IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mirage Trading Corporation v. Ghahroud,* 2025 BCSC 1955

Date: 20251007
Docket: S244258
Registry: Vancouver

Between:

Mirage Trading Corporation

Petitioner

And

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

Respondents

Before: The Honourable Justice Underhill

Reasons for Judgment

Counsel for the Petitioner:	S. Coblin M. Hashmi
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Counsel for Pan Pacific Business Corp.	J. Dawson
Counsel for Norseyl Properties Ltd. and Axa Consulting Services Inc.:	E. Aitken C. Basham
Place and Date of Trial/Hearing:	Vancouver, B.C. April 28 to 30, and May 1-2, 2025
Place and Date of Judgment:	Vancouver, B.C. October 7, 2025

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Introduction

[1] These reasons arise out of a petition brought by Mirage Trading Corporation ("Mirage") seeking relief pursuant to the *Business Corporations Act*, S.B.C. 2002, c. 57 ["*Act*"] from oppression or unfairly prejudicial treatment in regards to the conduct of the affairs of Teknocan Properties Inc. ("Teknocan") by its majority 90% shareholder MAJ Enterprises Inc. ("MAJ"), and its sole director and principal Rouzbeh Rabiei Ghahroud ("Mr. Rabiei") (collectively, the "Teknocan Respondents").

[2] Originally, two stay applications were also brought on before me by Norseyl Properties Ltd. ("Norseyl"), Axa Consulting Services Inc. ("Axa"), and Pan Pacific Business Corporation ("Pan Pacific"), but they were resolved by way of a consent order dated April 28, 2025 (the "Stay Order").

[3] The issues before me were further narrowed by concessions the Teknocan Respondents made immediately before and during the hearing. Particularly in light of those concessions, and for the reasons that follow, I have concluded that the affairs of Teknocan have been conducted in a manner oppressive or unfairly prejudicial to Mirage, and that Mirage is entitled to various remedies, including a buyout of its shares and the appointment of an interim receiver. I have also determined that Mirage is entitled to an award of special costs against MAJ and Mr. Rabiei, payable jointly and severally, for this entire proceeding.

Background

[4] This matter has a lengthy and complex background, including multiple hearings before this Court. I will provide a high-level review of the background in this section, and address additional relevant details in my analysis below.

The Parties and Corporate Relationships

[5] Teknocan is a limited partner in two limited partnerships developing condominium towers in North Vancouver known as Seylynn Village and Seylynn Gardens ("Seylynn LP" and "Seylynn LP II"). The other limited partners are Norseyl,

Pan Pacific, and a company called Bluemount Development Corp. Teknocan owns 51.70% of the equity units in Seylynn LP and Seylynn LP II.

[6] Teknocan was incorporated in 2011 by Dr. Abo Taheri ("Dr. Taheri"), the principal and controlling mind of Mirage, and Mr. Rabiei's father, Mr. Mahmoud Rabiee Gharoud, who have a long history of real estate investments together in both Iran and Canada. Dr. Taheri was the sole director of Teknocan until May 2020, when Mr. Rabiei became a director, and Dr. Taheri was removed as a director in October 2022.

[7] The two registered shareholders of Teknocan are MAJ, which holds 90 of 100 outstanding shares, and Mirage, which holds 10 outstanding shares. Norseyl, Pan Pacific and Axa claim ownership of 5 of the 10 shares in Teknocan that are registered to Mirage, and are pursuing separate legal proceedings which gave rise to the stay applications referenced at the outset of these Reasons.

[8] Two companies were originally incorporated to serve as the general partner of each of Seylynn LP and Seylynn LP II, the shares of which were half owned by Dr. Taheri and Mr. Abbasali Shapour Hosseini, the principal and controlling mind of Pan Pacific, through numbered companies. Various legal proceedings arose out of disputes related to the management and affairs of those general partner companies, and I understand the current general partner of each of the limited partnerships is now half owned by Mr. Rabiei.

The Allegations in the Amended Petition

[9] The underlying petition was filed on June 21, 2024, and an amended petition was filed on September 26, 2024, pursuant to an order of this Court dated August 26, 2024, which added Norseyl, Axa and Pan Pacific as respondents.

[10] The allegations in the amended petition include that MAJ and Mr. Rabiei acted in a manner oppressive and unfairly prejudicial to Mirage by unlawfully excluding Mirage from the financial management of Teknocan, unlawfully removing Dr. Taheri as a director, refusing to produce audited financial statements, refusing to

provide financial disclosure to Dr. Taheri while he was a director, and selectively repaying millions in shareholder loans to MAJ to the exclusion of any payments to Mirage.

[11] Mirage seeks various relief in the amended petition, some of which is now subject to the Stay Order, including declarations of oppressive conduct, a buy out of its shares in Teknocan, the appointment of an auditor and interim receiver, repayment of shareholder loans, and costs.

[12] The Teknocan Respondents made various concessions on the eve of the hearing, and in their written and oral submissions, including agreeing to a buy out of Mirage's shares, and that two multi-million dollar payments to MAJ, discussed more fully below, "were contrary to Mirage's reasonable expectations".

[13] Accordingly, I agree with Mirage that its entitlement to special costs is the most significant issue left to be determined on this petition.

Procedural History

The Injunction Order and Document Production

[14] On June 26, 2024, Mirage filed an application pursuant to s. 227(3) of the *Act*, seeking, *inter alia*, an injunction enjoining Teknocan from disposing of, or diminishing, the value of any of its cash or assets without the written consent of Mirage or an order of this Court.

[15] That application initially came on for hearing on July 18, 2024, the same day the Teknocan Respondents filed their responsive materials, which revealed that Mr. Rabiei had caused a "recent" payment of approximately $11 million to be made to MAJ without notice and without any corresponding payment to Mirage. In a later affidavit, Mr. Rabiei disclosed that the payment was made on July 12, 2024, after he was aware the Petitioner was seeking injunctive relief from this Court.

[16] In his initial affidavit, Mr. Rabiei also deposed that the $11 million payment was subsequently sent to Dubai to pay down a loan from what was described as a

"separate arm's length business" called Treaty Real Estate Brokers ("Treaty"), who was assigned the loan from Persepolis Real Estate Development ("Persepolis"), also said to be another arm's length company to MAJ and Mr. Rabiei's family (the "Treaty Loan").

[17] Due to a lack of court time, the injunction application was not heard until July 22, 2024, before Justice Milman. He concluded that Mirage had established a "strong *prima facie* case" of oppression as a result of the $11 million payment to MAJ, and the dissipation of those funds to Dubai to repay the Treaty loan.

