

CANADA / JUDGMENT

## Huang v. Meng

2020 BCSC 2097

### COURT

Supreme Court of British Columbia

### DECIDED

31 December 2020

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2020 BCSC 2097 Huang v. Meng

THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Huang v. Meng,

2020 BCSC 2097

Date: 20201231

Docket: S1911283

Registry: Vancouver

Between:

Wen Tao Huang also known as Tony Huang, Yu Zhi Peng also known as Daniel Peng and Yu Cong Peng also known as Lucas Peng

Plaintiffs

And:

Fei Meng also known as Scott Meng and Evilnut Creative Technology Ltd.

Defendants

Before: The Honourable Madam Justice Watchuk

Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

M. Fancourt Smith

P. Kressock

Counsel for the Defendants:

D. Chen

Place and Date of Summary Trial:

Vancouver, B.C.

July 14, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 31, 2020

## I. OVERVIEW

- [1] This is an application by the plaintiffs Wen Tao Huang ("Tony"), Yu Zhi Peng ("Daniel") and Yu Cong Peng ("Lucas") pursuant to Rule 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009. The plaintiffs seek judgment against the defendant Scott Meng ("Scott") for breach of alleged agreements to purchase the plaintiffs' shares in Evilnut Creative Technology Ltd. ("Evilnut" or the "Company"), a company of which Scott is the sole director and majority shareholder, and for an order compelling the Company to take the necessary steps to transfer the shares in accordance with the share purchase agreements.
- [2] Both suitability for summary trial and the substantive merits of the application are at issue.
- [3] As the parties were referred to by their counsel by their first names, for ease of reference to the materials, I will also do so.
- [4] The Notice of Civil Claim was filed on October 7, 2019, and the Response to Civil Claim was filed on November 25, 2019. Examinations for Discovery took place on February 18 and 24, 2020. The plaintiffs' summary trial Application was filed on March 9, 2020 and the defendants' Response was filed on May 29, 2020.
- [5] The plaintiffs claim that the parties made oral agreements that Scott would purchase their shares in the Company at a meeting with Scott, and then finalized the essential terms of the agreements in WeChat messages exchanged soon after, on October 16 and 17, 2017. They say that Scott made more than 50 payments to them pursuant to these agreements over a period of nearly two years, until he stopped paying.
- [6] The plaintiffs seek to recover from Scott the unpaid balances of amounts they say are owing to them from the alleged share purchase contracts, being \$125,689.54 for Daniel and Lucas' shares collectively, and \$109,575.87 for Tony's shares.
- [7] The plaintiffs submit that this matter is suited for summary trial. They say that there is sufficient evidence before the Court to find the facts as required, and that the amount, complexity, and cost all mitigate in favour of adjudicating the matter by summary trial.

- [8] The position of the defendants is set out in the Response to Civil Claim ("RCC"), the Application Response, affidavit evidence, and counsel's oral submissions.
- [9] In his RCC, Scott pleaded that there were no share purchase agreements. He also stated that the plaintiffs had made shareholder loans to the Company in the amounts of \$100,000 (Daniel and Lucas) and \$150,000 (Tony), and that the Company had fully repaid the loan from Daniel and Lucas by around 2018.
- [10] In his Application Response and at the trial, Scott abandoned the position that the plaintiffs had made shareholder loans to the company. In oral submissions and in the Application Response, he says:
- a) There were no binding share purchase agreements between Scott and the plaintiffs, as Scott intended for the plaintiffs to recover the value of their investments in the Company, and to see returns on those investments only if the Company made a profit (the "Profitability Condition);
  - b) The payments to plaintiffs were gratuitous only, as the plaintiffs gave no consideration to form a binding contract, being the transfer of shares; or alternatively, the consideration given by the plaintiffs was the promise of their friendship with Scott, which was withdrawn at the commencement of this litigation (the "Promise of Friendship");
  - c) If there were share purchase agreements, they are unenforceable as the parties did not follow the steps, processes and timelines for the transfer of shares as set out in the Shareholders Agreement;
  - d) If the Court finds any such binding share purchase agreements, they are between the plaintiffs and the Company, and not the plaintiffs and Scott; and
  - e) In the further alternative, payments made by the company to the plaintiffs toward the purchase price include amounts paid since 2016.
- [11] The defendants contest the suitability of this matter for summary trial. They say that there is insufficient evidence before the Court to find the facts as required, given conflicting evidence in affidavits on material issues such as credibility of the parties particularly regarding the Profitability Condition. The defendants also submit that the sum at issue, \$235,265.41, is substantial for a summary trial. Finally, the defendants submit that the cost of proceeding to a full trial, the urgency of the matter, and the prejudice likely to arise from the delay involved in bringing the matter to trial are minimal and thus favour the matter proceeding to a full trial.

