

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mirage Trading Corporation v. Ghahroud*,  
2025 BCSC 588

Date: 20250331  
Docket: S244258  
Registry: Vancouver

Between:

**Mirage Trading Corporation**

Petitioner

And

**Rouzbeh Rabiei Ghahroud, MAJ Enterprises Inc., Teknocan Properties Inc.,  
Norseyl Properties Ltd., AXA Consulting Services Inc., and Pan Pacific  
Business Corporation**

Respondents

Before: The Honourable Justice Matthews

## Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, British Columbia  
December 16-20, 2024

Place and Date of Judgment:

Vancouver, British Columbia  
March 31, 2025

**Table of Contents**

**OVERVIEW..... 3**

**THE PARTIES AND THE BACKGROUND ..... 4**

**THE TEKNOCAN RESPONDENTS’ APPLICATION TO VARY THE JULY 22, 2024 ORDER..... 10**

    The July 22 2024 Injunction Application and Order ..... 10

    The August 15, 2024 Comeback Hearing ..... 12

    October 30, 2024 Application to Vary ..... 12

    Order Sought to Permit a Payout of \$20,000,000 to MAJ ..... 13

    Expiry Date..... 21

    Undertaking as to Damages ..... 22

**APPLICATION TO APPOINT A RECEIVER..... 23**

    Legal Principles ..... 24

    Merits Threshold..... 27

    Irreparable Harm and Balance of Convenience..... 28

        Document Disclosure by Teknocan ..... 28

        The Audit ..... 29

        Continued Oppression ..... 33

    Conclusion on Receivership Application ..... 34

**DISPOSITION..... 35**

**Overview**

[1] The petitioner, Mirage Trading Corporation (“Mirage”), and the respondents are limited partners in limited partnerships to develop residential condominium towers in North Vancouver between Mountain Highway and the Second Narrows Bridge. The relationships between the partners in the limited partnerships, including among the shareholders of one of the limited partners, Teknocan Properties Inc. (“Teknocan”), have broken down and have spawned many pieces of litigation.

[2] In this petition, Mirage, a minority shareholder in Teknocan, accuses the majority Teknocan shareholder, MAJ Enterprises Inc. (“MAJ”), of oppressive conduct. On Mirage’s application, Justice Milman made an order on July 22, 2024 enjoining Teknocan from disposing of cash, other assets or voting its partnership units in Seylynn (North Shore) Development Limited Partnership (“Seylynn LP”) and Seylynn (North Shore) Properties Phase II Limited Partnership (“Seylynn II LP”) to affect how funds are used or paid out by the limited partnerships.

[3] Teknocan and the respondents Rouzbeh Rabiei Ghahroud (“Rouzbeh Rabiei”) and MAJ assert that the July 2, 2024 order is not an injunction order but rather an adjournment of Mirage’s injunction application, on terms. They assert that given that Mirage has not proceeded to reset the injunction application, it is appropriate to vary the order to permit Teknocan to pay out funds to MAJ so MAJ can pay down its indebtedness.

[4] Mirage asserts that Milman J. also directed the parties to attend a comeback hearing at which Teknocan could argue that it had produced documentation to establish that the restrictions placed on it in the July 22, 2024 order should be lifted or modified to allow Teknocan to pay down indebtedness. Mirage asserts that Teknocan failed to achieve a variation to the terms of the injunction at the comeback hearing. Mirage asserts that at the comeback hearing, Milman J. made further orders for financial information to be produced at Mirage’s request for the purposes of advancing the petition, and the interlocutory injunction was left intact.

[5] Mirage asserts that the same failure to produce financial information has persisted, and that Teknocan, Rouzbeh Rabiei and MAJ have violated the interlocutory injunction and continued the oppressive behaviour. Mirage seeks appointment of an interim receiver.

**The Parties and the Background**

[6] The residential commercial developments to which this litigation pertain are being run through Seylynn LP and Seylynn II LP.

[7] Until 2021, the general partners of both limited partnerships were Seylynn Village MP Ltd. and Seylynn Garden GP Ltd, of which Abo Taheri (“Dr. Taheri”) held 50% of the shares through a holding company and Abbasali Shapour Hosseini (“Dr. Hosseini”) owned the other 50% through the same holding company. In April 2021, the limited partners voted to remove the general partners and replace them with a company for whom Rouzbeh Rabiei and Dr. Hosseini are the directors.

[8] The respondent Teknocan is a limited partner in Seylynn LP and Seylynn II LP, holding 51.7% of the equity units of both limited partnerships.

[9] Rouzbeh Rabiei and other members of his family control the respondent MAJ, which owns 90% of the shares of Teknocan. I will refer to Rouzbeh Rabiei, MAJ and Teknocan collectively as the Teknocan respondents.

[10] The petitioner Mirage is a 10% shareholder of Teknocan. Dr. Taheri is the principal and directing mind of Mirage.

[11] Mirage asserts that some of the Teknocan respondents’ conduct has been oppressive in relation to Mirage as a minority shareholder in Teknocan, including removing Dr. Taheri as a director and excluding Dr. Taheri from the management of Teknocan. Rouzbeh Rabiei is currently the sole director of Teknocan. Mirage asserts that it has outstanding shareholder loans to Teknocan.

[12] The other limited partners of Seylynn LP and Seylynn II LP are Pan Pacific Business Corporation (“Pan Pacific”), Norseyl Properties Ltd. (“Norseyl”) and Bluemont Development Corp. (“Bluemont”).

[13] Pan Pacific claims that it is the beneficial owner of 2% of the shares of Teknocan and that those shares are in the name of Mirage. In British Columbia Supreme Court Action No. S225945, Pan Pacific is suing Mirage for breach of a trust agreement pursuant to which it alleges that Mirage agreed to hold 2% of the Teknocan shares for it. Norseyl claims that it and AXA are the beneficial owners of 3% of the shares of Teknocan and that those shares are in the name of Mirage. In British Columbia Supreme Court Action No. S233936, Norseyl and AXA are suing Mirage for breach of a trust agreement under which they allege that Mirage agreed to hold 3% of the Teknocan shares for them. If those claims are made out, then Mirage and MAJ are not the only shareholders of Teknocan.

[14] Originally, Mirage sought to make the claims it brings in this petition (and other claims) in a third party proceeding filed in Action No. 233936. Teknocan and Rouzbeh Rabiei applied to have the third party claims struck on the basis that the oppression claims had to be pursued by petition and the other claims were not significantly related to the claims brought by Norseyl and AXA. Pan Pacific, who was not a party to Action No. 233936, agreed that the oppression claims had to be brought by petition and the other claims were unrelated to the original action. Associate Judge Robertson struck the third party notice in reasons indexed as *Norseyl Properties Ltd. v. Mirage Trading Corporation*, 2024 BCSC 1225.

[15] Mirage then commenced this petition against the Teknocan respondents. At the time of the July 22, 2024 order, none of the other limited partners in Seylynn LP or Seylynn II LP were parties to the petition. Pan Pacific, Norseyl and AXA applied to be added to this action subsequent to the July 22, 2024 order. Justice Latimer granted the application in reasons indexed as *Mirage Trading Corporation v. Ghahroud*, 2024 BCSC 1552.