[18] As a result, Milman J. enjoined Teknocan from disposing of any cash or assets, and also from taking steps to vote its partnership units in Seylynn LP and Seylynn II LP in any way that would affect how funds were used or paid out by those partnerships (the "Injunction Order"). The order also required Teknocan to appoint MNP LLP as an auditor to prepare a report on Teknocan's financial statements for the years ending December 2021, December 2022, and December 2023, and for documents provided to MNP to be contemporaneously copied to Mirage.

[19] Lastly, leave was granted for the parties to reappear before Milman J. on August 15, 2024 to address the scope of the Injunction Order in light of the submission of the Teknocan Respondents that there was a pressing need to pay down the Treaty Loan and the interest accruing on it (referred to as the "Comeback Hearing" in the materials). In order to facilitate the Comeback Hearing, orders were also made for document production from Teknocan, to be based on a list prepared by Mirage.

[20] At the Comeback Hearing on August 15, Milman J. determined that there was not sufficient financial information from the Teknocan Respondents to vary the Injunction Order. The Injunction Order was left in place, with a further order for the Teknocan Respondents to produce specifically enumerated documents that had been requested by Mirage (the "August 15 Order").

[21] The Teknocan Respondents did not produce any documents until mid-September 2024, and took the position that the then-unsettled August 15 Order did not require any further production from them. As a result, the parties attended again before Milman J. on September 23, 2024, who confirmed Mirage's interpretation of the August 15 Order and provided some further clarification. After a further dispute on the terms of the order, the Teknocan Respondents began producing additional documents in mid-October. The August 15 Order was finally settled by Milman J. on October 25, 2024, in favour of Mirage's position.

The Audit Documents Dispute

[22] The Teknocan Respondents did not formally retain MNP until October 16, 2024, well after the issuance of the Injunction Order, which ultimately resulted, among other things, in the adjournment of the original petition hearing dates in November 2024.

[23] To complete their audit, MNP required financial documents not only from Teknocan but also from the two limited partnerships. As noted above, Mr. Rabiei is now a director and 50% shareholder of the general partner for each of Seylynn LP and Seylynn LP II, and Teknocan owns 51.7% of the equity units in each of the partnerships.

[24] However, Teknocan did not request the documents from the limited partnerships directly. Instead, an individual named Georgia Staicu, said in her affidavit to be an employee of the two limited partnerships, provided a password protected link to MNP allowing them access to various documents and bank records for both the limited partnerships and Teknocan. When counsel for Mirage requested access to the download folder, access was denied on the basis that the Injunction Order only required Mr. Rabiei or Teknocan to provide Mirage with copies of the documents when they were sent directly to MNP by the Teknocan Respondents.

[25] Counsel for MNP took the position in correspondence that his clients did not have access to the documents "in the capacities in which they are named in the petition" and did not control Ms. Staicu, said to be solely a partnership employee.

[26] Ms. Staicu advised Mirage that the documents in the folder provided to MNP were “confidential”, and separate counsel for the partnerships was subsequently retained, who took the position that Mirage had to execute a confidentiality order restricting its ability to access and use the documents in order to gain access to them. I return to this issue, and Mr. Rabiei’s role in it, in my discussion of special costs below.

[27] Further, on December 11, 2024, MNP sent a revised engagement letter to counsel for the Teknocan Respondents, which stated that the obligation to provide copies of documents which were sent to MNP to Mirage was the responsibility of Teknocan, not MNP. That revised engagement letter was signed by Mr. Rabiei on December 12, 2024.

The October 30, 2024 Hearing Before Justice Walker

[28] The Teknocan Respondents applied again to vary the Injunction Order in a hearing before Justice Walker on October 30, 2024. By that time, Norseyl, Axa and Pan Pacific had been added as respondents and filed their petition responses. However, the Teknocan Respondents had still not filed their petition response, in contravention of the *Supreme Court Rules*.

[29] This was the subject of considerable discussion before Walker J., who adjourned generally the application to vary the Injunction Order, and ordered the Teknocan Respondents to serve their response materials to the Petition by December 13, 2024. The hearing of the Petition, originally scheduled for November 26-28, 2024, was adjourned to April 28, 2025, for five days.

The December 2024 Hearing Before Justice Matthews

[30] On November 13, 2024, the Teknocan Respondents filed another application to vary the Injunction Order to allow for the distribution of approximately $20 million from Teknocan to MAJ to pay down the Treaty Loan. The application also sought an undertaking as to damages from Mirage, and an expiry date on the Injunction Order.

Mirage cross-applied for the appointment of an interim receiver. Those applications came on for hearing before Justice Matthews on December 16-20, 2024.

[31] In reasons released on March 31, 2025, Matthews J. dismissed all of the applications before her. With respect to the Teknocan Respondents' application to vary the Injunction Order, she affirmed the earlier finding of Milman J. that Mirage had established a "strong prima facie case" of oppression, and essentially held that the proposed $20 million payment could constitute further oppression. She also declined to require an undertaking as to damages or set an expiry date for the Injunction Order.

[32] Justice Matthews also declined to appoint an interim receiver because the "core" of the Injunction Order was effective in preventing the payout of funds by Teknocan. Notably, the application contemplated the interim receiver taking over day-to-day management of Teknocan, which is not the application currently before me.

[33] I will address the findings and concerns of Matthews J. regarding Mr. Rabiei's credibility and conduct in greater detail below in my analysis of special costs. I will simply note here that her finding of a strong *prima facie* case of oppression extended beyond the $11 million loan payout to MAJ to the failure to provide financial information to Mirage, as well as an approximately $6 million payment made in May 2022, well before the petition was commenced.

[34] Lastly, I also observe that no evidence of Teknocan's potential tax liability was before Matthews J. despite it being a significant issue in the application. That liability was later estimated to be in excess of $6 million, which would have left Mirage with little to no interest in Teknocan had the application to vary before Matthews J. been successful.

The Contempt Hearing before Justice Dion

[35] On or around February 19, 2025, Mr. Rabiei caused Teknocan to pay out $565,800 for a "cash call" by Seylynn LP II in June 2024 (the "June Cash Call"),

without the written consent of Mirage or an order of this Court. That payment was disclosed to Mirage on March 3, 2025.

