SUPREME COURT OF NOVA SCOTIA
Citation: *Lin v. Song*, 2024 NSSC 358

Date: 20241216
Docket: Hfx No. 520469
Registry: Halifax

Between:

Haiyan Lin Lin and 3340435 Nova Scotia Limited

Applicants

v.

Mingming Song and Eman Beauty Inc.

Respondents

Judge:	The Honourable Justice D. Timothy Gabriel
Heard:	By written correspondence
Final Written Submissions:	September 5, October 7, and October 10, 2024
Counsel:	Michael Blades and Grace Levy, for the Applicants Eugene Y.S. Tan, for the Respondents

By the Court:

[1] This proceeding has been the subject of earlier written decisions. It will be necessary to refer to some of the determinations made in those decisions throughout the course of this one, which will address the request of the Applicant, Haiyan Lin ("Ms. Lin") for a resolution of the outstanding issues, including damages and costs.

[2] This proceeding was commenced on January 16, 2023. The Respondents failed to file their pleadings in the proper time, and a Motion for Summary Disposition pursuant to *Civil Procedure Rule* 5.23 was initiated by the Applicants on February 9, 2023. This prompted the Respondents to file their documentation on February 17, 2023, which resulted in the Applicants withdrawing the Motion for Summary Disposition, and the Respondents' agreement to pay $250 in costs.

[3] Faced with a hearing scheduled for March 15, 2023, the Respondents did not comply with the directions given by the Court with respect to deadlines for filing either written submissions or affidavit evidence. The effect of this was that the Applicants prepared submissions and affidavit evidence, once again, on the expectation that the proceeding was uncontested.

[4] Two days before the proceeding was to be heard, the Respondents contacted the Court and advised that they would be seeking an adjournment. Justice Brothers heard the ensuing adjournment motion on March 14, 2023, and granted it. Subsequently, she issued a Costs Decision, reported as *Lin v. Song*, 2023 NSSC 117, ("the Adjournment Decision") in which she ordered the Respondents to pay $5,000 in costs to the Applicants to partially compensate them for wasted preparation costs. Among other things, she found that the Respondents' misconduct had warranted a departure from the Tariffs.

[5] The Decision on the merits of the Applicant's claim was rendered by myself, following a hearing on May 16, 2023. It has been indexed as *Lin v. Song*, 2023 NSSC 265 ("the Merits Decision" or "MD"). To briefly summarize the conclusions reached in that decision, it was determined that the corporate Applicant (who has been referred to as "Landlord Corp") must be wound up in accordance with the *Companies Winding Up Act*, R.S. NS 1989, c.82 ("the CWUA"). This was not unqualified, however. Ms. Song, at her request, was provided with an opportunity to purchase Ms. Lin's 50% shares in the company for fair market value, as permitted by s. 6(3) of the CWUA. In the event that Ms. Song sought to avail

herself of the option, certain actions were necessary, as outlined in the Merits Decision:

a) An updated appraisal of the condo unit from Turner Drake & Partners Ltd. ("Turner Drake") was to be obtained (*MD*, para. 52);

b) Upon receipt of the above-noted appraisal, a Chartered Business Valuator ("CBV") was to be retained in order to determine the fair value of Ms. Lin's 50% shareholding in Landlord Corp (*MD*, para. 53);

c) Within 45 days of the CBV valuation, Ms. Song was to determine whether she wished to exercise her option to purchase Ms. Lin's shares by paying the assessed fair value option purchase price, as an alternative to the winding up of Landlord Corp (*MD*, para. 54);

d) If Ms. Song ultimately did not exercise her buyout option on those terms, Landlord Corp was to be wound up and dissolved and all assets liquidated, with the proceeds divided between Ms. Lin and Ms. Song as directed by the Court (*MD*, para. 55); and

e) Costs (including the allocation of costs of appraisal and valuation) were to be assessed at the same time and in the same manner as punitive damages are addressed: by way of written correspondence after the share purchase had been agreed to, or upon the winding up of the company (*MD*, para. 56).

[6] During the course of the hearing (which resulted in the Merits Decision) some unusual developments occurred. For one thing, Ms. Song attended Court with a Louis Vuitton box purporting to contain funds which Ms. Lin was contending had been removed from the corporate bank account, and for which an accounting had not been previously provided. Ms. Song chose to refer to the box during her cross-examination, intimating that it was the repository of the missing funds from Landlord Corp. She also conceded, through her counsel's submissions, that a winding up of Landlord Corp was necessary, after all. She simply wished to be provided with the option of purchasing Ms. Lin's shares as an alternative.

[7] Another unusual development occurred. It consisted of the fact counsel had made reference, in their Joint Exhibit Book, to previous offers to settle which had been made. When this was discovered, counsel were directed by the Court to file written closing submissions. During the course of these submissions each party

agreed that the Court could nonetheless continue to decide the matter, notwithstanding that the substance of previous offers to settle that had been revealed.

[8] During the course of these written closing submissions, counsel for the Respondents also acknowledged that the $11,900 contained in the box did not, in fact, represent all of the missing funds. It was simply an arbitrary figure. In the Merits Decision, I concluded that this figure represented less than 50% of the missing funds.

[9] As has been noted, Ms. Song had informed the Applicants (and the Court) that she wished to take the steps necessary to determine the fair market assessment of Ms. Lin's 50% shareholding interest in Landlord Corp, as an alternative to having the corporate Applicant wound up. Having obtained the requisite appraisal in accordance with the above, a fair market assessment of Ms. Lin's corporate interest yielded a figure of $85,250. Ms. Song has not yet paid that purchase option price.

[10] The Respondents were also directed, in the Merits Decision, to provide the Court and the Applicants with an accounting of the outstanding funds within 30 days of the Decision, and for Ms. Song to personally repay to Landlord Corp the monies for which she could not satisfactorily account. The parties were to subsequently provide the Court with submissions with respect to their respective positions on the legitimacy and validity of the purported accounting, if they could not agree upon what was appropriate.

[11] A determination on this latter point by the Court ended up being necessary. Filing instructions with respect to briefs and affidavits were provided. The Respondents, once again, failed to comply with the deadlines which the Court had imposed. They did not file their accounting submissions until October 16, 2023. This accounting (once filed) generated numerous concerns, which were referenced in the written submissions filed by the Applicants. I issued a second decision in this matter. This one dealt with the appropriate amount of funds for which Ms. Song must account. It was reported as *Lin v. Song*, 2024 NSSC 41 ("the Accounting Decision" or "AD"). The Applicants' position on the amounts ultimately due and owing to Landlord Corp was, for the most part, accepted by the Court. The Respondents were directed to pay the missing funds (including the

$11,900 contained in the Louis Vuitton box) to the Applicants to be held in trust by their counsel.

[12] Now, to return to the share purchase option which Ms. Song had requested as an alternative to the winding up of Landlord Corp. In accordance with the Merits Decision, Turner Drake was retained to perform an updated appraisal, following which a CBV of Ms. Lin's 50% shareholding interest in the company was conducted. With the benefit of these assessments, we know that the fair market value of Ms. Lin's shares is $85,250. However, the need for these assessments resulted in costs being incurred of $21,315.25. I will subsequently refer to them as the "Valuation Expenses".

[13] The Applicants have followed the direction of the Court (provided in the Merits Decision) and have paid these Valuation Expenses. They did so out of the funds that were being held in trust by counsel for the Applicants, as a result of Ms. Song having been required to pay monies to counsel to be held in trust as part of the accounting process (*Blades Affidavit, paras. 4-8*).

[14] The following issues remain to be considered:

1. What should result from the manner in which Ms. Song has accounted for the misappropriated funds to date?
2. Are punitive damages appropriate in the circumstances?
3. Who bears ultimate responsibility for the Valuation Expenses?
4. What is an appropriate award of costs, and to whom?

