

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rajani v. Wescana Properties Inc.*,  
2024 BCSC 916

Date: 20240529  
Docket: S211375 and S224466  
Registry: Vancouver

Between:

**Shafik Rajani, Sherali Rajani, Imran Rajani and  
Natasha Rajani**

Petitioners

And:

**Wescana Properties Inc., Wescana Pharmacy Ltd.,  
Zahir Rajani and Salman Rajani**

Respondents

Before: The Honourable Madam Justice Morellato

## **Reasons for Judgment In Chambers**

Counsel for the Petitioners:

M.L. Drouillard  
B. Love

Counsel for the Respondents:

J. Rost  
M. Nakatsu

Place and Dates of Hearing:

Vancouver, B.C.  
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Vancouver, B.C.  
May 29, 2024

<b>Table of Contents</b>	<b>Paragraph Range</b>
<b>I. INTRODUCTION</b>	[1] - [20]
A. The Parties	[4] - [12]
B. The Petitions and Consent Orders	[13] - [20]
<b>II. PETITION #1: LIQUIDATION AND DISSOLUTION OF WESCANA PROPERTIES INC. AND WESCANA PHARMACY</b>	[21] - [232]
A. Background Facts	[30] - [116]
1. Wescana Properties	[30] - [36]
2. Wescana Pharmacy	[37] - [45]
3. Conflicts Among the Rajani's	[46] - [110]
(a) The Tentative Agreement, and the May 2022 Transfers of the Harvard Court Pharmacy and Hastings Pharmacy	[72] - [80]
(b) The Tentative Agreement Collapses	[81] - [90]
(c) The Petitioners' Decision to Proceed with the Transfers of the Harvard Court and Hastings Pharmacies	[91] - [99]
(d) The Payroll Dispute	[100] - [110]
4. Allegations of Oppressive Conduct by the Respondents	[111] - [115]
5. Recent Developments and Agreements	[116] - [116]
B. Issue 1 in Petition #1: Should the Companies be Dissolved and their Assets Liquidated?	[117] - [137]
1. Statutory Provisions	[120] - [124]
2. The Just and Equitable test	[125] - [137]
C. Issue 2 in Petition #1: Are the Respondents Entitled to Oppression Remedies?	[138] - [199]
1. Statutory Provisions	[140] - [142]
2. Oppression Remedies: Legal Test	[143] - [147]
3. Shafik's Shareholder's Loan	[148] - [156]
4. Interest on Shafik's Shareholder's Loan	[157] - [188]
5. Shafik and Imran's Overtime Pay	[189] - [199]
D. Issue 3 in Petition #1: Zahir and Salman's Contempt of Court Application	[200] - [227]
E. Issue 4 in Petition #1: Varying Justice Crerar's February 14, 2022 Order	[228] - [232]
<b>III. PETITION #2: OPPRESSION CROSS-PETITION</b>	[233] - [236]
<b>IV. TERMS OF ORDERS FOR PETITIONS #1 AND #2</b>	[237] - [304]
A. Should an independent real estate broker be appointed by mutual agreement of the parties or by order of the court to distribute the assets of Wescana Properties and Wescana Pharmacy?	[238] - [238]
B. The petitioners submit that if Shafik, Zahir and Sherali, as the directors of Wescana Properties ("Directors") are not able to agree on who ought to be engaged to sell the Companies' real	[239] - [239]

<b>Table of Contents</b>	<b>Paragraph Range</b>
estate property, then the parties should be at liberty to apply for an order from the Court in this respect.	
C. Process for Instructing Brokers	[240] - [240]
D. What should be the process and terms to be followed for the pre-sale of condos owned by Wescana Properties?	[241] - [244]
E. What should be the process and terms to be followed for the sale of commercial properties owned by Wescana Properties?	[245] - [276]
F. What should be the process and terms or order to be followed for the dissolution of Wescana Pharmacy?	[277] - [290]
G. Should the cost of the tax opinion of \$106,696.80 be borne equally between Wescana Properties and Wescana Pharmacy?	[291] - [291]
H. The appropriate award of Costs in regard to the Petitions	[292] - [304]
1. Costs Order Relating to Petition #1	[292] - [295]
2. Cost Relating to Petition #2 and the Contempt Application	[296] - [304]
<b>V. DISPOSITION</b>	[305] - [341]
A. Sale of Presale Condos	[311] - [314]
B. Disposition or Sale of Commercial Properties including the Preferred Properties	[315] - [329]
C. Process and Terms of Order for the Dissolution of Wescana Pharmacy	[330] - [333]
D. Petition #2	[334] - [334]
E. Other Miscellaneous Terms of Order	[335] - [341]

**I. INTRODUCTION**

[1] This matter comprises two petitions arising from the break down in the business relationships among three brothers and their respective children, in regard to two very successful family-owned businesses, Wescana Pharmacy Inc. and Wescana Properties Inc. (“the Companies”). The first petition is brought by the majority shareholders and seeks the liquidation and dissolution of the Companies. The second petition, brought by the minority shareholders, alleges oppressive conduct and related remedies.

[2] The parties agree that the Companies are the result of the combined skill, experience and hard work of the three Rajani brothers, Shafik Rajani, Zahir Rajani, and Sherali Rajani, and their children. The parties further agree that the Rajani family dynamic has deteriorated to the point that it is in everyone’s best interest to sever business ties. All wish to see that the assets of the Companies distributed evenly and fairly; however, there has been ongoing disputes and litigation over how this is to be done.

[3] Zahir Rajani and his son Salman Rajani have also brought a contempt of court application against Shafik Rajani and Sherali Rajani, relating to the unilateral change in the signing authority of Wescana Properties’ bank accounts.

**A. The Parties**

[4] For clarity and economy, I will refer to the parties by their first names. I mean no disrespect in doing so.

[5] Shafik, Zahir, and Sherali arrived in Canada from Kenya in the late 1970’s. Shafik has been a pharmacist in British Columbia since 1981. Zahir has been a pharmacist in British Columbia since 1982. Sherali has been a businessman since his arrival in British Columbia in 1978.

[6] The brothers were involved in a number of family businesses over the years following their arrival in Canada. The family business developed over time to include various enterprises, including cinemas, real estate, construction, fashion retail, and

pharmacies. The family's current business activities are focused on their real estate and pharmacy businesses. The income produced from all of the Rajani family's businesses was pooled and either split among the three families or reinvested into their family business.

[7] Overtime, the brothers began incorporating their children into the family business: Shafik's son Imran, Sherali's daughter Natasha, and Zahir's son Salman.

[8] The directors and officers of Wescana Properties are:

- (a) Shafik, director, CEO, and president;
- (b) Zahir, director and secretary; and
- (c) Sherali, director only.

[9] Each brother owns 1/3 of the shares of Wescana Properties.

[10] The sole director of Wescana Pharmacy is Imran. There are no officers of Wescana Pharmacy.

[11] The shareholders of Wescana Pharmacy are Imran, Natasha, and Salman, who each own 50 voting shares, as well as the Sherali Trust, the Shafik Trust, and the Zahir Trust that each own 50 non-voting shares. That is, Imran, Natasha, the Shafik Family Trust, and the Sherali Family Trust together own 2/3 of the shares of Wescana Pharmacy; they are the majority shareholders of Wescana Pharmacy. Salman and the Zahir Family Trust are the minority shareholders of Wescana Pharmacy; they hold the remaining 1/3 share of that company.

[12] The conflict among family members resulted in a division between Shafik, Sherali, Imran, and Natasha (the "Majority Shareholders") and Zahir and Salman (the "Minority Shareholders").

**B. The Petitions and Consent Orders**

[13] The first petition was brought by the Majority Shareholders, who are seeking the dissolution of both Companies (Registry No. S-211375 or “Petition #1”). In response, Zahir and Salman brought an oppression cross-petition (Registry No. S-224466 or “Petition #2”). These petitions and the contempt application were heard together.

[14] To their credit, the parties have agreed to several consent orders, including orders made by Justice Crerar on May 20, 2022, and two orders that I subsequently made on November 16, 2022.

[15] One of the November 16, 2022 orders concerned the sale of a number of residential properties owned by the Wescana Properties, and addressed the manner in which the sales would be conducted, including how the proceeds would be used and held by Wescana Properties. The other November 16, 2022 order (filed November 17, 2022) addressed matters involving the transfer of business assets out of Wescana Pharmacy (“Wescana Pharmacy Consent Order”). Paragraph 7 of the Wescana Pharmacy Consent Order also set out a process to settle the profits of Wescana Pharmacy from May 9, 2022 onwards (“Profits”).

[16] The parties made continued efforts to resolve certain issues between them. On December 6, 2023, they wrote the Court to confirm that they had “entered into a settlement agreement in which they have agreed upon the amount of the profits and payments that have been made to the parties as required under their settlement”.

[17] In a subsequent memorandum to the parties, I asked that they confirm precisely what orders they wished the Court to address, in light of the complexity of these proceedings and the various agreements reached between the parties both before and after various hearing dates. I also sought confirmation regarding the orders sought by each party because their respective positions had changed significantly since they first appeared before me, though their amended petitions were not amended further. While further amendments would have been the preferred route, I exercised my discretion to accommodate each party in this regard.

Seeking clarity was also necessary because the parties' written submissions, voluminous in nature, had been changed and then updated over time, although not entirely.

[18] On March 21, 2024, counsel for both parties confirmed in a letter to the Court that the orders they each sought were those set out in their last written submissions filed with the Court. The orders were sufficiently complex that a table of concordance was provided to the Court.

[19] Notwithstanding considerable efforts between the parties to resolve the issues between them, certain issues remain outstanding. Accordingly, I address each of the petitions and remaining issues in turn.

[20] I will note that numerous affidavits and large volumes of material were placed before the Court during various continuances in these proceedings. I have made my best efforts to understand the revised submissions and the revised orders as they evolved and changed over time. If the parties seek additional related orders or clarification of the orders granted herein, they have leave to bring their concerns before me prior to any orders being entered.

**II. PETITION #1: LIQUIDATION AND DISSOLUTION OF WESCANA PROPERTIES INC. AND WESCANA PHARMACY**

[21] The parties in Petition #1 agree that it is just and equitable to liquidate and dissolve Wescana Properties pursuant to s. 324(1)(b) of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*Act*], but disagree on the terms in which this is to occur. The respondents oppose the dissolution and liquidation of Wescana Pharmacy, as proposed by the Petitioners. I will address the specific points of contention between the parties later in these Reasons.

[22] The Petitioners, as majority shareholders, seek orders that:

- (1) Wescana Properties and Wescana Pharmacy be dissolved and the assets be liquidated pursuant to s. 324 of the *Act*; and

- (2) an independent real estate broker or liquidator be appointed by mutual agreement of the parties or by order of the court to distribute the assets of Wescana Properties and Wescana Pharmacy.

[23] Based on their revised submissions, the petitioners also seek additional orders relating to the process and terms to be followed should the parties disagree on an independent third party to distribute the assets of Wescana Properties; the process and terms regarding the “pre-sale of condos”; the process and terms regarding the sale of commercial properties owned by Wescana Properties; and terms for the dissolution of Wescana Pharmacy.

[24] The petitioners further seek orders that:

- (1) the cost of a tax opinion of \$106,696.80 be borne equally between Wescana Properties and Wescana Pharmacy;
- (2) Justice Crerar’s order made February 14, 2022 be varied such that paras. 3, 4, and 7 are deleted in their entirety;
- (3) special costs in favor of the petitioners in Petition #1 and the respondents in Petition #2.

[25] The Minority Shareholders (the respondents in Petition #1) oppose the dissolution and liquidation of Wescana Pharmacy on the terms proposed by the petitioners. In their Response to Petition #1, they assert and rely upon “instances of oppression and wrongful conduct” on the part of “Shafik and to a certain extent his son, Imran”. In addition, they made claims of oppression and wrongful conduct in their cross-petition (Petition #2).

[26] Later in the hearing before me, in advancing Petition #2, the Minority Shareholders advised the Court that they were no longer seeking certain oppression remedies in Petition #2, but they were “not abandoning” the oppression claim in responding to Petition #1. Furthermore, the Minority Shareholders advised they were no longer asking this Court to “make an oppression finding relating to events that occurred before 2022, apart from Shafik’s loan”. The oppression remedies that

the Minority Shareholders continued to seek at the conclusion of these concurrent hearings were:

- (a) profits from the Fraser Pharmacy (although I understand that this issue has been settled since the hearing of this matter);
- (b) repayment of Shafik’s shareholder’s loan of approximately \$1,618,665 (“Shafik’s Shareholder’s Loan”);
- (c) interest on the Shafik’s Shareholder’s Loan at the TD prime lending rate plus 0.50% per annum, based on Wescana Properties’ Line of Credit; and
- (d) Return of the overtime pay unilaterally taken by Shafik and Imran (\$17,750 and \$10,850 respectively).

[27] There is also an outstanding issue concerning how Wescana Pharmacy’s trademark licence and intellectual property ought to be owned and managed.

[28] I will address these outstanding issues following an outline of the factual matrix before me, as well as the parties’ respective views on the outstanding issues.

[29] I note at this juncture that I permitted the affidavits filed in Petition #1 and Petition #2 to be used for either proceeding, as requested. The factual narrative and issues overlap and converge in these petitions and they were properly heard together. This order is necessary and benefits both parties by avoiding unnecessary duplication and expense, and by ensuring a complete record in each petition.

**A. Background Facts**

**1. Wescana Properties**

[30] Wescana Properties owns numerous commercial and residential properties, as set out in its Amended Notice of Application, some of which were subsequently sold or agreed to be sold by the agreement of the parties. Wescana Properties also leases units in its properties to various tenants. Some of the properties are or were leased to pharmacies owned and operated by Wescana Pharmacy.

[31] There are trust agreements for all of the residential properties, and pre-sale contracts that are owned by Shafik and Imran in trust for Wescana Properties. The purpose of these properties being held in trust is to permit Wescana Properties to purchase additional units in buildings with restrictions on the number of units per owner.

[32] Shafik deposes that he has continued to be responsible for the day to day management and operation of Wescana Properties, including managing its commercial and residential tenancies, with the assistance of a real estate management company.

[33] Wescana Properties has a building loan with Vancity Savings Credit Union and an operating line of credit with TD Bank. Their loans appear to be in good standing and the value of the Wescana Properties far exceeds the value of its loans.

[34] I accept that, other than the properties out of which family members operated the remaining Pharmacies, none of the brothers have a close relationship to any of the properties held by Wescana Properties, although the parties agreed during the hearing to accommodate their preferences in regard to the purchase of certain commercial properties through rights of first refusal, though they could not agree on how this would be done.

[35] The petitioners agree to a process where the respondents can have a right of first refusal over the sale of their preferred Wescana Properties assets. They simply assert that the process must be structured in such a way that the respondents pay fair market value for the assets they want, and that they must equally share the tax burden.

[36] There are no written restrictions on the transfer of the shares of either Wescana Properties or Wescana Pharmacy. However, the parties have a common understanding that the shares should not be transferred outside of the Rajani family.

## 2. Wescana Pharmacy

[37] Wescana Pharmacy has been described as “the new business of the children” of the three brothers.

[38] The first Wescana pharmacy opened in 1981. Over the years the business grew and the parties operated 11 pharmacies. However, at the time Petition #1 was commenced, Wescana Pharmacy owned only three pharmacies: Hastings Pharmacy, Harvard Court Pharmacy, and Fraser Pharmacy.

[39] In 2016, a reorganization of the family business occurred whereby the real estate business was separated from the pharmacy business. The old Wescana Pharmacy Ltd., incorporated in 1981, changed its name to Wescana Properties Inc. and all of the other Wescana group companies were amalgamated into it, with the result that Wescana Properties owned all of the Rajani family’s properties.

[40] Immediately following the reorganization, Wescana Pharmacy owned eight pharmacies. Five of the pharmacies were sold or closed between 2016 and the time of the hearing. The reorganization also resulted in the pharmacies being transferred to a numbered company, which was 1/3 owned by one child of each of the Rajani brothers. This company was subsequently renamed Wescana Pharmacy. The respondents explain that at the time of the reorganization, the pharmacies could have been sold to independent third parties “outside the family”. However, “for succession planning” and because it was a family business, the “Rajanis decided that each child (along with the trust companies) would acquire their father’s one-third share of each”. Wescana Pharmacy has been described as “the new business” of the children of the three brothers.

[41] It is acknowledged that Shafik and Zahir have always been closely involved with Wescana Pharmacy even though they no longer own shares in that company directly. Zahir maintains that he has a reasonable expectation to have a continuing and close relationship to the Fraser Pharmacy after dissolution, even though he is not a shareholder of that company and passed his ownership of that pharmacy to his son Salman as part of the 2016 organization.

[42] Imran, who is a pharmacist, became the sole director of Wescana Pharmacy due to the requirement in section 5 of the *Pharmacy Operations and Drug Scheduling Act*, SBC 2003, c. 77. Section 5 provides that the majority of the directors of a company that owns a pharmacy must be pharmacists. As such, Imran agreed to be actively involved in managing the pharmacies.

[43] At the time of the reorganization in 2016, it was contemplated that Imran as a pharmacist, Salman as an accountant, and Natasha as a nurse, would each work for the family's pharmacy business. However, Natasha went back to nursing and it was agreed that Salman, who was still in school, would complete his education first and then "fulfill his duties" in the pharmacy business. In the meantime, Imran continued acting as director of all three pharmacies and he was actively involved in their management.

[44] In addition to managing Wescana Properties, Shafik works as a pharmacist at the Harvard Court Pharmacy. Imran also works at the Harvard Court Pharmacy and has done so since about 2010 when he graduated as a pharmacist.

[45] Zahir has worked and continues to work at the Fraser Pharmacy since its inception in 1981. He deposes that the Fraser Pharmacy produced significant profits and this freed up Shafik to help expand the family business which included more pharmacies and real estate investments. Zahir asserts his work at the Fraser Pharmacy generated profits that were "the foundation or backbone for future acquisitions" of the family businesses.