[36] Mirage then brought a contempt application for a breach of the Injunction Order, which came on for hearing before Justice Dion on April 1 and 4, 2025. The Teknocan Respondents took the position that the Injunction Order was sufficiently ambiguous such that the June Cash Call could be included in the "carve out" in subparagraph 3(a) for payment of "ordinary and proper business expenses". In reasons issued April 24, 2025, Dion J. found Teknocan and Mr. Rabiei in contempt of paragraph 1 of the Injunction Order, noting, *inter alia*, the following two key points (*Mirage Trading Corporation v Ghahroud,* 2025 BCSC 762):

> (a) at the Comeback Hearing on August 15, 2024, the Teknocan Respondents specifically sought to vary the Injunction Order to allow cash calls as part of the carve out in subparagraph 3(a), which was denied by Milman J.; and
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> (b) at no subsequent time did the Teknocan Respondents seek to vary the Injunction Order to allow for payment of the June Cash Call, or otherwise obtain a clarification that cash calls could be included in the subparagraph 3(a) carve out.

[37] Justice Dion also observed that funds from the June Cash Call were used to pay what were described as "significant" legal fees incurred by Seylynn II LP in respect of an arbitration proceeding brought by Dr. Taheri on behalf of the former general partner. In other words, "Teknocan used Mirage's own money to pay Mirage's opposing party's legal fees" (para. 84).

The Status of the Audited Financial Statements

[38] At the hearing before me in April 2025, the audit reports for the years ending December 2021, 2022 and 2023 were still not completed. As noted above, MNP were not retained until October of 2024, well after the issuance of the Injunction Order.

[39] More recently, on April 17, 2025, a potential conflict of interest was brought to the attention of Mirage regarding its personal accountant, Mr. Mehran Farmanara, who had become a partner of MNP after his former firm merged with MNP, effective February 1, 2025. At the time of the hearing, there was an ongoing dispute about the content of a conflict waiver MNP was asking Mirage to sign.

[40] I agree with Mirage that nothing turns on the absence of the audited financial statements, or the dispute over the conflict waiver, as I am able to make determinations about the conduct of the Teknocan Respondents without those statements.

[41] On April 17, 2025, counsel for the Teknocan Respondents also provided the unaudited financial statements for the year ended December 2024. Mirage raises three issues of concern:

(a) there is a new loan in the amount of $18,237,025 that Teknocan has taken from Seylynn LP, which was not disclosed in any of the documents pertaining to the 2023 year end. The general ledger of Teknocan records it as a "note payable" to Seylynn LP;

(b) there is a new expense of $7,829,094 recorded as "bank charges and interest", up from $44.00 in 2023. The general ledger shows that this is interest on shareholder loans payable solely to MAJ, with nothing payable to Mirage; and

(c) the unaudited statements show that Teknocan is "capitalizing" the interest on MAJ's shareholder loans to Teknocan into Seylynn LP, but not for Mirage, such that MAJ's contribution to Seylynn LP is being increased by that amount.

[42] MNP has also confirmed that their audits will be qualified for 2021 and 2022 because of a lack of "audit evidence" from Teknocan on shareholder loan balances, and other "receivable balances", totalling over $4.8 million.

[43] In light of my other findings on oppressive conduct by the Teknocan Respondents below, it is not necessary to determine whether these additional items constitute further instances of oppression or unfairly prejudicial conduct, or wade into the various concerns with the second Affidavit of Ms. Staicu made April 29, 2025. However, as I will discuss below, I agree with Mirage that the issues arising out of the 2024 financial statements are relevant to its request for the appointment of McEown and Associates Ltd. (McEown) as an interim receiver.

Issues

[44] There are three general issues for determination on the petition:

(a) Have the Teknocan Respondents engaged in oppressive or other unfairly prejudicial conduct towards Mirage?

(b) If so, what remedies should this Court order?

(c) Is Mirage entitled to special costs?

[45] In short, particularly in light of the concessions made by the Teknocan Respondents, I am able to conclude that there was oppressive or unfairly prejudicial conduct on the part of the Teknocan respondents towards Mirage. With respect to remedies, the Teknocan Respondents now consent to a buy out of Mirage's shares, and I am satisfied that McEown should be appointed as an interim receiver on substantially the terms set out in the draft form of order handed up by counsel for Mirage on May 2, 2025. Finally, I have concluded that Mirage is entitled to special costs for the entire proceeding.

Analysis

Oppression

[46] Mirage relies on s. 227 of the *Act*, which provides in part as follows:

> (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
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> (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.
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> (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:
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> (a) directing or prohibiting any act,
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> (b) regulating the conduct of the company's affairs,
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> (c) appointing a receiver or receiver manager,
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> (d) directing an issue or conversion or exchange of shares,
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> …
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> (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,
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> …
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> (h) directing a shareholder to purchase some or all of the shares of any other shareholder,
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> (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,
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> …
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> (k) varying or setting aside a resolution,
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> …

[47] The Supreme Court of Canada's decision in *BCE Inc. v. 1976 Debentureholders,* 2008 SCC 69 [*BCE*], made in the context of the *Canada Business Corporations Act,* R.S.C. 1985, c. C-44, is well-accepted as the leading authority on the oppression remedy in Canada. The relevant extracts provide:

> [45] … Unlike the derivative action, which is aimed at enforcing a right of the corporation itself, the oppression remedy focuses on harm to the legal and equitable

> interests of stakeholders affected by oppressive acts of a corporation or its directors. This remedy is available to a wide range of stakeholders – security holders, creditors, directors and officers.
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> …
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> [56] In our view, the best approach to the interpretation of s. 241(2) is one that combines the two approaches developed in the cases. One should look first to the principles underlying the oppression remedy, and in particular the concept of reasonable expectations. If a breach of a reasonable expectation is established, one must go on to consider whether the conduct complained of amounts to "oppression", "unfair prejudice" or "unfair disregard" as set out in s. 241(2) of the CBCA.
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> [57] We preface our discussion of the twin prongs of the oppression inquiry by two preliminary observations that run throughout all the jurisprudence
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> [58] First, oppression is an equitable remedy. It seeks to ensure fairness – what is "just and equitable". It gives a court broad, equitable jurisdiction to enforce not just what is legal but what is fair: *Wright v. Donald S. Montgomery Holdings Ltd*. (1998), 1998 CanLII 14805 (ON SC), 39 B.L.R. (2d) 266 (Ont. Ct. (Gen.Div.)), at p. 273; *Re Keho Holdings Ltd. and Noble* (1987), 1987 ABCA 84 (CanLII), 38 D.L.R. (4th) 368 (Alta. C.A.), at p. 374; see, more generally, Koehnen, at pp. 78-79. It follows that courts considering claims for oppression should look at business realities, not merely narrow legalities: *Scottish Co-operative Wholesale Society*, at p. 343.
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> [59] Second, like many equitable remedies, oppression is fact-specific. What is just and equitable is judged by the reasonable expectations of the stakeholders in the context and in regard to the relationships at play. Conduct that may be oppressive in one situation may not be in another.

