corporate resources to defend against the plaintiffs' claims. airG has not paid, and is not paying, for the costs of Mr. Ghahramani's legal representation.

[225] A committee that includes airG's corporate counsel, but does not include Mr. Ghahramani, instructs airG's external counsel in this litigation.

Discussion

[226] While Mr. Ghahramani and airG's positions are aligned, based on the evidence before me, I reject the assertion that airG's resources are being used against Mr. Yen, either at the direction of Mr. Ghahramani or otherwise. There is no evidence to support Mr. Yen's contention on this point.

[227] Given the nature of the issues in this litigation, and the allegations that both Mr. Yen and Mr. Ghahramani breached their obligations to airG, airG required its own counsel. It would have been inappropriate for Mr. Ghahramani to defend these claims on behalf of airG. airG was also a necessary participant in this litigation because its very existence was at issue.

[228] Considering the facts before me, I find that Mr. Yen has not established that airG's resources were used against him in this litigation.

Is it Just and Equitable to Liquidate and Dissolve airG?

Legal Principles

[229] Mr. Yen seeks a declaration under s. 214 of the *CBCA* that it is just and equitable to dissolve airG. Section 214(1)(b)(ii) of the *CBCA* provides that a shareholder may apply for the liquidation and dissolution of a corporation, and that a court may make such an order "if the court is satisfied that it is just and equitable that the corporation should be liquidated and dissolved".

[230] If the court concludes that it is just and equitable to liquidate and dissolve a company, a liquidation order does not automatically follow. The court may order the liquidation and dissolution of a company or, in accordance with s. 214(2) of the *CBCA*, it may make any of the orders enumerated in s. 241, as it sees fit.

[231] Therefore, if this Court makes a declaration under s. 214(1)(b)(ii) that it is just and equitable to liquidate and dissolve airG, all of the oppression remedies become available to the court. The court does not need to find that oppression occurred to make a finding under s. 214(1)(b)(ii). Mr. Yen does, however, advance a separate oppression remedy claim, which I will address, below.

[232] The just and equitable test represents a lower threshold than that under the oppression remedy: *Beck v. 0973415 B.C. Ltd.*, 2021 BCSC 2323 at para. 45, citing *Boffo Family Holdings Ltd. v. Garden Construction Ltd.*, 2011 BCSC 1246 at para. 121.

[233] *Weisstock v. Weisstock*, 2023 BCCA 352 [*Weisstock BCCA]*, the BCCA described the "just and equitable" provision under s. 324(1)(b) of the *BCA* as follows:

> [45] The "just and equitable" provision allows the court to impose broad and equitable considerations to the strict legal obligations that would otherwise apply to a corporation. It permits a judge to recognize that within and behind a corporation, "there are individuals, with rights, expectations and obligations" and that sometimes this "make[s] it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way".
>
> [46] The cornerstone of the just and equitable analysis is therefore the parties' reasonable expectations. In other words, liquidation is justified where an applicant "demonstrate[s] that the parties regarded, or would have regarded if they had turned their minds to it at the time of formation of the business association, the particular circumstances resulting from the disharmony to constitute the termination or repudiation of the business relationship".
>
> [47] As the judge identified, historically, courts have typically found it "just and equitable" to liquidate a company in one of four sets of circumstances:
>
> 1. loss of a company's substratum;
> 2. a justifiable lack of confidence among the members;
> 3. a deadlock among the parties; and
> 4. the partnership analogy.

> [48] The authorities are clear, however, that the court's discretion under s. 324(1)(b) is not limited to these categories. The words "just and equitable" have been described as words "of the widest significance" that confer a "broad discretion" on the court to make a liquidation order in any circumstances it considers appropriate: […]. A categorical approach to the court's jurisdiction is "wrong". While categories and illustrations are helpful, "general words should remain general and not be reduced to the sum of particular instances".
>
> [49] Determining what is "just and equitable" is a fact-and context-specific exercise. For example, the test may be applied more liberally in the context of a family company than a conventional commercial enterprise.
>
> [50] No finding of oppression, or even wrongdoing, is necessary to ground an order under s. 324: […]. While misconduct on the part of the applicant may be grounds to refuse equitable relief on a liquidation application, "such a determination falls within the discretion of the judge, and it is not an absolute bar".
>
> [51] Where neither party comes to court with "clean hands", "the court is not required to decipher which party bears more blame": […]. The conduct of the parties may however be relevant to "contextualizing the conflict" and to whether the court should exercise its discretion to grant relief.
>
> [Internal citations omitted.]

[234] While *Weisstock BCCA* considered the liquidation and dissolution provisions of the *BCA*, I find that the provisions in the *BCA* and *CBCA* are sufficiently similar such that the *Weisstock BCCA* principles apply in this case. Section 324(1)(b) of the *BCA* is similar to s. 214(1)(b)(ii) of the *CBCA*. Both provide that the court may order the liquidation and dissolution of a corporation if it considers it just and equitable to do so. Both acts, in ss. 324(3) and 214(2) respectively, also permit the court to order other remedies, where appropriate.

[235] The court must exercise the "just and equitable" provision judicially, on a principled basis, and in recognition of the court's reluctance to interfere in the internal affairs of a company: *Vivian v. Firth*, 2012 BCSC 517 at para. 67.

[236] The party seeking liquidation is not required to come to court with clean hands in order to be entitled to a remedy, as the court recognizes that in cases where liquidation is warranted, often, no one's hands are clean. The court may exercise its discretion to consider the conduct of the parties, but ultimately, where neither party has clean hands, the role of the court is to determine the fairest and

most efficient way to disentangle the parties: *Petersen v Hawley*, 2021 BCSC 2348 at paras. 50−61 aff'd 2022 BCCA 169; *Weisstock BCCA* at para. 51.

[237] Justifiable lack of confidence is recognized as an independent ground potentially warranting a winding-up order: *Weisstock v Weisstock*, 2022 BCSC 1886 at para. 83, citing *Vivian* at para. 98.

[238] In *1168556 B.C. Ltd. v. 1164429 B.C. Ltd.*, 2024 BCSC 1727 at para. 174 [*1168556*], the BC Supreme Court quoted the following passage from a 1924 decision of the Privy Council to explain what constitutes a "justifiable lack of confidence" in the context of a request for an order to liquidate:

> [174] […]
>
> …It is undoubtedly true that at the foundation of applications for winding up, on the "just and equitable" rule, there must be a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. Furthermore, the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs, or on what is called the domestic policy, of the company. On the other hand, wherever the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter, and it is, under the statute, just and equitable that the company be wound-up.

[239] A justifiable lack of confidence may therefore be found to exist where there "is proof of dishonesty or a lack of probity in the conduct of the company's affairs by directors or majority shareholders, [including] where the majority shareholders have treated the company or its assets as their own property or where a director has misappropriated company funds":*1168556* at para. 176, citing *Dia-Kas Inc. v Virani*, 1995 CarswellBC 2907, 1995 CanLII 798 (B.C.S.C.) at para. 125.