[16] There are non-parties who are referred to in the evidence. Mahmoud Rabiei Ghahroud (“Mahmoud Rabiei”) is Rouzbeh Rabiei’s father, a person who has had many business dealings with Dr. Taheri over the years. Mina Alipanah Jahroudi is the wife of Mahmoud Rabiei and the mother of Rouzbeh Rabiei and Ramin Rabiei. Persepolis Real Estate Development (“Persepolis”) and Treaty Real Estate Brokers (“Treaty”). Persepolis and Treaty are located in Dubai, United Arab Emirates. The principal of Pan Pacific is Dr. Housseini. The principal of Norseyl is Babak Marzbani, who also is the shareholder of respondent AXA Consulting Services (“AXA”). Mr. Marzbani also is the corporate accountant and chief financial officer for Seylynn LP, Seylynn II LP and Teknocan.

[17] MAJ claims that it funded its contribution to the limited partnerships through a loan from Persepolis, which assigned the loan to Treaty. It asserts that when the limited partnerships make distributions to Teknocan, and Teknocan makes distributions to MAJ and Mirage, MAJ uses the proceeds, although not exclusively, to repay its loan to Treaty.

[18] Mirage claims that the relationship between Persepolis and Treaty and MAJ is not arms length, and MAJ’s payments to Treaty are not truly repayments of a loan, but rather a means of the principals of MAJ to funnel money to themselves in Dubai and out of reach of any one in British Columbia who asserts a claim against MAJ or members of the Rabiei family. MAJ asserts that the Rabiei family has had relationships with Persepolis and its personnel for a long time, but Persepolis is not owned by any member of the Rabiei family, nor is Treaty.

[19] Nevertheless, there is evidence that Rouzbeh Rabiei’s LinkedIn page describes him as the finance manager for Treaty. Rouzbeh Rabiei deposed that someone else created that LinkedIn page for him and perhaps made that reference because he was helping Treaty to fill an employment position. He deposed that he has never been employed by Persepolis or Treaty, has never acted as a finance manager for Persepolis or Treaty, and has never held a management position for Persepolis or Treaty. Rouzbeh Rabiei has not led any evidence from anyone who

described him as the finance manager for Treaty on his LinkedIn page, or from anyone at Treaty that he helped with recruiting employees for Treaty despite having an arms length relationship with Treaty. For the reasons that I will set out below, I would prefer corroboration for this evidence or at least that it be the subject of cross examination.

[20] MAJ claims that Mirage funded its contribution to the limited partnership through a loan from Persepolis which was assigned to Treaty, and which was facilitated by the relationship between the Rabiei family, particularly Mahmoud Rabiei, and Persepolis and Treaty. Dr. Taheri deposed that he has always understood that Persepolis and Treaty were controlled by Rabiei family and that the loan to Mirage was really from Mahmoud Rabiei.

[21] The evidence shows that the funds advanced from Persepolis to MAJ for these loans came from or through a company called Hoday Trading Co. (LLC) ("Hoday"), a company that is controlled by members of the Rabiei family. Treaty's domain name is owned by Hoday. Persepolis, Treaty and Hoday have the same office address, phone number and employees. There is evidence from the Teknocan respondents that this is due to Rabiei family interests renting offices to Persepolis and/or Treaty. Their evidence is that the Rabiei businesses do not share the same office space as Persepolis or Treaty.

[22] In 2016, Treaty requested that Mirage repay its loan. That request was communicated to Dr. Taheri by Mahmoud Rabiei, and Rouzbeh Rabiei's brother, Ramin Rabiei. Rouzbeh Rabiei deposed that the communication was made by his father and brother because they "were the primary contact persons for Treaty in connection with Mirage's loan".

[23] At Dr. Taheri's request, Treaty prepared an invoice for the amount outstanding, which Mirage repaid. However, Mirage asserts that the loan was not really from Treaty, it was from Mahmoud Rabiei, and that is who was repaid. Mirage points to evidence that negotiations regarding the amount to be repaid involved one or more of the Ramin Rabiei, Rouzbeh Rabiei and Mina Jahroudi. According to an

email sent by Dr. Taheri to Ramin Rabiei, Rouzbeh Rabiei and Mina Jahroudi, they agreed that the amount to be repaid was 13,000,000 DHS, reduced from the invoice issued by Treaty in the amount of 14,504,205 DHS.

[24] The email sent by Dr. Taheri also states that the last of four repayment instalments was directed to Mina Jahroudi, and deposited in her Vancity account, pursuant to the instructions of Mr. Marzbani. Rouzbeh Rabiei deposed that the payment was made to his mother by Dr. Taheri, who directed her to forward it to “different”, but not identified, payees. Mina Jahroudi did not give evidence about this, so this statement can only be double hearsay.

[25] According to Mirage, in order to fund the repayment, it entered into a written trust agreement with Pan Pacific, Norseyl and AXA. Pan Pacific, Norseyl and AXA allege that Mirage transferred its beneficial interest in two Teknocan shares to Pan Pacific, its beneficial interest in one Teknocan share to AXA, and its beneficial interest in two Teknocan shares to Pan Pacific and held those shares in trust for those beneficial owners.

[26] According to MAJ, it was not informed that Mirage made this trust arrangement with Pan Pacific, Norseyl and AXA and considered the fact that Mirage did so to break their relationship of trust in business dealings and part of what caused MAJ to move to have Rouzbeh Rabiei made a director of Teknocan.

[27] With regard to MAJ’s loan from Persepolis and Treaty, Rouzbeh Rabiei deposed that on June 1, 2022, MAJ and Treaty agreed that the interest on the loan would increase. The addendum to the agreement indicates that the increase is from 8% provided for in the agreement dated January 1, 2015 to 14% per annum. However, the loan agreement dated January 1, 2015 provides for an interest rate of 5.5%. Rouzbeh Rabiei, in his affidavit describing the increase, did not explain the difference between the original interest rates as described in the January 1, 2015 agreement versus the June 1, 2022 amendment. Nor did Rouzbeh Rabiei explain why there was such a marked increase in the interest rate to 14%.

[28] Mirage claims that when the first net sale proceeds, of which it was aware, from the sale of the residential development came into Seylynn LP and out to the limited partners, including Teknocan, Teknocan caused 90% of the proceeds to be distributed to MAJ and held back Mirage's 10%. Teknocan does not dispute that it did so. Rouzbeh Rabiei deposed that Teknocan did so because of the litigation between Mirage, Pan Pacific, AXA and Norseyl in which Pan Pacific, AXA and Norseyl claim an interest in limited partnership payouts to Teknocan. Rouzbeh Rabiei asserts that he does not want Teknocan to unwittingly breach an agreement, so he has been holding back Mirage's share of the payments.

[29] Mirage claims that Teknocan has debts, including taxes, that have accrued or will be accruing and by distributing MAJ's share and holding back Mirage's share, the creditors will seek to be paid from Mirage's share. Mirage asserts that by purporting to repay the loan to Treaty, MAJ is really funnelling money to itself, or to Rabiei family members in Dubai.