[48] Thus, as set out in paragraph 56 of *BCE*, there is a two-step process to be followed. First, I must determine what Mirage's reasonable expectations are as a minority shareholder in Teknocan. Second, I must determine whether those reasonable expectations were violated by any conduct of the Teknocan Respondents.

[49] In this case, the analysis is a relatively straightforward exercise, at least insofar as the two payments of approximately $6 million and $11 million are concerned. In their written submissions, the Teknocan Respondents concede that making those payments to MAJ without any corresponding payment to Mirage was "contrary to Mirage's reasonable expectations".

[50] This is supported by the caselaw. As Madam Justice Young held in *D.C. Jensen Enterprises Ltd. v. Sand Dollar Enterprises Ltd.*, 2017 BCSC 185, "[n]o

shareholder would reasonably expect arbitrary treatment regarding shareholders loans accounts". See also *Walker et al. v. Betts et al.*, 2006 BCSC 128 at paras. 90, 98-102.

[51] Likewise, if the payments were classified as dividends, the law is also clear that shareholders have a right to participate in the benefits of membership equally: see *McClurg v. Canada*, [1990] 3 S.C.R. 1020 at 1041.

[52] Indeed, Mr. Rabiei has never disputed Mirage's entitlement to its share of the distributions from the limited partnership. Rather, he has taken the position in his sworn affidavits that he made the decision to retain Mirage's share in light of the ongoing claims of Norseyl, Axa and Pan Pacific. Justice Matthews addressed the frailties of that position in her reasons for judgment:

> [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.
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> …
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> [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.

[53] While I do not understand the Teknocan Respondents to have formally conceded that the failure to provide audited statements for 2021-2023 in a timely manner is contrary to the reasonable expectations of Mirage, s. 203 of the *Act* as well as the jurisprudence establishes that is so. Mr. Justice Lowry (as he then was) succinctly made the point in *Discovery Enterprises Inc. v. I.S.E. Research Ltd.*, 2002 BCSC 1624 at para 6: "…the receipt of audited financial statements when required is

a clear and mandatory right vested in a minority shareholder and it is not necessary that the shareholder advance any reason for exercising this right". See also: *Gierc Jr. v. Wescon Cedar Products Ltd.*, 2021 BCSC 23 at para. 95.

[54] The record is clear that Mirage was never a disinterested shareholder in Teknocan; to the contrary, Dr. Taheri made multiple demands for audited financial statements which were not forthcoming, and it required an order of this Court for MNP to be retained. I do not agree with the Teknocan Respondents that this delay can be classified as anything other than oppressive in nature.

[55] In light of my finding that there has been conduct that is oppressive or unfairly prejudicial, I now consider what orders should follow in addition to the declaratory relief sought by Mirage.

Remedies

The Buy Out of Mirage's Shares

[56] The Teknocan Respondents consent to a buy out of Mirage's shares, but some of the ancillary orders are partially contested.

[57] While it is agreed that Mirage's shareholder loans should be repaid as part of the buyout, it appears there may be an issue with the interest owing to Mirage, which apparently stopped being paid in 2021. Mr. Rabiei made this statement in his seventh affidavit: "…I deny that Mirage has a right to interest on its shareholder loan beyond that which is recorded in Teknocan's financial statements".

[58] I agree with Mirage that there is no corroborating evidence or further details provided in the evidence or submissions of the Teknocan Respondents on this point. In light of the relatively clear entitlement of Mirage to fair and equitable treatment in respect of its shareholder loans (see *D.C. Jensen* at para. 83), I conclude that Teknocan should repay Mirage's shareholder loans at the time of the share purchase, with the same rate of interest applied to MAJ's shareholder loans.

[59] Mirage also seeks an order that the $6 million and $11 million payments to MAJ be returned to facilitate a fair valuation of Teknocan for the purposes of the buyout. In my view, it is not necessary to order the return of those payments to ensure a fair valuation. Rather, I find that the valuation should be based on the assumption that those funds, and any other funds taken by MAJ without the consent of Mirage, have been returned.

[60] With respect to the valuation date, I must determine a date that is just and equitable in all the circumstances, and the date of the filing of the petition is a "sensible starting point": *M. McIsaac Family Holdings Ltd. v. Tolam Holdings Ltd.*, 2020 BCCA 371 at paras. 131-133.

[61] In light of the history of this matter, including the issues with the 2024 financial statements and the distributions from Seylynn LP in 2024, a more current valuation date is appropriate. In the circumstances, I order that the valuation date be the date the receiver issues its report to this Court.

[62] In regard to the price methodology, the Teknocan Respondents agree that no "minority discount" should be applied in the valuation of Teknocan, such that it will be based on a fair evaluation of Teknocan's value as an ongoing business, as opposed to the market value of the shares: *1043325 Ontario Ltd. v. CSA Building Sciences Western Ltd.*, 2015 BCSC 1160 at paras. 14, 18,19, and *Short v. Ewachniuk,* 2021 BCSC 994, at paras. 282-284.

[63] I also order MAJ to pay for the valuation, as opposed to Teknocan, because the conduct of MAJ, and its directing mind Mr. Rabiei, has led to the necessity for the buy out: *Azam v. Andrews Custom Furniture Designs Inc.*, 2022 BCSC 1166 at para. 94. MAJ consents to that order. I do not find it necessary to order that Mr. Rabiei be held jointly and severally liable to purchase the shares.

Interim Measures

[64] Mirage first seeks a continuation of the Injunction Order until such time as its shares are purchased. While the Teknocan Respondents take the position that

injunctive relief is not warranted, they are prepared to consent to a continuation of the terms of the Injunction Order as a "good faith gesture intended to facilitate an orderly buyout of Mirage's shares". The Injunction Order will therefore be continued until such time as the buy out of the Mirage shares is completed.

[65] That leaves the issue of the appointment of an interim receiver, which is opposed by the Teknocan Respondents. I understand that counsel for Norseyl, Axa and Pan Pacific worked with counsel for Mirage on the form of receivership order that was handed up on May 2, 2025, but those parties take no position on whether that order ought to be granted.