### **3. Conflicts Among the Rajani's**

[46] Since the 2016 reorganization, conflicts arose between the brothers. The main source of conflict appears to relate to the extent of their children's involvement in the Companies and whether additional remuneration should be paid to the shareholders who are more involved.

[47] Shafik and Imran consider it unfair that Shafik manages Wescana Properties and Imran manages Wescana Pharmacy while the other shareholders profit from

their efforts. All of the shareholders of each company receive the same dividends. Imran states that he has found it difficult to manage multiple pharmacies for Wescana without assistance.

[48] In late 2018, Sherali and Zahir voiced their concern to Shafik that it was unfair for Imran to be more involved in the Companies than their children, Natasha and Salman. They also thought Shafik was favouring Imran. Shafik disagreed. He was of the view that Natasha and Salman had the same opportunity to become involved but had not taken it. In any event, it is clear that such disagreements formed part of the irreconcilable discord that developed among the brothers such that the family businesses is no longer tenable as such.

[49] Shafik deposed that he finds his role in Wescana Properties increasingly difficult because he is 63 years old and a diabetic. A one-third share of the real estate of Wescana Properties, he says, would be more manageable for him. Shafik expressed these concerns to the other two shareholders of Wescana Properties, Sherali and Zahir.

[50] In an April 2019 meeting with Zahir, Shafik proposed that some of the pharmacies be sold, with Imran purchasing Harvard Court Pharmacy and Fraser Pharmacy at fair market value, and that the proceeds be divided amongst the shareholders. Sherali and Zahir did not agree with this proposal and suggested that all of the pharmacies be sold. Zahir also suggested that the most valuable pharmacies including Harvard Court Pharmacy and Fraser Pharmacy be sold and that Imran be given one or two of the least profitable pharmacies in existence at that time. Shafik did not agree with either proposal; Sherali did not respond to Zahir's proposal.

[51] Following this April 2019 meeting, Zahir deposed that he began questioning the operation of the Companies by Shafik and Imran. Shafik asserts that "prior to this time neither Zahir nor any other family members had any involvement with the business operations of Wescana Properties or Wescana Pharmacy for over 40 years

beyond Zahir working as a pharmacist at Fraser Pharmacy and making the weekly bank deposits for all of the pharmacies”.

[52] Zahir asserts that “there were a number of family meetings in 2019 to try to resolve the issues between the Rajani’s; included in those meetings were the Rajani sisters and some of their children”. He adds that in July 2019, Shafik had a draft shareholders' agreement prepared, although it was never finalized and signed. The main points in the draft shareholders' agreement were “to never sell a property unless all three of the Rajanis [the brothers] agreed and to arrange for the children to inherit the properties free of cost”.

[53] Both Shafik and Zahir refer to a meeting on December 16, 2019 at Fraser Pharmacy between Zahir, Shafik, and one of the Companies’ accountants, Amrinder Cheema. Sherali chose not to attend. Not surprisingly, the parties had different views of that meeting.

[54] Zahir asserts that: “the accountant presented them with financial statements; “information on individual debts owed to the company” that indicated “only Shafik had debt owing”; and a 2020 projected income statement to give them an indication of the properties owned by the Companies and their assessed values”. Zahir asserts that the meeting ended with him telling Shafik that he would look over the papers, and “do his research on how they should proceed regarding a possible division of the assets” and that they “would talk soon”.

[55] Shafik asserts that at this meeting Zahir accused him of “underhanded conduct” by having some properties held by Imran and Shafik in trust for Wescana Properties: “even though there are trust agreements in place. Zahir subsequently repeated these accusations on several occasions”.

[56] A day after this meeting, on December 17, 2019, Shafik sent Zahir, Sherali and their accountant an email “regarding finding an amicable way that is fair for all three of us to part ways financially”. According to Zahir, Shafik’s email indicated that:

- (a) a division of the Companies must happen;
- (b) the Properties are to be divided equally and fairly - which is each brother's right;
- (c) only the Fraser Pharmacy and the Harvard Court Pharmacy have value and only if run by Zahir and Shafik”.
- (d) Zahir observes that the “allocation would involve Shafik receiving the Harvard Court property, Sherali receiving the Main Street property and Zahir receiving the Fraser Street property”.

[57] Shafik asserts that the parties subsequently engaged in further negotiations. In or about April 2020, Zahir directed a personal banker Patty Tan and their Commercial Bank Manager at TD Canada Trust to contact him for any instructions in addition to Shafik. As a result, TD Canada Trust now requires any large transactions to have the approval of all three shareholders.

[58] Shafik deposes that since the beginning of the family businesses, over the course of 40 years of overseeing the brothers’ property holdings, the banks dealt with him alone, as he had signing authority, without having to ask either of the other two shareholders. Shafik deposes that Zahir was previously responsible for making the weekly bank deposits for all of the pharmacies but that was the extent of his involvement with banking. Zahir deposes that the signing authority for the Companies’ bank accounts has always been “any one to sign”, not just Shafik.

[59] Shafik deposes he later learned from “the accountant Amrinder Cheema and his team”, that Zahir had told them: that he [Zahir] could not trust Shafik and that he [Zahir] thinks the accountants were favouring Shafik; that he [Shafik] “was trying to manipulate the value of the pharmacies by decreasing the value of the Harvard Court Property and increase the value of the Fraser Pharmacy” (apparently so that Shafik could purchase Harvard Court at a lower price.

[60] Shafik also asserts that Zahir took a number of steps beginning in early November 2020 to disrupt the business of Wescana Pharmacy and prevent other shareholders from accessing information.

[61] Shafik asserts that when the Surrey Pharmacy closed in November 2020, Zahir and his sons, including Salman, attended at the Surrey Pharmacy and removed half of the patient files, and then brought them to Fraser Pharmacy without the prior agreement of Shafik and Imran. Shafik asserts that the patient files taken by Zahir and Salman included the more valuable files.

[62] Imran ordinarily receives daily reports from all the pharmacies that allow him, as CEO, to make management decisions for the pharmacies. Imran asserts that, starting in November 2020, Zahir removed Imran's access to the computer system for Fraser Pharmacy, where Zahir works, so that Imran is unable to receive the daily reports in the morning and evening. According to Imran, these reports are crucial to the day-to-day management of that pharmacy.

[63] Imran asserts that as a result of Zahir's actions, he could not effectively fulfil his role as director of Fraser Pharmacy. He adds that it appears there has been a decline in business for services like medication reviews and flu shots in contrast to previous years. However, Imran has been unable to conduct a proper analysis of the business of Fraser Pharmacy because he no longer has access to the requisite information.

[64] Imran deposes that in early November 2020, Zahir changed the passwords on Wescana Pharmacy's computer file storage and the pharmacy billing program WinRx for the Fraser Pharmacy. This resulted in Imran, the accountants, and the IT technician being prevented from accessing the system. This caused difficulties with payroll and maintenance of the computer systems.

[65] WinRx pharmacy software includes the database of patient information and prescriptions that are submitted by Fraser Pharmacy to PharmaCare. Imran deposes that as a result of Zahir removing his access, Imran was unable to properly manage the operations of Fraser Pharmacy. Imran states that this, in turn, prevented him from meeting his fiduciary obligations as the director of Wescana Pharmacy.

[66] Ordinarily, the accountants have full remote access to each pharmacy's accounting files, including staff timesheets. The petitioners assert that after Zahir cut-off their access to Fraser Pharmacy, the accountants could no longer access the staff's timesheets at the Fraser Pharmacy and they had to collect timesheets from the staff manually in order to process payroll. They were unable to verify the hours reported by staff, which they are required to do as part of their normal payroll process and for the purpose of preparing review engagement statements.

[67] Imran acknowledges Zahir did restore access to the computer file storage and pharmacy billing program on November 20, 2020 but this was after the IT technician, Emile Farah, threatened to quit and the accountants refused to process the next month's payroll unless access was restored. Imran deposes that his access, however, was not restored such that he is unable to effectively act as director of Fraser Pharmacy.

[68] Imran deposes that in early November 2020, Zahir removed his and Shafik's access to security camera footage at the Fraser Pharmacy. On December 21, 2020 at around 11:30 p.m., the security company called Imran about a break-in alarm. Normally, in the event of a break-in, Imran would view the security camera footage to verify if there was a break in and check the security of the premises, but he was unable to do so. Additionally, the cameras are an important tool for accountants to monitor staff timeliness. As a result of being unable to access the cameras, Imran asserts that his ability to manage the pharmacies was compromised.

[69] The pharmacy licences for all of the pharmacies were required to be renewed by the end of February 2021. Imran deposes, as the only director of Wescana Pharmacy he had the responsibility to renew the licence, which requires attestations from all three shareholders. However, on December 23, 2020, Zahir requested that the accountants complete the renewals. By attempting to have the accountants complete the renewals without Imran's involvement, Imran states that Zahir created unnecessary work for the accountants and risked them being completed without

proper compliance with the necessary regulatory requirements. However, Imran was ultimately able to complete the renewals.

[70] From the time of the April 2019 meeting, Shafik, Sherali and Zahir began negotiations regarding the division of the assets of the Wescana Properties and Wescana Pharmacy. Those negotiations continued for about a year, and then also continued with the assistance of their respective legal counsel in the spring of 2020. Shafik and Sherali understood that Zahir was generally in agreement that the assets of the Companies should be divided or liquidated, and the Companies wound up. However, the parties continued to negotiate how this was to be done, and the conflict between them escalated as trust between the brothers eroded to a breaking point.

[71] The animosity and hostility between the parties escalated in May 2022 when the parties could not agree on a divestiture of Wescana Pharmacy's remaining three businesses: the Fraser Street Pharmacy, Hastings Street Pharmacy and Harvard Pharmacy.

**(a) The Tentative Agreement, and the May 2022  
Transfers of the Harvard Court Pharmacy and  
Hastings Pharmacy**

[72] Towards the end of January 2022, the parties appeared to have reached an agreement to resolve the disposition of the Wescana Pharmacy's assets between the parties ("Tentative Agreement"). Accordingly, after the initially hearing before Justice Crerar concerning the liquidation and dispositions of the Companies, the parties focused on the process for the disposition and liquidation of Wescana Properties. Indeed, the parties advised Justice Crerar by letter that the issue concerning Wescana Pharmacy had been resolved.

[73] However, all parties have since agreed there was no binding agreement. They explain that their settlement regarding the disposition of Wescana Pharmacy assets required agreement on a number of issues that had not yet been addressed.

Nevertheless, as part of the Tentative Agreement, the parties agreed on a number of issues, including:

- (1) Fraser Pharmacy would be owned and operated by Zahir and Salman (Minority Shareholders) through a company they would incorporate for that purpose;
- (2) the purchase price for Fraser Pharmacy was \$1,666,390;
- (3) the Harvard Court and Hastings Pharmacies would be owned and operated by the petitioner majority shareholders, through companies they would incorporate for that purpose;
- (4) the purchase price for the Harvard Court and Hastings Pharmacies would be \$1,289,368 and \$475,000, respectively.

[74] At the time of writing this decision, the above transactions have occurred, but not without much acrimony and further court hearings, coupled with other attendant as yet unresolved issues between the parties.

[75] The record shows that after reaching this Tentative Agreement, the parties' counsel continued to discuss closing the transactions agreed to in principle. They shared a draft closing agenda in early February, setting out the dozens of steps and documents required to close. Early on, counsel for the Majority Shareholders suggested that a tax planned closing be considered. Zahir and Salman's counsel responded that "the time for such has long past" and suggested "that such [a] process is, at the last minute, somehow appropriate is ridiculous". Ironically, in May 2022, on the eve of closing, Zahir and Salman suggested that a tax plan was required. Further, they would not agree that closing discussions were to be "without prejudice".

[76] What followed was further acrimony. Zahir and Salman accused Shafik and Sherali of contempt of court, regarding a change in the signing authority of the Wescana Properties' bank accounts, which fueled further hostilities. A further issue arose concerning how to settle the terms of a shareholder agreement that would govern the relationship between the parties in relation to the shared ownership of Wescana Pharmacy's trademark through a new company "TradeMarkCo". It was contemplated that this new company would simply hold Wescana Pharmacy's

registered trademark, whose use would be licenced to the parties' respective pharmacy companies.

[77] During months of discussion and several extensions of the transfer date, the parties in April 2022 suggested the transfer of all three pharmacies occur on May 9, 2022 ("Closing Date").

[78] On May 1, 2022, counsel for the Majority Shareholders provided draft documents for all of the other aspects of the closing, such as the bill of sale, promissory notes, director and shareholder resolutions, that were set out in a closing agenda based upon a prior draft. Notably, later on, when advancing an application to reverse the transaction (which has not since been pursued), Zahir and Salman claimed that these documents contained prejudicial or unreasonable terms, even though their counsel advised they had reviewed them and had no comments.

[79] On May 6, 2022, Zahir and Salman's counsel advised counsel for the Majority Shareholders that there were three issues related to the shareholder agreement keeping the parties apart, including how much of the new company TradeMarkCo would be owned by Salman. The parties continued to discuss the matter. Later that day, then counsel to Zahir and Salman sent another draft version of the shareholders agreement and the trade-mark licence agreement.

[80] On the May 9th Closing Date, Zahir and Salman's counsel emailed a proposal which conceded a major point of dispute regarding the shareholders agreement. However, they also proposed to close the transaction in a different way—on a tax planned basis, which had not been previously discussed between the parties. The proposal also included a requirement to have Wescana Properties fund the transaction, and it required preparing a letter agreement. The transaction, involving the mutual and concurrent transfers of all three Wescana Pharmacies did not close that day. Nevertheless, the Majority Shareholders proceeded with the transfers of the Harvard Court Pharmacy and Hastings Pharmacy out of Wescana Pharmacy into separate companies that they owed and controlled.

**(b) The Tentative Agreement Collapses**

[81] The parties provide conflicting evidence and very different views of the events leading to the Majority Shareholders' decision to proceed with the transfer of the Harvard Court Pharmacy and Hastings Pharmacy without the mutual transfer of the Fraser Pharmacy by Zahir and Salman.

[82] The Majority Shareholders assert that it was unfair for Zahir and Salman to propose a radically different way of closing the transactions, with tax implications, on the Closing Date, after previously advising them that a tax planned closing was unacceptable. The Majority Shareholders assert they were caught off guard. Zahir and Salman assert that they were the ones that were caught off guard, as they were prepared to close.

[83] The Majority Shareholders depose, and provide documentation supporting their evidence, that during the months leading up to the Closing Date, the Rajani Family, including Zahir and Salman, took numerous steps to close in a manner consistent with the Tentative Agreement, including:

- (a) incorporating new companies to receive the pharmacies; the respondents incorporated Wescana Pharmacy Rx Ltd. to receive the Fraser Pharmacy;
- (b) on March 10, 2022, Shafik texted Zahir information regarding how to prepare for the transfer including how to incorporate his new company, how to open company bank accounts, how to secure insurance, how to deal with suppliers, how to set up IT, and various contacts for Zahir to use for his newly incorporated company;
- (c) the majority shareholders opened bank accounts for their newly incorporated companies;

- (d) the majority shareholders arranged for new insurance for all three new companies, including the company incorporated by the minority shareholders for the Fraser Pharmacy;
- (e) the majority shareholders registered website and domain names for their new companies, and advised all contacts for the Hastings and Harvard Court Pharmacies to contact them at their new e-mail addresses;
- (f) VISA terminals were transferred to the new companies for the Harvard Court and Hastings Pharmacies;
- (g) on March 21, 2022, Shafik, Sherali, and Zahir received an email from TD Commercial Bank regarding the process to de-couple the banking and credit facilities for Wescana Pharmacy and Wescana Properties. Zahir signed the necessary paperwork to discharge Wescana Properties security interest against Wescana Pharmacy April 21, 2022. The minority shareholders' counsel was informed of this on April 15 and 28, 2022, including the need for Zahir to sign these documents;
- (h) in March 2022, business licenses for the Hastings and Harvard Court Pharmacies were transferred from Wescana Pharmacy to the companies newly incorporated by the majority shareholders;
- (i) in early April 2022, auto leases were transferred from Wescana Pharmacy to Wescana Properties. At this time, Zahir paid \$2,000.00 towards the deposit on a vehicle;
- (j) on April 19, 2022, Zahir requested a transfer of payments from major pharmaceutical suppliers, presumably in anticipation of the transfer of Fraser Pharmacy from Wescana Pharmacy to Wescana Pharmacy Rx Ltd.;
- (k) on April 22, 2022, Imran notified a number of major pharmaceutical vendors regarding the transfer of accounts from

Wescana Pharmacy to the new companies for the Hastings and Harvard Court Pharmacies;

- (l) on April 26, 2022, the respondent minority shareholders submitted a transfer request to the College of Pharmacists (“College”) to transfer ownership of Fraser Pharmacy from Wescana Pharmacy to their new company, Wescana Pharmacy Rx Ltd. effective May 9, 2022. This request was approved by the College;
- (m) the College approved Imran’s application to transfer ownership of the Hastings and Harvard Court Pharmacies from Wescana Pharmacy to the new companies incorporated for that purpose;
- (n) Salman arranged with Shaw to transfer the internet account for Fraser Pharmacy to his new company with an effective date of May 9, 2022;
- (o) on April 29, 2022, Salman entered into an alarm contract for the newly incorporated company. The petitioners, the majority shareholders, also transferred the security alarm contracts to their newly incorporated companies for the Hastings and Harvard Court Pharmacies;
- (p) the employees of the Harvard Court and Hastings Pharmacies were terminated and re-hired under the new companies;
- (q) on May 4, 2022, Imran was informed by ScriptPro that Fraser Pharmacy had submitted the signed support agreement, but that the GST number for the Fraser Pharmacy was still outstanding; and
- (r) on May 17, 2022, Imran was informed by a manager at Mint Pharmaceuticals that he had met Zahir, and the Fraser Pharmacy store changes had been submitted.