[30] Mirage also alleges that it has recently become aware of a May 2022 disbursement of \$6 million by the limited partnerships to MAJ directly, bypassing Teknocan, without the knowledge of Mirage. The Teknocan respondents assert that Mr. Marzbani has "addressed this payment". What they appear to mean by that is that Mr. Marzbani, in an affidavit made in August 2024, for the August 15, 2024 comeback hearing, acknowledges this payment, but does not explain why it was made at all, nor why it was not disclosed until that time.

[31] Mirage claims that these steps, as well as the removal of Dr. Taheri as a director of Teknocan, excluding him from the management of Teknocan, refusing to product audited financial statements for Teknocan and refusing to product financial disclosure to Dr. Taheri, are oppressive conduct by the majority shareholder to the minority shareholder, defeating Mirage's reasonable expectation that it would be treated fairly and have access to financial information.

[32] Mirage commenced this petition on June 21, 2024.

**The Teknocan Respondents' Application to Vary the July 22, 2024 Order**

[33] The Teknocan respondents seek to vary the July 22, 2024 order to:

- a) allow Teknocan to pay out \$20,577,290.51 to MAJ to repay the Treaty debt;
- b) have the July 22, 2024 order expire within 60 days;
- c) require an undertaking to damages *nunc pro tunc*.

[34] The Teknocan respondents submit that the July 22, 2024 order is not an injunction, but rather an adjournment of Mirage's application for an injunction on terms. They argue that Milman J. intended that MAJ be able to pay off its loan to Treaty and that relief he granted was to be temporary only.

[35] Mirage submits that the order speaks for itself, it provides for injunctive relief until extended, varied or cancelled by the Court or agreement of the parties. Mirage submits that Milman J. scheduled the comeback hearing in order that MAJ have the opportunity to persuade him that it should have access to funds to pay off the Treaty loan. MAJ failed to do so at the comeback hearing and since then, the evidence that has been unearthed shows that MAJ and Treaty are not arms length.

**The July 22 2024 Injunction Application and Order**

[36] On June 26, 2024, Mirage filed an application for an injunction pursuant to s. 227(3) of the *Business Corporations Act*, S.B.C. 2002, c.57, including prohibiting Teknocan from disposing of or diminishing the value of any of its cash or assets without the written consent of Mirage.

[37] Between the filing of the application for an injunction on June 26, 2024, and MAJ's delivery of responding materials on July 17, 2024, Rouzbeh Rabiei caused Teknocan to pay out approximately \$11 million to MAJ and holdback Mirage's share of the net sale proceeds that underlay the payout. While Rouzbeh Rabiei disclosed in an affidavit made July 17, 2024 that the money had been paid out, he did not disclose when it was been paid out, simply deposing that it was "recently". Some

four months later, in November 2024, he swore an affidavit in which he deposed that the payout occurred on July 12, 2024, i.e. after the application for an injunction was filed and served but before it was heard.

[38] Rouzbeh Rabiei deposed that the amount paid out to MAJ was used by MAJ to retire part of its Treaty loan, leaving a loan balance of \$18,000,000 with interest accruing at 14%.

[39] The injunction application was on the list on July 18, 2024 but there was no available time in chambers that day. It was heard by Milman J. on July 22, 2024.

[40] The transcript of the July 22, 2024 hearing demonstrates that he concluded there was not enough time to deal with the injunction application. He stated that he was adjourning the application on terms. The terms were informed by his view that the test for an injunction had “been met on an interim basis”, and he was prepared to preserve the *status quo* for a few weeks because he was satisfied there was a strong *prima facie* case that Mirage had a claim in oppression based on Teknocan making preferential payments to MAJ and withholding payments and information from Mirage. Justice Milman also made some orders that he stated were to address the short term problems and provided for the parties to come back to him once they had the information that would allow him to make an order to permit Teknocan to pay the majority shareholder’s loan. Justice Milman set August 15, 2024 for the parties to come back before him.

[41] The terms of the July 22, 2024 order are:

- a) Except for ordinary business expenses, legal advice expenses and accounting and audit fees, Teknocan is prohibited from disposing, dealing with or diminishing cash or assets, including any net sale proceeds distributed or received from Seylynn LP or Seylynn II LP, without consent of Mirage or further order of the Court.
- b) Teknocan is prohibited from voting its interests in Seylynn LP or Seylynn II LP to change the *status quo* between the limited partnerships and the

limited partners in relation to how and when funds were to be paid out by the limited partnerships.

- c) The order is to remain in force until further order of the Court unless varied, discharged or extended by order of the Court. Anyone affected by the order may apply to vary or discharge it.
- d) Teknocan is to appoint MNP LLP as auditor. MNP shall prepare reports on the financial statements of Teknocan for financial years ending December 31, 2021, December 31, 2022 and December 31, 2023. Teknocan is to provide Mirage with the name of the person at MNP responsible for the audit reports, the Teknocan respondents are to provide MNP with all documents necessary for the audit as requested by the auditors and shall copy Mirage on all communications with the auditor pertaining to the audit including any documents provided to the auditor. The audit reports are to be provided directly to the registered shareholders on completion.

**The August 15, 2024 Comeback Hearing**

[42] On July 22, 2024, Milman J. described the purpose of the comeback hearing as being to determine, with the benefit of further information provided to Mirage by the Teknocan respondents and further evidence, how to allow funds to flow to MAJ to let it to pay down its indebtedness to Treaty.

[43] At the August 15, 2024 comeback hearing, Milman J. stated that based on the material he was presented with and the amount of time available for the hearing, he was not going to make an order varying his July 22, 2024 order. He made a further order for production of more information from Teknocan. He unseized himself of the matter and told the parties they could go before another judge.

**October 30, 2024 Application to Vary**

[44] The petition was originally set to be heard November 26 to 28, 2024. On October 16, 2024, the Teknocan respondents served an application to vary the July 22, 2024 order. That application came before Justice Walker on October 30, 2024.

At that time, the Teknocan respondents had not filed petition responses. Justice Walker determined that there was not enough time to hear the Teknocan respondents' application to vary and that the Teknocan respondents should file their petition responses before their application to vary was heard. Justice Walker adjourned the application to vary, rescheduled the petition to be heard on April 28, 2025 for five days and ordered the Teknocan respondents to file their petition responses and materials by December 13, 2024.

**Order Sought to Permit a Payout of \$20,000,000 to MAJ**

[45] MAJ points to Milman J.'s comments of a short term *status quo* order in support of its position that no injunction was granted, and that the order made is properly viewed as an adjournment until the comeback hearing on August 15, 2024. It argues that by failing to reset the injunction application, Mirage cannot oppose an order varying the order to allow payout of funds.

[46] I do not accept that argument. The July 22, 2024 order clearly enjoins Teknocan from making cash distributions until the order is varied, has been discharged or extended. It allows any party affected by the order to apply to vary it. The terms of an order govern; not the reasons for the order.

[47] The question really is whether the evidence now available is such that the order ought to be varied.

[48] The Teknocan respondents submit that the same test to consider whether injunctive relief is granted is the same test that should be considered to vary it. The test for granting interim injunctive relief under s. 227(3) of the *Business Corporations Act* is the same test for granting an interim injunction: *Mayer v. Mayer*, 2014 BCSC 1850 at para. 7, namely, there is a serious issue to be tried; irreparable harm will occur if the relief is not granted; and the balance of convenience favours granting an injunction. See *RJR-MacDonald Inc. v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117.