[66] Mirage unsuccessfully applied for the appointment of a receiver before Matthews J., who found that the Injunction Order was sufficient to preserve the status quo in the absence of evidence that it was ineffective in prohibiting the dissipation of funds. She also found that the proposed form of receivership order was overly broad, in that it contemplated the receiver taking full operational control of Teknocan.

[67] At least two things have changed since the previous application before Matthews J. First, the contempt finding of Dion J. confirms that the Injunction Order was not effective in preventing the dissipation of funds by the Teknocan Respondents. Second, Mirage now seeks what it describes as an interim and "limited" receivership order, in that the core mandate of the receiver would be to access and verify Teknocan's financial records, and assist in the independent valuation of Teknocan for the purposes of the buyout. In other words, the receiver would not take over day-to-day control of the company and would only be in place until the share purchase is completed.

[68] I am satisfied that this more limited receivership order should be granted. In light of the contempt finding there is a legitimate concern about the effectiveness of the Injunction Order to preserve the status quo and prevent the dissipation of assets. That concern is reinforced by the issues with the 2024 financial statements that have been identified by Mirage. While it is not necessary to determine whether any of

those issues constitute oppressive conduct or a further breach of the Injunction Order, they do raise legitimate questions about how Teknocan is managing its affairs in the face of the Injunction Order, and whether Mirage's interests are being further prejudiced by the conduct of MAJ and Mr. Rabiei.

[69] The Teknocan Respondents say that Mirage's objectives can be achieved through the less intrusive means of the appointment of an auditor. However, there have been significant problems with the production and sharing of financial information, including the obstacles Mirage faced on being copied on documents being provided to MNP, the auditor for the 2021-2023 financial statements. In addition, MNP has advised that it will have to issue a qualified audit for the 2021 and 2022 years because of a lack of key information.

[70] Those difficulties speak strongly in favour of having the interim receiver appointed to ensure the valuator has all the information that it needs in a timely manner, and Mirage is kept fully in the loop throughout the valuation process. I note that similar concerns about the sharing of information have led to the appointment of an interim receiver in other cases: *Adshade v. TDCI Bracebridge*, 2015 ONSC 1275 at para. 36.

[71] In supplementary written submissions, the Teknocan Respondents raised a number of issues with the draft form of receivership order handed up by Mirage. I address each of those in turn:

> (a) In paragraph 1, the language requiring cooperation with the receiver is duplicative of language in para. 4. I see no prejudice in duplicating cooperation language.
>
> (b) The first two sentences of para. 2 are said to be in substance duplicative injunctive relief which may create confusion. I do not read those sentences to constitute injunctive relief. They merely confirm that Teknocan will remain in control of its assets and can carry on business, subject to, *inter alia*, the Injunction Order.

(c) Paragraph 4 is said to bestow duplicative powers that will unnecessarily add to the cost and time of the valuation and buy out. I do not agree. The central mandate of the receiver is to facilitate and liaise with others to ensure the valuation and buy out proceed in an expeditious manner, and that Mirage and the other parties are kept fully apprised of the process. McEown is an experienced and professional receiver, and there is no reason to believe they will double bill for the work of any accounting or other professionals they may retain. I note that the preamble to para. 4 authorizes the receiver to act only where they consider it "necessary or desirable", which addresses the concern that they will duplicate the work of others.

(d) The Teknocan Respondents are also concerned about the "unfettered access" given to the receiver in para. 4. Given the history of this matter, I do not see any need to restrict or qualify the access of the receiver to Teknocan's accounting, computer software and physical facilities. Teknocan will not be prejudiced by the receiver having "unfettered access", and that kind of broad language may avoid a dispute about the level of access to be granted to the receiver.

(e) The Teknocan Respondents suggest that the cap on fees ($100,000) should be the same amount as the cap on the charge of the receiver ($50,000). In my view, a $100,000 cap on fees is reasonable, particularly as it also includes the fees of the receiver's legal counsel, and is properly distinguished from the charge, which is a form of security.

(f) I do not read para. 13 as authorizing the receiver to charge for fees related to the first unsuccessful application for the appointment of a receiver. It simply allows a charge for fees incurred before or after this order, which is reasonably interpreted to mean fees in connection with the current and more limited retainer.

Special Costs

[72] As a preliminary matter, the Teknocan Respondents raise a concern about lack of adequate notice of Mirage seeking special costs, as that relief was not specifically sought in the petition. Further, they say that the usual "convention" should be followed whereby costs should be addressed after a decision on the merits is rendered. While they addressed the claim for special costs in their written and oral submissions, the Teknocan Respondents also sought leave to file a supplemental submission on costs.

[73] Particularly in light of the fact that they were provided with a lengthy written submission at the outset of the hearing, I do not see any significant prejudice to the Teknocan Respondents arising from the failure to plead special costs in the amended petition. They had a meaningful opportunity to address the issue in their submissions to this Court and spent a significant amount of time canvassing the broader history between the parties, including the other legal proceedings, which was said to be important "context" for Mirage's claim to special costs.

[74] Further, I agree with Mirage that it would not be a good use of judicial resources to address costs after the fact given that, as a practical matter, much of this hearing was, directly or indirectly, focused on the claim for special costs. Given the nature of my findings below, I also do not see the need for supplemental submissions from any of the parties.

[75] Special costs are awarded where litigants have engaged in reprehensible conduct deserving of rebuke. Judge Walker provided a helpful summary of the applicable principles in *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914:

> [8] Special costs are awarded where a litigant engaged in reprehensible conduct. The purpose of an award of special costs is to chastise a litigant. Special costs are punitive in nature and encompass an element of deterrence. A wide meaning is given to the word "reprehensible". The term represents a general and all encompassing expression of the applicable standard for an award of special costs. "Reprehensible" conduct includes conduct that is scandalous, outrageous, or constitutes misbehaviour, as well as milder forms of misconduct that in a court's view deserves reproof or rebuke. In determining whether the conduct of a party is reprehensible, courts

may consider whether the conduct complained of is a type from which it should seek to dissociate itself: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 D.L.R. (4th) 740 at 745 - 747 (C.A.); *Stiles v. B.C. (W.C.B.)* (1989), 38 B.C.L.R. (2d) 307 at 311 (C.A.); *Leung v. Leung* (1993), 77 B.C.L.R. (2d) 314 at para. 5 (S.C.); *International Hi-Tech Industries Inc. v. FANUC Robotics Canada Ltd.*, 2007 BCSC 1724 at para. 6; and *Fullerton v. Matsqui (District)* (1992), 74 B.C.L.R. (2d) 311 at para. 23 (C.A.).