Analysis

A. What should result from the manner in which Ms. Song has accounted for the misappropriated funds to date?

[15] I am satisfied that there remains a shortfall of $437.95 with respect to Ms. Song's accounting of funds for the month of March 2024. These result from Ms. Song's decision to incur unauthorized and nonrecurring expenses on behalf of Landlord Corp, for which either no explanation, or a less than satisfactory one, has been provided, as previously discussed in the Accounting Decision (see also *Blades Affidavit, para. 9*). I also accept that the Respondent has not, to this date,

provided an accounting of missing Landlord Corp funds comprised of the rent due, less recurring expenses (*Blades Affidavit, para. 9*).

[16] As a consequence, I will order that Ms. Song deliver, to Pink Larkin in trust, the sum of $437.95 in relation to March 2024, as well as such further monthly accountings which will oscillate between $1,300 – $1,400 per month, depending upon the mortgage payment fluctuations (referenced in the Accounting Decision) for the months of August and September 2024, and every month thereafter, up to the date of purchase of Ms. Lin's shares, or the winding up of Landlord Corp, as the case may be.

B. Are punitive damages and/or prejudgment interest appropriate in the circumstances?

[17] In *Fraser v. 3102602 Nova Scotia Limited*, 2020 NSSC 187, Justice Bodurtha had occasion to consider the authorities relating to punitive damages, including *Whiten v. Pilot Insurance Co.*, 2002 SCC 18:

> [87] An award of punitive damages is only justified in exceptional cases when the defendant's conduct requires punishment. This Court in *VonMaltzahn v. Koppernaes*, 2018 NSSC 192, discussed when punitive damages should be awarded at paras. 57-58:
>
> > 57 Punitive Damages are awarded to deter a defendant from committing torts in the future and as punishment. They are granted when a plaintiff proves the defendant's conduct was "...so malicious, oppressive and high-handed that it offends the court's sense of decency." (*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 (S.C.C.) at para.199) and is a "...marked departure from ordinary standards of decent behaviour" (*Whiten v. Pilot Insurance Co.*, 2002 SCC 18 (S.C.C.) at para. 36.)
> >
> > 58 In *Whiten* (supra) the Supreme Court of Canada set out a number of factors the court should consider. The award is to be proportionate to the blameworthy conduct, the vulnerability of the plaintiff, the harm or potential harm directed toward the plaintiff, the advantage wrongfully gained by the defendant, the need for deterrence, and the other penalties assessed against the defendant because of his or her misconduct.
>
> [88] In *Fernandes v. Penncorp Life Insurance Co./La Cie D'Assurance-Vie Penncorp*, 2014 ONCA 61, Pepall J.A. summarised the applicable principles arising from two Supreme Court of Canada decisions regarding punitive damages:

> 74 The law relating to punitive damages was canvassed in detail by the Supreme Court in *Whiten* and addressed again more recently in *Fidler*. The key applicable principles may be summarized as follows.
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> > • Punitive damages are designed to address the objectives of retribution, deterrence and denunciation, not to compensate the plaintiff: *Whiten*, at paras. 43 and 94, and *Fidler*, at para. 61.
> >
> > • They are awarded only where compensatory damages are insufficient to accomplish these objectives: *Whiten*, at para. 94.
> >
> > • They are the exception rather than the rule: *Whiten*, at para. 94.
> >
> > • The impugned conduct must depart markedly from ordinary standards of decency; it is conduct that is malicious, oppressive or high-handed and that offends the court's sense of decency: *Whiten*, at paras. 36 and 94; and *Fidler*, at para. 62.[4]
> >
> > • In addition to the breach of contract, there must be an independent actionable wrong: *Whiten*, at para. 78, and *Fidler*, at para. 63.
> >
> > • In a case of breach of an insurance contract for failure to pay insurance benefits, a breach by the insurer of its contractual duty to act in good faith will constitute an independent actionable wrong: *Whiten*, at para. 79, and *Fidler*, at para. 63.

[18] In *National Bank of Canada v. Barthe Estate*, 2015 NSCA 47, our Court of Appeal also had the opportunity to consider and apply the principles set out in *Whiten*:

> [442] Justice Binnie [in *Whiten*] went on to provide a list of the types of factors which might influence the level of blameworthiness assigned to the wrongdoer. As one would expect, the more egregious the conduct, the greater the potential award. He said:
>
> > 112 The more reprehensible the conduct, the higher the rational limits to the potential award. The need for denunciation is aggravated where, as in this case, the conduct is persisted in over a lengthy period of time (two years to trial) without any rational justification, and despite the defendant’s awareness of the hardship it knew it was inflicting (indeed, the respondent anticipated that the greater the hardship to the appellant, the lower the settlement she would ultimately be forced to accept).
> >
> > 113 The level of blameworthiness may be influenced by many factors, but some of the factors noted in a selection of Canadian cases include [I have included the factors but omitted the case references]:

> (1) whether the misconduct was planned and deliberate:
>
> (2) the intent and motive of the defendant:
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> (3) whether the defendant persisted in the outrageous conduct over a lengthy period of time:
>
> (4) whether the defendant concealed or attempted to cover up its misconduct:
>
> (5) the defendant's awareness that what he or she was doing was wrong:
>
> (6) whether the defendant profited from its misconduct:
>
> (7) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff

[19] The authorities confirm that punitive damages may be assessed on the basis of a party's misconduct before, during, and after litigation (see for example, *Trout Point Lodge Limited v. Handshoe*, 2012 NSSC 245). This is subject to the proviso, however, that the impugned conduct, even though intentionally and knowingly carried out to harm the other party, and being deserving of deterrence and denunciation, must also be such that the award of compensatory damages already being awarded to that other party would not, on its own, have a sufficiently punishing and deterrent effect.

[20] For example, *Candelora v. Feser*, 2020 NSSC 177; aff'd 2021 NSCA 49, was a cyber-bullying case. General damages in the amount of $70,000 were awarded against the Respondent. However, punitive damages were also awarded in the amount of $15,000. In that case, in the trial decision, Arnold, J. observed:

> [38] The dollar figure must be proportionate to the blameworthiness of the defendant's conduct (*Whiten* at paras. 112-113), the vulnerability of the plaintiff (paras. 114-116), the harm directed at the plaintiff (para. 117), the need for deterrence (paras. 118-122), the need for a penalty above and beyond what the defendant may already have faced (para. 123), and any advantage the defendant wrongfully gained (paras. 124-126).

[21] In *J.F. v. B.A.*, 2024 NSSC 275, another cyber-bullying case, I awarded punitive damages in an identical amount in circumstances where:

> [77] The utmost extremity of malice was displayed by the Respondent in doing what she did. As earlier indicated, she was so highhanded and oppressive that she

> involved the Applicant's daughter, publishing some of these comments before and after this little girl was starting school, naming her, and publishing her picture.
>
> [78] This Court's sense of decency has been significantly offended. I award punitive damages of $15,000.