[84] The Majority Shareholders further assert that given the lack of comments on the transfer documents, the substantial steps both sides had taken towards the transfer of the three pharmacies, and the agreement on the purchase price for each pharmacy, they assumed right up until the Closing Date that the Zahir and Salman were preparing in good faith to close on the Closing Date. However, it became apparent that Zahir and Salman would not do so, despite months of preparation.

[85] Zahir and Salman have a categorically different perspective. They assert that “without exaggeration” only one issue, the non-solicitation clause, stood in the way of a mutually agreed closing that included the Fraser Pharmacy. They assert that, on May 9, 2022, they made a further concession, in order to reach a deal as contemplated by the Tentative Agreement; they withdrew their objection to the non-solicitation clause as requested by the Majority Shareholders. Zahir and Salman submit that “the path had been cleared for a mutually agreed closing”. Yet, assert Zahir and Salman, the Majority Shareholders proceeded to transfer the Harvard Court Pharmacy and the Hastings Pharmacy out of Wescana Pharmacies unilaterally and “inexplicably”, without telling them or their legal counsel that they had done so.

[86] Zahir and Salman add that when the petitioners filed an application before this Court on May 1, 2022 to permit them to proceed with the sale of the two pharmacies, the sale had already occurred, and they had not yet been advised that the transactions, transferring the Harvard Court Pharmacy and Hastings Pharmacy, had already closed.

[87] On May 10, 2022, Salman emailed Imran and asked him “who will be doing the bookkeeping and payroll pending closing?” Imran responded that:

Each pharmacy will look after their own payroll starting May 10<sup>th</sup>, pending court decision. Any and all final adjustments will be done at that time”.

[88] In this exchange, Imran does not disclose that the Hastings Pharmacy and Harvard Court Pharmacy had already been transferred. Zahir and Salman say they discovered the transfers were completed “through their own investigation.” On

May 12, 2022, their counsel demanded that immediate steps be taken to reverse these transfers. The Majority Shareholders refused.

[89] The respondents contend that the petitioner’s assertion that they ( i.e., the respondents Zahir and Salman) knew the credit facilities were going to end and payroll was going to stop on May 10th must be considered in this context. Zahir and Salman assert “that if the closing did not occur there was no reason for these things to occur”. They add that the closing date had been postponed before without incident and it could have been postponed again.

[90] Further, Zahir and Salman contend that they were waiting to hear back from the petitioners. It was their expectation that counsel for the petitioners would report back on the mechanics set out in a May 9th email and the parties would then arrange the closing. I note, however, as discussed later in these Reasons, that on May 9, 2022, rather than attending to the closing of the mutual transaction involving the transfer of the three pharmacies, Zahir and Salman brought contempt of court proceedings against Shafik and Sherali. The respondents also linked the contempt of court application to a demand by Zahir that he was entitled to \$17,750 to match Shafik’s overtime pay as an “equalization payment”.

**(c) The Petitioners’ Decision to Proceed with the Transfers of the Harvard Court and Hastings Pharmacies**

[91] The petitioners submit that when Zahir and Salman proposed a last minute “radical change” to the transaction on the Closing Date, they felt that there was no way the parties could productively cooperate and work together any longer. Accordingly, the transfer of the Harvard Court Pharmacy and the Hastings Pharmacy proceeded. The transactions actually closed around 1:00 a.m. on May 10, 2022, although they were dated to be effective as of May 9, 2022.

[92] The petitioners assert they were concerned that the many steps taken to prepare for closing put Wescana Pharmacy in a position where it would be prejudicial to wait longer. They note that, to compound matters, the relationship

between the parties was becoming more acrimonious, including a contempt allegation by Zahir and Salman against Shafik and Sherali. In this context, deposes Imran, he made the difficult decision to proceed with the transaction consistent with the Tentative Agreement. He states he intentionally proceeded with the transaction in a way that was as fair as possible for the respondents.

[93] Further, Imran deposes that he was of the view that proceeding in this manner was in the best interests of Wescana Pharmacy. He submits it was both consistent with the Tentative Agreement and intentionally severed as much of the business link between the parties as possible, while preserving the ability of the parties to share common assets while they awaited a court decision. The petitioners argued that the Fraser Pharmacy “is ready to be transferred out as soon as Salman agrees”. In fact, as noted earlier in these Reasons, Salman later agreed to transfer the Fraser Pharmacy out of Wescana Pharmacy on December 31, 2023, after the hearing of this matter.

[94] The petitioners acknowledge that after they proceeded with transferring the Harvard Court Pharmacy and Hastings Pharmacy out of Wescana Pharmacies into their own companies as envisioned by the Tentative Agreement, Zahir and Salman, set out their position as to why they believed it was unfair to do so. The petitioners assert that Zahir and Salman’s reasons are inconsistent with what they had said in the past about the matter. Again, they acknowledge that “this was not a smooth or friendly transaction, but it was in the best interests of the company”.

[95] Furthermore, Imran deposes he took a number of steps to ensure that the Minority Shareholders were not prejudiced by his or Natasha’s decision to transfer the Harvard Court Pharmacy and the Hastings Pharmacy to the newly incorporated companies. These steps included:

- (1) keeping the bank accounts for Wescana Pharmacy open. The bank confirmed to Imran that the Fraser Pharmacy would have no issue continuing to operate using this same account. These

- accounts remained open and were in use by the minority shareholders at the time Petition #2 was brought and litigated;
- (2) ensuring the property and liability insurance remained in place for Wescana Pharmacy;
  - (3) providing several weeks' notice to the minority shareholders regarding payroll transition plans;
  - (4) explicitly stating through counsel and in writing a continued willingness to cooperate, including amending the transfer agreements if need be;
  - (5) he specifically stated that the demand promissory notes used to pay Wescana Pharmacy for the Hastings and Harvard Court Pharmacies should be paid as quickly as possible and Shafik also offered to provide a personal guarantee or security to ensure payment of the promissory notes that were used to pay for the transfer of the Hastings and Harvard Court Pharmacies; and
  - (6) he reiterated that he continues to be available to assist the minority shareholders with Fraser Pharmacy business, and continues to be involved in matters such as the approval of employees, GST and other tax filings, and answering questions from the minority shareholders without delay.

[96] Imran and Natasha hold 2/3 of the voting shares of Wescana Pharmacy and, as such, they are the majority shareholders. The petitioners assert that the majority shareholders of Wescana Pharmacy held the requisite majority required for a special resolution, and they were therefore entitled to proceed with the transfers of the Harvard Court Pharmacy and the Hastings Pharmacy in May 2022.

[97] Moreover, Imran deposes that he and Natasha both approved the transfers because proceeding with these transfers was in the best interests of Wescana Pharmacy.

[98] In deciding that proceeding with the these two transfers was in Wescana Pharmacy's best interests, Imran asserts and deposes that the majority shareholders considered: (1) the deadlock and animosity between the parties, which was prejudicing the operation of Wescana Pharmacy; (2) the substantial steps that had been taken in anticipation of the Closing Date; (3) that the purchase prices and the allocation of the different pharmacies had been approved by all the parties; and (4) the reputational harm the pharmacies would suffer with the College, suppliers, and others if the transfers did not proceed.

[99] Zahir deposed he had concerns that the transfers were temporarily financed through promissory notes. Imran affirmed that they would be repaid as soon as possible as part of the Company's dissolution. Shafik was also prepared to provide a personal guarantee and security to assuage Zahir's concerns. Again, Imran testified that he felt he had no choice but to proceed in this way, in his capacity as C.E.O. and sole director of Wescana Pharmacy, on the basis it was in that company's best interest and this decision would work towards ending years of conflict.

**(d) The Payroll Dispute**

[100] The respondents argue that the petitioners acted in a high-handed manner in not giving them sufficient notice that they would be responsible for Fraser Pharmacy's payroll after May 9, 2022. The petitioners underscore that well in advance of May 9, 2022, their accountant gave two previous notices to Zahir and Salman that the last day of payroll would be May 9, 2022. As such, the petitioners assert that the respondents should have expected to take over the payroll for their Fraser Pharmacy by May 9th. However, Zahir and Salman assert that this conclusion only makes sense if the mutually agreed upon closing had actually taken place, but there was no transfer of the Fraser Pharmacy, no change in ownership

and, therefore, no change in the employment of the Fraser Pharmacy staff. The Fraser Pharmacy staff continued to be the employees of Wescana Pharmacy on May 9th.

[101] The respondents underscore it made no sense for Imran to expect Salman to take over payroll in circumstances where Zahir and Salman understood no closing had occurred, or that the transfers of Harvard Court and Hastings Pharmacies out of Wescana Pharmacy had not yet occurred.

[102] The respondents emphasize that because they understood there was no closing and Salman had not been provided with the Quick Books or any accounting information to takeover the payroll for the Fraser Pharmacy employees, he did not expect this task would fall on him on May 9 or 10, 2022.

[103] While the respondents point out that they did request the QuickBooks for the Fraser Pharmacy on May 2, 2022 through their lawyer, the QuickBooks were not provided before the Closing Date on May 9, 2022.

[104] Zahir and Salman assert that because they understood the closing was not going to occur, it was reasonable for them to assume that payroll services for the Fraser Pharmacy would continue to be provided as it had in the past through Wescana Pharmacy, such that they did not need to take it over.

[105] As a consequence of this turn of events, the employees at Fraser Pharmacy received mid-month pay cheques that did not include pay for one day; that is, on May 10, 2022. This error was corrected in the following pay period but, again, not without further conflict and court proceedings between the parties.

[106] On May 17, 2022, Zahir and Salman filed a short leave application to address the issue of payroll, among other issues. In support of this application, Salman swore an affidavit that referred to Imran's e-mail of May 10, 2022 that "Each pharmacy will look after their own payroll starting May 10th, pending court decision". Salman also deposed that because the signing authority for the Wescana Pharmacy bank account had been changed so that it now required two signatures instead of

one, he could not access the bank account to pay the Fraser Pharmacy employees in a timely manner.

[107] The short leave application before Justice Crerar was heard on May 20th, 2022 at 10:00 a.m. At 8:36 a.m. that morning, counsel for the petitioners advised counsel for the Zahir and Salman that their accountant, Mr. Sidhu, had agreed to immediately provide the information in his possession about Fraser Pharmacy personnel so that the payroll issue would be addressed.

[108] Furthermore, the parties consented to orders that the petitioners take all necessary steps to change the signing authority for the bank accounts of Wescana Pharmacy back to “any one to sign”, such that Salman was then able to access that account with his single signature.

[109] The parties also agreed to a consent order that “no future changes shall be made to the signing authority for the bank accounts of Wescana Pharmacy without unanimous written agreement of the parties or further order of the Court”. In addition, the parties agreed to a consent order that “no further steps to change the signing authority for the bank accounts of Wescana Pharmacy or Wescana Properties or both, could be taken without the unanimous written agreement of the parties or further order of the Court”.

[110] The respondents argue that the petitioners’ submission “that they wanted the Fraser Pharmacy to transfer out” by May 9, 2022 “is difficult to reconcile with the failure of the [petitioners] to communicate their own decision to proceed with the transfers of the Hastings and Harvard Court pharmacies”. The respondents submit it is “apparent” they were intent on proceeding with the transfers without Zahir or Salman, and without notifying them. Zahir and Salman submit the tax issue was a “red herring” and not there was no communication with them or their counsel regarding the petitioners’ concerns about their having raised the tax planning issue on May 9, 2022.

**4. Allegations of Oppressive Conduct by the Respondents**

[111] In their Amended Response to Petition #1, the respondents allege a number of incidents of oppressive conduct on the part of the petitioners; they also rely on the alleged incidents of oppressive conduct as set out in Petition #2 and they incorporate these allegations into Petition #1.

[112] The respondents assert that the numerous instances of oppressive conduct that they allege, underscore the need for the liquidations and dissolution order. Furthermore, in their final revised written submissions, the respondents no longer sought the reversal of the transfers of the Harvard Court and Hastings pharmacies out of Wescana Pharmacy as they initially did, and later pursued the transfer of the Fraser Pharmacy themselves. In any event, notwithstanding the various examples of oppressive conduct alleged by the respondents in Petition #1, after carefully reviewing the respondent's submissions, and the entirety of the factual matrix before me, I am not persuaded that reversing the transfers of the Harvard Court and Hastings Street transfers would be just, equitable or necessary.

[113] Furthermore, as noted earlier in these Reasons, the only allegations of oppressive conduct that I ought to address relate to the oppression remedies the respondents sought from the petitioners. They are as follows:

- (a) Distribution of profits from the Fraser Pharmacy
- (b) repayment of Shafik's Shareholder's Loan, of approximately \$1,618,665;
- (c) interest on the Loan at the TD prime lending rate plus 0.50% per annum; and,
- (d) return of the overtime pay unilaterally taken by Shafik and Imran in the amounts of \$17,750 and \$10,850 respectively.

[114] As regards the distribution of profits from the Fraser Pharmacy, I understand this issue was resolved between the parties in December 2023. That is, the Majority

Shareholders have agreed to an order whereby Salman receives the profits for the Fraser Pharmacy business from May 9, 2022 onwards. Zahir and Salman assert that “this is in reality an oppression remedy because, but for the transfer of the other two pharmacies, there would be no justification for Salman to obtain these profits”.

[115] I will address the evidentiary matrix relating to the remaining allegations of oppressive conduct, concerning Shafik’s Shareholder’s Loan and the overtime paid to Shafik and Imran, later in these Reasons when I discuss the legal merits of these claims.

## **5. Recent Developments and Agreements**

[116] Since the petition was first filed, the petitioners and respondents have addressed and resolved the issues between them in to a significant degree. Their positions have changed as a result. They have arranged for the purchase and transfer the three remaining pharmacies out of Wescana Pharmacy between them, divided certain residential properties held by Wescana Properties between them, and settled related profit and loss issues. However, outstanding issues remain between the parties as to how the assets of Wescana Properties are to be sold. The petitioners and respondents each seek specific and conflicting orders regarding the disposition of Wescana Properties assets. I address this issue later in these submissions.

### **B. Issue 1 in Petition #1: Should the Companies be Dissolved and their Assets Liquidated?**

[117] The petitioners submit that the significant and reoccurring conflicts between the parties, and the escalation of the conflict over the years in relation to numerous issues demonstrate that it is just and equitable for the court to intervene by granting the orders sought for dissolution and liquidation of both Companies

[118] The respondents support the separation of their respective business interests in Wescana Properties. However, the parties disagree on what these terms should be.

[119] Zahir and Salman oppose the dissolution of Wescana Properties and seek an order where Salman and Imran are equal shareholders and directors of this company. The petitioners do not see this as a viable arrangement given the continuing acrimony between these parties. I address each of these issues in their respective order.

### 1. Statutory Provisions

[120] In advancing their request for a liquidation and dissolution order, the petitioners rely on s. 324(1)(b) of the *Act* which provides that, on the application of a shareholder or director of a company, the court may order the company to be liquidated and dissolved if the court considers it just and equitable to do so.

[121] Section 324(1)(b) states:

Court may order company be liquidated and dissolved

324(1) On an application made in respect of a company that is a financial institution by the superintendent, or made in respect of a company, including a company that is a financial institution, by the company, a shareholder of the company, a beneficial owner of a share of the company, a director of the company or any other person, including a creditor of the company, whom the court considers to be an appropriate person to make the application, the court may order that the company be liquidated and dissolved if

- (a) an event occurs on the occurrence of which the memorandum or the articles of the company provide that the company is to be liquidated and dissolved, or
- (b) the court otherwise considers it just and equitable to do so.

[Emphasis added]

[122] Under s. 324(4) of the *Act*, where the court orders that a company is to be liquidated and dissolved, the court must appoint one or more liquidators:

s. 324(4) If the court orders under this Act that a company be liquidated and dissolved, the court must, in its order, appoint one or more liquidators.

[123] The petitioners note that the court may also make any of the orders listed under s. 227(3), including an order directing or prohibiting any act, or an order

regulating the conduct of the company's affairs. They submit this provision affords a broad discretion to the Court.

[124] The petitioners also submit that, under s. 325(3)(o) of the *Act*, the Court may make any order giving directions on any matter arising in a liquidation. Section 325 provides in part as follows:

325(1) An application to the court in respect of a company in liquidation may be made under this section by the company, a shareholder of the company or a beneficial owner of a share of the company, a director of the company or any other person, including a creditor or liquidator of the company, whom the court considers to be an appropriate person to make the application.

...

(3) On an application made in respect of a company in liquidation, the court may, in respect of that company, make any order it considers appropriate, including any of the following orders:

...

(o) an order giving directions on any matter arising in a liquidation.

## 2. The Just and Equitable test

[125] It is axiomatic that under s. 324(1)(b) the court may order a liquidation of a company when it is just and equitable to do so.

[126] The petitioners correctly submit that what is “just and equitable” encompasses broad considerations and is not limited to their interests as shareholders: *Masala Bites Enterprises Ltd. v. Sohal*, 2018 BCSC 1 at para. 15 quoting Lord Wilberforce in *Ebrahami v. Westbourne Galleries Ltd.*, [1973] A.C. 360 at paras. 374-375.

[127] A convenient summary of legal principles that inform liquidation applications under s. 324 of the *Act* is set in *Ten Hoeve v. Beukens*, 2020 BCSC 1194 [“*Ten Hoeve*”] as follows:

[44] Section 324(b) of the [Act] provides that a court can order a company liquidated and dissolved if it considers it just and equitable to do so. The words “just and equitable” are of the widest significance and confer a broad discretion on the court: *Kidner Investments Ltd. v. Totem Mercury Holdings Ltd.*, 2017 BCSC 205 at para. 69. Each case depends to a large extent on its own facts: *King City Holdings Ltd. v. Preston Springs Gardens Inc. (2001)*, 2001 CanLII 28368 (ON SC), 14 B.L.R. (3d) 277 (O.N.S.C.) at para. 10.