[9] In *Garcia* at 747, Lambert J.A. described the standard to be met in order to justify an award of special costs:

... it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as “reprehensible”. As Chief Justice Esson said in *Leung v. Leung,* the word “reprehensible” is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word “reprehensible”, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.

[10] The need for courts to disassociate themselves from misconduct is so important that special costs may be awarded even when the successful party does not have to pay legal fees. In *Fullerton* at para. 29, the Court of Appeal stated that “[s]ince the rationale for the award is to penalize, it matters not that the successful party does not have any legal fees to pay”.

[11] Special costs may be ordered in the following circumstances:

(a) where a party pursues a meritless claim and is reckless with regard to the truth;

(b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;

(c) where a party has displayed “reckless indifference” by not recognizing early on that its claim was manifestly deficient;

(d) where a party made the resolution of an issue far more difficult than it should have been;

(e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;

(f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;

(g) where a party brings a proceeding for an improper motive;

(h) where a party maintains unfounded allegations of fraud or dishonesty; and

(i) where a party pursues claims frivolously or without foundation.

See: *Garcia* at 748; *International Hi-Tech* at paras. 7-13; *Webber v. Singh*, 2005 BCSC 224 at para. 28; *McLean v. Gonzalez-Calvo*, 2007 BCSC 648 at

> paras. 26, 29; *Buchan v. Moss Management Inc.*, 2008 BCSC 1286 at paras. 11-12; and *Edwards v. Bell*, 2004 BCSC 399 at paras. 12, 43-45.

[76] An equally helpful summary of the law is found in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352. From Madam Justice Gropper's analysis, I will add that the Court must exercise restraint in awarding special costs and should only do so in exceptional circumstances (see para. 73).

[77] Mirage emphasizes that false and misleading evidence can give rise to an award of special costs, citing, *inter alia*, the decision of Mr. Justice Voith, as he then was, in *Behan v. Park*, 2014 BCSC 1982:

> [49] What flows from the foregoing discussions is a recognition that an award of special costs is an "extraordinary measure": *Grewal* at para. 107, and limited to "exceptional circumstances": *Westsea* at para. 39. Such an order is, however, warranted where a party gives:
>
> i. false evidence that has been contrived, concocted or fabricated;
>
> ii. with an intention to mislead: *Marchen* at para. 70, *Unternahe*r at para. 12;
>
> iii. on an issue that is central to the matter before the court: *Waters v. Michie*, 2013 BCCA 441 at paras. 39-40, and, which if accepted, would "drive [the opposing party] from the judgment seat": *Marchen* at para. 73.

[78] I agree with Mirage that the nature of Mr. Rabiei's evidence is a significant factor in the analysis, although I share the view of Matthews J. that it is best described as "sharp", a term that is appropriately applied to the overall litigation strategy employed by the Teknocan Respondents. She put it this way in her reasons for judgment:

> [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.

[79] As I detail below, I find that Mr. Rabiei's evidence, and more generally the positions taken by the Teknocan Respondents, were designed to, and had the effect of, making this litigation far more difficult and expensive than it ought to have been. Indeed, given the eleventh-hour concessions that were made as this matter came on for hearing before me, this litigation has been a significant waste of party and judicial resources.

[80] While the litigation may well have been fuelled by a certain level of animosity from other legal proceedings involving these parties, and the broader deterioration of long-standing business and personal relationships, that is no excuse for what transpired in this proceeding: see *Abougoush v. Abougoush*, 2015 BCSC 398 at para. 44. In the context of Mirage's plea for special costs, my focus must be on the litigation conduct of the Teknocan Respondents.

[81] I start by returning to the injunction application that was eventually heard by Milman J. on July 22, 2024. That application originally came on for hearing on July 18, 2024, the same day on which the Teknocan Respondents filed their responding materials, outside of the time period provided for in the BC *Supreme Court Rules*.

[82] In his first affidavit, sworn July 17, 2024, Mr. Rabiei disclosed the "recent" distribution of approximately $11 million to MAJ, which Matthews J. correctly described as sharp evidence given that the distribution was made on July 12, 2024, when Mr. Rabiei had knowledge of the impending injunction application. In the context of the rest of his conduct, Mr. Rabiei is not entitled to the benefit of the doubt as to why he failed to include the July 12 date in his first affidavit.

[83] In addition, Mr. Rabiei deposed that those funds were then sent to Dubai to pay down the Treaty Loan, said to be an arm's length loan with significant accruing interest. Importantly, the Treaty Loan, and the urgent need to pay it down, was the

basis on which the Teknocan Respondents successfully obtained leave to appear before Milman J. at the Comeback Hearing, and led to the subsequent hearings before both Walker and Matthews JJ.

[84] Mirage's position is that the Treaty Loan is a sham, and that Mr. Rabiei and his family have been simply attempting to funnel money to themselves in Dubai where it would be free from any claims asserted in British Columbia. It points to a significant body of evidence in support of that position, including:

(a) Mr. Rabiei is listed as the Finance Manager for Treaty on his LinkedIn page.

(b) Treaty is based in Dubai, yet advanced a multi-million dollar to a company in Canada without requiring any security.

(c) It is not disputed that Mr. Rabiei and his family own and control a company in Dubai called Homay General Trading Co. (LLC) ("Homay").

(d) On or about November 2011, Homay advanced the funds to Teknocan that are now alleged to form part of the Treaty Loan, which payments are reflected on statements issued by Persepolis and Treaty to MAJ and Teknocan.

(e) Treaty, Persepolis, and Homay all share the same office address in Dubai and have the same phone number and have the same employees.

(f) Persepolis and Treaty required payments on loans to be made directly to Homay.

(g) The repayment terms of Mirage's portion of the alleged Treaty Loan were negotiated with Mr. Rabiei's mother and father.

(h) The final payment on the Treaty loan was made directly to Mr. Rabiei's mother.

(i) Treaty's domain name is owned and controlled by Homay.

[85] Much of that evidence was before Matthews J., who made these concluding comments:

> [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.

[86] It is not necessary to review the details of Mr. Rabiei's explanations for this evidence in his later affidavits, or to conclusively determine whether the Treaty Loan is a "sham" for purposes of assessing special costs. What is clear is that Mr. Rabiei provided sharp and misleading evidence in his initial affidavit with respect to the fact that both Treaty and Persepolis were "arm's length" companies from Mr. Rabiei and his family, when plainly they are not.