[22] The Applicants contend that Ms. Song's blameworthy conduct antedates, is contemporaneous with, and post-dates the actual hearing itself. They contend that the following constitute examples of such conduct which occurred before the hearing:

> 32. The findings of fact already made in relation to the Respondents' misconduct before litigation includes the following:
>
> a) Despite Ms. Lin's efforts to work with Ms. Song to arrive at a solution for the best interests of Landlord-Corp following the breakdown in their relationship, Ms. Song reacted by "freezing out" Ms. Lin, causing Landlord-Corp to change its banking accounts, set up a new account with CUA, and effectively play "a shall game" with its financial receipts (*Merits Decision* at para. 42(4));
>
> b) Ms. Song intentionally refused to cause Eman to pay any rent due and owing to Landlord-Corp, despite the fact that Ms. Song/Eman retained full operation and possession of Landlord-Corp's entire premises (*Merits Decision* at para. 42(5));
>
> c) Ms. Song willfully boycotted a directors meeting, despite being provided with proper notice, and refused any other attempts by Ms. Lin to address the problems that were rising as a result of Landlord-Corp's (apparent) inability to meet its recurring liabilities, and to discuss what was being done with its income (*Merits Decision* at para. 42(6));
>
> d) In the aftermath of the directors meeting (which Ms. Song failed to attend), steps were taken to terminate Eman's occupancy so that the condo unit could be relet. However, Ms. Song broke the lock that had been installed, changed it, and began sleeping in the unit (*Merits Decision* at para. 42(7));
>
> e) Only after the directors meeting which purported to terminate Eman's tenancy did Ms. Song cause Eman to make up the arrears of rent owed to Landlord-Corp (*Merits Decision* at para. 42(8));
>
> f) Despite the fact that Ms. Song claimed rent payments continued, Ms. Song failed to maintain any accounting as to what had been done with those payments (*Merits Decision* at para. 42(9));

g) Although perhaps eventually causing Eman to make its rent payments as noted above, Ms. Song was secretly and misleadingly taking these payments (almost immediately) out of the bank account and had been depositing only the portion (into CUA) needed to cover recurring expenses such as mortgage and condo fees, failing to maintain any accounting of the remaining funds (*Merits Decision* at para. 42(12));

h) When Ms. Lin became concerned about the missing funds, and in the absence of any explanation from Ms. Song, Ms. Lin notified Ms. Song that she had opened a bank account with RBC in order to protect the funds which required dual signatures in order for the money to be drawn. Ms. Song immediately proceeded to attend the RBC branch and made a unilateral attempt to obtain the money, caused a physical altercation with a bank employee, following which RBC asked Ms. Lin to close the account (*Merits Decision* at para. 19-20);

i) Ms. Song unilaterally and without notice took steps to advertise the condo for rent and did not consult with or attempt to involve Ms. Lin in the process (*Merits Decision* at para. 42(11));

j) After the within proceeding was filed, and despite clear filing deadlines, the Respondents failed to file a timely Notice of Contest. The Applicants proceeded to file a motion for summary disposition. Eight days later, the Respondents filed their Notice of Contest, forcing the Applicants to withdraw their motion (*Adjournment Decision* at para. 7);

k) The Respondents again failed to comply with filing deadlines for affidavits and submissions, causing the Applicants to prepare to proceed with the proceeding on an uncontested basis (*Adjournment Decision* at para. 8);

l) The Respondents, then, just two clear days before the uncontested hearing was scheduled to be heard, filed a motion to adjourn, despite Ms. Song's former counsel advising that they should seek an adjournment five days earlier. This delay left the Applicants in an "untenable position" (*Adjournment Decision* at paras. 1, 16-17);

m) Despite granting the above-noted adjournment, Justice Brothers noted that the Respondents provided no affidavit evidence to adequately explain the repeated failures to meet clear filing deadlines – therefore concluding the blameworthy conduct could only be attributed to the Respondents (*Adjournment Decision* at para. 27).

[emphasis in original]

[23] Next, the Applicant referenced the following as constituting examples of Ms. Song's misconduct during the course of litigation:

> 33. The further findings of fact made in relation to the Respondents' misconduct during the course of litigation includes the following:
>
> a) Raising invalid and clearly unfounded legal issues in their written submissions, not included in the Respondents' pleadings, such as breaches of fiduciary duty by Ms. Lin, requests that the Court "pierce the corporate veil" in relation to Ms. Lin and Zyta (not a party in the within proceeding), a suggestion that piercing Zyta's corporate veil was justified pursuant to an assertion of the oppression remedy, and vague requests for various forms of financial redress and/or set off in relation to monies claimed to be owed to the Respondents (*Merits Decision* at para. 50);
>
> b) The Respondents' position in this matter was "amorphous and shifting". Although the Respondents' Notice of Contest did not concede to the Applicants' request for winding up, the Respondents proceeded to *admit* that a wind up was necessary, and that Ms. Song wished to purchase Ms. Lin's 50% shareholding in Landlord-Corp, but only once the trial commenced. The Applicants had previously made numerous attempts to obtain the necessary information to facilitate an option for Ms. Song to purchase Ms. Lin's shareholdings on a fair market basis prior to trial. However, this was not possible because Ms. Song was "exceedingly anxious to cloak the affairs of that company in secrecy" (*Merits Decision* at para. 39);
>
> c) Despite Ms. Song's claim that she caused Eman's rent payments to continue, Ms. Song failed to maintain any accounting as to what had been done with those payments, and did not dispute the assertion that both the BMO and CUA accounts contained essentially nil balances (*Merits Decision* at para. 42(9));
>
> d) Knowing that the Applicants were raising issues of misappropriation of funds throughout the entire litigation process, Ms. Song refused to provide accounting for the funds at issue. Ms. Song instead, during cross-examination, referenced a Louis Vuitton box of cash sitting on her counsel's table and claimed that all of the missing funds were there, however she refused to quantify the amount contained in the box. This development was a shock to Your Lordship, Applicants' counsel, and even her own counsel, causing Your Lordship to direct a recess for counsel to deal with the contents of the box (*Merits Decision* at para. 21-22);

e) Ms. Song was not forthcoming regarding the Louis Vuitton box contents. After it was counted, it was found to contain less than 50% of the missing funds (later deemed to be $25,078.49). Moreover, Respondents' counsel later stated, "The 11,900… was an arbitrary figure that reflected some of the funds collected as residue less all the liability payments" (*Merits Decision* at para. 37; *Accounting Decision* at para. 17);

f) The Respondents' affidavit evidence in the hearing on accounting was filed late, contained exhibits which were not individually identified, were not deemed to be "true and accurate copies" of what they purported to be, and were incomplete (among other things) (*Accounting Decision* at para. 6);

[emphasis in original]

[24] Finally, the following examples are provided of what the Applicants say is post-hearing conduct worthy of censure:

34. The Respondents' post-hearing misconduct includes, but is not limited to the following:

a) Ms. Song sarcastically taunting Ms. Lin regarding the financial burden of these proceedings forcing Ms. Lin to sell her home [Blades Affidavit para. 30-31];

b) Attempting to re-litigate issues already decided by Your Lordship with Valor during the CBV share valuation process, such as raising historical October 2021 rent payment issues that contradicted the *Accounting Decision*, and also raising new issues of Nova Scotia Power expenses that contradicted Ms. Song's earlier evidence at the hearing [Blades Affidavit para. 11-12];

c) Taking the frankly bizarre position that your Lordship's *Accounting Decision* should be withheld from Valor for the purpose of valuation [Blades Affidavit para. 10];

d) Delaying the payment of monthly accountings directed by Your Lordship [Blades Affidavit para. 9];

e) Unilaterally incurring extraordinary and unauthorized costs on behalf of Landlord-Corp [Blades Affidavit para. 13].

[emphasis in original]

[25] Much of the misconduct on the part of Ms. Song, which is said to have occurred before the litigation commenced, has been outlined in the Merits Decision itself. Reference was made therein to the new bank account which was set up by

the female Respondent with Credit Union Atlantic, which led to what was essentially a "shell game" being played with the financial receipts of Landlord Corp (*MD, para. 42(4)*). Ms. Song's refusal, for a time, to cause Eman to pay any rent to Landlord Corp while nonetheless retaining full possession of the corporate premises (*MD, para. 42(5)*); a lack of accounting with respect to rent payments (*MD, para. 42 (9)*); Ms. Song's attendance at RBC demanding funds which Ms. Lin had deposited for the benefit of Landlord Corp (and which required both of their signatures to withdraw) and the ensuing physical altercation at the bank (*MD, paras. 19 – 20)*); and the factors that led up to the Adjournment Decision, have all been earlier referenced.