## II. ISSUES

- [12] The issues to be determined by the Court are:
1. Is the matter suitable for determination by way of a summary trial?

2. If so, was there a binding agreement between the plaintiffs and Scott for the sale of their shares?
3. If not, was there an agreement with the Company for the sale of the plaintiffs' shares?
4. If there was an agreement, what are the amounts owing to the plaintiffs?

### III. tHE EVIDENCE

- [13] The evidence is found in the examinations for discovery of the parties which are relied upon, and the affidavits filed on this summary trial application, which include the WeChat messages between the parties.
- [14] Where the parties differ in the interpretation of the evidence, I will make the necessary findings of fact in the Discussion section below.

#### A. The Company and its shareholders

- [15] Evilnut is a software and web design company based in Vancouver that was incorporated in March 2014. Scott is the CEO and sole director of the Company. That the Company has four shareholders whose shareholdings are as follows is not in issue:

Scott

70 shares

Tony

10 shares

Daniel

10 shares

Lucas

10 shares

100 shares

- [16] Daniel and Lucas are brothers. Scott's affidavit evidence is that he came to know both Daniel and Lucas in university several years prior to the incorporation of the Company. Neither Daniel nor Lucas have ever worked for the Company.
- [17] Tony is a former employee of the Company. He joined the Company as a co-op student in or around January 2016, and from May 2017 to November 2017 worked for the Company on a full-time basis as a software developer and project manager.

**B. Daniel and Lucas' acquisition of shares**

- [18] There are minor differences in the parties' account of the history of Daniel and Lucas becoming shareholders. As the defendants have abandoned their position that the plaintiffs' investments were shareholder loans, the history is included for background.
- [19] In or around October 2014, Daniel and Lucas collectively paid \$40,000 to the Company to fund a video game development project that was underway. At the time, Scott was the sole shareholder in the Company.
- [20] Daniel's evidence is that Scott approached him and Lucas to solicit capital investment for the project.
- [21] Scott's evidence is that Daniel and Lucas were clients of the Company who had hired the Company to develop the project. When the project was low on funds, Scott and Daniel provided money to the Company to ensure that the project could continue. At some point afterwards, the parties agreed that Lucas and Daniel would also become investors in the Company.
- [22] At the time, the Company had only been incorporated for a few months. There were no detailed discussions about how the \$40,000 capital contribution should be characterized, although Daniel's evidence is that he considered it to be an equity investment, and not a loan.
- [23] In addition to the \$40,000 for the gaming project, Daniel and Lucas paid \$60,000 to the Company. Daniel's evidence is that Scott approached him and Lucas to solicit further investment in the Company in or around March 2015, and that the \$60,000 was paid as an investment in the Company in or around March 2015. (It is understood that there is a typographical error in the affidavit). In his affidavit evidence, Daniel says that in March 2015, contemporaneously with the \$60,000 investment in the Company, Scott caused the Company to issue to Daniel and Lucas 10 shares each, collectively a 20% stake in the Company. At the time, Scott held the remaining 80 shares in the Company.
- [24] Scott's affidavit evidence is that Daniel and Lucas made payments to the Company during the period of October 2014 to March 2015. Scott does not specify in his affidavit evidence when he agreed with Lucas and Daniel that they would become investors in the Company. However, Scott agrees that in March 2015, he, Lucas and Daniel came to an agreement with the respective shareholdings of the Company as outlined above.
- [25] The Central Securities Register reflects the issuance of those shares to Daniel and Lucas on March 13, 2015.