[87] Moreover, that evidence was the foundation for the applications to vary the Injunction Order that were the subject of the Comeback Hearing, as well as the hearings before Walker J., and most significantly Matthews J. (a five-day hearing in and of itself). In other words, the Teknocan Respondents consumed an exceptional amount of judicial resources on applications predicated on the notion that there was

a pressing need to repay a loan to a company that was separate and apart from the Teknocan Respondents when Mr. Rabiei had full knowledge that was not the case.

[88] That is exacerbated by the fact that the position of the Teknocan Respondents before Milman J., again based on the sworn evidence of Mr. Rabiei, was that there was a "past practice" of MAJ using distributions to pay down the Treaty Loan. What was not initially disclosed by Mr. Rabiei, however, was the $6 million distribution in 2022, and that it was not used by MAJ to pay down the Treaty Loan.

[89] Even if Mr. Rabiei had no obligation to disclose that 2022 payment in his initial affidavit, I find that it was sharp of Mr. Rabiei not to do so, and for the Teknocan Respondents to press the "past practice" before Milman J. and seek the urgent Comeback Hearing. It is no answer to say that Mr. Rabiei later "clarified" his evidence in a subsequent affidavit in November of 2024.

[90] Lastly, among other late concessions, the Teknocan Respondents consented to the continuation of the operative provisions of the Injunction Order, which would preclude any further funds being directed towards the Treaty Loan. While portrayed as a "good faith gesture", the fact remains that this concession directly undermines the foundation for the previous applications regarding an urgent need to pay down the Treaty Loan, assuming any such need ever existed.

[91] Even if the applications to vary were not expressly designed to allow for the dissipation of funds to a foreign country for the personal benefit of Mr. Rabiei and his family, they needlessly added to the complexity and cost of this litigation and were grounded in evidence that was at best sharp and misleading, and at worst, demonstrably and intentionally false. This is reprehensible conduct deserving of rebuke.

[92] Following the issuance of the Injunction Order, there were immediate problems with document production on the part of the Teknocan Respondents,

resulting in a further production order from Milman J. on August 15, 2024. A protracted dispute over the settlement of the August 15, 2024 order also ensued.

[93] While the Teknocan Respondents say this all arose out of a “genuine disagreement” over the scope of the August 15, 2024 order, I find they once again are not entitled to the benefit of the doubt when that conduct is placed in the broader litigation context. That context includes the failure to file a petition response for months, in contravention of the Rules, which resulted in the adjournment of the hearing before Walker J. and ultimately the hearing of the petition itself. In fact, notwithstanding express warnings from Walker J., they proceeded to bring on a further application to vary the Injunction Order on November 26, 2024, still without having filed their response to the petition.

[94] Another critical part of the context is the conduct of the Teknocan Respondents in frustrating Mirage’s efforts to obtain access to documents being provided to MNP (their retainer also being delayed for a number of months after the issuance of the Injunction Order), as expressly provided for in the Injunction Order.

[95] In particular, I note the efforts made to funnel documents through Ms. Staicu, who was said to be an employee of the limited partnerships, including in her sworn affidavit, when in fact there is compelling evidence that she also works for Teknocan and was expressly put forward as Teknocan’s point of contact for the audit process. Notably, she was a conduit for information flowing to MNP from both the limited partnerships and Teknocan itself.

[96] I also find there was no proper basis for demanding that Mirage sign any kind of confidentiality agreement or order given that Milman J.’s orders were expressly subject to the implied undertaking. Indeed, the Teknocan Respondents went so far as to orchestrate and sign an amended engagement letter from MNP that prevented MNP from copying Mirage on documents, which I find, like Matthews J., is directly contrary to the spirit and the express language of the Injunction Order. In that regard, paragraph 7(e) of the Injunction Order states in part:

> Teknocan and Mr. Rabiei shall copy, and shall ensure that the Auditor is advised to copy, the Petitioner contemporaneously on all communication and correspondence in relation to the Auditor's Reports, including any documents provided to MNP in relation to the Auditor's Reports.

[97] On July 22, 2024, counsel for the Teknocan Respondents assured this Court that financial information flowing to MNP would be copied to Mirage, and that it "[was] not [his] client's intention to do anything by cloak of night". But that is effectively what transpired in the fall of 2024, and also constitutes reprehensible conduct.

[98] A further instance of sharp conduct arose before Matthews J. at the hearing of the second application to vary the Injunction Order to permit the payment of approximately $20 million to MAJ to allow it to pay down the Treaty Loan in Dubai.

[99] The position taken by the Teknocan Respondents at that hearing was that the $20 million could be paid out without any prejudice to Mirage because there would be sufficient funds to pay out all current and anticipated liabilities. Mirage pointed out that there was no evidence before the Court about Teknocan's potential tax liability, including any evidence about the income for the year to date (on which the tax liability would be based). Justice Matthews addressed this issue commencing at para. 61:

> [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.

[100] On February 7, 2025, counsel for the Teknocan Respondents advised Mirage that the accounting firm of KPMG had calculated Teknocan's expected tax liability for the 2024 financial year to be $6,424,766. As Mirage points out, had the Teknocan Respondents been successful before Matthews J., Mirage's interest would have been completely wiped out, as there would not have been enough in Teknocan's account to cover off the tax liability.

[101] While the Teknocan Respondents would obviously not have had the KPMG estimate in December 2024, I agree with Mirage that there would have been some level of awareness within Teknocan as to the likely tax liability given that a reasonable estimate of income would have been available to the company at that time of year. In my view, it was sharp litigation conduct to bring that application without providing the Court at least a rough estimate of the expected tax liability.

[102] The complexity and cost of the litigation was also needlessly increased by the Teknocan Respondents repeatedly raising highly technical arguments that were largely devoid of merit. Before both Walker and Matthews JJ., they took the position that the Injunction Order was merely an adjournment order on terms (indeed, remnants of that argument remained in the written submissions before me). Justice Matthews properly rejected that argument:

> [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.
>
> . . .
>
> [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.

[103] It appears the Teknocan Respondents continued to take that position before Dion J. on the contempt application:

> [37] Teknocan has taken the position that the Milman Order was an adjournment on terms. Mirage has always taken the position that the Milman Order was an injunction.
>
> [38] Justice Matthews rejected Teknocan's argument that the Milman Order was an adjournment on terms which allowed them to pay out funds in issue before her. At para. 46, she found:
>
> 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.
>
> [39] Mr.Cayley, in email correspondence with Mr. Coblin on February 20, 2025 (so prior to Matthews J.'s decision in *Mirage*), referred to the Milman Order as an injunction.
>
> [40] There is no question the Milman Order is an injunction.