[49] I pause to note that the Teknocan respondents' arguments proceed on the basis of a common law injunction while Mirage's June 26, 2024 notice of application and submissions invoked s. 227(3) of the *Business Corporations Act*. With the exception of the implied undertaking as to damages, which I will address below, there is no difference in the applicable principles.

[50] The Teknocan respondents submit that this injunction restrained Teknocan from using assets to which Mirage claims no proprietary interest, therefore the first branch of the test is a strong *prima facie* case, a higher threshold than a serious issue to be tried. Mirage has not expressly addressed this issue on the application to vary, but did not dispute the Teknocan respondents' position either. On the application for a receiver, Mirage agreed that where the injunctive relief is in the nature of a mandatory injunction, the strong *prima facie* case threshold applies. In his reasons for granting the July 22, 2024 order, Milman J. held that Mirage had made out "at least" a strong *prima facie* case of oppressive conduct on the part of Teknocan.

[51] I will proceed on the basis that the threshold for the first step is a strong *prima facie* case of oppression.

[52] In *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 54–64, the Supreme Court of Canada explained that the shareholders' oppression remedy concerns legal rights and equitable rights which are informed by the reasonable expectations of the shareholders in the context and the circumstances prevailing. The oppression remedy provides superior courts with jurisdiction to enforce what is legal and what is fair as between shareholders. The key questions are what were the reasonable expectations of the shareholders and whether those reasonable expectations were violated in a way which could be said to be oppressive conduct, unfair prejudice or unfair disregard of a relevant interest.

[53] The Teknocan respondents' arguments proceed on the basis that Milman J.'s finding of a strong *prima facie* case of oppressive conduct was limited to Teknocan not paying out Mirage's shareholder loan. They argue that, based on the math the

Teknocan respondents have done, if the order to vary is made there will be more than enough money left in Teknocan to cover Mirage's shareholder loan. They also argue that future payouts from the limited partnerships to Teknocan will cover any Teknocan liabilities not currently identified. For these reasons, the Teknocan respondents argue that the first stage of the injunctive test cannot be made out any longer or is no longer maintainable.

[54] I disagree for several reasons. First, Milman J.'s expression of a strong *prima facie* case was not limited to conduct in relation to Mirage's shareholder loan. Justice Milman stated "...I am satisfied that there is a claim on the part of the petitioner for relief in furtherance of its oppression complaint". Justice Milman referred to "preferential payments", which are broader than failure to pay out Mirage's shareholder loan, moneys withheld from Mirage where there may not be justification to do so, a legitimate complaint by Mirage that money was owing to it, and a legitimate complaint by Mirage that information was owing to it.

[55] Accordingly, the scope of the strong *prima facie* oppression complaint found by Milman J., and which I find is still the case, is larger than failing to payout Mirage's shareholder loan.

[56] As I address in more detail below, Mirage has not received all of the documents that the auditors appointed by Milman J. have received, despite Milman J.'s order that Mirage receive those documents. There is a dispute, which I have not been asked to resolve, as to whether Teknocan has control over those documents and could have and should have obtained them, delivered them to the auditors, and provided copies to Mirage. Accordingly, the complaint about information owing to Mirage, that Milman J. included in his description of the strong *prima facie* case of oppression, is still an issue between Mirage and the Teknocan respondents.

[57] In addition, the revelation, made after the July 22, 2204 order and the August 15, 2024 order, that Teknocan made a large payment out to MAJ after Teknocan was served with the application for an injunction and before the hearing, the timing of which was not disclosed at the time of the hearing before Milman J., is more

evidence supporting a strong *prima facie* case of oppression based on unfair conduct and withholding of information.

[58] This revelation also demonstrates a sharpness on the part of Rouzbeh Rabiei in terms of his conduct and in his provision of evidence under oath to the court. He is the sole director of Teknocan. He engaged in preferential treatment towards one of the two shareholders, the one he is also a director of, when he knew that the minority shareholder was seeking the court to intervene to prevent that sort of unfair conduct. He did it after being served with the application, and when responding to the application he did not describe precisely when he did it, i.e. after being served with the application. This causes the Court to view evidence he gives sceptically and to look for corroborating detail or independent corroborating evidence.

[59] In addition, there is additional evidence that before this petition was commenced, funds flowed from one or both of the limited partners to MAJ, bypassing Teknocan, with the knowledge of MAJ and not with the knowledge of Mirage.

[60] I am satisfied that there is a strong *prima facie* complaint of oppression that is broader than failure to payout the Mirage shareholder loan. The scope of the strong *prima facie* oppression case cannot be completely addressed by pointing to funds that cover Mirage's shareholder loan. The first branch of the test for interim injunctive relief continues to be met.

[61] With regard to irreparable harm and balancing of prejudice, the Teknocan respondents submit that based on the math they have done, there is ample money left in the company to satisfy Mirage's claims to 10% of the net proceeds. However, again, that is not the totality of the irreparable harm that Mirage argues. It argues that Teknocan has actual and contingent debts, including taxes, that have to be paid from the net sale proceeds, and if only Mirage's share of the net sale paid proceeds are left in Teknocan, then Mirage's share will be used to pay those debts and not available for distribution to Mirage.

[62] Contingent future payouts from Seylynn LP and Seylynn II LP are not a sound basis to conclude that there is no irreparable harm to Mirage by Teknocan paying out MAJ only and pointing to future funds that should flow to Teknocan to cover its liabilities. The parties cannot say how much funds are needed for Teknocan to discharge its liabilities including its tax liability on the net sale proceeds from the limited partnerships. It is not disputed that the limited partnerships do not pay the tax, rather the proceeds gross of tax are out to the limited partners, giving rise to a tax liability in their hands. There is currently no estimate of what the tax liability will be which will allow the Court to determine whether there is irreparable prejudice to Mirage if Teknocan pays out the \$20 million that it seeks to payout.

[63] Regardless of the quantum of the liabilities, Teknocan's proposed variation would result in the funds left in Teknocan to be different from the 10/90 ratio of shareholdings and would mean that Mirage's share of the net sale proceeds would be disproportionately available to make good on Teknocan's financial responsibilities.

[64] At the July 22, 2024 hearing, MAJ asserted that it was prejudiced by the injunctive relief because it still owed \$18 million to Treaty with interest accruing at 14% and needed payouts from Teknocan to pay down this debt. This was to be reconsidered at the August 15, 2024 comeback hearing with the benefit of further information that Teknocan had been ordered to produce on July 22, 2024 and with further time for submissions on the point. At the August 15, 2024 comeback hearing, Milman J. declined to vary his July 22, 2024 order. Accordingly, I conclude that there was no shift in Milman J.'s assessment of the balance of convenience with reference to the prejudice to MAJ.