**1. Shareholder Agreement**

- [26] Scott, Daniel and Lucas did not execute any formal share purchase documents in connection with the issuance of shares. They did, however, sign a form of "Shareholder Agreement" dated March 13, 2015 which they apparently believed to be a share purchase document.
- [27] The Shareholder Agreement contained a "Shot Gun Provision" governing material disputes of shareholders, which included disputes concerning:
- (a) the manner in which the affairs of the Corporation are to be conducted;
  - (b) the business in which the Corporation should engage, or;
  - (c) any other matter where the disagreement is of such a nature that it is likely to prejudice the operations or profitability of the Corporation.
- [28] After a negotiation period of at least 30 days, the Shot Gun Provision enabled (but did not require) a shareholder to initiate a forced buy or sell of shares.
- [29] The Shareholder Agreement also required the shareholders to obtain prior written approval of all shareholders to sell shares, except in accordance with the other express provisions of the Agreement.
- [30] Daniel's evidence is that the 20 shares in the Company were issued to him and Lucas in recognition of their collective \$100,000 investment in the Company. Paragraph 35 of the "Shareholder Agreement" acknowledged that "Class A shares have a value of \$5,000 per share".

### C. Tony's acquisition of shares

- [31] In the summer of 2016, while he was working for the Company, Tony had discussions with Scott about investing money in the Company and acquiring shares. These discussions culminated in an agreement that Tony would purchase 10 shares in the Company from Scott -- a 10% percent stake -- for \$150,000. Tony paid the purchase price to Scott in July 2016, and they subsequently entered into a written share purchase agreement. Tony's purchase of 10 shares from Scott completed as of July 31, 2016.
- [32] Upon Tony's acquisition of shares in July 2016, the shareholdings of the respective shareholders of the Company became what they are now: Tony, Daniel and Lucas each hold 10 shares and Scott holds the remaining 70 shares.

### D. The October 2017 Meeting

- [33] In mid-October 2017, Scott called a meeting of the shareholders at the Company's offices (the "October 2017 Meeting"). Scott, Tony, Daniel and Lucas all attended. What occurred at this meeting is in dispute. The plaintiffs say that Scott made an offer to them to purchase their shares in the Company, and that they communicated their acceptance. Scott disputes that he offered to purchase the plaintiffs' shares, and says instead that he offered to repay their investments slowly, or if and only if the Company became profitable.

## 1. Plaintiffs' Evidence

- [34] The plaintiffs' collective evidence is that Scott indicated that he had been in discussions with potential investors whom he believed might be interested in purchasing a large stake in the Company, and so he wanted to become the sole shareholder. Scott told Tony, Daniel and Lucas that he would be willing to pay a premium for their respective shares beyond their capital contributions to the Company so that they would realize a return on their investment. Although Scott did not give specific dollar amounts for the proposed purchase prices during this discussion, he advised Tony, Daniel and Lucas that he would pay a price for their shares which reflected a 20 percent return on investment per year in relation to the amount of their capital contributions and the timing of when the investments were made.
- [35] In response to Scott's proposal, the plaintiffs' evidence is that they each agreed to sell their shares to Scott on the terms he had outlined, and they communicated their agreement to Scott. Scott then said that he would calculate the purchase prices he would pay and would follow up to finalize the amounts.
- [36] Tony's evidence is that he considered there was an "agreement in principle" and Daniel's evidence is that there was an "understanding", respecting the material terms of the share purchase agreement.