[240] Acrimony and irreconcilable differences also are not sufficient grounds for a liquidation order, unless they cause a deadlock that prevents the parties from making decisions on significant matters that affect the business: *Weisstock BCCA* at para. 82

[241] The partnership analogy has also been found to be a fair and equitable reason to liquidate a company. Mr. Yen made the following submissions related to the partnership analogy:

> The following two-part test must be met for the partnership analogy to apply: (a) the existence of an undertaking that is in substance a partnership in the guise of a private company; and (b) a breakdown of the mutual trust and confidence upon which the original undertaking was founded.
>
> A finding that the business was in fact a partnership is not required. As Fitch J. held in Vivian v. Firth, 2012 BCSC 517, "[t]he Court is not engaged in a labelling exercise in determining whether a partnership analogy is appropriate, but in an assessment of a constellation of factors that may, as between one person and another, make it unjust to insist on a strict application of legal rights".
>
> The factors that courts consider in determining whether an in substance partnership exists include the following: (a) an association formed or continued on the basis of a personal relationship, involving mutual confidence; (b) an agreement, or understanding, that all, or some of the shareholders shall participate in the conduct of the business; and (c) restriction on the transfer of the members' interest in the company so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.
>
> The following is an inexhaustive list of factors courts have considered relevant in the context of finding that the partnership analogy applies:
>
> > (a) The company was formed or continued on the basis of a personal relationship and the founders each became equal shareholders.
> >
> > (b) The company was run in a "very informal manner", including no regular directors' or shareholders' meetings.
> >
> > (c) A situation where it is impossible for the partners to maintain the reasonably expected confidence in each other necessary to continue the affairs of the business, and no particular party is culpable for the state of affairs.
> >
> > (d) There was at least an understanding that all of the shareholders could, if they were inclined, participate in the conduct of the business at the shareholder and/or director levels.
> >
> > (e) Whether there were restrictions on share transfers in the company's Articles.
> >
> > (f) Whether the moving party had a reasonable expectation to be a director.
>
> [Emphasis added.]

Positions of the Parties

[242] The plaintiffs assert that there are two grounds for declaring that it is just and equitable to wind up airG:

1) a justifiable lack of confidence; and

2) the partnership analogy.

[243] The plaintiffs assert that Yen Co., as the second largest shareholder of airG, has lost confidence in airG's management due to Mr. Ghahramani's persistent dishonesty and self-interest. This behaviour includes Mr. Ghahramani directing airG to pay excessive salaries to himself and Mr. Bhangu, as well as threatening to move airG's operations offshore, which would deprive Mr. Yen of his ownership interest in airG.

[244] The plaintiffs also assert that the partnership analogy applies because Mr. Yen and Mr. Ghahramani understood themselves to be and functioned as "incorporated partners" in airG. They argue Mr. Ghahramani unilaterally destroyed this alleged partnership by removing Mr. Yen as a director, terminating Mr. Yen's compensation, completing share purchases without involving Mr. Yen, and paying himself amounts in excess of their agreed compensation structure.

[245] The plaintiffs also generally submit that as a result of Mr. Ghahramani's actions, the interests of Mr. Yen and Mr. Ghahramani must be separated because their relationship has become dysfunctional.

[246] Based on the above, the plaintiffs seek a declaration that it is just and equitable to dissolve airG. Assuming this declaration is made, they request that the court exercise its discretion to order an alternative remedy instead of dissolution. They argue that a shot gun sale is the most appropriate remedy.

[247] The defendants assert that it is not just and equitable to liquidate and dissolve airG and, accordingly, the plaintiffs are not entitled to this declaration.

Relevant Findings of Fact

[248] I rely on facts as set out above.

Discussion

[249] The breakdown in mutual trust and confidence between Mr. Yen and Mr. Ghahramani occurred in 2009. Importantly, in the 16 years following this falling out, the affairs of airG did not become deadlocked, nor are they currently deadlocked. airG operated profitably when Mr. Yen ran the operations from December 2009 to June 2012. It also operated profitably when Mr. Ghahramani ran the operations from June 2012 until Mr. Yen was removed as a director in 2021.

[250] After Mr. Yen's removal, airG normalized its corporate governance by adding external directors and aligning the compensation of its key employees, including Mr. Ghahramani and Mr. Bhangu, with the recommendations of independent consultants. airG's business has also expanded into new areas, and, as of trial, it now employs approximately 65 people in Canada.

[251] In accordance with *Weisstock BCCA*, acrimony does not justify a liquidation order, unless it causes a deadlock on significant matters that affect the business. While Mr. Yen and Mr. Ghahramani do not trust one another and cannot work together, their acrimony and irreconcilable differences have not prevented airG from continuing to function effectively. There is no operational deadlock.

[252] Since Mr. Yen's removal as a director, airG's Board of Directors has managed the day-to-day operations of airG.

[253] Mr. Yen is not entitled to a declaration of liquidation, and a corresponding monetization in his minority shareholder interest in airG, merely because he was removed from the airG Board of Directors. Nor is he entitled to such a declaration because of the acrimony between himself and Mr. Ghahramani.

[254] I also reject the argument that Mr. Ghahramani will move airG's operation offshore. It is true that Mr. Ghahramani mused about doing this in a 2011 email, and

at a 2021 Board of Directors' meeting, but there is no evidence to suggest that this was any thing more than idle speculation. airG has operated in Canada for almost 25 years. With airG's transition to normalized corporate governance, Mr. Ghahramani is also unable to unilaterally initiate such a move.

[255] Lastly, Mr. Yen relies on the partnership analogy. In order for this Court to find that the partnership analogy applies, I would need to accept that Mr. Yen and Mr. Ghahramani entered into an undertaking that airG is, in substance, a partnership in the guise of a private company. I reject, both legally and factually, that Mr. Yen and Mr. Ghahramani operated airG as a partnership or quasi-partnership.

[256] While the 2012 and 2015 Agreements use the term "partnership", the essence of these documents was an effort to avoid or evade their tax obligations, and to subvert the interests of airG's other shareholders, and the company itself. These agreements were covertly negotiated by Mr. Yen and Mr. Ghahramani without involving or notifying the principal corporate entity, airG.

[257] Mr. Ghahramani's reference to himself and Mr. Yen as "50-50 partners" was, for many years, a statement of fact given that they each owned an equal number of shares in airG. The absence of regular directors' or shareholders' meetings was a mutual decision because neither of them sought one of these meetings between 2006 and 2021.

[258] airG is also not a family company. By 2002, airG was an incorporated company with a range of shareholders, including at least ten angel investors.

[259] Based on the above, I find that the references to Mr. Yen and Mr. Ghahramani being "partners" should be properly understood as a reference to them being business associates. They were not "partners" in the legal sense of the word, nor do the Agreements outline a partnership structure.

[260] In summary, Mr. Yen has failed to demonstrate a deadlock among the parties, a justifiable lack of confidence among the members, the presence of a partnership, or any other reason why it would be just and equitable to liquidate airG.

[261] I find that it would not be just and equitable to liquidate and dissolve airG under s. 214(1)(b)(ii) of the *CBCA*. In substance, Mr. Yen seeks a separation of his interests from those of Mr. Ghahramani because he was removed as a director of airG. He seeks to have his minority, albeit significant, share ownership in airG monetized. This is not the purpose of s. 214 of the *CBCA.*

Were Mr. Ghahramani's Actions Oppressive Towards the Plaintiffs?

Legal Principles

[262] Section 241(1) of the *CBCA* permits a "complainant" to bring an oppression remedy application for the reasons enumerated in s. 241(2), which provides:

> (2) If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates
>
> (a) any act or omission of the corporation or any of its affiliates effects a result,
>
> (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
>
> (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner
>
> that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

[263] "Complainant" is broadly defined in s. 238 of the *CBCA* to mean:

> 238 […]
>
> (a) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
>
> (b) a director or an officer or a former director or officer of a corporation or any of its affiliates,
>
> (c) the Director, or
>
> (d) any other person who, in the discretion of a court, is a proper person to make an application under this Part.
>
> [Emphasis added.]