[26] Much of the misconduct contemporaneous with the hearing itself has also been the subject of earlier comment. Included in such conduct has been those factors to which I referred as exemplifying Ms. Song's "amorphous and shifting" behaviour, which included a concession, at the Merits Hearing, that the winding up was necessary, after having denied it up to that point, and that she was prepared to purchase Ms. Lin's shares as an alternative. This was notwithstanding her attempts to "cloak the affairs of [the] company in secrecy" and withholding information necessary to make a determination of the fair market value of those shares (*MD, para. 39*); her failure to identify what had been done with the missing funds from Landlord Corp, even when asked the question on cross-examination, and initially attempting to suggest that they were all contained in the Louis Vuitton box that Ms. Song had brought with her (*MD, paras. 21 – 22*); and the fact (as it turned out) that the $11,900 actually in the box amounted to less than half what was subsequently determined to be missing from the company (*MD, para. 37*; *Accounting Decision ("AD"), para. 17*).

[27] While being mindful of what the Applicants say constituted the specifics of the post hearing misconduct on the part of Ms. Song, I am not inclined to attribute much weight to them. They do not form part of an affidavit submitted by Ms. Lin herself, but rather appear in the affidavit of her counsel. Moreover, even if the evidence had been given by Ms. Lin herself, since all proceedings subsequent to the Merits Decision were conducted entirely on the basis of written submissions by counsel, they have not been tested by cross-examination.

[28] In addition, some of the complaints raised by the Applicants in relation to conduct prior to the hearing and contemporaneous with it, are more properly considered under the rubric of costs, with which I will deal below.

[29] I am also mindful of what I said in relation to Ms. Song's conduct in the Merits Decision:

> [35] [Ms.] Song's demeanour on the stand, under cross-examination, was suggestive of one who feels completely justified and righteous in having taken the steps that she did. Despite her legal representation, she did not seem to have any conception of the difference between herself as a person, and her rights (and obligations), as well as those of Lin, as shareholder and director of a company.
>
> [36] In particular, she simply did not appear to understand that it was not right to take assets owned by the company, and/or that the company was a legal entity separate and apart from herself, an entity in which Lin also has an interest, as a fellow shareholder and director.
>
> [emphasis added]

[30] With all that having been said, it is nonetheless the case that Ms. Song has, at various times, appeared evasive and vindictive in her dealings with Ms. Lin and, by extension, Landlord Corp itself. Despite being represented by legal counsel, she has been largely impervious to the attempts which the Court has made to correct (or even moderate) her behavior throughout these proceedings.

[31] I am mindful that Ms. Lin has not pled general damages. Her objective at all times has been the statutory relief available under the CWUA, together with ensuring that all monies properly due to Landlord Corp were accounted for and repaid. In the specific circumstances of this case, counsel for the Respondents has asked that the Court allow Ms. Song, after all of this, to end her involvement with Ms. Lin, and acquire the latter's 50% interest of Landlord Corp (thereby obtaining all of the issued and outstanding shares in the corporate Applicant) merely by paying the fair market value of those shares.

[32] Counsel for the Applicants argues that such a result would provide absolutely no deterrent to the high-handed and oppressive behaviour (to say nothing of the dishonesty with respect to the missing funds) that Ms. Song has displayed throughout, nor would it provide any disincentive to the repetition of such behaviour in the future.

[33] This is an argument with which the Court has some sympathy. However, I am not (quite) satisfied that Ms. Song's actions were totally actuated by malice. I have some doubt, notwithstanding the fact that she was represented by counsel (albeit different counsel) throughout, as to whether she ever came to the realization

of how her interests were interrelated with those of Ms. Lin and/or Landlord Corp. With some hesitation, I conclude that her actions did not rise to the standard, set out in the case law, to be met preliminary to an award of punitive damages. Her actions, however, will be considered globally, when the issue of costs is addressed below.

C. Who bears responsible for the Valuation Expenses?

[34] Ms. Song ultimately agreed with the Applicants (albeit, only once the parties were in the midst of the hearing) that Landlord Corp needed to be wound up. She requested that the Court exercise its discretion, conferred by the CWUA (s. 6(3)), to allow her to purchase Ms. Lin's interest in the company, as an alternative to a winding up. The Court acceded to her request (*MD, para. 43*).

[35] But for Ms. Song's request, the Valuation Expenses would not have been incurred. Consequently, it would not be fair or equitable, in the circumstances, to apportion all or some of that expense to any of the other parties. Nor is it appropriate that Landlord Corp be called upon to fund the acquisition of information necessary to the purchase of its own shares.

[36] The Valuation Expenses are part of the costs to be incurred by the provision to Ms. Song of the option which she requested. Ms. Song will be solely responsible for the Valuation Expenses, whether or not she ultimately follows through with the purchase of Ms. Lin's shares.

D. What is an appropriate award of costs, and to whom?

[37] Predictably, the Applicants seek their costs. More precisely, the Applicant, Ms. Lin, seeks her costs, as any payment of costs awarded to Landlord Corp would serve no purpose, given that Ms. Song's intention is to purchase the former's shareholding interest in the company, thereby assuming 100% ownership of same. Ms. Lin also reminds the Court that it is she, alone, who has borne all of the legal expense on behalf of both herself and Landlord Corp, to date.

[38] The CWUA itself contains some provisions which relate to costs. They are outlined below:

> Consequences
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> 9 …
>
> (e) all costs, charges and expenses properly incurred in the winding up of a company under this Act, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims. R.S., c. 82, s. 9.
>
> …
>
> Taxation of costs
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> 63 (1) The costs of proceedings under this Act shall be taxed and allowed according to the law relating to costs and fees.
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> Petition
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> (2) An application to the Court for the winding up of a company under this Act shall be by petition, and the petition may be presented by the company, or by any contributory or contributories, or shareholder or shareholders, or member or members of the company.
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> Powers on hearing
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> (3) Upon hearing the petition, the Court may dismiss the same with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make an interim order or any other order that it deems just.

[39] Much of the "law relating to costs and fees" (s. 63(1) above) has been codified in CPR 77. Some of the more important principles enshrined in that Rule include these:

> 77.01 Scope of Rule 77
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> (1) The court deals with each of the following kinds of costs:
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> (a) party and party costs, by which one party compensates another party for part of the compensated party's expenses of litigation;
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> (b) solicitor and client costs, which may be awarded in exceptional circumstances to compensate a party fully for the expenses of litigation;
>
> (c) fees and disbursements counsel charges to a client for representing the client in a proceeding.
>
> (2) Costs may be ordered, the amount of costs may be assessed, and counsel's fees and disbursements may be charged, in accordance with this Rule.
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> 77.02 General discretion (party and party costs)
>
> (1) A presiding judge may, at any time, make any order about costs as the judge is satisfied will do justice between the parties.

…

77.03 Liability for costs

(1) A judge may order that parties bear their own costs, one party pay costs to another, two or more parties jointly pay costs, a party pay costs out of a fund or an estate, or that liability for party and party costs is fixed in any other way.

(2) A judge may order a party to pay solicitor and client costs to another party in exceptional circumstances recognized by law.

(3) Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise.

(4) A judge who awards party and party costs of a motion that does not result in the final determination of the proceeding may order payment in any of the following ways:

(a) in the cause, in which case the party who succeeds in the proceeding receives the costs of the motion at the end of the proceeding;

(b) to a party in the cause, in which case the party receives the costs of the motion at the end of the proceeding if the party succeeds;

(c) to a party in any event of the cause and to be paid immediately or at the end of the proceeding, in which case the party receives the costs of the motion regardless of success in the proceeding and the judge directs when the costs are payable;

(d) any other way the judge sees fit.

(5) A judge may order that costs awarded to a party represented by counsel with Nova Scotia Legal Aid or Dalhousie Legal Aid be paid directly to the Nova Scotia Legal Aid Commission or Dalhousie Legal Aid Service.

…

77.06 …

(3) Party and party costs of a motion or application in chambers, a proceeding for judicial review, or an appeal to the Supreme Court of Nova Scotia must, unless the presiding judge orders otherwise, be assessed in accordance with Tariff C.

77.07 Increasing or decreasing tariff amount

(1) A judge who fixes costs may add an amount to, or subtract an amount from, tariff costs.