## 2. Defendants' Evidence

- [37] Scott disputes that he offered to purchase the plaintiffs' shares at the October 2017 Meeting, and disputes that any negotiation for buying the shares occurred.
- [38] Scott's affidavit evidence is that he called the meeting after Tony had expressed to him that he no longer wanted to be a shareholder, and after frustrations with Lucas and Daniel being inactive with the Company. Scott says that Tony had just returned from a trip to China in which he had unsuccessfully tried to set up a Company satellite office there, and that the trip had been hard on Tony. Scott disputes that he wanted the plaintiffs to leave the Company to become the sole shareholder.
- [39] Scott says that he, Daniel, Lucas and Tony discussed selling shares in the Company to other investors. Scott told the plaintiffs about a possible opportunity for their shares to be purchased as part of a sale to another company. However, he told the plaintiffs that the deal was in its infant stages, and nothing yet had been confirmed.
- [40] During the meeting, Scott said that he would try to make as much as he could so that their initial investments would be slowly covered by the company. He said that if the plaintiffs sought a one-time payment, they would have to split the balance of the \$60,000 in the business account. Scott then therefore gave them money slowly to pay back their initial investments only because they were his friends.

- [41] In addition, says Scott, the plaintiffs expressed frustrations to him that they were not seeing returns on their investments in the Company. Although the Company had good cash flow, it had never been in a position to pay dividends to any of the shareholders out of any retained surplus. He told the plaintiffs that he would "give priority to ensuring that each of [them] received a positive return on their initial investments".
- [42] Scott believed that a tax-advantageous method of putting some money into the plaintiffs' hands was to have the Company pay wages to the plaintiffs by payroll. He considered using some of his own money to repay investments for the Company and that then the Company could later repay him. He says the WeChat messages were a discussion of how the plaintiffs could receive some payouts on their investments in the Company.
- [43] In addition, and internally inconsistently, Scott deposed that he told the plaintiffs at the meeting that they would get returns on their investments when and only when the Company made a profit.

### **E. Finalization of purchase terms for Daniel and Lucas' shares**

- [44] Shortly after the October 2017 Meeting, Scott followed up with Daniel by WeChat to address what they had discussed at the October 2017 meeting. The plaintiffs submit that through these discussions, Scott finalized the terms of the offer to purchase of Daniel's and Lucas' shares.
- [45] Daniel dealt with Scott in this regard on both his and his brother Lucas' behalf. Scott confirmed at his examination for discovery that he understood he was dealing with both Daniel and Lucas through his WeChats with Daniel.
- [46] On October 16, 2017, Scott told Daniel that he would "calculate the payout of your shares for you guys". Scott explained that he was willing to pay \$150,000, which was 150% of the amount of Daniel and Lucas' capital contribution to the Company, plus an additional \$30,000 to \$40,000 if they were willing to accept payment by way of the Company payroll through the end of December 2018. Scott then confirmed that, "At the end of the day, there'll be actually a total of \$180,000-\$190,000 in your hands". Scott also said that he would "pay the tax" in respect of these payments.
- [47] Scott confirmed at his examination for discovery that he offered to "pay the tax", meaning that the payments to Daniel and Lucas toward the purchase price for their shares would be after-tax amounts. He also confirmed that it was his idea to pay the purchase price to Daniel and Lucas through the Company payroll.
- [48] Daniel's evidence is that he considered Scott's proposal to "pay the tax" to mean that the purchase price would be paid down over time with net payments received from the Company after source deductions, including tax.

- [49] Daniel then confirmed with Scott that the amount being offered for his and Lucas' shares was lower than Scott had previously suggested he was willing to pay. Scott complained that Daniel and Lucas had not helped him enough with running the Company and that sales had not increased. Scott then wrote: "You guys can stay, but I'm not sure if there's going to be another buyout later on". Daniel's evidence is that he understood Scott to be suggesting that the price being offered was the most Scott was willing to pay, and that the alternative was for Daniel and Lucas to stay shareholders with no other foreseeable prospect of selling their shares in the future.
- [50] Daniel then asked Scott to confirm that the \$180,000-\$190,000 he was offering was "after tax", or that the amount offered was net of any source deductions that would have to be made if Scott was going to pay Daniel and Lucas by way of the Company payroll. Scott confirmed this. Scott also referred to tax on the "capital gain" that would arise from his purchase of Daniel and Lucas' shares.
- [51] Finally, Scott reiterated that if Daniel and Lucas were "not in a hurry" and were willing to be paid the purchase price through the Company payroll over time, they would get "an extra \$40,000-\$50,000". Daniel's evidence is that he understood Scott to mean that if he and Lucas accepted Scott's proposed payment terms, Scott would pay a further \$40,000-\$50,000 on top of the \$150,000 he had mentioned earlier, for a total purchase price of \$190,000-\$200,000. Scott then wrote in English: "Your call". Daniel wrote back to confirm his agreement and to say that he had no problem with Scott's proposal. Scott replied saying: "okay".
- [52] At his examination for discovery, Scott confirmed that he had reached an agreement with Daniel on these terms:

630

Q

Okay. And I'm going to go through the last four chats with you. You say to Daniel that if there's no rush, he will get 40- to \$50,000 more by getting the money through payroll; right?

A

M'mm-hmm.

631

Q

You have to say "yes."

A

Yes.

632

Q

And you said that -- "it's your call." You said that in English; right?

A

Yeah.

633

Q

Okay. And Daniel says he's okay with this; right?

A

M'mm-hmm.

634

Q

Oh -- so you have to say "yes."

A

Yes.

635

Q

And then you say okay?

A

Yeah.

634

Q

That's an agreement, isn't it?

A

Yes. Yeah. Sure. M'mm-hmm.

[53] Daniel's evidence is that as a result of this discussion on October 16, 2017, he considered that he and Scott had come to an agreement on the terms of Scott's purchase of his and Lucas' shares, namely:

- (a) Scott would purchase Daniel and Lucas' shares for \$190,000 in total. While Scott had initially offered \$180,000 to \$190,000, and then offered \$190,000 to \$200,000 -- which Daniel accepted -- Daniel considered the agreed price for his and Lucas' shares to be \$190,000;
- (b) Scott would pay the purchase price by causing the Company to issue payments to Daniel and Lucas through payroll, and that the net payments received (after source deductions) would be applied to the purchase price for the shares; and
- (c) Scott would pay the purchase price in full by December 2018.

#### F. Finalization of purchase terms for Tony' shares

- [54] As with Daniel, Scott also followed up with Tony by WeChat to address discussions at the October 2017 Meeting.
- [55] On October 17, 2017, Scott offered to pay \$180,000 to Tony on the basis that this was 120% of the amount Tony had originally paid as investment funds. Tony advised that he agreed with this price. Scott said that he could pay this amount to Tony in full by the end of October 2017, but then said he may actually need until December 31, 2017 to pay. Tony told Scott that he had no problem with this timing.
- [56] Tony then asked Scott how they would deal with a \$5,000 payment Tony had made to the Company previously as part of a shareholder cash contribution. Scott said that they add this amount to the \$180,000, to which Tony agreed.
- [57] Tony's evidence is that as a result of this discussion, he considered that he and Scott had a deal on October 17, 2017: Scott would purchase Tony's shares for \$185,000, payable by December 31, 2017.
- [58] At his examination for discovery, Scott confirmed that he had reached an agreement with Tony on these terms:

645

Q

Okay. So the first message at the top you indicate to Tony that you will give him \$180,000; right?

A

Okay.

646

Q

Well, is it yes or no?

A

Yes.

647

Q

Okay. And you -- that's calculated on the basis of \$150,000 times 120 percent?

A

Yeah.

...

652

Q

And Tony accepts that; right?

A

Yeah.

653

Q

He says "please give me the amount. Yes." Correct?

A

Yeah, yeah.

654

Q

Okay.

A

Yeah.

655

Q

So there's an agreement about that?

A

Yeah.

...

670

Q

So you proposed to pay Tony in a single transaction of \$180,000 by the end of 2017 --

A

Yeah.

671

Q

-- and he said, no problem. Correct?

A

Yeah.

...

675

Q

-- he refers to a cheque that he gave to the company for --

A

Yeah.

676

Q

-- \$5,000; correct?

A

Yeah.

677

Q

That was the shareholder cash contribution that you referred to earlier; right?

A

M'mm-hmm.

678

Q

Okay. And you agreed to add that on top of the \$180,000; right?

A

Yeah, yeah, yeah.

679

Q

Okay.

A

M'mm-hmm.

680

Q

So you were going to pay him \$185,000?