[45] The just and equitable test set out in s. 324 represents a lower threshold than that under the oppression remedy set out in s. 227. Under s. 324, there is no requirement of a finding of oppression, or unfairly prejudicial conduct, or other wrongdoing by either party. Nor is it necessary that there be a finding that the conduct of the company's affairs are being impeded: *Safarik v. Ocean Fisheries Ltd.*, (1995) 1995 CanLII 6269 (BCCA), 12 B.C.L.R. (3d) 342 (C.A.) at para. 84; *Callahan v. Shasta Properties Ltd.*, 2015 BCSC 663 at para. 81.

...

[67] In situations involving very similar circumstances where the mutual trust between siblings working together in a family business has been irretrievably lost, this court has determined that the fair and equitable solution is to order either that one party purchase the other's Interest in the business or, failing that, a dissolution and liquidation of the business: *Rendle v. Stanhope Dairy Farm Ltd. et al.*, 2003 BCSC 1894; *Sohi v. Best Choice Blueberry Farms Limited*, 2018 BCSC 36.

[Emphasis added]

[128] I have also considered the more recent decision of our Court of Appeal in *Weistock v. Weistock*, 2023 BCCA 352 at paras. 43-53 which endorses the principles subsumed in *Ten Hoeve*, among others. The Court in *Weistock* affirms the context and fact specific nature of the requisite analysis in such cases, as well as the broad discretion of the Court:

[47] ...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.

[129] Significantly, our Court of Appeal in *Weistock* also affirms that these categories are not exhaustive and the court's discretion is not limited to them:

[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: *Vivian* at para. 64. 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”: *Ebrahimi* at 496 (per Lord Wilberforce).

[130] I also agree with the petitioners that, in discerning what is equitable, a liberal approach ought to be taken in such cases when family-owned companies are involved. In *Safarik v. Ocean Fisheries Ltd.*, (1995) 64 B.C.A.C. 14 at para. 102, our Court of Appeal affirms that judges may apply the test for liquidating a company more liberally in the context of a family-owned businesses than in a conventional commercial enterprise.

[131] The petitioners also rely on *Sohi v. Best Choice Blueberry Farms Limited*, 2018 BCSC 36 (“*Sohi*”) at paras. 92-93, asserting that it is just and equitable to grant relief in instances such as this since the businesses of the parties are analogous to a partnership. The petitioners submit that the category with the closest application to the instant case is the partnership analogy. They argue that factors that determine when the partnership analogy applies include:

- (1) an association formed or continued on the basis of a personal relationship, involving mutual confidence;
- (2) an agreement, or understanding, that all, or some of the shareholders shall participate in the conduct of the business;  
and
- (3) restriction on the transfer of the members’ interest in the company.

[132] The petitioners assert that the first two factors apply to both Wescana Properties and Wescana Pharmacy. With respect to the third factor, they argue there is no express restriction on the transfer of shares of Wescana Properties or Wescana Pharmacy, but the parties understood that they could not be transferred outside of the Rajani family; therefore, they argue, the partnership analogy applies.

[133] I find the partnership analogy apt in the circumstances before me. There has been a breakdown of the mutual trust and confidence that had previously

underpinned the original undertaking between the brothers, which has expanded and now involves protracted business conflict between not only the brothers but their children as well (e.g., the conflict and disagreements between cousins as business associates): see *Sohi* at paras. 97-98 and *Vivian v. Firth*, 2012 BCSC 517 at para. 78. Moreover, I am satisfied that I may exercise my discretion to order the liquidation and dissolution of both Companies on specific terms because the mutual trust between family members in each company is so compromised that working together in the family businesses has become impossible. There have been serious and persistent disagreements between the parties on numerous issues regarding the proper management and functioning of the Companies for some years now. The background facts and outstanding issues in this case makes this patently clear.

[134] I am also satisfied on the authorities cited by the parties, and the respondents agree, that the oppression remedies they seek do not interfere with the court's discretion to grant liquidation and dissolution orders.

[135] Nevertheless, the respondents seek remedial relief, based on the broad discretionary authority of the court, grounded in s. 324 and s.227 of the *Act*, arising from their allegations of oppressive conduct against the petitioners.

[136] In this light, I have no difficulty in ordering the dissolution and liquidation of Wescana Pharmacy and Wescana Properties subject to particular terms that guide the liquidation process. The factual matrix outlined in these Reasons makes it clear that there has been a breakdown of the essential mutual trust and confidence that was previously the foundation of the business relationship between the Brothers and now, by extension, their children including Imran and Salman. The assets of Wescana Properties and Wescana Pharmacy are very valuable. A liquidation is likely to yield significant proceeds that can be distributed equitably amongst the shareholders.

[137] I order that under s. 324(1)(b) of the *Act*, Wescana Properties and Wescana Pharmacy be liquidated and dissolved, on the terms set out later these Reasons. These terms of order are to guide the process of dissolution and liquidation.

**C. Issue 2 in Petition #1: Are the Respondents Entitled to Oppression Remedies?**

[138] The orders the respondents seek “to rectify the matter” in their Amended Response have categorically changed over time, since the Amended Response was first filed.

[139] The respondents, as I understand their revised submissions, no longer request, for example, that: (1) a “butterfly transaction” be put in place; or (2) Wescana Pharmacy be retained by Salman. I have outlined above, in considerable detail, which remedies the respondents continue to seek in relation to their allegations of oppressive conduct by the petitioners. I now discuss the merits of these allegations.

**1. Statutory Provisions**

[140] The respondents rely on s. 227(1) ad (2) of the *Act* which provides:

**Complaints by shareholder**

227(1) For the purposes of this section, "shareholder" has the same meaning as in section 1(1) and includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section.

- (2) A shareholder may apply to the court for an order under this section on the ground
- (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
  - (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

[141] Section 227(3) of the *Act* also explicitly provides the court with the discretion to issue a broad range of orders, including those enumerated below:

- (3) On an application under this section, the court may, with a view to remedying or bringing to an end the matters complained of and subject to

subsection (4) of this section, make any interim or final order it considers appropriate, including an order

- (a) directing or prohibiting any act,
- (b) regulating the conduct of the company's affairs,
- (c) appointing a receiver or receiver manager,
- ...
- (e) appointing directors in place of or in addition to all or any of the directors then in office,
- (f) removing any director,
- (g) directing the company, subject to subsections (5) and (6), to purchase some or all of the shares of a shareholder and, if required, to reduce its capital in the manner specified by the court,
- (h) directing a shareholder to purchase some or all of the shares of any other shareholder,
- (i) directing the company, subject to subsections (5) and (6), or any other person, to pay to a shareholder all or any part of the money paid by that shareholder for shares of the company,
- (j) varying or setting aside a transaction to which the company is a party and directing any party to the transaction to compensate any other party to the transaction,
- ...
- (m) directing the company, subject to subsections (5) and (6), to compensate an aggrieved person,
- (o) directing that the company be liquidated and dissolved, and appointing one or more liquidators, with or without security,
- (q) requiring the trial of any issue, or

[142] While I have not listed all the powers of the court under s. 227 of the *Act*, the *Act* clearly affords the Court broad discretion in resolving the issues before it in such cases: *Boffo Family Holdings Ltd. v. Garden Construction Ltd.*, 2011 BCSC 124 [“*Boffo*”] at para. 120; *Re Rogers and Agincourt Holdings Ltd.*, (1976) 74 D.L.R. (3d) 152 (Ont. C.A.) at p. 156.

## 2. Oppression Remedies: Legal Test

[143] In *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560 [BCE], the Supreme Court of Canada reviewed and reframed the law relating to the oppression remedies, making it clear that findings of oppression are context and fact

specific. At para. 68, the Court mandated a two-step inquiry in assessing oppression claims:

[68] In summary, the foregoing discussion suggests conducting two related inquiries in a claim for oppression: (1) Does the evidence support the reasonable expectation asserted by the claimant? and (2) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms “oppression”, “unfair prejudice” or “unfair disregard” of a relevant interest?

[144] In *Boffo*, Justice Goepel, as he then was, reasoned at para. 110 that, “the reasonable expectation of stakeholders is the cornerstone of the oppression remedy”. Of significance, what constitutes a “reasonable expectation” is informed by an objective, contextual and fact specific analysis. Further, Justice Goepel states that considerations which may be useful in the analysis of whether a reasonable expectation exists include: “general commercial practice, the nature of the corporation, the relationship between the parties, and past practice: *BCE* at paras. 61, 62, 71, and 72.”

[145] The respondents rely on the decision in *BCE* at paras. 60-62:

[60] Against this background, we turn to the first prong of the inquiry, the principles underlying the remedy of oppression. In *Ebrahimi v. Westbourne Galleries Ltd.*, [1973] A.C. 360 (H.L.), at p. 379, Lord Wilberforce, interpreting s. 222 of the U.K. Companies Act, 1948, described the remedy of oppression in the following seminal terms:

The words [“just and equitable”] are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structure.

[61] Lord Wilberforce spoke of the equitable remedy in terms of the “rights, expectations and obligations” of individuals. “Rights” and “obligations” connote interests enforceable at law without recourse to special remedies, for example, through a contractual suit or a derivative action under s. 239 of the CBCA. It is left for the oppression remedy to deal with the “expectations” of affected stakeholders. The reasonable expectations of these stakeholders is the cornerstone of the oppression remedy.

[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.

[146] In *BCE*, the Supreme Court of Canada makes it clear that oppression is an equitable remedy, designed to ensure fairness; that is, what is “just and equitable”. The Court affirms that the oppression remedy gives a court broad, equitable jurisdiction to enforce not just what is legal but also what is fair, reasoning that courts considering claims for oppression should look at business realities, not merely narrow legalities: see para. 58.

[147] With this legal framework in mind, I now address the remaining allegations of oppressive conduct and the remedies the respondents continue to seek in Petition #1.

### **3. Shafik’s Shareholder’s Loan**

[148] Zahir and Salman depose that between September 2018 and March 2020, Shafik borrowed \$3,000,000 from Wescana Properties, and that he has paid back \$1,400,000 such that about \$1,600,000 is still owed to the company. Shafik acknowledges he borrowed these funds from Wescana Properties and he has agreed, from the outset of these proceedings to pay back the amount owing as soon as the assets of Wescana Properties are liquidated.

[149] Zahir states that near the end of August 2019, Shafik asked him if he could borrow \$1,000,000 from him to repay Wescana Properties, in order to pay back the funds he had borrowed from this company. Zahir notes that, according to Shafik, he was going to be taxed on the amount he had borrowed. Zahir asserts that he had no issue with loaning these monies to Shafik but wanted Shafik to confirm that he would no longer seek to have the Companies “split up”. Zahir thought this was consistent with the 2019 draft shareholders agreement that had been prepared. However, Zahir states that Shafik declined his offer to lend him \$1,000,000 on this condition, saying that he did not want Zahir’s money if it had this condition on it.

Notably, Zahir and Salman have since agreed to the dissolution and liquidation of the Companies.

[150] Zahir adds that, in the summer of 2019, he also wanted to purchase a home and “discussed with Shafik the possibility of borrowing funds” from Wescana Properties for this purpose. Zahir deposes that “Shafik was against the idea of borrowing funds” even though Shafik had done so in that past and Shafik borrowed more funds from this company months later.

[151] The respondents assert that Shafik is the only shareholder who has taken out any shareholder’s loans from Wescana Properties.

[152] Shafik takes issue with the allegation that his actions were oppressive. He deposes:

All the partners have at all times been fully aware of my borrowing from Wescana Properties. I am willing to pay all amounts that I owe to Wescana as part of any division or liquidation.

[153] It is also noteworthy that from time to time, Shafik has paid back monies he had borrowed from Wescana Properties.

[154] Shafik adds that he never prevented Zahir from borrowing funds from Wescana Properties. There is no paper trail or record before me that the majority shareholders (i.e., Shafik and Sherali) were formally approached to consider approving a shareholder loan to Zahir.

[155] In their oral submissions, counsel for the minority shareholders conceded that all three brothers consented to Shafik’s Shareholder’s Loan when it was made.

[156] In light of the authorities discussed early in these submissions and the factual matrix before me, I find that Shafik’s Shareholder’s Loan does not constitute oppressive conduct. No reasonable expectations were violated and Shafik’s conduct was not in any way oppressive, unfairly prejudicial or unfairly disregarded a relevant interest.

**4. Interest on Shafik’s Shareholder’s Loan**

[157] Zahir and Salman assert that Shafik’s Shareholder’s Loan was taken out on Wescana Properties’ Line of Credit (“LOC”) and that the LOC bears interest at TD prime lending rate plus 0.50% per annum. As such, notwithstanding Zahir’s offer to lend his brother \$1,000,000 on certain terms, the respondents now assert that “it is costing the company money if Shafik does not pay the same percent interest on his Loan”.

[158] In an affidavit dated May 9, 2022, Salman deposes that he “recently discovered” that Shafik had not paid any interest on the amount he borrowed from Wescana Properties. Salman also deposes that “Shafik directed Wescana Properties to pay the interest on his personal loans”. It is noteworthy that Salman is not a director or officer of Wescana Properties, nor is he a shareholder of that company.

[159] The petitioners assert that the money which Shafik borrowed was not taken from Wescana Properties’ LOC but, rather from their profits.

[160] To support their allegation that Shafik borrowed \$1.6 million from Wescana Properties’ through its LOC, the respondents rely on a one-page document appended to Zahir’s affidavit dated, September 27, 2021 [“Ex. J”] entitled “Reconciliation of TD Operating Line of Credit – July 9, 2020”. Zahir deposes that this “document was prepared by “Wescana Properties’ accountants that shows the amounts Shafik borrowed and repaid at Note 1”. I note that this document lists a number of properties, purchase prices, deposits paid, “funds from Pharmacy” but simply includes the following notation:

Shafik’s Borrowings (Note 1)	1,618, 445.00
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[161] Regrettably, this document does not contain any narrative or explanatory text as to its contents or the reason it was created. Furthermore, it does not identify the source of the numbers listed on the page, and the author is also not identified.

[162] Furthermore, Shafik deposes that it has been the past practice of Wescana Properties, since its inception, to charge no interest on shareholders' loans. He deposes, for example, that each month a shareholders' loan is used to partially finance a \$25,000 advance (i.e., approximately half of this amount), which the brothers receive monthly "on a zero interest basis". Accordingly, half of the \$25,000 per month each brother receives from Wescana Properties is funded from the shareholder loan account, interest free. Zahir acknowledges that he receives approximately \$12,500 each month as an interest-free shareholder loan, although he states this is done for "accounting reasons".

[163] Shafik deposes that the allegations of the respondents, that by not paying interest he is being unfair to the other shareholders, takes matters out of context and ignores the fact that he has led and managed Wescana Properties for years without being paid any compensation for his work in this regard. Shafik deposes:

I also don't take compensation for my work in managing Wescana Properties. There is a complex history to how I am compensated by the family companies, and the allegations made by Zahir and Salman regarding the unfairness of not paying interest on those loans are out of context to that complex history. If I had to pay interest on that loan, then in exchange, the Wescana Properties should compensate me for my unpaid work at the company.

[164] Shafik adds that neither the articles of Wescana Properties or Wescana Pharmacy require interest to be charged on shareholder loans. He also deposes that the brothers have always enjoyed financial benefits from the Companies. For example, Zahir enjoys expensive cars, and their cost "are made through shareholders loans to him for which no interest is paid".

[165] The petitioners underscore that the record before me does not establish that Shafik's Shareholder's Loan was advanced from the LOC. They assert that the evidence from their accountant Gary Sidhu, emailed to Salman in March 2022 in response to Salman's inquiries about the interest on Shafik's Shareholder's Loan, shows that the LOC was not actually used to advance funds for Shafik's

Shareholder's Loan. Instead, shareholders' loans were funded from Wescana Properties' operational profits.

[166] On March 9, 2022, Salman emailed Mr. Sidhu and asked him who was paying the interest arising from Shafik's Shareholder's Loan. On March 10, 2022, Mr. Sidhu responded to Salman:

Hello Salman,

This was an interest free borrowing as were all other borrowings that Wescana Properties had given out in the past.

[167] Salman was not satisfied with Mr. Sidhu's response, and wrote to him again on March 10, 2022:

Hi Gary,

To confirm that means Wescana Properties has been paying the interest, correct?

[168] Salman followed up on his previous email on March 15, 2022 and asked:

Following up on the question below from last week. With Shafik borrowing money from Wescana Properties' line of credit, who is paying the interest on the borrowed money?

[169] The petitioners underscore that Mr. Sidhu responded that same day to confirm that Shafik's Shareholder's Loan was not drawn from the LOC, but instead came from the shareholder's loan account; that is, shareholder loans re drawn from the Wescana Properties' positive cashflow:

Hello Salman,

All withdrawals made by any of the shareholders are from the shareholders loan account and are from Wescana Properties' positive cashflow. Hence no interest is associated with these withdrawals.

[170] Salman wrote to Mr. Sidhu later that same day to inquire why, if Shafik's Shareholder's Loan was paid from Wescana Properties' positive cashflow, it appeared on the TD operating LOC reconciliation? Of note, Mr. Sidhu's response to this inquiry, if it exists, is not included in Salman's affidavit material, or anywhere else on the record.

[171] The petitioners underscore that, the only financial records for Wescana Properties come from 2020 and show that the company had retained earnings at that time in excess of \$10,000,000, notwithstanding Shafik’s Shareholder’s Loan.

[172] The petitioners assert that there is no reliable documentary evidence before this Court showing the source of Shafik’s Shareholder Loan is from the LOC, rather than from Wescana Properties’ operational revenue, or something else. I agree. If such reliable documentation existed, it could have been produced. Indeed, it was incumbent on the respondents to do so.

[173] The petitioners emphasize that despite Mr. Sidhu’s explanation that the Shafik’s Shareholder’s Loan was made from positive cashflow and that no interest was therefore associated with this loan, Salman nevertheless deposes that Shafik “directed Wescana Properties to pay the interest on his personal loans”. Yet, this allegation was not substantiated by Shafik and the respondents failed to substantiate this assertion through reliable evidence. Such evidence could have been placed before me by the respondents to support this allegation; however, it was not.