(2) The following are examples of factors that may be relevant on a request that tariff costs be increased or decreased after the trial of an action, or hearing of an application:

(a) the amount claimed in relation to the amount recovered;

(b) a written offer of settlement, whether made formally under Rule 10 Settlement or otherwise, that is not accepted;

(c) an offer of contribution; (d) a payment into court;

(e) conduct of a party affecting the speed or expense of the proceeding;

(f) a step in the proceeding that is taken improperly, abusively, through excessive caution, by neglect or mistake, or unnecessarily;

(g) a step in the proceeding a party was required to take because the other party unreasonably withheld consent;

(h) a failure to admit something that should have been admitted.

…

77.08 Lump sum amount instead of tariff

A judge may award lump sum costs instead of tariff costs.

[40] Then, there are the Tariffs, which are found at the end of CPR 77. The relevant portions are reproduced below:

TARIFFS OF COSTS AND FEES DETERMINED BY THE COSTS AND FEES COMMITTEE TO BE USED IN DETERMINING PARTY AND PARTY COSTS

In these Tariffs unless otherwise prescribed, the "amount involved" shall be

(a) where the main issue is a monetary claim which is allowed in whole or in part, an amount determined having regard to

(i) the amount allowed,

(ii) the complexity of the proceeding, and

(iii) the importance of the issues;

(b) where the main issue is a monetary claim which is dismissed, an amount determined having regard to

(i) the amount of damages provisionally assessed by the court, if any,

(ii) the amount claimed, if any,

(iii) the complexity of the proceeding, and

(iv) the importance of the issues;

(c) where there is a substantial non-monetary issue involved and whether or not the proceeding is contested, an amount determined having regard to

(i) the complexity of the proceeding, and

(ii) the importance of the issues;

(d) an amount agreed upon by the parties.

TARIFF A

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs on a Decision or Order in a Proceeding

In applying this Schedule the "length of trial" is to be fixed by a Trial Judge.

The length of trial is an additional factor to be included in calculating costs under this Tariff and therefore two thousand dollars ($2,000) shall be added to the amount calculated under this tariff for each day of trial as determined by the trial judge

Amount Involved	Scale 1 (-25%)	Scale 2 (Basic)	Scale 3 (+25%)
Less than $25,000	$ 3,000	$ 4,000	$ 5,000
$25,000-$40,000	4,688	6,250	7,813
$40,001-$65,000	5,138	7,250	9,063
$65,001-$90,000	7,313	9,750	12,188
$90,001-$125,000	9,188	12,250	15,313
$125,001-$200,000	12,563	16,750	20,938
$200,001-$300,000	17,063	22,750	28,438
$300,001-$500,000	26,063	34,750	43,438
$500,001-$750,000	37,313	49,750	63,188
$750,001-$1,000,000	48,563	64,750	80,938
more than $1,000,000	The Basic Scale is derived by multiplying the "amount involved by 6.5%.		

…

TARIFF C

Tariff of Costs payable following an Application heard in Chambers by the Supreme Court of Nova Scotia

For applications heard in Chambers the following guidelines shall apply:

(1) Based on this Tariff C costs shall be assessed by the Judge presiding in Chambers at the time an order is made following an application heard in Chambers.

(2) Unless otherwise ordered, the costs assessed following an application shall be in the cause and either added to or subtracted from the costs calculated under Tariff A.

(3) In the exercise of discretion to award costs following an application, a Judge presiding in Chambers, notwithstanding this Tariff C, may award costs that are just and appropriate in the circumstances of the application.

(4) When an order following an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amounts in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following factors:

(a) the complexity of the matter,

(b) the importance of the matter to the parties,

(c) the amount of effort involved in preparing for and conducting the application.

(such applications might include, but are not limited to, successful applications for Summary Judgment, judicial review of an inferior tribunal, statutory appeals and applications for some of the prerogative writs such as certiorari or a permanent injunction.)

Length of Hearing of Application	**Range of Costs**
Less than 1 hour	$250 - $500
More than 1 hour but less than ½ day	$750 - $1,000
More than ½ day but less than 1 day	$1,000 - $2,000
1 day or more	$2,000 per full day

…

[41] The Applicants argue that the costs provisions contained in the CWUA, although rarely interpreted, are broadly supportive of the position that Ms. Lin should receive full indemnity with respect to her costs associated with this Application. Specifically, CWUA s. 9(e) has been referenced, and it has been argued that it contemplates "that a party bringing an application to wind up the company should not be required to pay such costs, charges, and expenses properly incurred" (*Applicants' Brief, para. 49*). In fact, it will be recalled that the section provides that such costs and expenses, along with the liquidators' fees, would form a first charge upon the proceeds generated when the company is wound up. Section 63, as we have also seen, provides that the costs of an application under this Act shall be taxed according to the "law of costs and fees".

[42] That "law of costs and fees", including those portions of CWUA and CPR 77 earlier referenced, does not purport to fetter the Court's discretion in this regard. That discretion has an object: to do justice between the parties in the particular

circumstances of the case. The provisions contained in CPR 77, and in the Tariffs, simply guide the Court in the exercise of its discretion.

[43] With that said, the aim of the Tariffs is to make the exercise of awarding costs less arbitrary and, to some degree, more predictable. Because of this, the Tariffs should be followed unless, owing to the circumstances of the case at bar, it is necessary to depart from them in order to do justice between the parties.

[44] Sometimes, for example, the situations contemplated by the various Tariffs do not correspond well with the real nature of the Court proceeding in question. I am mindful of what our Court of Appeal said in *Armoyan v. Armoyan*, 2013 NSCA 136:

> [17] The tariffs deliver the benefit of predictability by limiting the use of subjective discretion. This works well in a conventional case whose circumstances conform generally to the parameters assumed by the tariffs. The remaining discretion is a mechanism for constructive adjustment that tailors the tariffs' model to the features of the case.
>
> [18] But some cases bear no resemblance to the tariffs' assumptions. A proceeding begun nominally as a chambers motion, signalling Tariff C, may assume trial functions, contemplated by Tariff A. A Tariff A case may have no "amount involved", other important issues being at stake. Sometimes the effort is substantially lessened by the efficiencies of capable counsel, or handicapped by obstructionism. The amount claimed may vary widely from the amount awarded. The case may assume a complexity, with a corresponding workload, that is far disproportionate to the court time, by which costs are assessed under provisions of the Tariffs. Conversely, a substantial sum may turn on a concisely presented issue. There may be a rejected settlement offer, formal or informal, that would have saved everyone significant expense. These are just examples. Some cases may combine several such factors to the degree that the reflexive use of the tariffs may inject a heavy dose of the very subjectivity – *e.g.* to define an artificial "amount involved" as Justice Freeman noted in *Williamson* – that the tariffs aim to avoid. When this subjectivity exceeds a critical level, the tariff may be more distracting than useful. Then it is more realistic to circumvent the tariffs, and channel that discretion directly to the principled calculation of a lump sum. A principled calculation should turn on the objective criteria that are accepted by the *Rules* or case law.

[45] In a nutshell, the female Applicant argues that she has had to carry the ball (so to speak) in order to protect Landlord Corp and, at the same time, advance her own interests. She argues that the necessity to do so arose entirely through the

extremely unreasonable and intractable approach taken by the female Respondent. For example, she cites the various instances of misconduct by Ms. Song which were enumerated and considered earlier in these reasons, stressing in particular her attempts to secrete funds that were actually the property of Landlord Corp, by opening a new account, and also attempting to take possession of residual funds which Ms. Lin had deposited at RBC, which required the signature of both women to withdraw them, and creating such a scene at the bank that RBC requested Ms. Lin to close out the account.

[46] Equally problematic, it is argued, was Ms. Song's obstinacy in refusing various specific offers to settle, and /or resolution scenarios on the basis that the matter "needed to be litigated", only to acknowledge, through counsel, in the middle of the hearing that led to the Merits Decision, that Landlord Corp needed to be "wound up" after all, but that she was requesting an option to purchase Ms. Lin's shares under s. 6(3) of the CWUA (*Applicants' Post-Hearing Brief, para. 67(d)*). And then there was the whole (bizarre) business of the Louis Vuitton box, discussed earlier in these reasons, and in some of the other decisions, and her failure to observe almost every filing deadline stipulated by the Court in relation to the multiple proceedings and decisions required in order to conclude this matter.