[264] A shareholder of a shareholder with a direct financial interest in how a company is managed may apply for an order that the affairs of a company are being

conducted oppressively: *R.B.L. Management Inc. v. Royal Island Development Ltd.*, 2007 BCSC 960 at para. 14.

[265] The oppression remedy is a broad and equitable remedy that protects the legal and equitable interests of shareholders who are affected by the oppressive actions of a corporation or its directors. An oppression remedy claim is not a substitute for an action in contract, tort, or misrepresentation: *Stahlke v. Stanfield*, 2010 BCSC 142 at paras. 9 and 23.

[266] In *Wilson v. Alharayeri*, 2017 SCC 39, the SCC summarized the law surrounding oppression remedy claims:

> [23] The nature of the oppression remedy is well recognized in our jurisprudence. Section 241 creates an equitable remedy that "seeks to ensure fairness — what is 'just and equitable'" (*BCE*, at para. 58). It gives "a court broad, equitable jurisdiction to enforce not just what is legal but what is fair" (*ibid.*). Courts considering claims for oppression are therefore instructed to engage in fact-specific, contextual inquiries looking at "business realities, not merely narrow legalities" (*ibid.*).
>
> [24] The two requirements of an oppression claim are equally well known. First, the complainant must "identify the expectations that he or she claims have been violated by the conduct at issue and establish that the expectations were reasonably held" (*BCE*, at para. 70). Second, the complainant must show that these reasonable expectations were violated by corporate conduct that was oppressive or unfairly prejudicial to or that unfairly disregarded the interests of "any security holder, creditor, director or officer," pursuant to s. 241(2). As stated above, the presence of these two elements is not at issue in this appeal.

[267] Due to the broad equitable nature of the oppression remedy, the court must consider business realities, not merely narrow legalities, in its analysis: *BCE* at para. 58.

[268] Similar to the analysis under s. 214, analyzing a shareholder's expectations under s. 241 requires the court to consider both the claimant's subjective expectations and the objective reasonableness of those expectations. In doing so, the court should consider the same factors outlined at para. 72 of *BCE*, as enumerated above. Ultimately, in order to support an oppression remedy claim, the shareholder's expectations must be reasonable: *1168556* at paras. 78−81.

[269] It is necessary to consider the fact-specific context of the alleged oppression, because "[w]hat is just and equitable is judged by the reasonable expectations of the stakeholders in the context and in regard to the relationships at play. Conduct that may be oppressive in one situation may not be in another": *BCE* at para. 59.

[270] If a reasonable expectation is established, this Court must then consider whether the breach of the expectation amounted to oppression, unfair prejudice, or unfair disregard. Not every expectation can ground an oppression remedy claim under s. 241. Conduct that is coercive, abusive, suggests bad faith, has unfair consequences, or ignores the complainant's interest as having no importance is most likely to rise to the threshold of oppressive: *BCE* at para. 67.

[271] In order for an oppression claim to be successful equity, wrongful conduct, causation, and compensable injury must also be established: *McDougall v. Knutsen*, 2024 BCCA 55 at para. 23; *BCE* at para. 90.

[272] "The burden of proof in an oppression application is on the applicant and the respondents are not required to prove that they did not act oppressively": *Greenlight Capital Inc. v. Stronach*, 22 B.L.R. (4th) 11, 2006 CanLII 36620 (O.N.S.C.) at para. 18. See also: *BCE* at para. 137.

Positions of the Parties

[273] The plaintiffs take the position that, in accordance with ss. 238 and 241 of the *CBCA,* Yen Co., as a shareholder of airG, has standing to bring an oppression remedy claim. They also argue that Mr. Yen, in his personal capacity, has standing to advance an oppression claim, both as a former director of airG and as the directing mind of Yen Co.

[274] The plaintiffs also assert that Mr. Yen had the following five reasonable expectations: that there was an ESOA, that he would remain a director until he resigned, that airG would remain neutral in the litigation and not use its resource against him, that he would be compensated in accordance with the terms of the

2015 Agreement until he chose to resign as a director, and that Mr. Ghahramani would be paid in accordance with the 2015 Agreement.

[275] They assert that each of these expectations were reasonable, and that Mr. Ghahramani's actions breached the expectations in a way that was oppressive.

[276] The defendants assert that Mr. Yen does not have standing in his personal capacity to advance an oppression claim, as he is not a shareholder of airG, and that the oppression remedy is not an appropriate cause of action for advancing his claim, which they assert is more accurately described as a contractual dispute.

[277] The defendants also deny that Mr. Ghahramani oppressed Mr. Yen. They argue that, in accordance with the business judgement rule, this Court should extend deference to Mr. Ghahramani's decision to remove Mr. Yen as a director and normalize airG's business, as these actions were within the range of reasonable possibilities, were not oppressive, and were, in fact, in the interests of airG and its shareholders.

[278] They also assert that Mr. Yen participated in substantial wrongdoing, which precipitated his removal as a director, and that his past conduct should be considered in the Court's analysis.

Relevant Findings of Fact

[279] In May 2006, Mr. Yen and Mr. Ghahramani each transferred their respective airG shares to Yen Co. and Ghahramani Co.

[280] Mr. Yen is Yen Co.'s sole director and officer. Yen Co.'s only shareholders are Mr. Yen and a family trust of which Mr. Yen and his mother are co-trustees.

[281] Mr. Yen and Mr. Ghahramani treat the shares held by their respective holding companies as if they are their own. Section 4.4 of the 2015 Agreement supports this finding insofar as it states that Mr. Yen and Mr. Ghahramani are "shareholders of airG (either directly or indirectly through family trusts)".

[282] Mr. Yen is the sole directing mind and agent of Yen Co. and, similarly, Mr. Ghahramani is the sole directing mind and agent of Ghahramani Co.

[283] When an agent is effectively the directing mind of a corporation, that agent's acts and knowledge will normally be attributed to the corporate principal: *Scott v. Golden Oaks Enterprises Inc*., 2024 SCC 32, para. 162.

Discussion

[284] As a shareholder, Yen Co. has standing to bring an oppression claim.

[285] I am also satisfied that Mr. Yen, as both a beneficial owner of airG's shares and a former director, has the standing to bring an oppression claim in his personal capacity.

[286] Mr. Yen and Mr. Ghahramani have always treated and considered the shares held by their respective holding companies, Yen Co. and Ghahramani Co, as shares held by themselves personally. Mr. Yen is also a shareholder and the directing mind of Yen Co. Through Yen Co., Mr. Yen has an indirect 44.37% ownership and associated financial interest in airG. In this way, Mr. Yen is the beneficial owner of the airG shares held by Yen Co. and has standing to bring the oppression claim.

[287] In order to succeed in his oppression remedy claim, Mr. Yen would either need to prove that he had a reasonable expectation that was violated by airG's corporate conduct that was oppressive or unfairly prejudicial; or that airG unfairly disregarded his interest as a shareholder.

[288] Mr. Yen asserts that five of his reasonable expectations were violated. I have already addressed Mr. Yen's assertions that there was an ESOA and that he was entitled to remain a director until he resigned. Even if Mr. Yen had an expectation or a sincere belief about these issues, his expectations were not reasonable or rooted in fact.