[104] In their written submissions before me, the Teknocan Respondents argued that Mirage was engaged in "trial by ambush" because issues such as Dion J.'s contempt finding, the 2024 Financial Statements and the non-arm's length nature of the Treaty loan were not properly pleaded in the Amended Petition. Similar arguments were raised before Walker and Matthews JJ.

[105] Leaving aside whether the Amended Petition is drafted broadly enough to capture these types of allegations (I note in that regard that the Amended Petition refers to "ongoing" oppressive conduct), I see no merit to the proposition that the Teknocan Respondents were taken by surprise or prejudiced in any way by these issues being raised, particularly in light of the extensive written submissions that were before the Court in previous hearings, all of which were included in the record before me.

[106] Mirage also says that the Teknocan Respondents engaged in a collateral attack on “Justice Dion’s reasons” by repeating their submission that Dr. Taheri should have consented to the June Cash Call, and that his failure to do so brings into question the motivations of Mirage in pursuing their contempt application.

[107] While it may be that the recycling of that submission before me could be said to fall under one of the subspecies of the general doctrine of abuse of process (see e.g. *Saskatchewan (Environment) v Metis Nation – Saskatchewan,* 2025 SCC 4 at paras. 33-36), I do not find it necessary to make such a finding. For the purposes of special costs, it is sufficient that it is another example of a largely unmeritorious submission that unnecessarily added to the complexity and cost of the litigation, particularly in the context of the Teknocan Respondents having unsuccessfully attempted to remove cash calls from the scope of the Injunction Order, and subsequently declining to bring an application to vary it to allow for payment of the June Cash Call.

[108] The June Cash Call argument is an example of a pattern of the Teknocan Respondents seeking to deflect attention from their own litigation conduct by impugning the motivations and conduct of Mirage. Another example is their position on the 2024 financial statements, and Mirage’s argument that those statements contain evidence of oppressive conduct and potential breaches of the Injunction Order.

[109] As noted above, the Teknocan Respondents argued that this issue was not properly raised in the pleadings and constituted an inappropriate ambush on the part of Mirage. Given the fact that the draft 2024 financial statements were only produced on April 17, 2025, Mirage cannot be faulted for failing to amend its petition or for raising concerns about issues identified in the statements, including the $18 million loan agreement and $7 million interest payment. The Teknocan Respondents made no effort to explain or even flag those entries when the statements were delivered, despite them obviously being potentially problematic on their face and requiring explanation.

[110] Lastly, I highlight again the various concessions made by the Teknocan Respondents on the eve of and during the course of the hearing. Among other concessions, the Teknocan Respondents consented to orders for the buy out of Mirage's shares, the appointment of a valuator, the repayment of Mirage's shareholder loans, and the continuation of the Injunction Order.

[111] The Teknocan Respondents stated in their written submissions that such concessions were made because it is "apparent that [the parties] cannot continue in business together and it would be convenient, in all the circumstances, for the parties to go their separate ways". I agree with Mirage that it has long been apparent that the business relationship had to come to an end given that Dr. Taheri was removed as a director back in October 2022. And the Teknocan Respondents have never seriously contested that the $11 million and $6 million preferential payments were oppressive conduct, instead holding back Mirage's funds on the basis that there was litigation outstanding involving the other respondents.

[112] I also agree that had the Teknocan Respondents made those concessions at an earlier stage, much of this litigation could have been avoided, including at least 12 days of court time since the Comeback Hearing in August of 2024. I find that is reprehensible conduct worthy of rebuke.

[113] In conclusion, I refer to the following written submission of the Teknocan Respondents:

> 358. There is no question that this has been hard fought litigation between former friends and business partners. This litigation involved the normal assortment of disputes over procedure and evidence that arise in many cases. An award of special costs is not warranted.

[114] In my view, there was nothing "normal" or reasonable about the Teknocan Respondents' litigation conduct, recognizing that litigation of this kind is often "hard fought" and contentious. There was a consistent pattern of sharp conduct throughout that led to unnecessarily protracted and costly litigation which consumed an extraordinary amount of judicial resources. I accordingly award special costs to Mirage for the entirety of the proceeding.

Conclusion

[115] In sum, I make the following declarations and orders, and for clarity, confirm that some orders are partially stayed pursuant to the terms of the Stay Order, as identified below:

(a) I declare that the affairs of Teknocan are being or have been conducted in a manner oppressive or unfairly prejudicial to Mirage contrary to s .227 of the *Act*.

(b) I declare that Mr. Rabiei is or has been exercising his powers as a director and officer of Teknocan in a manner oppressive or unfairly prejudicial to Mirage contrary to s. 227 of the *Act*.

(c) Teknocan is directed to forthwith retain and appoint a licensed Certified General Accountant or Chartered Accountant, to be selected by McEown, (the "Auditor"), for the purposes of preparing audited financial statements for Teknocan in compliance with the Auditor's obligations under the *Act* and the *Business Corporations Regulations*, B.C. 65/2004, who shall hold office until the next annual reference date as defined in s. 204 of the *Act*.

(d) Paragraphs 1 through 6 and paragraph 14 of the Injunction Order are continued until such time as Mirage's shares in Teknocan have been purchased by MAJ, or such other time as may be agreed to by the parties or ordered by this Court.

(e) Subject to the terms of the Stay Order, Teknocan is directed to repay all of Mirage's shareholders loans, with accrued interest as outlined in these Reasons, at the same time as Mirage's shares in Teknocan are purchased by MAJ.

(f) Subject to the terms of the Stay Order, MAJ is directed to purchase the shares of Mirage in Teknocan on the following terms:

(i) the value of the shares will be determined by a Chartered Business Valuator retained and instructed by the receiver, and the costs of the valuation will be paid by MAJ;

(ii) the valuation date will be the date the receiver issues its report to this Court, and the valuation will be performed following the receipt of that report;

(iii) the valuation will be based on the assumption that MAJ has returned the $6 million and $11 million payments, along with any other funds removed from Teknocan without the consent of Mirage; and

(iv) the price methodology will be based on a fair valuation of Teknocan as an operating business, not on fair market value, and there will be no minority discount applied.

(g) McEown is appointed as an interim receiver under s .227(3) of the *Act*, substantially in the form handed up to the Court by counsel for Mirage on May 2, 2025.

(h) Special costs of this entire proceeding are awarded to Mirage, payable jointly and severally by Mr. Rabiei and MAJ.

[116] Should there be a need to apply for directions with respect to the terms of these orders, the parties should submit a request to appear before me in the usual manner.

"Underhill J."