[47] Ms. Lin asks the Court to consider the numerous attempts that she has made to resolve this matter privately, as well as the behaviour and attitude manifested by Ms. Song throughout, and award solicitor-client costs to her, on the basis that she ought never have had to bear legal expense at all, let alone expense of the magnitude which has been incurred.

Offers to Settle

[48] The female Applicant (in her post-hearing submissions) has summarized her attempts to settle this matter in the following terms:

> 75. The following is a summary of the multiple, repeated and wide-ranging efforts made by Ms. Lin to settle this matter and avoid litigation proceedings:
>
> a) **June 17, 2022**: Long before litigation commenced, and when the relationship breakdown began, Ms. Lin made offers to settle all issues including costs and convey all of her interest in Landlord-Corp to Ms. Song on terms equating to an all-including lump sum of between $64,000 - $89,000 [Blades Affidavit at paras. 20-21]. Such offers were hugely more favourable to Ms. Song than the outcome

now resulting, and would have entirely avoided the need for any litigation proceeding.

b) **June 21, 2022**: Ms. Lin repeated the offers to settle made on June 17, 2022, and went further to offer a third simplistic option of an all-inclusive $100,000 payment to settle all issues including costs and convey her interest to Ms. Song [Blades Affidavit at para. 23]. Again, such offers were hugely more favourable to Ms. Song than the outcome now resulting.

c) **June 21-July 25, 2022**: Ms. Lin reiterated the offers to settle made on June 21, 2022 on numerous occasions to Ms. Song [Blades Affidavit at para. 24-28];

d) **November 2022**: Ms. Lin reiterated the offer to have an updated appraisal of the condo unit performed, and settling on the basis of Ms. Song buying out Ms. Lin's 50% interest in the equity of the condo unit, which Ms. Song rejected saying that the concept of having an updated appraisal of the condo unit performed was "*pointless*" and that she preferred to have the Court resolve the issues [Blades Affidavit at para. 30].

e) **February 17, 2023**: Ms. Lin offered to settle all issues including costs and convey her interest to Ms. Song for an all-inclusive sum of $90,000, or alternatively, a liquidation of the company's assets with surplus proceedings split evenly after a $20,000 costs reimbursement [Blades Affidavit at para. 29]. Again, clearly more favourable to Ms. Song than the outcome now resulting.

f) **May 16, 2023**: Ms. Lin made an offer during the hearing of this proceeding to settle all issues including costs and convey her interest to Ms. Song for an all-inclusive sum of $150,000 [Blades Affidavit at para. 32];

g) **February 7-8, 2024**: Ms. Lin made a post-trial offer of an all-inclusive sum of $198,353.73, including costs and prejudgment interest [emphasis added] [Blades Affidavit at para. 33].

[remaining emphases in original]

[49] Ms. Song, in her post-hearing brief, counters with:

23. The Applicants' affidavit and brief are far from complete on this point. We summarize as follows:

a. Paragraph 21 of the Blades' Affidavit referring to his communication of June 14, 2022 was, in fact, qualified by his email of June 17, 2022, which actually represented the offer of settlement as being

$100,000.00, and, to a party minimally educated in this matters, not the $64,000.00 - $89,000.00 as stated in the Blades Affidavit;

b. The offer of June 24, 2022, noted in Exhibit 22 of the Blades Affidavit, made offers of three possibilities, with another reference to $100,000.00;

c. Paragraphs 32 and 33 of the Blades Affidavit were adopted by Ms. Song, and represent offers of close to 175% and 233% of the value of Ms. Lin's interest after expert valuation;

d. We note that the offer of $120,000.00 made by the Respondents represents an offer of 141% of Ms. Lin's interest.

24. In context, virtually every offer made by the Applicants exceeded the value of Ms. Lin's interest by at least 17% (based on the $100,000.00) and was as high as 134% above value. In fact, the most recent offer made by the Respondents exceeded Ms. Lin's interest by 41%.

25. Based on the "amount involved", or the value of Ms. Lin's interest, the Applicants did [not] make any offer of settlement that was remotely reflective of the actual value and exceeded the value by up to a whopping 133%. In contrast, the Respondents made a very fair offer that include[ed] an additional 41% above Ms. Lin's value, which was rejected.

26. The actions of the Applicants in reaching the final appraisal must bear scrutiny as well. …

[50] There were no further particulars provided in paragraph 26 whereby the Court could ascertain the point which the Respondents were endeavouring to make therein. Given the thrust, however, of paragraphs 23 to 25, it is felt necessary to consider what constitutes a "more favourable" or "less favourable" outcome, when offers to settle are considered.

[51] Recall that CPR 10 contains the guidelines with respect to the consideration of offers to settle. I reproduce the most pertinent portions of the Rule below:

10.01 Scope of Rule 10

(1) This Rule applies to a settlement of a proceeding or of a claim in a proceeding, and includes both of the following:

(a) a formal way to make an offer that may affect how costs are awarded;

(b) judge-assisted alternative dispute resolution that is voluntary and flexible.

(2) This Rule does not cover approval of a settlement by a judge, such as that provided for in Rule 36 - Representative Party.

(3) Nothing in this Rule makes a judge a compellable witness, or diminishes judicial immunity from civil claims.

(4) **…**

10.03 Settlement offers and costs

A judge who determines costs may take into consideration a written offer of settlement made formally under this Rule or otherwise, unless the offer was made at a settlement conference or under an agreement that the offer would not be admissible in relation to costs.

…

10.05 Formal offer to settle an action

(1) A party who makes a formal offer to settle under this Rule 10.05 may take advantage of the applicable provisions for costs in Rules 10.08 and 10.09.

(2) A party may make a formal offer to settle an action, or a counterclaim, crossclaim or third party claim in an action, by delivering an offer to settle.

(3) A formal offer to settle must contain the standard heading of the action, be entitled in one of the following ways, and be dated and signed:

(a) "Offer to Settle by Claimant (Monetary)", if it offers to settle entirely on the basis that money is paid to the party who makes the offer;

(b) "Offer to Settle by Claimant (Non-monetary)", if it offers to settle on terms that include a requirement the other party do, or refrain from doing, something in satisfaction of a non-monetary claim;

(c) "Offer to Settle by Person Claimed Against (Monetary)", if it offers to settle entirely on the basis that money is paid to the other party by the party who makes the offer;

(d) "Offer to Settle by Person Claimed Against (Non- monetary)", if it offers to settle on terms that require the party making the offer to do, or refrain from doing, something in satisfaction of a non-monetary claim made by the other party.

(4) The offer must include terms that would settle all claims in the proceeding between the party making the offer and the party to

whom it is made, and the term that would settle costs must provide for one of the following:

(a) payment on acceptance of an amount stated in the offer;

(b) payment of an amount for costs to be determined by a judge;

(c) an option for the other party to choose between a stated amount for costs or determination by a judge.

(5) The offer must also contain both of the following terms:

(a) it is open for acceptance until it is withdrawn or the trial begins;

(b) it may be accepted only by delivery of a written acceptance to the party making the offer.

10.06 Withdrawal or expiry of formal offer to settle

(1) A party who makes a formal offer to settle may withdraw the offer at any time by delivering to the other party a written withdrawal.

(2) A formal offer to settle remains open for acceptance although the other party makes an offer to settle on other terms.

…

10.09 Determining costs if formal offer not accepted

(1) A party obtains a "favourable judgment" when each of the following have occurred:

(a) the party delivers a formal offer to settle an action, or a counterclaim, crossclaim, or third party claim, at least one week before a trial;

(b) the offer is not withdrawn or accepted;

(c) a judgment is given providing the other party with a result no better than that party would have received by accepting the offer.