[174] I also agree with the petitioners that simply because Wescana Properties has a LOC and Shafik has taken out a shareholder’s loan does not mean these facts may be conflated to support the conclusion that Shafik’s Shareholder’s Loan came from the LOC or that it automatically attracts the same interest as the LOC. This is particularly the case when Salman was expressly informed that the Shafik’s Shareholder’s Loan was not advanced through the LOC and did not have any interest associated with it, but instead came from Wescana Properties’ positive cashflow.

[175] Further, the petitioners assert there are “many reasons why Wescana Properties’ finances are structured in such a way that positive cashflow is not all immediately paid to the LOC, none of which are in the record”, and that “the only information in the petition record points to the conclusion that the balance on the LOC has nothing to do with the Shareholder Loan”. Again, the record before me shows Wescana Properties had retained earnings in 2020 in excess of \$10,000,000.

[176] Not only did all the minority shareholders consent to the Shafik's Shareholder's Loan when it was made, as a director and shareholder of Wescana Properties, Zahir has long had access to the financial records of Wescana Properties. There is no allegation that these records were not provided to him, or that any of these records have ever been withheld from him.

[177] In light of this factual matrix, I am unable to conclude that the respondents had a reasonable expectation that Shafik ought to pay interest on his loan or that his conduct in not doing so was oppressive, unfairly prejudicial or unfairly disregarded Zahir's interests. Nor am I of the view that the respondents' allegations rise to the level of a triable issue. In making this assessment, I must and have relied on the record placed before me.

[178] I am also mindful of the following considerations, among others, that inform my determination on whether a reasonable expectation exists: the general commercial practice, the nature of the corporation, the relationship between the parties, and past practice: *BCE* at paras. 61, 62, 71 and 72. Because of the fact-specific nature of the inquiry, the question of whether and when a reasonable expectation may arise must be determined on a case-by-case basis.

[179] Reasonable expectations may also arise from the personal relationships between shareholders. As noted earlier in these Reasons, familial ties may give rise to different standards than relationships between arm's length shareholders: *BCE* at para. 75. This is apparent in the instant case, where the shareholders of Wescana Properties agreed to Shafik's Shareholder's Loan. Zahir even offered to lend Shafik \$1,000,000 if he met certain conditions as discussed earlier in these Reasons; notably, there is no evidence that those conditions included the payment of interest on the brother-to-brother loan.

[180] Parenthetically, I note also that the three promissory notes owed to Wescana Pharmacy by each of the parties in relation to the transfer of the three new companies out of Wescana Pharmacy (in relation the Fraser, Harvard Court and Hastings pharmacies) are all interest free promissory notes.

[181] In any event, one of the significant difficulties in the respondents' argument that Shafik violated a reasonable expectation is that they did not establish that Shafik's Shareholder's Loan was even funded through the LOC. Again, the evidence tendered by the respondents in this regard does not rise to the level of a triable issue in my view. Given the hundreds of documents produced in this case, and the assistance of very able and thorough counsel, reliable documentation was not produced to support their assertion that Shafik's Shareholder's Loan was financed through the Wescana Properties' LOC. Again, even if this were the case, I am not persuaded that an interest-free shareholders loan was contrary to past practice or contrary to any reasonable expectation.

[182] The onus is on the respondents, as the party seeking an oppression remedy, to establish their reasonable expectation: see for example *Boffo* at paras. 114 -117; *Callahan v. Callahan*, 2011 BCSC 40, 18 B.C.L.R. (5th) 203 at para. 17. Part of that onus is to provide reliable evidence that Shafik's Shareholder's Loan was actually financed through Wescana Properties' LOC or that the company paid interest. Such reliable evidence was not adduced.

[183] In considering the issue of whether a reasonable expectation was violated, I also note that there is no shareholders' agreement. As well, the Articles of Incorporation of Wescana Properties are silent on the issue; they do not require interest to be paid on shareholders loan, although they could have been drafted to require interest payments. Further, there is evidence that shareholders loans have been made but there is no evidence that any interest has ever been paid on any shareholders' loans provided through Wescana Properties.

[184] Having carefully considered the factual matrix before me, I am simply unable to conclude that the petitioners violated the respondents' reasonable expectation regarding Shafik's Shareholder's Loan. The respondents carried the onus of putting reliable evidence before the court to support their assertions that Wescana Properties' LOC actually paid interest on Shafik's Shareholder's Loan. They did not do so. On the unique facts before, and viewed objectively, I am not persuaded that

it was reasonable for the respondents to expect Shafik to pay interest on his loan. I am similarly not persuaded that Shafik's conduct was oppressive, or that it was unfairly prejudicial, or that it unfairly disregarded Zahir's interests as a shareholder.

[185] In *Boffo*, at para. 114, Justice Goepel reasons that the complainant must also prove that the failure to meet a reasonable expectation was a consequence of wrongful conduct that caused a compensable injury. He elaborates on the nature and scope of the conduct:

[114] In addition the complainant must also prove that failure to meet the reasonable expectation was a consequence of such wrongful conduct and that the conduct caused compensable injury: *Stahlke v. Stanfield*, 2010 BCSC 142, aff'd 2010 BCCA 603 at para. 19.

[115] The distinction between conduct that is oppressive and that which gives rise to unfair prejudice was discussed in *Urquhart v. Technovision Systems Inc.*, 2002 BCSC 172, aff'd 2003 BCCA 45 at paras. 35-37:

[35] The law that governs what can be said to be "oppressive" and what can amount to "unfair prejudice" has not developed with great clarity. Generally, founded on what Viscount Simon said in *Scottish Co-op Wholesale Soc. Ltd. v. Meyer*, [1958] 3 All E.R. 66 at 71, "oppression" has been said to mean conduct that is burdensome, harsh, and wrongful or, following what Lord Keith said at p. 86, it is said to mean conduct that lacks probity and fair dealing in the affairs of the company to the prejudice of some of its members. "Unfairly prejudicial" has been distinguished as having a broader meaning protecting a wider range of rights, but it has not been, and perhaps cannot be, as well defined.

[36] In *Diligenti v. RWMD Operations Kelowna Ltd.* (1976), 1 B.C.L.R. 36, which appears to have been the first consideration of the term in the context of the oppression remedy, this court equated that which is unfairly prejudicial to that which is unjust and inequitable. In so doing, Lord Wilberforce's discussion of those words in *Ebrahimi v. Westborne Galleries Ltd.*, (1972), 2 All E.R. 492 in the context of what was then the English statutory oppression remedy was cited at some length. There it was recognized (p. 500) that behind the legal entity a company represents "there are individuals with rights, expectations, and obligations inter se that are not necessarily submerged in the company structure" which the remedy enables the court to invoke equity to protect.

[37] ...the focus with regard to "oppression" has been seen to be on the character of the conduct complained of while the in considering what is said to be "unfairly prejudicial" has been

on the effect of the impugned conduct on the injured shareholder.

[186] This case illustrates that not every unmet expectation gives rise to an oppression claim: *BCE* at para. 67. For years now Shafik has been instrumental in leading, building, and managing the business affairs of the property holdings of Wescana Properties as its CEO, and in regard to those properties purchased and developed before the reorganization of the corporate structure that led to the incorporation of Wescana Properties, as discussed above. The parties were all agreed at the hearing that their property holdings' business has been very successful and profitable. Shafik spent years as CEO and managing this business very successfully without compensation, while sharing the profits equally with his brothers. This is not, in my view, the stuff of a viable oppression claim.

[187] I have very carefully considered whether this issue should be referred for determination at trial, or whether it warrants a further "hybrid" proceeding by way of additional affidavit material and cross-examination on affidavits. The respondents' submitted that it was not necessary to refer this issue to the trial list. It is understandable that the respondents took this position given that this chambers hearing was already longer and more complex than many trials. They were of the view that their oppression claims were established on the material before me. However, the respondents argued, in the alternative, that a further hybrid proceeding was warranted on their allegation that Shafik's Shareholder's Loan and the interest on the Loan constituted oppressive conduct.

[188] The reasoning in *Cepuran v. Carlton*, 2022 BCCA 76 at para. 158, as affirmed in *Petersen v. Hawley*, 2022 BCCA 169 at paras. 25-27, has guided the exercise of my discretion and decision in this regard. After considerable thought, I am of the view that a further proceeding on these issues, either by way of a trial or a streamlined hybrid proceeding, is not warranted or justified. The respondents chose to advance their oppression allegations concerning Shafik's Shareholder's Loan within the confines of the petitioners' s. 324 proceeding. They chose to marshal their evidence as they did, yet with ample opportunity to present their case and

affidavit material on the strongest footing. I am simply not persuaded that extending this proceeding, even in a hybrid fashion by filling affidavit material and through cross-examination, would yield a different result. Not only has a triable issue not been established on the material place before me, extending this proceeding further would not be in the interests of justice, and would not advance the principle of proportionality or the efficient use of valuable resources.

### **5. Shafik and Imran's Overtime Pay**

[189] This aspect of the respondents' oppression allegations concern Shafik and Imran overtime pay in the amounts of \$17,750 and \$10,850 respectively.

[190] The respondents underscore that all three brothers have had the same draws for the last 40 years regardless of the amount of work they did. They argue that the petitioners are attempting to artificially create a COVID pandemic exception. The respondents point out that the Court must consider the factual history and the reasonable expectation of shareholders.

[191] For example, the respondents point out that: Sherali continues to draw an equal one third share of profits from Wescana Properties even though his Main Street clothing business has been closed for years, while Zahir "has worked tirelessly at the Fraser Pharmacy often putting in overtime without any additional pay". They argue that under these circumstances it was reasonable for Zahir to expect that Imran and Shafik would not unilaterally pay themselves.

[192] Imran and Shafik submit that they were each paid overtime payments of \$17,750 and \$10,850 respectively, on one occasion for their extraordinary workload during the COVID-19 pandemic. They emphasize that the COVID-19 pandemic was a once-in-a-century event, and it resulted in an extraordinary workload for Imran and Shafik, which in turn lead to significant profits to Wescana Pharmacy, which all the brothers' shared.

[193] This was explained to the respondents through counsel, on March 8, 2022. David Allman, the petitioners prior counsel, wrote to counsel for the minority shareholders explaining the overtime payment:

Imran and Shafik worked very significant additional hours in connection with administering COVID-19 vaccinations and attending to documentation regarding same. Approximately \$110,000 in vaccination fees were earned, resulting in significant profits. Absent the long additional hours and overtime worked by Imran and Shafik throughout this period, it would have been necessary to incur the expense of hiring additional staff, assuming such staff would have been available. It was also necessary for Imran and Shafik to work additional hours at the Hastings pharmacy while Sama was out of the country from December 18, 2021 to February 2, 2022, as they were unable to hire a short-term replacement. Accordingly, our client will not agree to the salary increase for Zahir or the adjustments referenced in your email.

[194] Imran also explains his entitlement to the overtime payment in his third affidavit:

I did withdraw \$10,850 from Wescana Pharmacy, but as compensation for overtime work resulting from increased activity from the COVID-19 pandemic. If Zahir also wants compensation for overtime work, then he should raise the matter with me. The COVID-19 pandemic generated \$110,000 in unusual profits. Also, Shafik and I had to work overtime when one our [sic] pharmacists at Hastings contracted COVID-19 and was temporarily stuck in Iran. The compensation I took is fair, is consistent with what the majority of shareholders want, and I would dispute it if I had to return it to Wescana Pharmacy Ltd.

[195] Shafik explains his entitlement to the overtime payment in his 5th affidavit:

I did withdraw \$17,750 from Wescana Pharmacy. Imran also withdrew \$10,850. This was for overtime work. These withdrawals were unusual, because since the COVID-19 pandemic, we have had to work much more than ever before, particularly with administering COVID-19 vaccines. Approximately \$110,000 in vaccination fees were earned, resulting in a significant increase in profits. Also, a pharmacy manager contracted COVID-19 while visiting parents in Iran and was temporarily stranded. We have kept the store fully operational for over 45 days while she was away and worked overtime at the Hasting pharmacy. It was not realistic in the circumstances to find a replacement pharmacist. This was fair compensation to me for my efforts, and if Wescana Pharmacy Ltd. tries to demand its return, then I would dispute it.

[196] Like Imran, Shafik deposes that if Zahir felt that he was entitled to overtime pay, he should have raised the matter with Imran, who was the CEO and sole Director of Wescana Pharmacy:

Zahir has worked very long hours, and I agree that is the case. If he wants overtime, then he should raise the matter with Imran. He should not just withdraw money from the company and have his lawyer send a letter justifying the decision afterwards. That is not a fair or efficient way to run a company.

[197] The petitioners submit that if Zahir believed he was also entitled to overtime payment for extraordinary work during the COVID-19 pandemic, then he should simply have raised the matter with Imran, and requested the overtime pay. They point out, however, that he did not do this. Rather, Zahir simply demanded that he be paid exactly what Shafik was paid, for no reason other than that is what Shafik received.

[198] While I appreciate that the brothers have run their businesses over the years by sharing the profits of their businesses on an equal basis, the COVID-19 pandemic was the exception that proved the rule in this case. I am not persuaded that Shafik and Imran acted unreasonably or unfairly such that an oppression remedy is warranted. Put differently, while there may have been a reasonable expectation that the parties earned the same income, that expectation was necessarily altered by the exigencies of a life-threatening pandemic. Furthermore, I do not see how the overtime pay could in anyway be characterized as oppressive, unfairly prejudicial or that it unfairly disregarded the interests of Zahir and Salman. The extra work and effort put into the vaccination initiative by Shafik and Imran reaped considerable profits for Wescana Pharmacy, which the parties all shared. One is hard-pressed to understand how the modest overtime paid to Shafik and Imran would be oppressive or unfair to the minority when they benefited from Shafik and Imran's efforts. Further, I agree with Imran that the proper course of action for Zahir and Salman, if they also wished to be compensated for exceptional effort would have been to make the request based on their actual overtime work during COVID-19.

[199] The respondents' oppression claims relating to Shafik's Shareholder's Loan, the interest on that loan, and the overtime pay, are dismissed.

**D. Issue 3 in Petition #1: Zahir and Salman's Contempt of Court Application**

[200] Zahir and Salman allege that Shafik and Sherali should be found in contempt of court for willfully disobeying the terms of Justice Crerar's February 14, 2022 order. Zahir and Salman also seek a \$5000 fine, special costs or, in the alternative cost of their contempt application.

[201] At a January hearing before Justice Crerar in regard to the dissolution and liquidation of Wescana Properties, Justice Crerar issued an interim order relating to the valuation of certain assets, and the conduct of Wescana Properties' business pending the resolution of the petition. The parties appeared before Justice Crerar again on February 14, 2022. At issue in this contempt application are paragraphs 7 and 7(a) of this February 14, 2022 order, which states as follows:

7. During the period between the date of this Order and the resolution of this matter, (the "Interim Period"), except as otherwise agreed to by the parties in writing or by further court order, the parties shall:
  - a) conduct the business of Wescana Properties in the ordinary course consistent with past practices ....

[202] Notably, Justice Crerar's order applies to Wescana Properties and not Wescana Pharmacy.

[203] Zahir and Salman assert that Shafik and Sherali were aware of the terms of this order. In support of this assertion, they submit that Shafik had attended the January 2022 hearing before Justice Crerar and, further, that he acknowledged in an affidavit that he had reviewed the following excerpts of that hearing, where Justice Crerar stated, in part:

So, I will read this into the record.

During the period between the date of this order and the resolution of this matter, except as otherwise agreed to by the parties, in writing, or by further court order, the parties shall:

And then A through E, verbatim, as exists on page 42.

[204] When Justice Crerar stated at the January 2022 hearing that he incorporated by reference the terms of order “A through E verbatim” from a portion of Zahir and Salman’s written submissions, he did not expressly state on the record what the specific terms of “A through E” actually were. Rather, the transcript of that hearing before Justice Crerar provides that Justice Crerar stated:

...I won’t read A through E, since those are unmodified ....

[205] It was paragraph “A” that provided that the business of Wescana Properties would be conducted in the ordinary course consistent with past practice. However, the transcript reveals that this term was not actually read out in open court; a point which Zahir and Salman’s submissions did not acknowledge.

[206] In any event, Zahir and Salman note that effective February 22, 2022, only eight days after Justice Crerar issued this order, Shafik and Sherali changed the signing authority for the bank accounts of Wescana Properties that had been in place for many years from “anyone to sign” to “any two to sign”. This prevented Zahir from drawing cheques on the Wescana Properties’ account. Zahir submits that Shafik admitted to making this change to the signing authority in his affidavit sworn May 15, 2022, wherein he deposes:

5. ...I changed the signing authority effective February 22, 2022, because I did not know if he [Zahir] was going to do further withdrawals that I would dispute.

[207] It is important to consider this statement in context. Shafik deposes that Zahir unilaterally withdrew \$65,184 from Wescana Properties’ bank account on February 18, 2022, to be reimbursed for the cost of an expert that Zahir had personally retained to assist with this litigation (i.e., the “Smythe Invoice”). Shafik objected to this particular use of Wescana Properties’ funds, claiming it was improper.

[208] On February 18, 2022, Zahir wrote an email to Wescana Properties' accountant regarding the cost of the expert's services, as set out in the Smythe Invoice, which stated:

Kindly note that, as per agreement between the parties, a transfer of \$65,184 has been made out from the Properties bank account to account for the Expert amounts paid personally. This is in accordance with the fifth item of the agreement: "All experts to be paid by Wescana Pharmacy or Wescana Properties".

[209] The "agreement" to which Zahir refers in this email is the "Tentative Agreement" discussed earlier in these Reasons that the parties later agreed was not binding or enforceable. Shafik explains his response to Zahir's withdrawal of \$65,184 from Wescana Properties' bank account, as follows:

This was a lot of money. I interpreted this to mean that Zahir was prepared to take money from the company about the ongoing litigation without discussing the matter in advance, and that he could use those withdrawals as a way to resolve his disputes with me and the company.