[289] I also note that the oppression remedy protects the rights and interests of shareholders, not directors. In the absence of a binding shareholders' agreement

that Mr. Yen would remain a director of airG in perpetuity, the removal of Mr. Yen from airG's Board of Directors was not oppressive to the plaintiffs' interests as a shareholder, as Mr. Yen's removal did not affect the value of his shares.

[290] Mr. Yen also argues that he had a reasonable expectation that airG would remain neutral in this litigation. I have already concluded that airG has not used its resources to fund Mr. Ghahramani's litigation expenses. I am also not convinced that airG acted either in favour of Mr. Ghahramani or against Mr. Yen. It simply acted in its own best interests.

[291] Given my finding above, I need only address Mr. Yen's remaining claims that:

1) he would maintain compensation under the terms of the 2015 Agreement until he chose to resign as a director; and

2) Mr. Ghahramani would only be paid in accordance with the 2015 Agreement and that this expectation was breached when Mr. Ghahramani received a $1.9 million bonus for the 2020 fiscal year.

[292] Beginning with the issue of Mr. Yen's compensation. The 2015 Agreement was a side agreement negotiated between Mr. Yen and Mr. Ghahramani which illicitly diverted airG's funds from other shareholders into Mr. Yen and Mr. Ghahramani's pockets. airG was not aware of, or party to, the Agreement.

[293] The 2015 Agreement purports to guarantee that Mr. Yen and Mr. Ghahramani would remain directors and employees forever unless they decided to resign from these positions. Accordingly, Mr. Yen asserts that he expected to receive compensation indefinitely.

[294] The plaintiffs also assert that Mr. Yen's compensation and employment with airG was a consequence of his share ownership in airG and, therefore, should continue as long as he remains a shareholder.

[295] I find this position to be entirely unreasonable and unrealistic. At the outset, I find that any expectation that is grounded in the covert 2015 Agreement cannot be found to be reasonable. It is also not commercially reasonable for Mr. Yen to

assume that, by virtue of his share ownership and his history with airG, he would forever be employed and entitled to draw compensation from the company.

[296] Mr. Yen's expectation is especially unreasonable given that he performed no regular, let alone useful, services for airG. He was an employee in name only. The compensation he received was pursuant to the illicit 2015 Agreement, which airG was unaware of. It defies logic and reason to expect that airG would be compelled to employ and compensate Mr. Yen in perpetuity in these circumstances.

[297] Mr. Yen's final contention is that Mr. Ghahramani's 2020 fiscal year bonus breached Mr. Yen's reasonable expectation. I do not agree. I reiterate that the 2015 Agreement cannot ground a reasonable expectation. Mr. Ghahramani's bonus at the culmination of the 2020 fiscal year was aligned with the recommendation of outside consultants and is in accordance with normal business practices.

[298] Accordingly, Mr. Yen has failed to establish that any of his alleged expectations were reasonable and, therefore, none of them can support a finding of oppression under the *CBCA*.

[299] Even if I were to accept that Mr. Yen's expectations were reasonable, Mr. Yen has not proven that Mr. Ghahramani's impugned conduct was coercive, abusive, or undertaken in bad faith. In my view, Mr. Yen and Mr. Ghahramani engaged in longstanding fraudulent behaviour which damaged the interests of airG and its shareholders. At the conclusion of the 2020 fiscal year, Mr. Yen and Mr. Ghahramani went into corporate battle for the control of airG and based on the exercise of corporate democracy, Mr. Yen lost.

[300] While Mr. Ghahramani's decision to remove Mr. Yen as a director and normalize airG's business operations were subjectively disappointing to Mr. Yen, they were not oppressive, nor were they a breach of any objectively reasonable expectations. Instead, I find that these actions are well within the range of reasonable possibilities a director could undertake and are therefore entitled to deference under the business judgment rule.

[301] Mr. Yen has been sidelined as a minority shareholder with no authority to direct the affairs of airG. As a result, he wants an exit from airG that will monetize his minority interest in the company. His unilateral and subjective wishes and expectations are entirely secondary to the legitimate interests of airG, as expressed by its directors, and the rest of airG's shareholders.

[302] Accordingly, I find that there is no basis for a finding of oppression.

Conclusion on the Plaintiffs' Claims

[303] Based on my review of the facts and law before the court, I find:

1) There was no ESOA between Mr. Yen and Mr. Ghahramani;

2) While Mr. Yen may have believed that he was entitled to remain an airG director in perpetuity, such a belief was not reasonable;

3) airG's resources are not being used to fund Mr. Ghahramani's litigation. Mr. Yen's assertion that airG should have stayed out of this litigation is unreasonable;

4) It is not just and equitable to dissolve airG. Therefore, I decline to make an order under either s. 214(b)(ii) or s. 214(2) of the *CBCA*; and

5) Neither airG nor Mr. Ghahramani acted in a way which oppressed Mr. Yen or Yen Co.

[304] Consequently, I dismiss the plaintiffs' claims.

The Counterclaims

[305] There are two counterclaims to which the defendants by counterclaim must respond. One filed by Mr. Ghahramani (the "Ghahramani Counterclaim") and the other by airG (the "airG Counterclaim").

[306] The Ghahramani Counterclaim makes two primary claims. The first is that Mr. Yen breached the 2015 Agreement by: (a) being involved with competing mobile software and content services; (b) being involved with StudyPug; (c) using airG's relationships and employees for the benefit of competing businesses; (d) soliciting

airG employees to join competing businesses; and (e) failing to make prompt disclosure related to his involvement with competing businesses to Mr. Ghahramani.

[307] Mr. Ghahramani also asserts that since Mr. Yen breached the 2015 Agreement, Mr. Yen's claims for damages and loss which stem from Mr. Ghahramani's alleged breaches are barred.

[308] The Ghahramani Counterclaim further alleges that Mr. Yen misappropriated airG's resources from 2009 onward by improperly expensing claims which were either personal expenses or expenses relating to competing businesses.

[309] The airG Counterclaim originally named Mr. Yen, StudyPug, Tai Management, Canfleet, Manitoulin, and ASI; however, airG discontinued its counterclaims against Tai Management, Canfleet, and Manitoulin.

[310] The remaining airG Counterclaims allege that Mr. Yen, as a director of airG, owed airG a fiduciary duty and that Mr. Yen breached this fiduciary duty by participating in, and using airG's resources to support, StudyPug, a competing business. airG also claims that Mr. Yen misappropriated corporate resources, both by diverting them to competing companies and by having airG pay for Mr. Yen's personal expenses.

[311] These personal expenses were claimed through Mr. Yen's sidecar company, ASI, which had a business contract with airG. Therefore, airG also brings a claim against ASI for breach of contract.

[312] airG also seeks a remedy of unjust enrichment against StudyPug as it asserts that Mr. Yen diverted thousands of dollars in airG's corporate resources to buy office equipment and rent office space for StudyPug.

Are the Counterclaims Barred by the Operation of the *Limitation Act*?

Legal Principles

[313] The *Limitation Act* dictates the statute of limitations for causes of action that arose after June 1, 2013.

[314] According to s. 6 of the *Limitation Act*, “a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered”.

[315] Section 8 of the *Limitation Act* states that a claim is considered to have been discovered on the first day on which a person knew or reasonably ought to have known all the following:

> **8**. […]
>
> (a) that injury, loss or damage had occurred;
>
> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
>
> (c) that the act or omission was that of the person against whom the claim is or may be made; and
>
> (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

[316] The SCC in *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, at para. 40 [*Grant Thornton*] clarified that “the limitation period is triggered when the plaintiff discovers or ought to have discovered through the exercise of reasonable diligence the material facts on which the claim is based”.