[65] It is not apparent to me what evidence was before Milman J. about the nature of the relationship between Treaty and MAJ or the Rabiei family members, but before me there is evidence that calls into question whether there is an arms length relationship between Treaty and MAJ. If there is not an arms length relationship, the concern that MAJ is prejudiced by inability to repay the loan and stop interest from

accruing is diminished. The evidence includes evidence of close links between the Rabiei family and Persepolis and Treaty. The evidence includes addresses that are the same or shared, Rouzbeh Rabiei's LinkedIn page describing himself as the financial manager of Treaty, and a company controlled by the Rabiei family owning Treaty's domain name and playing a role in providing the money for the loans to Mirage and MAJ from Persepolis and which were assigned to Treaty. Even more relevant to Mirage, the Rabiei family members communicated on behalf of Treaty that Treaty was calling the loan that Persepolis made to Mirage and that Treaty had acquired. Rabiei family members played substantive roles in negotiating the amount that Dr. Taheri was to repay on Mirage's indebtedness to Treaty, and one of Mirage's repayment installments was made to a Rabiei family member. Finally, there is the unexplained sudden jump in the interest on the MAJ/Treaty loan agreement from 5.5%, or 8%, to 14%.

[66] Accordingly, for the reasons I have described, it is not clear that MAJ actually owes the money to an arms length lender to whom it is paying 14% interest and has no ability to renegotiate that rate.

[67] In addition, the evidence falls short of persuading me that MAJ has no assets to repay the loan other than those it seeks access to through varying the July 22, 2024 order. There is a bare statement of Rouzbeh Rabiei to that effect. There is no specific evidence corroborating Rouzbeh Rabiei's statement that MAJ does not have assets, other than its interest in Teknocan, that it could use to repay the loan or the inability to raise the cash to repay the loan through a cash call to its shareholders or through financing at a rate lower than 14%. For the reasons given above, I prefer that his evidence be supported with details or be corroborated with independent evidence. This bare statement has neither of those features.

[68] I am mindful that interim injunctive relief is an extraordinary remedy, and parties who are litigating should not have their assets tied up pending the results of the litigation unless circumstances demand it. In this case, Mirage has demonstrated a strong *prima facie* case and irreparable harm. The prejudice to MAJ of maintaining

the injunctive relief pending the hearing of the petition does not overtake the irreparable harm to Mirage if its share of the limited partnerships' net sale proceeds constitute the only funds left in Teknocan to pay liabilities that have not yet been quantified.

[69] I pause to note the irony of the Teknocan respondents' position. They admit that Teknocan has withheld Mirage's share of Seylynn LP and Seylynn II LP net sale proceeds because of the claims made by AXA, Norseyl and Pan Pacific with regard to those proceeds. In that regard, they have imposed what is in effect an injunction on the distribution of cash from Teknocan to Mirage to secure the claims made by strangers to Teknocan. The variation of the July 22, 2024 order that the Teknocan respondents seek does not include releasing Mirage's proportion of net sale proceeds to Mirage. They only seek to release MAJ's portion of net sale proceeds to MAJ. The court-ordered injunction would stay in effect over Mirage's share.

[70] Justice Walker set the petition to proceed on April 28, 2025. At the time this hearing proceeded, the petition hearing was four months away, and so MAJ had a stronger fiscal argument of prejudice if it is paying interest at 14% and it is paying that to a third party. I advised the parties that I would not be in a position to issue a decision on the application made by the Teknocan respondents (or the application made by Mirage) until, at the earliest, some time in March 2025, or roughly one to two months before the date set for the petition. Nevertheless, Teknocan wished the matter to be addressed. I am addressing it with the reality that there is approximately one month to the hearing of the petition. That weighs in favour of not varying the order because the prejudice to MAJ between now and then does not outweigh the irreparable harm to Mirage if Teknocan is stripped of cash greater such that all, or a portion greater than 10%, of the liabilities are paid from Mirage's share of the net sale proceeds.

[71] During the hearing before me, there was some scepticism expressed that the petition could be heard by April 28, 2025 due to ongoing disputes over document production with regard to the audit ordered by Milman J., as well as a proposed but

not filed application to stay the petition until the actions brought by Pan Pacific, Norseyl and AXA have been heard and decided.

[72] With regard to obstacles within this action, Milman J. ordered that an audit take place, the auditors be provided with the documents necessary to do so, Mirage be provided with copies of those documents, and that if the implied undertaking of confidentiality applied to what was produced, nothing in the order changed that. The documents that the auditor needs include Seylynn LP's and Seylynn II LP's documents.

[73] Seylynn LP and Seylynn II LP have provided the auditor with the documents but will not provide them to Mirage without a confidentiality order. I have discussed this below in greater detail.

[74] If the status of documents provided by Seylynn LP and Seylynn II LP to the auditor will hold up the hearing of this petition, that is something that can and should have been addressed by the parties well before the hearing of the petition. Nevertheless, neither Mirage, which asserts that the issue is created by the limited partnerships doing Teknocan's bidding with regard to the necessary documents, nor Teknocan, which is a party bound by the July 22, 2204 order, has sought a court order to resolve this issue. I encouraged the parties to come to a common sense resolution at the hearing before me or while the matter was on reserve. I hope they have done so. If they have not, that is not a reason to vary the July 22, 2024 order, especially given the balance of convenience considerations I have set out above.

[75] With regard to the potential for an application for an order staying this petition, I see no reason to permit a hypothetical application and a hypothetical order to affect my decision. If a stay would effectively make the interim injunction permanent, presumably the Teknocan respondents, or at least MAJ, will make those submissions to the court hearing the stay application for that court's consideration on whether a stay should be ordered.

[76] It is my view that the step that is most important in this petition, given the balance of convenience issues, is that the petition be heard as soon as possible.

[77] I do not need to consider Mirage's application for cross examinations on affidavits as MAJ has not persuaded me to vary Milman J.'s July 22, 2024 order.

### **Expiry Date**

[78] The Teknocan respondents seek the Court to vary the July 22, 2024 order to provide that all of its terms will expire on set date, for example, 60 days from now. This relief is not limited to the prohibition on Teknocan dispersing cash or assets. The relief sought is to vary clause 5 of the order by adding an expiry date. Although clause 5 appears under the heading "Interim Injunctive Relief", it is not, on its face, restricted to any clause of the order, rather it applies to the whole order. Clause 5 reads:

5. Unless this Order is varied or discharged or extended by order of the Court, this Order shall remain in force until further order of the court.

[79] In addition to the injunctive relief, the July 22, 2024 order provides for audits of the fiscal years ending December 31, 2021, December 31, 2022 and December 31, 2023, appoints the auditor, provides for how the auditor is to obtain the information necessary to complete the audits and to ensure that Mirage is copied on all communications pertaining to the auditors' reports and with all documents received by the auditor to complete the audits, and provides for the Teknocan respondents to make document production to Mirage.

[80] The order provides that the order does not derogate from the parties' obligation as to the implied undertaking of confidentiality, to the extent that the implied undertaking applies to any documents produced pursuant to this order. The issue of the applicability of the implied undertaking is engaged as I will describe later in these reasons. At this juncture, it is sufficient to note that having the order expire, will, with regard to the implied undertaking of confidentiality, further complicate matters.

[81] The relief sought to have the whole order expire is clearly overbroad.

[82] I am of the view that even if the expiry is limited to the injunctive relief portions of the order, it is not appropriate. I disagree with the assertion of the Teknocan respondents that the order should expire because Mirage was required to reset its injunction application but did not because, as I have already set, the terms of the order governs and it does not provide for expiry. On this application to vary, which is provided for in the July 22, 2024 order, the Teknocan respondents must establish a reason for varying it to provide for expiry. The only reason they have given is that Milman J. intended for it to expire. I disagree because the July 22, 2024 order says otherwise.