Based on the information he provided to me at that time and as set out in his email, I found it objectionable. It made no sense to me that a settlement of Wescana Pharmacy had any relevancy to the ongoing dispute concerning Wescana Properties. I changed the signing authority effective February 22, 2022 because I did not know if he was going to do further withdrawals that I would dispute.

[210] By way of background, the Smythe Invoice related in part to advice regarding the tax implications of Wescana Pharmacy, although counsel for Zahir and Salman later clarified that the Smythe expert opinion also related to Wescana Properties.

[211] Zahir and Salman underscore that the change of the signing authority from "any one to sign" to "any two to sign" was inconsistent with the longstanding past practice of both Wescana Properties and Wescana Pharmacy. Prior to this change on February 22, 2022, the signing authority for the Companies had never been "any two to sign". They submit that Shafik and Sherali were in contempt of Justice Crerar's term of order that the business of Wescana Properties should be conducted in accordance with past practice.

[212] It is undisputed that Shafik and Sherali did sign a February 22, 2022 resolution under the heading “Signing Officer Requirements/Restrictions” to: “ANY TWO TO SIGN”.

[213] What followed was correspondence between counsel regarding the propriety of both Zahir reimbursing himself for the Smythe Invoice, and Shafik and Sherali’s resolution requiring two directors to sign withdrawals from the Companies’ respective bank accounts instead of only one director.

[214] On March 17, 2022, Zahir contacted management at TD Bank regarding the change in signing authority and notified them of Justice February 14, 2022 order which provided that the parties were to conduct the business of Wescana Properties in the ordinary course and consistent with past practices. On March 17, 2022, counsel for Zahir and Salman emailed then counsel for Shafik and Sherali requesting a restoration of the *status quo* contemplated by Justice Crerar’s February 14, 2022 order. Specifically, counsel requested reversing the change in signing authority for Wescana Properties back to “any one to sign.” Incidentally, she also asked for the same to be done with respect to Wescana Pharmacy since that signing authority had been changed to “any two to sign” with that company was well.

[215] On March 21, 2022, four days after Zahir contacted the TD Bank complaining of the change in signing authority, counsel for TD Bank wrote a letter to counsel for each of the parties that the signing authority for Wescana Properties had been changed back to “any one to sign”.

[216] As noted earlier in these submissions, as forewarned by Zahir’s legal counsel, notwithstanding that Zahir’s signing authority was effectively restored in March 2022, Zahir and Salman brought an application on May 9, 2022, which included allegations of contempt of court relating to the Wescana Property’s signing authority.

[217] Counsel for Shafik and Sherali argued that the only reliable evidence about the actual business practices of Wescana Properties showed that it was very unusual for Zahir to ever use that company’s account. They underscored that the

only example Zahir provided to the Court of him doing so in the past, other than the payment of the Smythe Invoice, was on one other occasion when Zahir used a Wescana Properties' cheque to pay a bill for Wescana Pharmacy. Accordingly, Shafik and Sherali submit that this did not constitute a "past practice" but, rather, two isolated instances.

[218] Moreover, counsel for Shafik and Sherali submit that orders such as that of Justice Crerar that prohibit conduct that departs from the ordinary business practices of a company have been found to be too general to support a finding of contempt because they do not clearly and unequivocally state what can or cannot be done in this regard: see *Porter v. Anytime Custom Mechanical Ltd.*, 2016 ABQB 322 at para. 55. Counsel argue further that the evidence of contempt must be compelling because the standard of proof for civil contempt proceedings is beyond a reasonable doubt. Finally, counsel for Shafik and Sherali submit that even if the change in signing authority could be considered a breach of Justice Crerar's February 14, 2022 order, it would not be in the interests of justice to find contempt in this case because not every breach of a court order results in a finding of contempt, and such a quasi-criminal finding ought to be a last resort.

[219] There was also conflict between the parties' counsel regarding the inappropriate purpose for which this contempt application was brought forward. Further, each accused the other of unprofessional conduct. However, in light of my findings, it is unnecessary to address these issues for purposes of this application.

[220] It is not surprising, given the degree of conflict between the brothers, that their views on what was or was not a past practice was in dispute in this regard. In any event, the bank remedied the issue in Zahir's favour by reversing the "any two to sign" requirement back to any "one to sign" in relatively short order. Further, as discussed earlier in these Reasons, by May 20, 2022 a consent order resolving the issue was fashioned and filed. The parties also agreed to a consent order that no future changes could be made to the signing authority for the bank accounts of both

Wescana Pharmacy and Wescana Properties, without the unanimous written agreement of the parties or further order of the Court.

[221] Notwithstanding that the signing authority issue was resolved, followed by a consent order that addressed the parties' respective ongoing concerns about the issue, Zahir and Salman's persisted with advancing their application seeking a contempt of court order.

[222] In *Carey v. Laiken*, 2015 SCC 17, at paras. 32-35, the Court confirmed the three elements that must be proved, beyond a reasonable doubt, in order to establish a civil contempt:

- (1) the order alleged to have been breached must state clearly and unequivocally what should or should not have been done;
- (2) the party alleged to have breached the order must have had actual knowledge of it; and
- (3) the alleged contemnor must have intentionally done the act that the order prohibits, or intentionally failed to do the act the order compelled.

[223] The Court in *Carey* affirmed that the contempt power is a discretionary power and should not be routinely used to obtain compliance with court orders. Further, the court may exercise its discretion to decline to impose a finding of contempt even if the three elements of are proved beyond a reasonable doubt where it would work an injustice in the circumstance of the case: *Carey* at paras. 36-37.

[224] As counsel for Zahir and Salman acknowledge, the power of contempt should be used "cautiously and with great restraint and is "an enforcement power of last rather than first resort": *Carey* at para. 36.

[225] In the circumstance of this case, after having carefully considered these guiding principles, I am of the view that I must dismiss this contempt application. I

am not satisfied beyond a reasonable doubt that the three elements of civil contempt have been established.

[226] For example, in the specific factual context before me, I find that the application of Justice Crerar's order was ambiguous such that it was not clear what should or should not be done under the order. In any event, it is not clear to me that Shafik understood Justice Crerar's order prevented him from changing the signing authority of Wescana Properties. Perhaps more importantly, the facts do not establish beyond a reasonable doubt that Shafik intentionally did what he understood he could not do under Justice Crerar's order. The applicants simply have not met their burden of proof; a civil contempt has not been established.

[227] I am also of the view that a finding of contempt would work an injustice in this case. While the parties, including their respective counsel, have different views of what Justice Crerar's order meant or how it should have been applied, they nevertheless reached a resolution on the issue by way of consent orders on this issue in May 2022. Such resolutions should be honoured and encouraged, rather than being effectively rendered inconsequential by a subsequent finding of contempt. Nor should the significance of the consent orders be diminished.

**E. Issue 4 in Petition #1: Varying Justice Crerar's February 14, 2022 Order**

[228] The petitioners seek to vary Justice Crerar's February 14, 2022 order on the basis of a material change in circumstances. The respondents no longer take issue with this variance. I agree that the order should be varied by deleting paras. 3, 4 and 7 in their entirety.

[229] Paragraphs 3, 4 and 7 of Justice Crerar's February 14, 2022 Order state:

3. With respect to each of the Properties described as "commercial-mixed use" in paragraph 53 of the Amended Petition:
  - a. If the two Valuations for a property are within 5%, those two Valuations will be averaged to determine the value of that property.

- b. If the two Valuations for a property are greater than 5%, the Appraisers will appoint a third Appraiser (the “Third Appraiser”). The Third Appraiser will then prepare an appraisal of that property (the “Third Valuation”). The average of the appraised value of the Third Valuation and the next closest Valuation will be the value of that property.
- 4. With respect to each of the remaining Properties described as either “residential” or “pre-sale” in the Amended Petition:
  - a. If the two Valuations for a property are within 10%, those two Valuations will be averaged to determine the value of that property.
  - b. If the two Valuations for a property are greater than 10%, the Appraisers will appoint a third Appraiser (the “Third Appraiser”). The Third Appraiser will then prepare an appraisal of that property (the “Third Valuation”). The average of the appraised value of the Third Valuation and the next closest Valuation will be the value of that property.
- ...
- 7. During the period between the date of this Order and the resolution of this matter, (the “Interim Period”), except as otherwise agreed to by the parties in writing or by further court order, the parties shall:
  - a. Conduct the business of Wescana Properties in the ordinary course consistent with past practice;
  - b. Use their reasonable best efforts to maintain and preserve the rights, goodwill, and relationships of its lenders and others having relationships with the business of Wescana Properties;
  - c. Pay the debts, taxes and other obligations of the business of Wescana Properties when due;
  - d. Maintain the Properties in the same condition as they were on the date of this Order, subject to reasonable wear and tear; and,
  - e. Continue in full force and effect without modification all insurance policies, applicable to the Properties and the business of Wescana Properties except as required by applicable law.

[230] It is well established that courts have a wide discretion to vary an order where there has been a change in circumstances, particularly when a party has specifically been given “liberty to apply” in the court order: see for example *Canadian Cash Express Corp. v. Connect Cash Service Inc.*, 2011 BCSC 219 at para. 36.

[231] The order of Justice Crerar was clearly an interlocutory order. It is also very clear, on the record before me, that there has been a material change in circumstances. For example, when the parties appeared before Justice Crerar in February 2022, the parties contemplated the need for a third appraiser to value the properties of Wescana Properties. They have since agreed on a single appraiser. The parties have also agreed to proceed with a Broker or Brokers to sell the properties in question. Further, the parties have settled their differences to a certain degree and have accordingly agreed to conduct their business in a different manner than set out in paragraph 7 of Justice Crerar’s Order. Accordingly, varying Justice Crerar’s February 14, 2022 order facilitates the settlement of this dispute. Indeed, Justice Crerar noted in this order that the parties were at liberty to seek further directions from the Court.

[232] In this light, I have no difficulty varying Justice Crerar’s February 14, 2022 order by deleting paragraphs 3, 4 and 7 in their entirety.

### **III. PETITION #2: OPPRESSION CROSS-PETITION**

[233] With respect to Petitioner #2, the petitioners are Zahir and Salman. They alleged a number of oppressive actions against the majority shareholders, which they ultimately did not pursue. As noted earlier in these submissions, Zahir and Salman advanced their allegations of oppressive conduct within Petition #1.

[234] I have already addressed and dismissed the three remaining allegations of oppressive conduct relating to Shafik’s Shareholder’s Loan, the interest on the loan and the modest overtime pay to Shafik and Imran. The relief sought regarding outstanding profits owed by the majority shareholders was settled in December 2023. Furthermore, based on the final draft orders advance by each party, I see no other remedy or order advanced by Zahir and Salman that requires

any further determination by this Court within the context of Petition #2, or Petition #1 for that matter.

[235] I would add that the record before me does not indicate the loss of a corporate opportunity by Zahir, Salman or Wescana Pharmacy. Ultimately, the Harvard Court Pharmacy, Hastings Pharmacy and Fraser Pharmacy were sold at the price Zahir and Salman originally agreed. There is no evidence that any shares diminished in price as a result of the majority shareholders' action to pursue the transfer of the Harvard Court Pharmacy and Hastings Pharmacy in May 2022. I see no outstanding reasonable expectation that was violated or that resulted in a loss.

[236] In the final analysis, and in light of the agreements reached by the parties, I dismiss Petition #2.

#### **IV. TERMS OF ORDERS FOR PETITIONS #1 AND #2**

[237] The parties have agreed on a number of terms and conditions regarding the process to be followed in the liquidation and dissolution of the Wescana Properties. However, they have requested that I address and determine the remaining outstanding issues. Following an outline of their respective submission on the points of contention, I now issue my decision on the terms of this Order. I also note the parties' points of agreement in this regard.

##### **A. Should an independent real estate broker be appointed by mutual agreement of the parties or by order of the court to distribute the assets of Wescana Properties and Wescana Pharmacy?**

[238] The petitioners assert that independent real estate broker ought to be appointed to distribute the remaining assets of the Companies. They rely on the decision in *Kidner Investments Ltd. v. Totem Mercury Ltd.*, 2017 BCSC 205 where an independent broker facilitated the wind-up of a real estate holding company. They note that if brokers are used in this case, more than one broker will be needed to sell Wescana's portfolio ("Brokers" or "Broker"). The respondents do not take issue with the appointment of Brokers by mutual agreement to distribute specific

assets as agreed upon. I accept that the Brokers selected by the parties may sell Wescana Properties' assets as set out in my final order.

- B. The petitioners submit that if Shafik, Zahir and Sherali, as the directors of Wescana Properties (“Directors”) are not able to agree on who ought to be engaged to sell the Companies’ real estate property, then the parties should be at liberty to apply for an order from the Court in this respect.**

[239] The respondents agree to seeking the direction of the Court where the parties cannot agree on who the Brokers should be. Accordingly, I so order.

- C. Process for Instructing Brokers**

[240] The petitioners seek an order that the Brokers be jointly instructed by the brothers, as the directors of Wescana Properties (“Directors”), and that the Directors will not interfere with the sales process or the Brokers’ mandate. Further, any correspondence submitted to any of the Brokers by the parties would be promptly shared with the other parties. In these circumstances, any one of the Directors may apply to the court for directions concerning the marketing of the real estate properties by the Brokers. These terms are appropriate and fair. I accept them.

- D. What should be the process and terms to be followed for the pre-sale of condos owned by Wescana Properties?**

[241] Wescana Properties has a number of presale contracts to purchase condos under construction. I am advised it will take years for these condos to be completed. The petitioners underscore that even if the contracts are assigned to the brothers, Wescana Properties will remain liable for the contracts unless the developer otherwise agrees to release Wescana Properties, which it is not obliged to do. Accordingly, the petitioners submit that Wescana Properties may have no choice but to retain sufficient capital until the transactions are completed. In this light, they propose the following form of order:

17. Wescana Properties will take all commercially reasonable efforts to obtain approval from the vendor to assign its contract to purchase for the following properties to the following Wescana Properties Directors as set out below, and each of the Wescana Properties

Directors will accept an assignment of the contract in question. Any fee charged by the vendor for permitting an assignment will be borne by Wescana Properties. The Director who receives the assignment will indemnify and save harmless Wescana Properties against any costs, losses, or damages, caused by that Director's failure to complete the transaction contemplated by the contract assigned to that Director:

Unit 3807 Pier West Tower A (600-720 Quayside Drive) – to Zahir Rajani

Unit 4701 Pier West Tower A (600-720 Quayside Drive) – to Zahir Rajani

Unit 4108 Pier West Tower A (600-720 Quayside Drive) – to Sherali Rajani;

Unit 5004 Pier West Tower A (600-720 Quayside Drive) – to Sherali Rajani;

Unit TH2 Pier West Tower B (600-720 Quayside Drive) – to Shafik Rajani;

Unit 5001 Pier West Tower A (600-720 Quayside Drive) – to Shafik Rajani;

If any of Zahir Rajani, Sherali Rajani, or Shafik Rajani gives notice to Wescana Properties within 15 days of the pronouncement of this order that they do not wish to have a pre-sale contract assigned to them, then any of the other brothers may give notice to Wescana Properties of their agreement to receive an assignment of the contract on the same terms;

If none of the brothers agree to have a pre-sale contract assigned to them, or if it is otherwise required by the *Act*, Wescana Properties will retain sufficient capital to acquire any presale condominium in accordance with the terms of the contract in question and will also sell the property in question as soon as it is legally able to do so in accordance with the process set out above.

[242] The respondents submit that these terms of order “may be disputed”. However, they state in their draft form of order that:

Wescana Properties Inc. shall retain each of the pre-sale properties it owns (the “Pre-Sales”) until such time as they are completed, at which time they will be listed for sale by an independent realtor agreed to in writing by the parties.

[243] In addition, the respondents reiterate in their draft form of order that, in distributing funds to the shareholders of Wescana Properties, sufficient capital must be retained in the company to pay for the Pre-Sales held by Wescana Properties when they become due and owing:

19. As the properties owned by Wescana Properties are sold, the sale proceeds shall be applied to satisfying the company's outstanding liabilities, including debts and taxes. Any funds remaining shall be distributed by Wescana Properties to the shareholders of Wescana Properties on a pro-rata basis in accordance with the shareholdings of Wescana Properties, while maintaining sufficient capital in the company to pay for the Pre-Sales held by Wescana Properties when they become due and owing. For the purposes of any distributions to the Wescana Properties Shareholders, each of the Wescana Properties Shareholders shall be entitled to a 1/3 interest in the distribution.

[244] I accept that the final order must contain language that will provide for sufficient capital to be held in Wescana Properties in order to cover the liability inherent in the pre-sale contracts. I find that the term of order should reflect language proposed by both parties, as set out in the Disposition section at the end of these Reasons.

**E. What should be the process and terms to be followed for the sale of commercial properties owned by Wescana Properties?**

[245] The petitioners propose a term of order for the sale of the commercial properties that contemplates each brother having an option to purchase their preferred property within a specified time ("Preferred Property"), as follows:

17. In regard to the following commercial properties, within 10 days of pronouncement of this order, Wescana Properties will appoint Nathan Nottingham of Ryan ULC; or if he is not available, another appraiser agreed to by all of the Wescana Properties Directors, or as appointed by the court on application by any of the Wescana Properties Directors if they are unable to agree (the "Valuator"), to conduct a fair market value appraisal of the following properties owned by Wescana Properties (the "Valuation"):

4012 Hastings Street, Burnaby, British Columbia;  
8737 120th Street, Delta, British Columbia;  
6935 120th Street, Delta, British Columbia;

6682-6690 Fraser Street & 707 East 51st Street,  
Vancouver, British Columbia;  
8585 160th Street, Surrey, British Columbia;  
6480, 6482, and 6494 Main Street and 215 & 219 East  
49th Avenue, Vancouver, British Columbia;  
Unit 7, 8388 128th Street, Surrey, British Columbia;  
1309 St. Georges Avenue, North Vancouver, British  
Columbia;  
(collectively, the “Commercial Properties”)

[246] The respondents agree that a process should be implemented which ensures the parties have an opportunity to purchase their Preferred Properties but take issue with the timing of the Valuation, and the purchase and sale of these properties.