[317] While *Grant Thornton* addressed New Brunswick’s statute of limitation legislation, the BCCA in *Rooney v. Galloway*, 2024 BCCA 8, at para. 195, determined that this decision also applies to s. 8 of the BC *Limitations Act*.

[318] The SCC in *Grant Thornton* also stated that “a claim is discovered when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant’s part can be drawn”: para. 42.

[319] The court may find that an individual had constructive knowledge of a claim when the individual “ought to have discovered the material facts by exercising reasonable diligence”: *Grant Thornton* at para. 44.

[320] On the issue of knowledge, “ignorance of the extent of injury will not of itself serve to postpone the running of the time in which to commence an action”: *Craig v. Insurance Corporation of British Columbia*, 2005 BCCA 275 at para. 14.

[321] Section 17 of the *Limitation Act* addresses the discovery rules which apply when a successor, predecessor, principal, or agent makes the discovery. Section 17 provides:

> **17** (1) A claim of a person claiming through a predecessor in right, title or interest is discovered on the earlier of the following:
>
> (a) the day on which the claim is discovered by the predecessor;
>
> (b) the day on which the claim is discovered by the person claiming.
>
> (2) A claim of a principal, if the principal's agent had a duty to communicate to the principal knowledge of the matters referred to in section 8 (a) to (d), is discovered on the earlier of the following:
>
> (a) the day on which the claim is discovered by the principal's agent;
>
> (b) the day on which the claim is discovered by the principal.

[322] Knowledge acquired by the directing mind of a corporation will be attributed to the corporation through the principles of agency: *Scott v. Golden Oaks*, 2024 SCC 32 at para. 162.

[323] Section 22(1)(a) of the *Limitation Act* addresses the limitation period for related claims and counterclaims, and reads as follows:

> **22** (1) If a court proceeding has been commenced in relation to a claim within the basic limitation period and ultimate limitation period applicable to the claim and there is another claim (the "related claim") relating to or connected with the first mentioned claim, the following may, in the court proceeding, be done with respect to the related claim even though a limitation period applicable to either or both of the claims has expired:
>
> (a) proceedings by counterclaim may be brought, including the addition of a new party as a defendant by counterclaim;

[324] As stated by the BC Supreme Court in *Phaneuf v. 0896459 B.C. Ltd.*, 2024 BCSC 1343:

> [79] The purpose of s. 22(1) of the *Limitation Act* is to avoid the mischief that would result if plaintiffs could wait until the last minute to start an action, thereby “clearing the battlefield” of any competing claims or counterclaims for

> which the limitation period will have expired by the time the plaintiff delivers pleadings. Section 22(1) avoids this mischief by allowing related claims and counterclaims to be joined to the plaintiff's action after the expiry of a limitation period. […]
>
> [Citations omitted.]

[325] In *Lui v. West Granville Manor Ltd.* (1987), 11 B.C.L.R. (2d) 273, 1987 CanLII 164 (C.A.), the BCCA considered the application of this provision to third-party claims which would otherwise be statute barred. In *Lui*, the defendant counterclaimed against a third-party who had not been named in the original litigation, after the elapse of the ordinary limitation period. The BCCA stated the following at para. 58, citing p. 331 of *Lui v. West Granville* (1985), 61 B.C.L.R. 315 (C.A.):

> [58] […]
>
> In my opinion, permitting third party proceedings to stand and not be struck out, where the third party proceedings are capable of standing alone as a separate cause of action, and where they are brought after the effluxion of a limitation period that would apply if the third party proceedings were standing alone, must depend on the establishment of some real and substantive connection between the third party proceedings and the original action. That real and substantive connection must also operate to explain why the third party proceedings were not brought as an independent action. There must be some degree of dependence by the third party proceedings on the original action before the third party proceedings setting up a separate cause of action can be piggy-backed over the limitation period.

See also: *Phaneuf* at para. 80.

[326] The BCCA in *Lui* also stated the following at para. 45:

> The legislative purpose [of then s. 4(1), now s. 22(1)] must surely have been to permit those proceedings which are brought within the applicable limitation period to go ahead, and to permit all subordinate proceedings which are dependent on the main proceedings to go ahead with them, but to prevent any proceedings which are truly independent from using bogus subordinate status to avoid a limitation period which would otherwise be applicable.

[327] Whether a counterclaim is related to or connected with the action is a fact-specific inquiry. The court may consider, among other things, “the facts that give rise to the claims, the causes of action and the possible connection between the relief

sought by the parties.”: *Shoolestani v. Ichikawa*, 2017 BCSC 1589 at para. 35, aff’d 2018 BCCA 11.

[328] With the exception of claims captured by s. 24(1) of the *Limitation Act*, when a claim is advanced based on a series of wrongful actions, ongoing wrongful acts do not extend or restart the limitation period of the previous actions: *Boulet v. Inventys Thermal Technologies Inc.*, 2019 BCSC 1416 at paras. 74−75; *Chancellor v. Maynes*, 2021 BCSC 391 at paras. 72−76.

Positions of the Parties

[329] airG submits that its claims related to Mr. Yen’s improper business expenses are permissible as it discovered these claims in 2021 and commenced its action within the two-year basic limitation period.

[330] airG asserts that, prior to 2021, it did not have knowledge of the material facts from which a plausible reference of liability could be drawn. Mr. Yen invoiced airG for his expenses on a monthly basis, via ASI. These invoices constituted only a single line item with all expenses in bulk and were not itemized. Therefore, airG asserts that it did not have the knowledge as to the substance of the expensed items.

[331] airG further asserts that its counterclaims are permissible under s. 22 of the *Limitation Act* because its counterclaims are “related to or connected with” the main claim. It asserts that the counterclaim arose from the same events and the same timeline as the main action and form part of airG’s affirmative defence to the plaintiffs’ claims.

[332] airG concedes that the counterclaims related to Canfleet can only be advanced if they are permissible as related claims under s. 22(1) of the *Limitations Act.*

[333] Mr. Yen asserts that the claims within both the Ghahramani Counterclaim and the airG Counterclaim were commenced after the two-year limitation period and are, therefore, statute barred.

[334] In relation to his alleged personal expenses, Mr. Yen asserts that the statute of limitation bars claims two years from the date of the alleged improper expenses. He disputes the notion that continued wrongdoing would allow for the statute of limitations to roll forward.

[335] He also asserts that neither of the counterclaims fall within the exception laid out in s. 22 of the *Limitations Act*, as they are not subordinate proceedings that are "dependent" on Mr. Yen's main claim. In response, airG asserts that "dependency" is not the relevant legal threshold for the s. 22 inquiry.

Relevant Findings of Fact

StudyPug

[336] StudyPug is a Vancouver-based company that offers educational videos, written study guides, worksheets, and practice questions based on government-mandated curriculum.

[337] StudyPug was co-founded in September 2014 by Mr. Yen and Dennis Lee, one of Mr. Yen's and Mr. Ghahramani's engineering classmates at the Simon Fraser University.

[338] Mr. Lee ran an in-person tutoring business and, in 2014, proposed to Mr. Yen that the lessons Mr. Lee developed could be put online and accessed for a fee.

[339] In July 2014, Robert Boyes, airG's former Director of Technology, resigned from airG and started working on the development of StudyPug with Mr. Yen and Mr. Lee. It took over a year for Mr. Boyes, Mr. Yen, and Mr. Lee to develop a viable product for StudyPug.