[83] In addition, given the pendency of the hearing of the petition, an expiry date serves no purpose and could complicate the petition if the court hearing the petition needs to reserve. It raises the prospect that the injunction would have to be argued all over again if the order were to expire while the petition was under reserve.

[84] I decline to impose an expiry date.

#### **Undertaking as to Damages**

[85] The application for an interlocutory injunction listed s. 227(3) of the *Business Corporations Act* as well as Rule 10-2.

[86] Mirage asserts that under s. 227(3) of the *Business Corporations Act*, an undertaking as to damages is discretionary, while the Teknocan respondents assert that on all interlocutory applications, an undertaking as to damages is required by Rule 10-4(5), unless the Court otherwise orders.

[87] In *N'Quatqua Logging Co. Ltd. v. Thevarge et al.*, 2006 BCSC 1122 at para. 40, Justice Pitfield distinguished between injunction sought pursuant to the Rules of Court and injunctions sought pursuant to s. 227(3) of the *Business Corporations Act* so far as the undertaking of damages is concerned. Justice Pitfield held that the requirement of an undertaking was inappropriate, because the party

seeking the injunction had an interest in the affairs of the party being restrained. That is the same as this case, and is almost by definition, the same as any s. 227(3) oppression remedy injunction application.

[88] In this case, Teknocan has not denied that it has paid out funds to MAJ while holding back Mirage's funds, thereby disproportionately exposing Mirage to the liabilities of Teknocan and precluding Mirage access to its share of net sale proceeds funds while MAJ has access to its share of those proceeds. Teknocan asserts it has done so because of the claims made by Pan Pacific, AXA and Norseyl against Mirage. Teknocan, in that sense, is justifying its conduct through a defence of being a busybody. It has decided to provide security for the claims of Pan Pacific, AXA and Norseyl, claims in which it has no apparent interest.

[89] At the same time, as I have already explained, there are questions about the *bona fide* of the damages that MAJ says it will suffer due to the injunction. But if MAJ can prove damages as a result of the injunction, the injunction preserves Teknocan's assets, including Mirage's share of them. MAJ will have the ability to seek its damages be paid from those funds.

[90] In the circumstances, I exercise my discretion to not require Mirage to make an undertaking as damages.

**Application to Appoint a Receiver**

[91] Mirage seeks appointment of an interim receiver and manager without security over all of the property of Teknocan and, in addition to the "usual" powers granted to a receiver, to investigate the accounts of Teknocan "and such further records that will be necessary" to complete or obtain an accounting of funds that have been diverted from Teknocan by Rouzbeh Rabiei to his personal use including to the benefit of MAJ; accounting of the value of Mirage's shareholder loans inclusive of interest; an independent appraisal of the value of Mirage's registered shares in Teknocan and Mirage's shareholder loans inclusive of interest; an accounting of what effect the capitalization of interest on MAJ's shareholder loans into the partnerships, has had on Teknocan's finances.

[92] A receivership order is not exhaustive of the relief that Mirage seeks in its petition, but it is one of the forms of alternate relief sought. The types of accountings that the receiver would be empowered to do is intricately connected to the allegations of oppressive conduct that Mirage makes.

[93] I note, however, that the blacklined order (blacklined to the model receiver order) that Mirage handed up does not include the matters included in the scope of receivership sought at para. 2 of Mirage’s notice of application. That may be because those powers are not part of the “usual powers” of a receiver. I will assume that Mirage intends to seek those powers as part of the receivership order despite that it has not included them in the blacklined order. I will refer to the provisions sought in paragraph 2 of Mirage’s notice of application as the “additional accounting receivership provisions”.

### **Legal Principles**

[94] Mirage seeks the receiver be appointed pursuant to s. 227 of the *British Columbia Business Corporations Act*. Section 227 (2) provides for a shareholder to apply for relief if the affairs of the company have been conducted, or the powers of the directors have been exercised, in a manner oppressive to the application.

Section 227(3) includes various forms of relief, including:

- (a) directing or prohibiting any act,
- (b) regulating the conduct of the company's affairs,
- (c) appointing a receiver or receiver manager,
- (d) directing an issue or conversion or exchange of shares,
- (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,

(k) varying or setting aside a resolution,

(l) requiring the company, within a time specified by the court, to produce to the court or to an interested person financial statements or an accounting in any form the court may determine,

(m) directing the company, subject to subsections (5) and (6), to compensate an aggrieved person,

(n) directing correction of the registers or other records of the company,

(o) directing that the company be liquidated and dissolved, and appointing one or more liquidators, with or without security,

(p) directing that an investigation be made under Division 3 of this Part,

(q) requiring the trial of any issue, or

(r) authorizing or directing that legal proceedings be commenced in the name of the company against any person on the terms the court directs.

[95] The granting of a receivership order is “extraordinary relief which should be granted cautiously and sparingly”, and if there is a remedy other than receivership, it should be considered because receiverships are intrusive interferences with the affairs of company, harmful to the reputation of the company and the cost of a receivership can be considerable: *Callahan v. Callahan*, 2011 BCSC 40 at paras. 53 and 55; *Petersen v. Hawley*, 2021 BCSC 44 at paras. 48 and 69; *Cascade Divide Enterprises, Inc. v. Laliberte*, 2013 BCSC 263 at para. 81.

[96] The Teknocan respondents rely on a line of authorities described in *Bank of Montreal v. Gian's Business Centre Inc.*, 2016 BCSC 2348; and *Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47. Both of those cases involve the jurisdiction to appoint receivers pursuant to s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 where the test is whether it is just and convenient to do so. In *Gian's Business Centre Inc.* Justice Fitzpatrick held that the decision to appoint a receiver must be taken after holistic consideration of all relevant factors, and adopted a series of non-exhaustive factors referred to as the *Maple Trade* factors for *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527. Justice Fitzpatrick preferred the holistic consideration of all relevant factors to the approach

of, where a secured creditor can show default, appointing receiver on that basis alone. That alternate narrower approach is obviously not relevant in a case like this that does not involve default on a secured debt.

[97] The *Maple Trade* factors are many, not all of which are relevant to this case because it is not a creditor/debtor receivership application. The *Maple Trade* factors that are potentially relevant to this case are:

- a) whether irreparable harm might be caused if no order were made;
- b) the nature of the property over which receivership is sought;
- c) the apprehended or actual waste of assets;
- d) the preservation and protection of the property pending judicial resolution;
- e) the balance of convenience to the parties;
- f) the principle that enforcement of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- g) the effect of the order on the parties;
- h) the conduct of the parties;
- i) the length of time that a receivership might be in place;
- j) the cost to the parties; and
- k) the likelihood of maximizing return to the parties.

[98] The reference to “property” in this list demonstrates that the list was developed within the context of a creditor debtor situation where specific property secures the debt and that is the property over which a receiver is sought to be appointed. In this case, the party seeking a receiver is a shareholder. Shares in a company do not confer rights to the assets of the company, but rather are themselves a bundle of rights and liabilities including the right to a proportionate part

of assets on windup or liquidation and the right to oversee the management of the company by its board of directors: *BCE Inc.* at paras. 34–35. Accordingly, the *Maple Trade* factors, in particular b) have to be approached carefully in these circumstances.