(2) A judge may award costs to a party who starts or who successfully defends a proceeding and obtains a favourable judgment, in an amount based on the tariffs increased by one of the following percentages:

(a) one hundred percent, if the offer is made less than twenty-five days after pleadings close;

(b) seventy-five percent, if the offer is made more than twenty-five days after pleadings close and before setting down;

(c) fifty percent, if the offer is made after setting down and before the finish date;

(d) twenty-five percent, if the offer is made after the finish date.

(3) A judge may award costs in one of the following amounts to a party who defends a proceeding, does not fully succeed, and obtains a favourable judgment:

(a) the amount that the tariffs would provide had the party been successful, if the offer is made less than twenty-five days after pleadings close;

(b) seventy-five percent of that amount, if the offer is made more than twenty-five days after pleadings close and before setting down;

(c) sixty percent of that amount, if the offer is made after setting down and before the finish date;

(d) nothing, if the offer is made after the finish date.

…

[emphasis added]

[52] It is my view that, in considering offers to settle, I must look at more than simply the appraised value that ended up being assigned to Ms. Lin's shareholding interest in Landlord Corp ($85,250). In particular, I agree with the Applicants' position that I must look at other things, including the $5,250 in pre-hearing costs awarded by Justice Brothers (*Adjournment Decision, para. 42*). I must also have regard to the necessity for Ms. Song to account for $41,006.50 (Accounting Decision and *Blades Affidavit, para. 13*) to date, as well as the additional funds noted earlier in these reasons, and the fact that I have also determined earlier in these reasons that Ms. Song is also personally responsible for the $21,315.25 Valuation Expenses.

[53] The Respondents have argued:

> 27. With respect to the prejudgement interest paragraph 7 / Exhibit "A" and paragraph 10 / Exhibit "D". In each case, the Applicants engage in frivolous formality in reacting to suggestions made by the Respondents for the expedient and cost-conscious resolution of the outcome. In reviewing the Bill of Costs, the contrast with that of the Respondents' counsel is clear and certainly demonstrates

> little regard for the value to the client. In short the legal bill is approximately 11% greater than the actual value of the shares at stake.
>
> 28. In light of the foregoing, it appears that there is mixed success to a degree in this litigation. Certainly, the Applicants were successful, but provided offers of settlement that essentially guaranteed that the matter would be litigated. On the other hand, the Respondents acted in a manner that was somewhat irresponsible, although it was not to the level of deserving punitive damages. Balanced against that, however, appears to be relatively clear misconduct by Ms. Lin (and her husband) in providing misleading evidence to her counsel, and unnecessarily complicated efforts to obtain the ultimate valuation.

[54] Once again, I have difficulty with the final sentence in paragraph 28, and in particular, what is argued as constituting the "relatively clear misconduct by Ms. Lin." In any event, I would hesitate to speculate (as it appears I am being invited to do) about the nature of communications between Ms. Lin and her counsel, which would be subject to solicitor-client privilege.

[55] The Applicants' legal fees and disbursements, which appear to have been borne entirely by Ms. Lin, out of her own resources (*Blades Affidavit, para. 14*) amounted to $94,573.85 (*Blades Affidavit, para. 15 and tab 19*). They were incurred at a rate of $165 per hour respect to the work performed by Ms. Levy, and $360 – $375 per hour in relation to work done by Mr. Blades. The hours have been broken down, and I see nothing out of line with respect to either the total hours spent on the work, the explanation (in the invoices) of the work which was done, or the hourly rates charged by counsel.

[56] There is one consideration, however, which is also critical to the allocation of costs, and it was not addressed by either side. It is the role of the $5,250 already awarded to Ms. Lin by Justice Brothers in the aftermath of the Adjournment Decision. In effect, some of the work and cost reflected in Mr. Blades' Affidavit (Tab 19) has already been the subject of an earlier award of costs.

[57] The adjournment hearing itself was held on March 14, 2022. Written submissions on costs were delivered to the Court on March 22, April 6, and April 11, 2023. The decision on costs was handed down on April 12, 2023.

[58] While it is difficult to precisely identify the swath of time that is associated with this award, reference to the work performed in the entries on the various bills, and the time frames associated with the work, makes the parameters somewhat clear.

[59] It appears to me that these parameters are provided by the work referenced in Invoice #123210, dated March 31, 2023, in the total amount of $13,203.73, including HST, and the entries in its successor, Invoice #125416, dated May 30, 2023, up to and including the April 12, 2023 entry on the latter (by Ms. Levy) "Review of costs decision, telephone conference with Mr. Blades regarding same; Review of email correspondence regarding same."

[60] So, we begin with the total billed costs and disbursements ($94,573.85) inclusive of HST. We subtract from that figure the costs incurred in the preparation for the hearing which had been scheduled for March 15, 2023, which was adjourned on March 14, 2023. This work has already been the subject of an award of costs. So, $94,573.85 – $13,203.73 (Invoice #124210) = $81,370.12.

[61] From the $81,370.12, we subtract the time represented by the first five entries on Invoice #125416. Comulatively, they amount to one hour expended by Mr. Blades, and one hour by Ms. Levy. So, $375 + $175, plus the HST associated therewith, must also be deducted, yielding $81,370.12 - $649.00 = $80,721 in costs. This is the real costs total under consideration in this decision.

[62] On the basis of the above, I conclude that, first, having regard to the matter holistically, and, in particular, the history of the offers to settle and when they were made, essentially all of them were more favourable to Ms. Song than the position in which she currently finds herself post-litigation. In particular, I have regard to the earlier referenced offers made on February 17, 2023, prior to the hearing which led to the Merits Decision, and the offer made on May 16, 2023 (during the hearing of the Merits Decision).

[63] The above is not determinative, but is certainly an important factor in the consideration of whether an award of solicitor-client costs is merited. Other factors were considered in *Smith's Field Manor Development Ltd. v. Campbell*, 2001 NSSC 44; aff'd 2002 NSCA 104, where Justice Hood had occasion to canvass the authorities on the topic:

> [480] It is not disputed that solicitor-client cost awards are made only in rare and exceptional circumstances. In *Coughlan et al. v. Westminer Canada Limited, et al* (1994), 127 N.S.R. (2d) 241, the Court of Appeal upheld the decision of Nunn, J., the trial judge, with respect to costs. The Court of Appeal quoted from his decision at para. 170:

> The plaintiffs in each of these actions are entitled to recover costs and on a solicitor client basis. The character of the allegations involved here, fraud and dishonesty, and the circumstances here of the length of time of the outstanding allegations, their national publicity, the length and extent of the pre-trial processes and the trial itself, the findings I have made regarding injury to reputations and the lack of any real proof of fraud or dishonesty all contribute to making this a proper situation to award costs on a solicitor client basis as, in my opinion, this does constitute one of those 'rare and exceptional' cases wherein such awards are, and should, be made.

[481] In The Law of Costs, Orkin, 2nd Edition, the authors say at pp. 2-144-146:

> An award of costs on the solicitor-and-client scale, it has been said, is ordered only in rare and exceptional circumstances to mark the court's disapproval of the conduct of a party in the litigation. The principle guiding the decision to award solicitor-and-client costs has been enunciated thus:
>
> > [S]olicitor-and-client costs should not be awarded unless there is some form of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceedings, which make such costs desirable as a form of chastisement.
>
> The Supreme Court of Canada has approved the following statement of principle:
>
> > Solicitor-and-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties.
>
> …
>
> At the same time, it has been said that an award of solicitor-and-client costs is not reserved for cases where the court wishes to show his disapproval of oppressive or contumelious conduct.
>
> There is, as well, a factor frequently underlying such an award, although not necessarily expressed, namely, that the circumstances of the case may be such that the successful party ought not to be put to any expense for costs.... As well, an award of costs on the solicitor-and-client scale is an important device that the courts may use to discourage harassment of another party by the pursuit of fruitless litigation.