[340] Mr. Yen has been involved with StudyPug since its incorporation in 2014. As of the trial, Mr. Yen is a director of StudyPug Inc., StudyPug Holding Inc., and StudyPug USA Inc.

[341] Mr. Ghahramani has been aware of Mr. Yen's involvement with StudyPug since at least January 27, 2016. On that date, Mr. Yen informed Mr. Ghahramani about his involvement in StudyPug via an email, which read:

> In case you are w[o]ndering, one of the project[s] I am helping out/participating in is this one: www.studypug.com.

[342] Mr. Bhangu learned about StudyPug around 2015 or 2016 when StudyPug went live. He signed up for a trial and received notifications about StudyPug on Instagram.

[343] Mr. Ghahramani also signed up for a free trial of StudyPug and obtained access to its website content. He could not recall when he did this.

[344] By at least March 24, 2017, Mr. Ghahramani knew that Mr. Boyes was working for StudyPug. On that date, Mr. Ghahramani sent an email to Mr. Bhangu which stated that Mr. Yen "stole" Mr. Boyes.

[345] Mr. Boyes also bumped into Mr. Bhangu at an airport in 2018. Mr. Bhangu already knew about Mr. Boyes' involvement with StudyPug. Mr. Boyes recalls Mr. Bhangu asking about the work Mr. Boyes was doing with Mr. Yen on StudyPug. This conversation is corroborated by an email exchange between Mr. Ghahramani and Mr. Bhangu, as discussed above.

[346] On September 12, 2019, Mr. Bhangu emailed one of airG's licensing contacts because he wanted to "license this type of tutorial content" for airG. In the email, Mr. Bhangu included a link to StudyPug's website.

[347] Between 2016 and the end of 2020, Mr. Ghahramani did not raise any concern with Mr. Yen regarding his involvement with StudyPug, either in writing or in person.

[348] Mr. Ghahramani did not confront Mr. Yen about StudyPug during airG's February 9, 2021 Board of Directors' meeting.

Mr. Yen's Personal Expenses

[349] airG had an established practice of allowing Mr. Yen and Mr. Ghahramani to charge personal expenses to airG. This practice was recorded in writing in the 2012 Agreement, which permitted them to expense $24,000 a year, and the 2015 Agreement, which permitted them to expense $4,000 a month.

[350] On February 9, 2018, Mr. Ghahramani sent an email to Mr. Yen raising "immediate concerns" about some of the expenses Mr. Yen expensed to airG personally, or through ASI. This email included the following:

> I've witnessed your expensing to airG things like:
>
> - Hotels in Taipei
> - Your wife's Line credits for games she plays
> - Computer hardware and devices from Amazon and Apple
> - Entire trip to Affiliate West conference in Las Vegas
> - Your taxi's and Uber/Lyft rides to and fro
> - Lunches and dinners 'with Simon' and 'with Dejan' – both of whom have not been employed with airG for years.
>
> You can probably appreciate my uneasiness at rushing into an 'equalization payment given that NONE of the above expenses being billed to airG are related to airG, or the fact that you're not actually doing any work for airG or advancing our revenues, profits, or financial interests… So I want to review with Lum that which I'm 'equalizing' and make sure that the items adhere to the spirit of the agreement.

[351] Notwithstanding this email, prior to Mr. Yen's removal as a director in March 2021, neither Mr. Ghahramani nor anyone else at airG took any substantive steps to review Mr. Yen's expenses.

Discussion

[352] airG asserts that the statute of limitations should be extended by virtue of s. 22(1)(a) of the *Limitation Act*. In my view, the claims made in the Ghahramani Counterclaim and the airG Counterclaim are not subordinate proceedings because they are independent from the plaintiffs' claims and not dependent on the main proceedings.

[353] I reject airG's submission that dependence on the original action is not required to extend the statute of limitations for third party proceedings. In *Lui*, the BCCA held there must be "some degree of dependence by the third party proceedings on the original action before the third party proceedings setting up a separate cause of action can be piggy-backed over the limitation period": at p. 23.

[354] The BCCA then went on to note that "similar guidelines can be applied, with any necessary modifications, to counterclaims against a new party and to other additions of parties": at p. 23. airG argues that the phrase "any necessary modifications" removes the requirement of dependency. I do not agree. The phrase "necessary modifications" does not remove, or in any way obviate, the requirement that dependency must be present in order for a party to resuscitate a claim that would otherwise be statue barred.

[355] In this case, I find that the counterclaims advanced by airG and Mr. Ghahramani are capable of standing alone as a separate cause of action, and do not depend on Mr. Yen's original action. Therefore, the normal statute of limitation applies.

[356] I also find that at all times after 2012, Mr. Ghahramani was the directing mind of airG. His knowledge is therefore imputed to airG for determining the date on which airG discovered Mr. Yen's alleged misconduct.

Study Pug

[357] The evidence shows that Mr. Yen disclosed his involvement with StudyPug to Mr. Ghahramani in January 2016. By 2018, Mr. Yen's involvement with StudyPug was known to Mr. Bhangu, Terrence Lee, airG's vice president of products, and Mr. Ghahramani.

[358] The claims in respect to Mr. Yen's involvement with StudyPug were therefore known to Mr. Ghahramani, and by extension to airG, as of January 27, 2016.

[359] The defendants are seeking to use subordinate status to avoid the applicable limitation period, and I reject this argument. The statute of limitations in relation to the StudyPug claims elapsed on January 27, 2018.

[360] Mr. Ghahramani's counterclaim was filed February 7, 2022. airG's Counterclaim was filed on March 7, 2022. This is beyond the two year statute of limitations. Consequently, with one exception, I find that the claims related to StudyPug are statute barred.

[361] The only exception to this finding relates to Mr. Yen's expensing of "DivaLites" (a professional quality light fixture that is often used in photo or film production), an electronic whiteboard, and the cost of renting Regus office space from 2014 to 2017. The cost of these items totalled $58,335.

[362] airG asserts that these items were used to unjustly enrich StudyPug. While these expenses were incurred and expensed by Mr. Yen between 2014 and 2017, airG's claim against StudyPug raises a separate cause of action. I find that the claims related to StudyPug's unjust enrichment were not discoverable until airG received disclosure from the parties following the commencement of this litigation.

[363] ASI provided airG with bulk invoices that did not reveal details of the items for which reimbursement was sought. Accordingly, while airG could have known that Mr. Yen was incurring expenses for his personal use, airG could not reasonably have known that Mr. Yen was acquiring these items and providing them to StudyPug.

[364] Due to the above, I find that airG's claim against StudyPug, in the amount of $58,335, are not statute barred.

Mr. Yen's Personal Expenses

[365] I find that, at the latest, airG's claim in relation to Mr. Yen's personal expenses was discovered on February 9, 2018, when Mr. Ghahramani raised

concerns about Mr. Yen charging airG for expenses related to travel, meals, entertainment, computer hardware, and other electronic devices.

[366] Mr. Ghahramani may not have known the extent of these expenses, but he knew that Mr. Yen charged expenses to airG that, on their face, did not appear to be related to airG's business. He could, therefore, have discovered the full nature of Mr. Yen's expenses by exercising reasonable diligence. Instead, Mr. Ghahramani, as the acting mind of airG, chose not to pursue this issue because "it was not a priority".