They propose:

3. The appraisal process contemplated below shall begin when Wescana Properties Inc. (“Wescana Properties”) existing line of credit has been paid off through the sale of the Residential Properties as defined in the Consent Order dated November 16th and filed November 17th in this proceeding.

[247] I was advised in March 2024 by the parties that the orders they seek have not changed between November 2022 and now. Having considered the matter, I find the respondents’ request in this regard to be a reasonable one. Their paragraph 3 is accepted.

[248] The petitioners propose that the Valuator use a valuation date that is the first day of the month following the date of this order:

18. Wescana Properties will instruct the Valuator to use a valuation date that is the first day of the month following the date this order is pronounced for the Valuation; and also, to share a draft valuation that may be subject to comment by any of the Wescana Properties Directors prior to delivering it to the parties in final form.

[249] The respondents agree largely with this term but disagree with the timing proposed (as outlined above). I agree and accept that the proposed language that

the Valuator is to share a draft valuation subject to comment by any of the Wescana Properties Directors prior to issuing the final report makes good sense.

[250] The parties are in virtual agreement that the Directors should not interfere with the valuation process or Valuator’s mandate. The petitioners propose:

19. Wescana Properties Directors will not interfere with the valuation process or the Valuator’s mandate. Any correspondence submitted to the Valuator by the parties must be contemporaneously or otherwise promptly shared with the other parties.

[251] The respondents propose that “all parties”, not just the Directors, are not to interfere with the valuation process and that all substantive communications with the Appraiser [Valuator] be in writing:

5. The parties will not interfere with the valuation process or the Appraiser’s mandate. Any correspondence submitted to the Appraiser by the parties must be contemporaneously or otherwise promptly shared with the other parties. All substantive communications with the Appraiser must be in writing.

[252] I agree with the respondents’ proposed language. It best ensures the integrity of the appraisal or valuation process. I accept the language of their paragraph 5.

[253] The petitioners set out the following list of Preferred Properties in their proposed draft order, beginning with Zahir’s Preferred Properties:

20. The Commercial Properties preferred by each Wescana Properties Director are set out below:

8737 120th Street, Delta, British Columbia;  
6682-6690 Fraser Street & 707 East 51st Street,  
Vancouver, British Columbia; and,  
Unit 7, 8388 128th Street, Surrey, British Columbia  
 (“Zahir’s Preferred Properties”)

6480, 6482, and 6494 Main Street and 215 & 219 East  
49th Avenue, Vancouver, British Columbia;

1309 Georges Street, North Vancouver; and,  
8585 160th Street, Surrey, British Columbia  
("Sherali's Preferred Properties")

6935 120th Street, Delta, British Columbia; and,  
4012 Hastings Street, Burnaby, British Columbia.  
("Shafik's Preferred Properties")

Each of the Wescana Properties Directors may give notice, within 15 days of the Valuation coming available, to purchase any of their respective preferred properties, and may then make any necessary financial arrangements to purchase the preferred property, or enter into a binding contract with Wescana Properties to purchase the preferred property, within 6 months from the date of the Valuation for 5% less than the appraised value set out in the Valuation.

21. Any Wescana Properties Director who purchases a preferred property in accordance with the above must use a contract in which that director agrees to indemnify and save harmless any of the other Wescana Properties Directors and Wescana Properties from any tax liability of any kind arising from a reassessment of the fair market value of the transaction by any government taxation authority, including but not limited to a reassessment of GST, income taxes, or provincial property transfer tax.

[254] The respondents agree with the allocation of Preferred Properties identified above by petitioners but propose that the shareholder who wishes to purchase the Preferred Property be given 14 days from the delivery of the final valuation to confirm their intent, and three months to enter into a binding contract of purchase and sale at the value of the property as determined in by the Valuation:

11....

If any of the Wescana Properties shareholders wish to purchase their Preferred Property, that shareholder shall be given 14 days from the delivery of the final Appraisals to confirm their intent to exercise their option to purchase any of their respective Preferred Properties by providing written notice to the other parties. For clarity, Zahir shall have the first option to purchase Zahir's Preferred Properties, Shafik shall have the first option to purchase the Shafik's Preferred Properties, and Sherali shall have the first option to purchase the Sherali's Preferred Properties.

12. If any of the Wescana Properties shareholder confirms their intent to purchase in accordance with paragraph 11 of this Order, that shareholder shall have three months from the date they confirm their intent to purchase the property to enter into a binding contract of purchase and sale with Wescana Properties to do so for the value of the property as determined by the Appraisals, with the completion date to be set in accordance with this at Order.

[255] The respondents' proposed language at paras. 11 and 12 above is reasonable, most consistent with the Valuator's efforts, and also promotes a timely distribution of assets. I accept it.

[256] The petitioners' proposed language at para. 21 is informed by an expert report filed in these proceedings to the effect that the Canada Revenue Agency may not accept a Valuator's assessment. Accordingly, their proposed indemnity language, applicable to each of the Directors, is prudent and fair. The language of para. 21 is accepted by this Court.

[257] The petitioners propose language in their draft order that would facilitate the purchase of the Preferred Properties by each Director in a single transaction, as follows:

22. If all of the Wescana Properties Directors give notice to purchase all of their preferred properties, as set out above, then if all of the Wescana Properties Directors agree, but subject to the requirements of the *Business Corporations Act*, Wescana Properties may also complete the transfers in a single transaction in which Wescana Properties' transfers the properties to the Wescana Properties Directors, with the tax liabilities externally financed by the Wescana Properties Directors.

[258] The respondents do not agree with this term as advanced by the petitioners. They advance the following term instead:

15. Any contract entered into by any of the Wescana Properties Shareholders with Wescana Properties in accordance with paragraph 12 of this Order must close simultaneously on a date mutually agreed between the parties in writing or by order of the Court, which date will be after the sale of any property not selected in accordance with paragraphs 11 and 12.

[259] While this court has been receptive to resolving as many disputes as possible between the parties regarding the terms that guide the disposition of Wescana Properties' assets, I agree with the petitioners that it is not the court's role to supervise the transactions of the parties to the specificity envisioned in the respondents' proposed para. 15. If the Directors all agree to have all the Preferred Properties transferred to them in a single transaction on a particular date, they are free to do so. I accept para. 22 in the petitioner's proposed draft order.

[260] The petitioners propose the following term of order in the event a Director does not choose to purchase a Preferred Property:

23. Any offer made by any director of Wescana Properties to purchase any of Zahir's Preferred Properties, Sherali's Preferred Properties, or Shafik's Preferred Properties that is not elected and acquired by the respective Director may be accepted, providing all Wescana Properties Directors agree.

[261] The respondents advise that this "may be disputed". Where a Preferred Property is not acquired by the Director that identified it as his Preferred Property (as set out in the order), I see no difficulty with permitting any Director from purchasing that preferred property at the appraised value determined by the Valuator. Accordingly, I accept the term of order of the petitioners at para. 23 of their draft order.

[262] In regard to properties not purchased as Preferred Properties, the petitioners propose at para. 24 of their draft order that upon the expiry of the time available for a Director to acquire a preferred property, the Directors must instruct the Brokers to list the properties for sale unless the Directors all otherwise agree; further, in regard to the listing price, the Wescana Directors must obtain a further valuation if requested by the Broker, at the cost of Wescana Properties. The respondents do not agree with this process.

[263] The respondents assert instead that the Broker is to sell the properties at the appraised value determined by the Valuator subject to the "approval of the Courts or consent of the parties" and:

... The Wescana Properties shareholders shall have conduct of sale, and decisions relating to same must be made unanimously. If unable to make unanimous decision a receiver shall be appointed to have conduct of sale.

[264] Having carefully considered the matter, including the history of conflict between the brothers, the petitioners' proposal is preferred and is most likely in my view to result in the fair and expeditious disposition of these properties.

[265] In regard to the sale of these properties, the petitioners proposed the follow term or order:

25. The Directors must accept an offer that is both: 1) within 5% of the listed price; and 2) on terms that are recommended to be accepted by the Broker. If an offer is provided which does not meet the foregoing requirements, then it may not be accepted, unless all of the Directors agree.

[266] The respondents agree that a Broker is to sell the unselected properties but also propose that the "Wescana Properties shareholders shall have conduct of sale and decisions must be made unanimously or, if the parties are unable to make unanimous decision, a receiver is to be appointed to have conduct of sale."

[267] The petitioners disagree, submitting that the respondents' proposal would effectively give Zahir a "veto". They argue that "if the offer is good" as set out in the order, it should be accepted.

[268] I am not persuaded, given the history of acrimony between the brothers, that they are likely (as Directors) to reach unanimous decisions regarding the conduct of sale of such properties. However, they have devised a method of valuing their Preferred Properties and have also agreed to the process of using a Broker. Should the parties not purchase these Preferred Properties for themselves, a listing price based on the appraised value makes good sense, as does the efficient and fair process set out by the petitioners' terms of order at paras. 24 and 25 of their proposed order. I accept those terms.

[269] The petitioners propose that the sales proceeds are to be managed in the following manner:

26. As the properties owned by Wescana Properties are sold, the Directors will apply the sale proceeds to its outstanding liabilities, including debts and taxes, and cause the remainder to be distributed to the shareholders at reasonable intervals and in reasonable amounts.

[270] The respondents agree with the above language except they assert the sales proceeds are to be distributed in “one-third” amounts rather than in “reasonable amounts”.

[271] I am of the view that the parties’ respective interests are met by language which requires the distribution of funds equally among the shareholders at reasonable intervals, in reasonable amounts. Such language ensures a measured, one-third distribution of sales proceeds at reasonable intervals. Accordingly, paragraph 26 will be revised as follows:

26. As the properties owned by Wescana Properties are sold, the Directors will apply the sale proceeds to its outstanding liabilities, including debts and taxes, and cause the remainder to be distributed in equal parts to the shareholders at reasonable intervals and in reasonable amounts.

[272] The petitioners also propose the following term of order:

27. Any shareholder owing loans to Wescana Properties must apply their distribution firstly towards the repayment of said loan.

[273] The respondents state that this term may be disputed.

[274] The petitioners’ para. 27 is a reasonable term and will be included in my final order.

[275] At para. 28 of their order, the petitioners propose:

28. The Wescana Properties Directors will dissolve Wescana Properties as soon as it is capable of dissolution, after divestment

and distribution of all of its assets and payment of all of its outstanding liabilities.

[276] The respondents agree with this term. I also agree, subject to the other terms of my final order as set out herein.

**F. What should be the process and terms or order to be followed for the dissolution of Wescana Pharmacy?**

[277] There is less agreement between the parties in regard to the process for dissolving Wescana Pharmacy.

[278] In regard to the promissory notes owed to Wescana Pharmacy for the transfer of each of the Harvard Court, Hastings and Fraser pharmacies, and the distribution of Wescana Pharmacies' remaining assets, the petitioners propose:

29. Imran Rajani must direct Wescana Pharmacy to give notice to Wescana Drugs Ltd., Wescana Pharmacy Rx Ltd., and Wescana Healthcare Ltd. that the promissory notes owing to Wescana Pharmacy are due and payable within 60 days of the date of this order. The proceeds, once received, must be distributed to the shareholders after payment of outstanding liabilities and taxes.
30. After the payment of all taxes and liabilities of Wescana Pharmacy is made, any remaining funds will be distributed to the shareholders at reasonable intervals until Wescana Pharmacy's only asset is its intellectual property, with minimal to no liabilities.

[279] The respondents do not agree with these proposed terms. Instead, they propose the following terms:

11. The following promissory notes owing to Wescana Pharmacy shall be payable 30 days after the distribution of the entirety of the Profits to Rx Ltd. (the "Payment Date"):
  - a) Promissory Note from Rx Ltd. to Wescana Pharmacy dated December 1, 2022 in the amount of \$1,666,390.00 for the transfer of the business assets of the pharmacy located at 6682 - 6686 Fraser Street, Vancouver (the "Fraser Pharmacy") by Wescana Pharmacy to Rx Ltd. (the "Fraser Note");
  - b) Promissory Note from Wescana Healthcare to Wescana Pharmacy dated May 9th, 2022 in the amount of

- \$1,289,369.00 for the transfer of the business assets of the pharmacy located at 6935 120 Street, Delta (the “Harvard Court Pharmacy”) by Wescana Pharmacy to Wescana Healthcare (the “Harvard Court Note”); and
- c) Promissory Note from Wescana Drugs to Wescana Pharmacy dated May 9th, 2022 in the amount of \$475,000.00 for the transfer of the business assets of the pharmacy located at 4012 Hastings Street, Burnaby (the “Hastings Pharmacy”) by Wescana Pharmacy to Wescana Drugs (the “Hastings Note”),
- (collectively, the “Three P Notes”)
12. On the same day as the Three P Notes are payable, Wescana Pharmacy shall pay a dividend, one third to Natasha, one third to Rx Ltd. and one third to Imran’s Companies, such dividend to be an amount equal to the fair market value of Wescana Pharmacy’s assets, not including the Profits, less all of Wescana Pharmacy’s debts, liabilities, whether accrued or unaccrued, including any taxes payable by Wescana Pharmacy on the sale of the Fraser Pharmacy, Harvard Court Pharmacy and the Hastings Pharmacy.
13. The dividends payable by Wescana Pharmacy to Rx Ltd. under paragraph 12 shall be offset by the amount owing to Wescana Pharmacy by Rx Ltd. under the Fraser Note.
14. The dividends payable by Wescana Pharmacy to the Imran Companies under paragraph 12 shall be offset by the amount owing to Wescana Pharmacy by Wescana Healthcare and Wescana Drugs under the Harvard Court Note and the Hastings Note.

[280] The petitioners propose that the promissory notes owed be the parties to Wescana Pharmacy be paid within 60 days of this order. The respondents propose that the promissory notes are to be paid “30 days after the distribution of the entirety of the Profits to Rx Ltd”. As noted earlier in these Reasons, in their December 6, 2023 letter to the Court, the parties advised the Court that they had reached a settlement on the profits owed to the respondents. The letter cryptically states that the parties had entered into a settlement agreement in which they “agreed upon the amount of the profits and payments they have made to the parties as required under the settlement”.

[281] On the record before me, it is not clear how the settlement does or does not dovetail with the respondents' proposed language, or how the respondents' proposed terms would be implemented. On balance, I am of the view that the petitioners' proposed language at paras. 29 and 30 are clear and preferable. This language will be included in my final order.

[282] As noted earlier in these Reasons the ownership of Wescana Pharmacy is undergoing a change in which the brothers' children, Imran, Natasha, and Salman, will separately operate pharmacy businesses and jointly use the Wescana name and its intellectual property. In this context, the petitioners propose the following additional terms of order relating to the shareholders of Wescana Pharmacy (not including the family trusts):

31. Imran Rajani, Natasha Rajani, and Salman Rajani will take reasonable steps to negotiate and to settle a permanent form of intellectual property licence between them concerning Wescana Pharmacy, Wescana Drugs Ltd., Wescana Pharmacy RX Ltd., and Wescana Healthcare Ltd., within 3 months of the date this order is pronounced; failing which, any party may apply to the court for further direction; and in particular, for an order dissolving Wescana Pharmacy, including the sale of that company's intellectual property.

[283] The respondents do not agree with this approach and propose the following:

1. Wescana Pharmacy Ltd. ("Wescana Pharmacy") shall grant to Salman Rajani ("Salman"), Imran Rajani ("Imran"), and Natasha Rajani ("Natasha"), or a company which they may nominate wholly owned by each of them and/or one or more of their Family Members as defined in the Trademark License Agreement attached as Schedule "A" to this Order, an irrevocable license to the trademark in the same form as the Trademark License Agreement attached as Schedule "A" to this Order.
2. Simultaneous to paragraph 1, all prior licenses of trademark rights and intellectual property rights granted by Wescana Pharmacy to the parties to this action, or their companies shall be terminated, including, without limitation, the Trademark License Agreement dated May 9, 2022 between Wescana Pharmacy as licensor and Wescana Healthcare Ltd. ("Wescana Healthcare") and Wescana Drugs Ltd. ("Wescana Drugs"), as licensees and the Trademark License Agreement dated December 1, 2022 between Wescana

Pharmacy as licensor and Wescana Pharmacy Rx Ltd. (“Rx Ltd.”)  
as Licensee.

[284] The Trademark Licence Agreement referenced in Schedule “A” of para. 1 of the respondents’ proposed term is a complex commercial document that has not yet been negotiated between the parties. It also engages commercial terms and issues beyond this court’s proper role. As such, this Court is not at all inclined to impose it on any party or shareholder who has not agreed to it.

[285] I agree with the petitioners that if Imran, Natasha and Salman wish to share Wescana’s name and intellectual property, they may negotiate an agreement between them. Furthermore, if the parties cannot reach an agreement to settle a permanent form of agreement regarding Wescana Pharmacy’s intellectual property, this court would have no choice but to order the sale of Wescana Pharmacy’s intellectual property, as its last remaining asset; however, I am of the view that it is premature to do so at this juncture. I accept the petitioners’ term of order at para. 31 of their draft order.

[286] The next step proposed by the petitioners is to amend the articles of Wescana Properties so that decision-making between Salman, Natasha and Imran must be unanimous as it relates to the company’s intellectual property. The petitioners propose:

32. Imran Rajani, Natasha Rajani, and Salman Rajani will take all necessary corporate steps under s. 137 of the Business Corporations Act to amend Wescana Pharmacy’s articles so that decision making of the shareholders must be unanimous, and so that decisions of the director [Imran] relating to Wescana Pharmacy’s intellectual property must instead be made unanimously by the shareholders of Wescana Pharmacy.