[99] Mirage relies on my decision in *Short v. Ewachniuk*, 2018 BCSC 1686 at para. 24, citing *Mayer* at para. 7, for the proposition that the test for interim relief under s. 227(3) of the *Business Corporations Act*, is the same as the *RJR-MacDonald* test for interim injunctive relief. However, in both of those cases, the interim relief sought was an interlocutory injunction. Mirage characterizes its application to appoint a receiver as a “mandatory interlocutory injunction”.

[100] In my view, where the interim relief sought is the appointment of receiver, the balance of convenience analysis should be informed by the relevant *Maple Trade* factors considered for the appointment of a receiver.

### **Merits Threshold**

[101] Mirage characterizes its application for a receiver as a “a mandatory injunction”. It submits that as a result, the first branch of the test must meet the strong *prima facie* case threshold.

[102] Pan Pacific, AXA and Norseyl argue that the merits threshold has not been met because there is no fresh oppressive conduct since the July 22, 2024 order. It argues that the issue over the documents being provided to the auditors and not being copied to Mirage is not a breach of the July 22, 2204 order that amounts to fresh oppressive conduct.

[103] For the reasons given above, I am of the view that Mirage has made out a strong *prima facie* case of oppressive conduct. The fact that it is arguably not fresh oppressive conduct is relevant to whether the July 22, 2024 order is an adequate interim remedy such that a receiver is not necessary.

[104] The issue pertaining to the documents for the audit is new conduct since the July 22, 2024 order. I agree that the fact that Mirage has been denied information that the July 22, 2024 order provided for it to receive is new conduct that adds to the strong *prima facie* case of oppressive conduct against Teknocan. The fact that the documents belong to the limited partnerships may or may not mean that Teknocan, as a limited partner, could demand them and provide them to the auditor. Regardless, the spirit of the July 22, 2024 order is that Teknocan will ensure that Mirage has everything the auditor was given to do the audits. Teknocan has not attempted to facilitate that in a meaningful way.

**Irreparable Harm and Balance of Convenience**

[105] As I have noted above, it is appropriate to consider the *Maple Trade* factors in this analysis. I will do so with regard to the factual matters that Mirage raises to support its argument that consideration of irreparable harm and balance of convenience favours the receiver order it seeks.

**Document Disclosure by Teknocan**

[106] Justice Milman made orders for disclosure of specific documents by Teknocan to Mirage in the July 22, 2024 order and in the August 15, 2024 order.

[107] Mirage complains that Teknocan did not respond in a timely way to Mirage's counsel's request to finalize the August 15, 2024 order, necessitating those issues be resolved before Milman J. in favour of Mirage's proposed form of order.

[108] Mirage submits that Teknocan did not produce the documents required by the August 15, 2024 order in a timely way, did not produce any until September 13, 2024 and still did not produce all of them. Mirage asserts that a second appearance to settle the August 15, 2024 order was required to compel the production of the documents. Mirage argues that Teknocan did not begin to produce the documents required by the August 15, 2024 order until October 2024.

[109] Teknocan submits that these issues were part of a genuine disagreement between the parties as to the scope of the July 22, 2024 and the August 15, 2024 order.

[110] Mirage has not specified any specific categories of documents that remain outstanding, other than the documents which the limited partnerships provided to the auditors. Mirage asserts that those documents should have flowed from the limited partnerships to Teknocan and then to the auditors with a copy to Mirage. I will address this below.

[111] Mirage argues that Teknocan's delay, when combined with its other behaviour, is such that I should conclude that its disagreement over meaning of the July 22, 2024 and August 15, 2024 orders was not genuine, but rather a deliberate attempt to delay matters. I am reluctant to reach that conclusion on affidavit evidence, however there is some force to it given what I have observed about Rouzbeh Rabiei's affidavit evidence and the evidence of significant delay between the July 22, 2024 order, the retention of the auditors in October 2024, and the problems with settling the August 15, 2024 order.

[112] Leaving aside the audit documents, the other terms of the order have been complied with, albeit belatedly.

### ***The Audit***

[113] Mirage complains that Teknocan did not engage MNP to prepare the audit ordered by Milman J. until October 16, 2024, almost three months after it was ordered to do so on July 22, 2024. At that time, this petition was set to be heard on November 26-28, 2024. It was adjourned.

[114] There is no indication before me that the audit will not be completed in time for the April 28, 2025 petition hearing dates.

[115] Justice Milman's July 22, 2024 order required Teknocan and Rouzbeh Rabiei to copy Mirage with all documents that were provided to MNP in relation to its audit

reports. Mirage asserts that Teknocan, as 51.7 % equity unit holder in Seylynn LP and Seylynn II LP, could have required the limited partnerships to provide it with the documents the auditors required from Seylynn LP and Seylynn II LP, and then Teknocan could have provided them to the auditor, copying Mirage as it was required to do under the July 22, 2024 order. Instead, Teknocan asked that the auditor to communicate directly with the Seylynn LP and Seylynn II LP. The limited partnerships provided their documents to MNP by a password encrypted upload to MNP to which Mirage has not been granted access.

[116] Seylynn LP and Seylynn II LP took the position that the documents were confidential to them and should not be provided to Mirage without a confidentiality order. Counsel for Seylynn LP and Seylynn II LP has proposed a confidentiality order. They assert that Mirage did not reply to the confidentiality order, even though counsel for the limited partnerships indicated that the terms could be discussed.

[117] Mirage asserts the proposed confidentiality order will defeat the purpose of Milman J.'s order requiring Mirage to be copied on the documents because the order prevents Dr. Taheri from obtaining a photocopy or electronic copy, prevents any witness, including expert witnesses, from obtaining a photocopy or electronic copy of the documents, and prevents appending any copy of the documents to an affidavit that will be filed without advance written consent of the limited partnerships. This confidentiality order purports to apply to documents that Teknocan has provided to the auditor, as well as to those provided by the limited partnerships to the auditor.

[118] This latter feature of the proposed confidentiality order makes no sense given that Teknocan purports to not be the cause of this issue (despite that it is the 51.7 equity unit holder in the limited partnerships and Rouzbeh Rabiei is the director of a 50% shareholder of the general partner of the limited partnerships) and has asserted that the limited partnerships' documents are not Teknocan's documents.

[119] Despite the statement that the limited partnerships are not "wed" to the terms of this proposed confidentiality order, the criticism of Mirage for not responding to it to negotiate the terms is misplaced. As I have said above, Teknocan's failure to

facilitate Mirage receiving the documents provided to MNP is at least contrary to the spirit of the July 22, 2024 order. The proposed confidentiality terms are well beyond reasonable to deal with any uncertainty about whether the implied undertaking applies, because if there was no debate about the implied undertaking, the restrictions on its use of the documents would be far less than the proposed confidentiality order.