[367] Each claim related to Mr. Yen's personal expenses is independently actionable. Generally, the statute of limitations would have elapsed two years after he made the purchase on the basis that he expensed purchases shortly after buying items. That being said, the statute of limitations was suspended from March 26, 2020 to March 25, 2021, in accordance with the *COVID-19 (Limitation Periods in Court Proceedings) Regulation*, B.C. Reg. 199/2020.

[368] Given the date of airG's filing, and the suspended limitations period, I find that airG's claims against Mr. Yen for improperly claimed personal expenses from March 7, 2019 forward fall within the statute of limitations period. Any expenses prior to this date are time-barred.

[369] Mr. Ghahramani also advanced a claim in respect of Mr. Yen's inappropriate expenses. I find that these claims were paid by airG, not by Mr. Ghahramani. Mr. Ghahramani does not have a valid cause of action against Mr. Yen for expenses that did not affect him. Accordingly, Mr. Ghahramani's claim in relation to Mr. Yen's personal expenses is dismissed.

Payments to Ms. Hui – Mr. Yen's Sister-In-Law

[370] In addition to wrongful personal expenses, airG also claims that Mr. Yen diverted airG's resources, in breach of his fiduciary duty. Specifically, airG claims that Mr. Yen improperly diverted airG's corporate resources to his sister-in-law, Ms. Chia Hui. airG advances a claim against Mr. Yen personally in the amount of

$360,525 USD (representing the amount diverted, plus 15%) in respect of these payments.

[371] In 2014, Mr. Yen directed ASI to send payments totaling $313,500 USD to Ms. Hui pursuant to a consulting agreement between airG and Ms. Hui. Ms. Hui did not provide services to airG or ASI, and at trial, Mr. Yen had no knowledge of Ms. Hui's educational or professional background.

[372] While I have no difficulty accepting that these transfers were not made as a legitimate payment for services rendered, I find that the claim related to these transfers is barred by the *Limitation Act*.

[373] Mr. Ghahramani became aware of the payments to Ms. Hui in either 2014 or 2015 when Mr. Yen and Mr. Ghahramani agreed to "square up"—in other words, to equalize the effect of these payments in their year-end reconciliation in order to calculate their respective year end bonuses.

[374] Accordingly, through Mr. Ghahramani, airG's directing mind and agent, airG knew about these questionable payments in 2014 or 2015 and did nothing about them. The limitation period therefore began to run in 2014 or 2015 and has long since expired. airG is statute barred from now claiming this amount.

Did Mr. Yen and/or ASI Improperly Expense airG for Personal Expenses?

Positions of the Parties

[375] Mr. Yen denies that he claimed personal expenses via ASI. He attributes all of the expenses in issue to the legitimate business purposes of ASI. Specifically, he asserts that the meal and entertainment expenses were incurred to build and maintain his network of business contacts.

[376] airG submits that Mr. Yen claimed personal expenses through ASI and that it was unable to detect these personal expenses at the time because ASI's invoices were billed monthly, in one bulk amount, and were not particularized.

Relevant Findings of Fact

[377] airG seeks an order that Mr. Yen and ASI are liable in the amount of $216,855. This amount is based on the total amount expensed to airG between September 2014 and August 2021. This amount was $188,570, plus 15%, which represents the markup ASI applied to all expenses it charged to airG.

[378] The vast majority of the expenses charged to airG by ASI were expenses that were incurred on Mr. Yen's personal credit cards. Mr. Yen's monthly credit card bills were paid by ASI, which, in turn, charged these amounts, plus 15%, to airG.

[379] ASI provided a bulk invoice to airG. Individual expenses were not itemized.

[380] Melinda Chen, airG's controller testified that all Goods and Services Tax ("GST") and capital assets were removed from the calculations, but evidence contained in the interrogatories shows examples that include GST.

[381] ASI also did not remove GST from the credit card amounts that it charged airG, nor did airG remove GST from the amounts it paid to ASI in respect of these claimed expenses. Accordingly, airG paid ASI the full amount of the credit card bill, plus 15%, including a 15% markup on GST.

[382] From September 2014 to August 2021, airG paid ASI $216,855. This amount consists of $188,570 in actual expenses, plus the 15% markup.

[383] The $188,570 of expenses can be broken down into three categories, as follows:

1) Expenses submitted by Mr. Yen to airG, through ASI, which were recorded as office supplies, computer hardware, office furniture and handsets. These expenses totalled $92,719;

2) Expenses submitted by Mr. Yen to airG, through ASI, related to the cost of renting office space. These expenses totalled $45,230; and

3) Expenses submitted by Mr. Yen to airG, through ASI, which were labelled as expenses relating to "OT/Working Food & Bev" and included dozens of meals and many purchases of personal or office alcohol. These expenses totalled $50,621.

[384] Included in the $188,570 is an amount of $58,335 which Mr. Yen expensed to provide office equipment and rental space for Study Pug. This $58,335 includes the 2014 purchase of DivaLites and an electronic whiteboard, as well as the rental fee to rent Regus office space between 2014 and 2017.

[385] Mr. Yen expensed this amount to airG on the false premise that he used these items and the office space for ASI and/or airG business purposes. At trial, Mr. Yen eventually admitted that this amount was improperly charged to airG and that it was, instead, his own personal expense.

[386] I do not accept that these items were purely for personal purposes. Instead, I find that these items were used to further the StudyPug venture. Mr. Chan and Mr. Boyes recall StudyPug conducting business from the Regus office. Mr. Chan testified that he believed that StudyPug was "born" at this location. The DivaLites and electronic whiteboard were used by StudyPug in its Richmond, BC office.

[387] More generally, I find that $188,570 in expenses that Mr. Yen charged to airG via ASI were not incurred by ASI for the purpose of gaining or producing income for ASI. Nor were the expenses related to a business purpose of airG. They were either Mr. Yen's personal expenses or expenses incurred for the benefit of entities other than ASI or airG.

Discussion

[388] airG was ASI's only source of income. ASI did not provide services to anyone other than airG and its subsidiaries. airG paid all of the expenses ASI charged to it. airG's contract with ASI provides that airG will reimburse ASI for expenses incurred for a business purpose.

[389] While ASI was entitled to claim the expenses it incurred for legitimate business purposes from airG, I am satisfied that, via ASI, Mr. Yen treated airG like a bank machine that generously funded a range of his personal expenses and some of StudyPug's business expenses. For example, Mr. Yen expensed to airG the cost of

renting an office, as well as the cost of buying personal alcohol and restaurant meals.

[390] Mr. Yen's explanations for claiming these personal expenses were deceptive and irrational. I especially reject Mr. Yen's explanation that the meals and alcohol were "networking" activities to expand airG's business. Mr. Yen had not been meaningfully involved in the operations of airG since June 2012, so, while he may have been expanding his personal network, the meals purchase between 2014 and 2021 did not serve a business purpose for airG.

[391] I find that $188,570 of expenses were improperly charged to airG.

[392] While I accept that the expenses sought by airG were incurred by Mr. Yen for his personal purposes, as stated above, many of these expenses are barred by the *Limitation Act*. No later than 2018, Mr. Ghahramani, and by extension airG, knew that Mr. Yen was claiming personal expenses to airG. Mr. Ghahramani raised this issue with Mr. Yen in an email dated February 9, 2018, but chose not to follow up on this matter.

[393] I find that Mr. Yen breached his fiduciary duty to airG by claiming these personal expenses and he caused ASI to breach its contract with airG in respect of these expenses. Therefore, airG is entitled to damages in respect of the personal expenses claimed by Mr. Yen through ASI after March 7, 2019, but expenses prior to March 7, 2019 are time-barred.