[287] The respondents do not agree with this proposed order. They propose the following terms of order:

6. Immediately following the Reorganization, the shareholders of Wescana Pharmacy shall increase the number of directors from one to three, by way of ordinary shareholders resolution pursuant to

section 13.1(c)(i) of the Articles of Wescana Pharmacy. No further change may be made to the number of directors on the board of directors of Wescana Pharmacy without unanimous written agreement of the shareholders or further court order.

7. Following the increase in the board to 3 directors, each of the following shareholder groups shall have the right to appoint her or its' nominee as a director of Wescana Pharmacy:
  - (a) Rx Ltd.,
  - (b) the Imran Companies,
  - (c) Natasha and the Sherali Rajani Family Trust.
8. All decisions and actions taken by Wescana Pharmacy must be made with the unanimous written agreement of its directors.
9. Any decision that can be made by the shareholders can only be done by unanimous written agreement unless otherwise ordered by this Court.

[288] The "Reorganization" referred to in the respondents' para. 6 above is defined and described earlier in their draft order as follows:

3. Ten days from the date of this Order:
  - (a) Salman Rajani shall transfer all of his shares in Wescana Pharmacy to Rx Ltd.;
  - (b) The Zahir Rajani Family Trust shall transfer all of its shares in Wescana Pharmacy to Rx Ltd. pursuant to Section 85(1) of the *Income Tax Act* (the "Act");
  - (c) Imran Rajani shall transfer all of his shares in Wescana Pharmacy to Wescana Healthcare and Wescana Drugs (collectively the "Imran Companies"); and
  - (d) The Shafik Rajani Family Trust shall transfer all of its shares in Wescana Pharmacy to the Imran Companies pursuant to Section 85(1) of the *Act*.
4. Upon completion of the reorganization set out in paragraph 3 (the "Reorganization"), the shareholders of Wescana Pharmacy shall be Rx Ltd., the Imran Companies, Natasha and the Sherali Rajani Family Trust.
5. Imran shall take all necessary steps, and sign all necessary document, required of him to effect the Reorganization.

[289] The respondents do not wish Imran, as he has been for years now, to be the sole director of Wescana Pharmacy. Accordingly, they seek the Reorganization and an increase in the number of directors. However, the petitioners have accommodated their concerns by requiring changes to the Articles of the company so that any decisions made by the company must be approved unanimously by the shareholders, and can no longer be unilaterally directed by Imran. In my view, the solution proposed by the petitioners is the simplest, fairest and likely the most effective route given the history between the parties. Clearly, since the assets of Wescana Pharmacy have now been transferred to three new pharmacy companies owned by the parties, the decisions of the shareholders will be reduced essentially to simply addressing the name and intellectual property interests of the Wescana Pharmacy. Furthermore, the interests of the respondents are protected by the requirement for a unanimous decision of the current shareholders, as contemplated by the petitioners and failing agreement, if necessary, the assistance of the court. I agree with the petitioners term of order at para. 32 of their draft for form of order.

[290] Should the parties require further direction in clarifying our implementing the above orders, they have leave to address the matter with me. The parties are also at liberty to revise or settle the terms of the orders by agreement.

**G. Should the cost of the tax opinion of \$106,696.80 be borne equally between Wescana Properties and Wescana Pharmacy?**

[291] I have reviewed the tax opinion in question. I am satisfied that it is highly relevant and added value to the decisions of how to best manage the affairs and disposition of both Wescana Pharmacy and Wescana Properties assets, including their shares and related tax considerations. I am not only of the view, as was Justice Crerar, that these companies should share the cost of this tax opinion but also that it is entirely appropriate for the cost to be divided equally between the Companies.

**H. The appropriate award of Costs in regard to the Petitions**

**1. Costs Order Relating to Petition #1**

[292] It is well settled law that an applicant is entitled to its costs when it is substantially successful: see *Supreme Court Civil Rule 14-1(9)*; *Bolin v Lylick*, 2018 BCCA 127.

[293] The respondents have requested the opportunity to provide their submissions on this issue following the release of these Reasons. They will be granted that opportunity in regard to Petition #1, if the parties are unable to resolve this issue.

[294] However, I would encourage the parties to resolve this issue between them without further litigation. If they are not able to do so, the parties are to exchange and file their submission regarding the costs of Petition #1 within 45 days from the release of these Reasons, or at another date as otherwise agreed in writing between the parties.

[295] The respondents' submissions shall be no longer than 10 pages in length. Following the receipt of the respondents' cost submissions, the petitioners will have an opportunity to file a reply, no longer than five pages in length, within 14 days of receipt of the respondents' submissions, or on another date as agreed in writing between them.

**2. Cost Relating to Petition #2 and the Contempt Application**

[296] In light of my conclusions dismissing both the allegations of oppressive conduct in Petition #2 and the contempt of court application by Zahir and Salman, I have also concluded that Zahir and Salman's application for costs should also be dismissed.

[297] The Majority Shareholders argued that they were entitled to special costs. An award of special costs is granted only in exceptional circumstances and is intended to address a party's behaviour during the course of the litigation: *Smithies Holdings*

*Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 129–134. Special costs are not compensatory; they are punitive: *Smithies* at para. 56. The purpose of special costs is to censure and deter litigation misconduct, not to compensate the successful party. Special costs are also not a substitute for damages, or to be conflated with damages for mental distress, punitive damages or contractual costs: *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, leave to appeal refused [2019] SCCA No. 417, at para. 51.

[298] I am unable to conclude that the conduct of any of the parties in Petition #2, during the course of this litigation, was so egregious and reprehensible to deserve condemnation in the form of special costs: see *Westsea Construction Ltd. v. 0759553 BC Ltd*, 2013 BCSC 1352.

[299] While this was a high conflict matter with significant disagreement and acrimony on various issues between the parties, to their credit, both parties attempted to reach agreement on a number of issues and, in fact, were successful in eventually did so.

[300] While Zahir and Salman chose not to pursue a number of allegations of oppressive conduct against the majority shareholders, their conduct also involved significant collaboration and cooperation during the course of this litigation, which resulted in the distillation and simplification of some of the issues before the Court, including agreement on a number of others. Considering these facts as a whole, I am of the view that it would be inappropriate to award special cost against Zahir and/or Salman in this context.

[301] I am also of the view that, for similar reasons, it would not be appropriate to award special damages in favour of the petitioners against Zahir and Salman in regard to their contempt application against Shafik and Sherali. While their contempt application was misguided and ultimately unsuccessful, it is not worthy of censure in light of the entirety of the facts before me, particularly the efforts made throughout these proceedings by all parties to reach agreement, which to a considerable extent were successful.

[302] In sum, given the special circumstances of this case, I am of the view that it would not be appropriate to award special costs to either party.

[303] Nevertheless, while the majority shareholders are not entitled to special costs, as the substantially successful parties, they are entitled to their party and party costs in regard to Petition #2 at Scale B.

[304] The respondents in the contempt application were also successful in defending the allegations against. Accordingly, they are also entitled to their party and party costs.

## **V. DISPOSITION**

[305] For the Reasons set out above, I order as follows.

[306] Wescana Pharmacy and Wescana Properties are to be dissolved and liquidated pursuant to s. 324 of the *Business Corporations Act*, S.B.C. 2002, c. 57, in accordance with the following terms of order.

[307] Shafik Rajani, Zahir Rajani and Sherali Rajani (“Directors”), will appoint independent real estate brokers (“Broker or Brokers”) as required, and will jointly instruct them to sell the assets of Wescana Properties in accordance with the specific terms set out herein.

[308] If the Directors are not able to agree on which Broker ought to be engaged to sell the Wescana Properties’ real estate properties, they are at liberty to apply to court for direction.

[309] The Directors will not interfere with the agreed upon sales process or the Broker’s mandate, as set out herein. Any correspondence submitted to any of the Brokers by any party will be promptly shared with the other parties.

[310] Any one of the Directors may apply to court for directions concerning issues that may arise, not contemplated by this order, regarding the marketing of the real estate properties by the Brokers.

**A. Sale of Presale Condos**

[311] Wescana Properties will make all commercially reasonable efforts to obtain approval from the vendor to assign its contracts to purchase to the properties, to the following Wescana Properties Directors, and each of the Wescana Properties Directors will accept an assignment of the contract in question. Any fee charged by the vendor for permitting an assignment will be borne by Wescana Properties. The Director who receives the assignment will indemnify and save harmless Wescana Properties against any costs, losses, or damages, caused by that Director's failure to complete the transaction contemplated by the contract assigned to that Director:

- (a) Unit 3807 Pier West Tower A (600-720 Quayside Drive) – to Zahir Rajani;
- (b) Unit 4701 Pier West Tower A (600-720 Quayside Drive) – to Zahir Rajani;
- (c) Unit 4108 Pier West Tower A (600-720 Quayside Drive) – to Sherali Rajani;
- (d) Unit 5004 Pier West Tower A (600-720 Quayside Drive) – to Sherali Rajani;
- (e) Unit TH2 Pier West Tower B (600-720 Quayside Drive) – to Shafik Rajani;
- (f) Unit 5001 Pier West Tower A (600-720 Quayside Drive) – to Shafik Rajani.

[312] If any one of the Directors gives notice to Wescana Properties, within 15 days of the pronouncement of this order, that they do not wish to have a pre-sale contract assigned to them, then any of the other brothers may give notice to Wescana Properties of their agreement to receive an assignment of the contract on the same terms.

[313] If none of the brothers agree to have a pre-sale contract assigned to them, or if it is otherwise required by the *Business Corporations Act*, Wescana Properties will retain sufficient capital to acquire any presale condominium in accordance with the terms of the contract in question and will also sell the property in question as soon

as it is legally able to do so in accordance with this order, the proceeds of which are to be distributed equally between the brothers.

[314] As the properties owned by Wescana Properties are sold, the sale proceeds shall be applied to satisfy the company's outstanding liabilities, including debts and taxes.

**B. Disposition or Sale of Commercial Properties including the Preferred Properties**

[315] In regard to the following commercial properties, within 10 days of pronouncement of this order, Wescana Properties will appoint Nathan Nottingham of Ryan ULC; or if he is not available, another appraiser agreed to by all of the Wescana Properties Directors, or as appointed by the court on application by any of the Wescana Properties Directors if they are unable to agree (the "Valuator"), to conduct a fair market value appraisal of the following properties owned by Wescana Properties (the "Valuation"):

- 4012 Hastings Street, Burnaby, British Columbia;
  - 8737 120th Street, Delta, British Columbia;
  - 6935 120th Street, Delta, British Columbia;
  - 6682-6690 Fraser Street & 707 East 51st Street, Vancouver, British Columbia;
  - 8585 160th Street, Surrey, British Columbia;
  - 6480, 6482, and 6494 Main Street and 215 & 219 East 49th Avenue, Vancouver, British Columbia;
  - Unit 7, 8388 128th Street, Surrey, British Columbia;
  - 1309 St. Georges Avenue, North Vancouver, British Columbia;
- (collectively, the "Commercial Properties")

[316] The valuation process will begin when Wescana Properties' existing line of credit has been paid off through the sale of the Residential Properties as contemplated in the Consent Order of Justice Morellato, dated November 16, 2022 in this proceeding.

[317] Unless otherwise agreed in writing, Wescana Properties will: (1) instruct the Valuator to use a valuation date that is the first day of the month following the date this order is pronounced for the Valuation; and (2) share a draft valuation that may be subject to comment by any of the Wescana Properties' Directors prior to delivering the Valuation in its final form.

[318] The parties will not interfere with the valuation process or the Valuators' mandate. Any correspondence submitted to the Valuator by the parties must be contemporaneously or otherwise promptly shared with the other parties. All substantive communications with the Appraiser must be in writing.

[319] The Commercial Properties preferred by each Wescana Properties Director are as follows:

**Zahir's Preferred Properties**

8737 120th Street, Delta, British Columbia;

6682-6690 Fraser Street & 707 East 51st Street, Vancouver, British Columbia;

Unit 7, 8388 128th Street, Surrey, British Columbia;

...

**Sherali's Preferred Properties**

6480, 6482, and 6494 Main Street and 215 & 219 East 49th Avenue, Vancouver, British Columbia;

1309 Georges Street, North Vancouver;

8585 160th Street, Surrey, British Columbia;

...

**Shafik's Preferred Properties**

6935 120th Street, Delta, British Columbia;

4012 Hastings Street, Burnaby, British Columbia.

[320] If any of the Wescana Properties shareholders wish to purchase their Preferred Property, that shareholder shall be given 14 days from the delivery of the final Valuation to confirm their intent to exercise their option to purchase any of their respective Preferred Properties by providing written notice to the other parties. For

clarity, Zahir shall have the first option to purchase Zahir's Preferred Properties, Shafik shall have the first option to purchase the Shafik's Preferred Properties, and Sherali shall have the first option to purchase the Sherali's Preferred Properties.

[321] If any of the Wescana Properties shareholders confirms their intent to purchase in accordance this Order, that shareholder shall have three months from the date they confirm their intent to purchase the property to enter into a binding contract of purchase and sale with Wescana Properties to do so for the value of the property as determined by the Valuations, with the completion date to be set in accordance with this Order.

[322] Any Wescana Properties Director who purchases a preferred property in accordance with the above terms must use a contract in which that director agrees to indemnify and save harmless any of the other Wescana Properties Directors and Wescana Properties from any tax liability of any kind arising from a reassessment of the fair market value of the transaction by any government taxation authority, including but not limited to a reassessment of GST, income taxes, or provincial property transfer tax.

[323] If all of the Wescana Properties Directors give notice to purchase all of their preferred properties, as set out above, then if all of the Wescana Properties Directors agree, but subject to the requirements of the *Business Corporations Act*, Wescana Properties may also complete the transfers in a single transaction in which Wescana Properties' transfers the properties to the Wescana Properties Directors, with the tax liabilities externally financed by the Wescana Properties' Directors.

[324] Any offer made by any Director of Wescana Properties to purchase any of Zahir's Preferred Properties, Sherali's Preferred Properties, or Shafik's Preferred Properties that is not elected and acquired by the respective Director may be accepted, providing all Wescana Properties Directors agree.

[325] In regard to properties not purchased as Preferred Properties, upon the expiry of the time available for a Director to acquire a preferred property, the Directors must

instruct the Brokers to list the properties for sale unless the Directors all otherwise agree. If the Broker requests a further valuation for purposes of setting a listing price for these properties, unless the Wescana Properties' Directors otherwise all agree, they must obtain a further valuation at the cost of Wescana Properties.

[326] In regard to the sale of commercial properties that are not purchased as "Preferred Properties", the Directors must accept an offer that is both: (1) within 5% of the listed price; and (2) on terms that are recommended to be accepted by the Broker. If an offer is provided which does not meet the foregoing requirements, then it may not be accepted, unless all of the Directors agree. If agreement is not reached between the Directors, a receiver may be appointed to conduct the sale.

[327] As the properties owned by Wescana Properties are sold, the Directors will apply the sale proceeds to its outstanding liabilities, including debts and taxes, and cause the remainder to be distributed in equal parts to the shareholders at reasonable intervals and in reasonable amounts.

[328] Any shareholder, who owes loans to Wescana Properties at the time of distribution, must apply their distribution firstly towards the repayment of said loan.

[329] The Wescana Properties Directors will dissolve Wescana Properties as soon as it is capable of dissolution, after divestment and distribution of all of its assets and payment of all of its outstanding liabilities.

**C. Process and Terms of Order for the Dissolution of Wescana Pharmacy**

[330] Imran Rajani must direct Wescana Pharmacy to give notice to Wescana Drugs Ltd., Wescana Pharmacy Rx Ltd., and Wescana Healthcare Ltd. that the promissory notes owing to Wescana Pharmacy are due and payable within 60 days of the date of this order, unless otherwise agreed in writing. The proceeds, once received, must be distributed to the shareholders after payment of outstanding liabilities and taxes.

[331] After the payment of all taxes and liabilities of Wescana Pharmacy is made, any remaining funds will be distributed to the shareholders at reasonable intervals until Wescana Pharmacy's only asset is its intellectual property.

[332] Imran Rajani, Natasha Rajani, and Salman Rajani will take reasonable steps to negotiate and to settle a permanent form of intellectual property licence between them concerning Wescana Pharmacy, Wescana Drugs Ltd., Wescana Pharmacy RX Ltd., and Wescana Healthcare Ltd., within three months of the date this order is pronounced; failing which, any party may apply to the court for further direction including an order for the final dissolution of the company that includes the sale of that company's intellectual property.

[333] Imran Rajani, Natasha Rajani, and Salman Rajani will take all necessary corporate steps under s. 137 of the *Business Corporations Act* to amend Wescana Pharmacy's articles so that that the decision-making of the shareholders must be unanimous; for greater clarity, any decision of the director Imran, relating to Wescana Pharmacy's intellectual property must instead be made unanimously by the shareholders of Wescana Pharmacy.

**D. Petition #2**

[334] The petition proceeding commenced under court file S224466 is dismissed.

**E. Other Miscellaneous Terms of Order**

[335] The cost of the expert tax report, invoice 1083499, in the amount of \$106,696.80 will be shared equally between Wescana Properties and Wescana Pharmacy.

[336] Justice Crerar's order made February 14, 2022, in court file S211375 is varied by deleting paras. 3, 4 and 7 in their entirety.

[337] The contempt of court application brought by Zahir Rajani and Salman Rajani is dismissed, with costs to the respondents, Shafik and Sherali, in that application.

[338] As requested, the respondents in Petition #1, will have the opportunity to make further submissions on costs, as directed earlier in these Reasons.

[339] The applications of both parties for special costs are dismissed with respect to Petition #2.

[340] The respondents in Petition #2, Shafik Rajani, Sherali Rajani, Natasha Rajani and Imran Rajani, are entitled to their party and party costs at Scale B.

[341] As this was a very complex matter, should the parties require further direction and clarification regarding the terms of this Order or their implementation, they have leave to address the matter with the court. The parties are also at liberty to revise or settle the terms of this Order by agreement, in writing, and by a Consent Order.

“MORELLATO J.”