[482] McLachlin, J. (as she then was) of the Supreme Court of Canada said in *Young. v. Young* (1984), 108 D.L.R. (4th) 193 (S.C.C.) at p. 284:

> Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the

> parties. Accordingly, the fact that an application has little merit is no basis for awarding solicitor-client costs; nor is the fact that part of the cost of the litigation may have been paid for by others.

[483] In *Leung v. Leung*, [1993] B.C.J. No. 2909 (B.C.S.C.), solicitor-client costs were also considered. In that case, Esson, C.J.S.C. defined "reprehensible" to include conduct which is scandalous, outrageous or constitutes misbehaviour; but it also includes milder forms of misconduct. He said it means simply "deserving of reproof or rebuke."

[484] Pugsley, J.A., in *Brown v. Metropolitan Authority*, [1996] N.S.J. No. 146 (N.S.C.A.) referred to The Concise Oxford Dictionary (1990) definition of reprehensible as "deserving censure or rebuke" (para. 96).

[485] In Orkin, the author says at para. 219 beginning at p. 2-146:

> The exercise of discretion must be based on relevant factors, for example, the conduct of the litigation, and not on otherwise unrelated conduct. Orders of this kind have been made where a litigant's conduct has been particularly blameworthy, for example, where there were allegations of criminality, arson; fraud or impropriety either unproven or abandoned at trial; particularly when the allegations are made against professional persons carrying out their professional duties; .... Solicitor-and-client costs were awarded where a party brought wanton and scandalous charges; or allegations of perjury; ... or dishonesty; ... or deceit, conspiracy and breach of fiduciary duty; ....

[64] The Applicants have referenced *McInnis v. Stone*, 2016 NSSC 212, wherein Justice Pickup adverted to the fact that the Applicant therein ought not to have been required to incur any expense to protect his property, and stated:

> [12] This is one of those rare and exceptional circumstances where solicitor/client costs should apply. As I have said, despite being told they had no claim to Mr. McInnis's land at the time they purchased it, they did everything possible to take Mr. McInnis's lands, including preventing him accessing his lands. The Stones systematically advanced into his lands, then cobbled together legal arguments after the fact to justify their actions. Mr. McInnis should not be put to any expense for costs to defend himself and protest his property under these circumstances.

[65] I have also been referred to *Atlantica Mechanical Contractors Inc. v. Steve Tsimiklis Ltd., et al,* 2020 NSSC 76 ("*Atlantica*") and *Landry v. Kidlark,* 2019 NSSC 128 ("*Landry*"). In the former case, the Defendant's conduct attracting censure included an unreasonable refusal to admit certain facts, a refusal to comply with certain document productions, and flagrant breaches of trust provisions.

Justice Ann Smith, in making an award of solicitor-client costs to the Plaintiffs, concluded that they "should not have been put to any legal expense to recover trust fund monies that were rightfully theirs" (para. 251).

[66] In *Landry*, the Court concluded that the Respondent's misuse of the Court's time, and disrespect for previous decisions warranted solicitor-client costs. In so doing, it was noted:

> [24] Not only did Mr. Kidlark attempt to relitigate issues before Justice Murphy that had been decided by Justice Hood, but he has gone on to advance the very same arguments before me in this hearing. He has continued to make unsubstantiated allegations of misrepresentation and fraudulent misrepresentation against Mr. Landry and Ms. MacDonald. Disrespect for previous court decisions cannot be condoned. Mr. Kidlark's misuse of the court's time and unwarranted allegations against the Applicant and his counsel must be reflected in costs.

[67] Having considered these, and other authorities, I conclude as follows:

1. Solicitor-client costs are not routinely awarded. The Court only does so in rare and exceptional circumstances – those in which it is necessary to signify the Court's disapproval of the conduct of a party to the litigation;
2. Such costs are generally awarded where one of the parties engages in reprehensible, scandalous or outrageous conduct;
3. Reprehensible conduct may include misconduct deserving of censure or rebuke;
4. Such conduct may arise either during circumstances leading to the cause of action itself, or during the course of the proceedings; and
5. Circumstances in which the successful party ought not to have been put to any expense to assert their rights.

[68] As I said earlier, when considering whether or not to award punitive damages against Ms. Song, I had occasion to consider the comments which I made in relation to her (*Merits Decision*, paras. 35-36). In particular, I was uncertain as to whether her actions up to that point had been prompted by malice and/or her inability and/or her unwillingness to differentiate between her rights as a person, and her rights and obligations, as well the rights of Ms. Lin, as a shareholder and director of Landlord Corp.

[69] With that said, and while her actions might not have been wholly actuated by malice, they were certainly unreasonable, and I have noted that she was intractable in the extreme. Her stance, throughout, led to the need for the expenditure of exceedingly more by way of legal fees than ought to have been necessary. When I consider her actions throughout the entire course of these proceedings, including those actions after Ms. Song had the benefit of the Merits Decision, and the fact that she has had legal representation, on top of that, to guide her throughout these proceedings, I have concluded that her conduct, as a whole, while it did not rise to such a level as meriting an award of punitive damages, is nonetheless deserving of censure or rebuke.

[70] This included her conduct in hiding the cash receipts of Landlord Corp, her actions at RBC, her refusal to consider the winding up of Landlord Corp which persisted until the parties were in the middle of the very hearing itself, her refusal to accurately account for the missing monies in their totality until ordered to do so by the Court, and initially attempting to mislead the Court and the Applicants by suggesting that the $11,900 in the Louis Vuitton box was all of the money that she had removed from Landlord Corp. I have also considered all of the other instances of misconduct that have been discussed. Cumulatively, they have resulted in the necessity of four separate hearings (thus far) in order to bring finality to the parties' affairs. Ms. Song's refusal to accept offers to settle which would have left her in more favourable circumstances (cumulatively) than those in which she now finds herself and would have further obviated the need for Ms. Lin to have incurred much of the legal cost necessitated herein, is also a factor in this calculus.

[71] Indeed, Ms. Song now finds herself responsible to pay:

1. $85,250 – the cost of acquiring Ms. Lin's shares;
2. Approximately $41,000, including the $11,900 money from the Louis Vuitton box to Landlord Corp to account for the money that she removed from the corporate Applicant; plus
3. The additional funds noted in this decision (post August/September, 2024); and
4. The $21,300.25 in Valuation Expenses.

[72] Ms. Song's conduct, while it did not attract an award of punitive damages, has nonetheless been remarkable. I am persuaded that this is one of those rare and exceptional cases in which an award of solicitor-client costs is necessary to do

justice between the parties, and to censure the manner in which the female Respondent has conducted herself throughout.

[73] Since costs incurred leading up to the Adjournment Decision were not awarded on a solicitor-client basis, Ms. Lin will be nonetheless end up bearing some of that herself. This is reasonable in the circumstances. Consider that even if Ms. Song had been reasonable and completely up front with respect to her dealings with Ms. Lin and Landlord Corp from the outset, some legal expense would nonetheless have been incurred by Ms. Lin as her shares were purchased by Ms. Song.

[74] Ms. Lin is entitled, in these circumstances, to a solicitor-client or lump sum award of costs in relation to those legal fees that were not impacted by the award of costs by Justice Brothers following the Adjournment Decision.

[75] In the result, I conclude that an award of solicitor-client costs is necessary to do justice between the parties. Ms. Song shall pay costs to Ms. Lin in the amount of $80,721.00, inclusive of HST and other disbursements.

Conclusion

[76] The Respondents shall have 45 days from the date of the Order giving effect to this Decision within which to pay to Ms. Song the share option price of $85,250. I decline to award pre-judgment interest on this figure, because Ms. Song shall also be required to satisfy all other financial obligations imposed upon her as a result of this Decision (and the earlier ones) before Ms. Lin is obligated to transfer her interest in Landlord Corp.

[77] In the event that Ms. Song cannot or does not satisfy the conditions of the share purchase option outlined above, the parties are directed to contact the Court and the remaining specifics of the dissolution and wind up of Landlord Corp (if any) will be addressed.

Gabriel, J.