[394] In respect to quantum of damages, I do not accept the plaintiffs' submission that defendants are disentitled to damages in respect of personal expenses because some of the items claimed included GST or were capital items.

[395] Mr. Yen, as the directing mind of ASI, was responsible for submitting ASI's expenses to airG. On behalf of ASI, Mr. Yen submitted expense claims to airG that included GST. airG paid these amounts in full, plus a 15% markup on the total amount claimed. Mr. Yen, through ASI, effectively profited from claiming a markup on GST.

[396] Accordingly, I find that airG is entitled to damages of $82,871 to compensate it for Mr. Yen's improperly claimed personal expenses. This amount accounts for the personal expenses claimed by Mr. Yen after March 7, 2019, in the amount of $72,061.50, plus the 15% markup, for a total of $82,871. ASI is jointly and severally liable for the payment of this amount for breach of its contract with airG.

[397] In addition, the evidence reveals that StudyPug was unjustly enriched by $58,335 based on its receipt of the DivaLites, an electronic whiteboard, and the use of the Regus rental office. At trial, Mr. Yen admitted the expenses for these items were improperly expensed to airG. I do not accept that these were merely personal expenses of Mr. Yen inadvertently charged to airG. These items are ordinarily used for a business purpose.

[398] Based on the evidence before me, I find that Mr. Yen acquired these items, but that they were ultimately used by StudyPug. The claims against StudyPug for unjust enrichment were not discovered or discoverable until the commencement of this litigation. Accordingly, they are not statute-barred.

[399] I am satisfied that StudyPug is liable to pay airG $58,335 in respect of the aforementioned items. This amount was incurred prior to March 7, 2019, and is therefore not actionable against Mr. Yen directly. Therefore, airG will not receive double compensation for these expenses.

Did StudyPug compete with airG?

[400] I am satisfied that StudyPug did not compete with airG.

[401] Section 4.3 of the 2015 Agreement contains a non-competition clause, and reads as follows:

> **4.3 Non-Competition**
>
> Vince and fredG [*sic*] hereby represent and warrant to each other, by way of a material inducement for entering into this agreement, that during the period of their Employment, and for a period of one (1) year after their respective Full Termination, neither Vince nor fredG [*sic*] will directly or indirectly engage in, be employed by, perform services for, participate in the ownership,

> management, control or operation of, or otherwise be connected with, a Competing Business.
>
> Competing Business for the purposes of this Agreement, means companies that develop, or market, or commercially promote services that can be described as either of:
>
> […]
>
> (f) mobile content services

[402] In my view, StudyPug does not fit within the definition of "mobile content services". StudyPug delivers online tutoring content. Providing tutoring services via online videos does not make StudyPug a provider of "mobile content services". Accordingly, the 2015 Agreement does not affect Mr. Yen's ability to participate in StudyPug.

[403] Looking beyond the 2015 Agreement, I also do not accept, as a matter of law, that StudyPug was a competitor of airG. StudyPug delivered online tutoring content. In my view, this is unrelated to airG's core business of mobile content distribution and merchandising to telecoms via value-added services. airG's competitive advantage and the core of its value is its broad range of international telecommunication carriers.

[404] There is nothing more than a tenuous and unconvincing nexus between the provision of online tutoring provided by StudyPug and the distribution of video content provided by airG. I accept the evidence of Mr. Boyes that airG was not equipped to deliver StudyPug's content through its existing infrastructure. I also accept that, at the time StudyPug was founded, airG was not pursuing any product initiative related to tutoring services and that neither Mr. Ghahramani nor Mr. Bhangu expressed any serious interest in airG delivering tutoring content.

[405] Accordingly, I find that StudyPug was, and is, an entirely different business, which delivers an entirely different product, as compared to airG.

[406] I also reject the assertion that Mr. Yen or ASI were required to disclose the StudyPug opportunity to airG based on their consulting agreement, as, at the time when Mr. Yen founded StudyPug, online tutoring did not relate to any current or

planned airG products or services. Mr. Yen also did not become aware of the StudyPug opportunity in the course of, or because of, the consulting agreement.

[407] Additionally, participating in other business ventures was an accepted practice at airG. During his sabbatical from airG, Mr. Ghahramani remained an employee and director of airG. He received an annual salary and annual bonuses from the company, and he charged personal expenses to it. During this period, Mr. Ghahramani also spent time on non-airG matters, including assisting his wife's family with an arms deal in Africa, and oil and gas deals in Venezuela and the Dominican Republic.

[408] In my view, after discovering that StudyPug was doing well, Mr. Ghahramani became jealous of Mr. Yen's success and sought to manufacture a conflict between the StudyPug business and airG by developing the "Mini-Me Academy", an airG product, that Mr. Ghahramani asserts could have been used to deliver content similar to the tutoring content provided by StudyPug.

[409] Based on the evidence before me, I am not satisfied that the Mini-Me Academy could reasonably produce similar content as StudyPug and, in any event, Mr. Bhangu admits that he did not begin pitching the Mini-Me Academy to potential clients until after February 2021, six or seven years after he first became aware of StudyPug.

[410] In summary, I am satisfied that at the time StudyPug was founded, StudyPug did not compete with airG and that, as of the time of trial, StudyPug still does not compete with airG. I am also satisfied that Mr. Yen did not learn of this opportunity by virtue of his role in airG.

[411] Accordingly, even if the claim were not statute-barred, I would dismiss the claims related to StudyPug.

Mr. Ghahramani's Counterclaims

[412] Any purported breach of the 2015 Agreement is statute barred. The allegation that Mr. Yen misappropriated airG's resources by improperly claiming expenses is an actionable cause of action for airG, but not for Mr. Ghahramani, personally.

[413] The Ghahramani Counterclaim is dismissed in its entirety.

Conclusion on the Counterclaims

[414] Based on my review of the facts and law before the court, I find:

1) Mr. Yen improperly expensed personal expenses to airG, via ASI;

2) By operation of the *Limitation Act*, only expenses incurred after March 7, 2019 are actionable;

3) airG is entitled to $82,871 for the repayment of personal expenses that Mr. Yen improperly expensed airG following March 7, 2019. ASI is jointly and severally liable for the payment of this amount for breach of its contract with airG;

4) Mr. Ghahramani is not entitled to relief for expenses which were charged to, and paid by, airG;

5) StudyPug was unjustly enriched and is liable to pay airG $58,335 in respect of the DivaLites, electronic whiteboard and the cost of renting Regus office space from 2014 to 2017;

6) Mr. Ghahramani's claims related to Mr. Yen's alleged breaches of the 2015 Agreement are time-barred; and

7) StudyPug is not a competing business and, consequently, even if the claim was not time-barred, Mr. Yen's participation in StudyPug did not breach the fiduciary duty he owed to airG.

[415] Consequently, airG's claim related to the improperly claimed expenses by Mr. Yen and ASI is successful, in part. StudyPug was unjustly enriched and is liable to airG as described above. I dismiss the remaining counterclaims, in their entirety.

Costs

[416] The parties asked to make submissions on costs after the release of these reasons for judgment. Costs submissions, not to exceed 20 pages, may be filed

within 60 days of the date of this judgment. If the parties wish to make oral submissions on costs, they may make the necessary arrangements with Supreme Court Scheduling within this timeframe.

[417] If no further submissions are received, the defendants are entitled to their costs at Scale B.

"Basran J."