[120] Mirage's position is also not sound. Mirage stated in its written submission that Milman J.'s order provides that the implied undertaking remains in effect. However that term of the order states that the order does not change the implied undertaking to the extent that it applies, so until it is clear that the implied undertaking applies, then there is no comfort that the documents produced will only be used for the purpose of the petition. I observe that if the implied undertaking applies, then legitimate uses of the documents in other proceedings or for other purposes can be the subject of an application to lift the implied undertaking. Accordingly, while Mirage asserts that Teknocan is not litigating in a straight forward manner, Mirage's position on whether the implied undertaking applies naturally gives the limited partnerships pause.

[121] Given that no relief was sought that would permit me to break the log jam over the provision of the limited partnerships' documents to Mirage, I suggested to the parties that they should resolve it during the hearing. The log jam remained unbroken as of the end of the hearing.

[122] Mirage has seized upon this issue as a means to go straight to an order appointing a receiver as interim order, asserting that without a receivership, information will continue to be withheld from Mirage and the petition cannot be heard on its merits. However, it is not clear that a receivership is an appropriate or complete solution. Presumably the receiver would also need these documents and the issue would manifest itself again, even if it is couched differently due to the terms of the receivership order.

[123] In addition, Mirage asserts that if the interim receivership is granted, the July 22, 2024 order would remain in place. Accordingly, there would be both an order for an audit and a separate order for the accounting ordered under the receivership order. If the July 22, 2024 order remains in place, then the audits will continue, the order pertaining to Mirage receiving copies of documents provided to the auditor will still be in play, and the issue will not be resolved.

[124] Mirage submits that the additional accounting receivership provisions are necessary in addition to the audits, because the audits go up to 2023, and the tax liability might not show up in the audit. However, the additional accounting receivership provisions sought by Mirage do not include an accounting or estimate of the tax liability of Teknocan.

[125] In addition, Mirage seeks the additional accounting receivership provisions and the usual receiver manager order provisions, namely that every aspect of Teknocan's operations will be in the hands of the receiver. If Mirage were simply seeking an accounting or several accountings be done by a forensic accountant or a receiver appointed for that limited purpose, that would be much less of an interim intrusion into the running of the company, taken away from the directors and management chosen by the shareholders, than a full receivership order. Mirage is not seeking a limited receivership to get at certain information. It is seeking, on an interim basis, that Teknocan be run by a receiver, and not by director(s) chosen by the shareholders and management employed by the director(s). There is no cogent submission as to why a full receiver order is necessary.

[126] Mirage sought and received an order for audits and to be copied with the information supplied to the auditors. The audit has not been stymied by the issues over the documents provided to the auditors despite that the provisions of the July 22, 2024 order, requiring that the documents for the audit be copied to Mirage, have arguably not been complied with or met in spirit. Mirage is entitled to take the steps that it deems advisable to enforce the order of the Court. That is a much more surgical approach than a receivership.

***Continued Oppression***

[127] Mirage also makes reference to “continued oppression”. I understand that to be the discovery of the \$6 million dollar payout from one or both limited partnerships to MAJ that bypassed Teknocan, and the fact that the July 2024 payout was made between the date of filing the application for an injunction and the hearing of the injunction without advising of that at the time of the July 22, 2024 hearing and order.

[128] Those matters are instances of disclosure of arguably oppressive conduct that took place previously, as opposed to continuing oppression. These incidences are not events of new oppressive conduct.

[129] In addition, Mirage alleges that counsel for Teknocan is in conflict because he also represents Rouzbeh Rabiei and Rouzbeh Rabiei has proven himself not to manage Teknocan in Teknocan’s best interests, but rather in the best interests of MAJ.

[130] I agree with the Teknocan respondents that if Mirage is of the view that counsel for the Teknocan respondents is in a disqualifying conflict of interest, the appropriate remedy is to apply to disqualify counsel. That is a remedy less intrusive than a receivership. Mirage argues in response that an order disqualifying counsel will not remedy the situation because there is only one director of Teknocan, and so that director, Rouzbeh Rabiei, will still be retaining and instructing new counsel, and the conflict will persist.

[131] I do not accept that argument. The first step is a determination as to whether there is a conflict, a matter which has not been determined. If there is, there may be methods for the director and the company to have separate counsel and be instructed appropriately. If not, s. 227(3)(e) of the *Business Corporations Act* allows for the court to replace a director or appoint additional directors. Accordingly, several steps are necessary and other avenues should be explored before the broad, intrusive and extraordinary remedy of an interim receivership is considered.

### Conclusion on Receivership Application

[132] The analysis of strength of the allegations pertaining to the alleged oppressive conduct gave rise to the July 22, 2024 order which I have declined to vary. The additional evidence since that order, for the most part does not amount to more oppressive conduct, but rather more information about the previous oppressive conduct.

[133] The receivership order that Mirage seeks would provide significant relief on the merits of Mirage's petition prior to the hearing of the petition. While I agree that Mirage has shown a strong *prima facie* case of oppression, the question of whether oppression will actually be proven is for the hearing of the petition.

[134] The balance of convenience, as informed by the *Maple Trade* factors, must be strongly toward a receivership in order to grant a full receivership on an interim basis. As discussed above, orders of receivership are to be approached cautiously and all other possible remedies must be considered.

[135] In this case, other viable remedies have been sought by Mirage and imposed through the July 22, 2024 and August 15, 2024 order.

[136] Mirage has not demonstrated any irreparable harm different from what it said ought to be remedied through the injunctive relief. Mirage has not asserted that the core of that injunctive relief, the prohibition on paying out funds, is ineffective.

[137] In opposing the Teknocan respondents' application to vary that part of the order, Mirage made the opposite submission: that the injunctive relief remains necessary and effective. I see no risk of wastage of assets or that there are further steps necessary to preserve the property sought to be protected.

[138] With one exception, Mirage has not explained why an additional order of a receivership is necessary, prior to final adjudication of the allegations of oppressive conduct, to protect it from the alleged oppressive conduct. The exception is that an accounting of the tax liability of Teknocan is necessary and is not part of the audits.

However, as I have noted above, Mirage does not seek such an accounting in the receivership order and so that argument fails. If such an accounting is necessary, that can be accomplished through an order far less intrusive than a receivership.

[139] I am not persuaded that Mirage is suffering irreparable harm that is not or cannot be addressed through the existing orders, including enforcement measures.

[140] Mirage seeks to limit the cost of the receivership by including in the order that the cost may not exceed \$100,000 without further order of the court. In my view that does not appropriately address the issue of the costs of receiver. Teknocan is a money making venture, and to require the shareholders of Teknocan to spend \$100,000 (at least, given that the expense can be exceeded by court order) without a pressing purpose in doing so prior to the adjudication of the merits of the petition weighs against appointing a receiver.

[141] The receivership order sought would encompass every aspect of Teknocan's business and operation. Teknocan is a going concern. To take the management of the company out of the hands of the directors is draconian in these circumstances. The July 22, 2024 and August 15, 2024 orders and any enforcement steps that might need to be taken pursuant to them are more appropriate to address the problems that have arisen between the shareholders of Teknocan pending the hearing of the petition than an interim receivership order.

[142] The application for a receivership order is dismissed.

**Disposition**

[143] The Teknocan respondents' application to vary the July 22, 2024 order is dismissed.

[144] Mirage's application for an appointment of a receiver is dismissed.

“Matthews J.”