A

Yeah. M'mm-hmm.

#### G. Payments to the plaintiffs

##### 1. Payments to Daniel and Lucas

[59] Following the WeChat exchange between Scott and Daniel on October 16, 2017, Scott began making payments toward the \$190,000 he had agreed to pay Scott and Daniel by way of the Company's payroll. Daniel's evidence is that between October 2017 and August 2019, he and Lucas received more than 40 cheques from the Company totalling \$64,310.46.

##### 2. Payments to Tony

[60] As stated earlier, Scott agreed with Tony on October 17, 2017 that he would pay \$185,000 to him by December 31, 2017.

[61] On November 7, 2017, Scott proposed different payment terms. Scott proposed to make an initial payment to Tony of \$100,000 at the end of November 2017; to pay him \$30,000 through the Company payroll; and then to pay him a final instalment of \$50,000. Tony agreed to these payment terms (though this omitted \$5,000 from the purchase price). Tony's evidence is that he accepted this new payment arrangement because he was under the impression that Scott did not have the money to pay the money all at once.

[62] On November 10, 2017, Scott again proposed different payment terms. This time, Scott proposed to make a \$50,000 payment to Tony at the end of November 2017, and then to start paying him through the Company payroll that month. Scott also said that "there was no need [for Tony] to pass tax" in relation to payments from the Company. Again, Tony's evidence is that he accepted these new payment terms because he was under the impression that Scott was short on money.

[63] Tony's evidence is that by the beginning of December 2017, he had started receiving payments toward the \$185,000 purchase price for his shares. Tony received an initial \$50,000 from Scott by way of a bank draft drawn on his personal account, and he started receiving payroll payments from the Company. Between December 2017 and August 2018, Tony had received the bank draft from Scott and nine cheques from the Company, totalling \$75,424.13.

[64] At his examination for discovery, Scott admitted making these payments to Tony, including the \$50,000 bank draft from his personal account:

719

Q

So that's the bank draft that you gave Tony?

A

That's right.

720

Q

It's from your account; right?

A

That's right.

721

Q

Okay. And so you paid him \$50,000 toward that \$185,000; right?

A

Yeah.

[65] Scott's evidence is that he made the initial \$50,000 payment to Tony from his personal account because he was under the impression that the Company would repay him at a later date when it became profitable.

### Scott's Evidence on payments

[66] In his first Affidavit, Scott lists Company payroll figures which he says represent the total amount of payments to the plaintiffs between 2016 and 2019. He also attaches T4 statements issued by the Company. Although Scott disputes the existence of any share purchase agreements between himself and the plaintiffs, he submits that, if the Court finds any such contract, these payroll figures and T4 statements should be credited toward his payment obligations to the plaintiffs. In particular:

- (a) Scott says that "Daniel and Lucas have together been paid \$177,000 from the Company through the Company's payroll despite not doing any work for the Company"; and
  - (b) Scott says that "Tony received a total of \$85,721.50 from the Company's payroll [and] \$50,000 from my personal bank account which brings the total up to \$135,721.50".
- [67] Bairui Yu, who worked as a general manager for the Company deposed that during the time he worked for the company, from the end of 2016 to the end of 2017, Scott told him that "the Company was operating at a loss and should not pay the plaintiffs so much". However, there is no indication if that statement was made by Scott before or after the alleged share purchase agreement with the plaintiffs in mid-October 2017.
- [68] In reply affidavits from Tony and Daniel, the plaintiffs submit that Scott's evidence in this regard is misleading for the following reasons:
- (a) Scott fails to explain that these are gross payroll figures. The amounts actually received by the plaintiffs were net of tax and other source deductions. As stated earlier, Scott advised the plaintiffs many times that he would "pay the tax" and that the amounts to be credited toward the purchase price would be after-tax payments;
  - (b) Scott fails to explain that this total payroll figure for Tony of \$85,721.50 includes Tony's actual employment income while working for the Company between January 2016 and November 2017;
  - (c) Scott fails to explain why the Company was paying Daniel and Lucas through payroll in 2016 and 2017 prior to the October 2017 Meeting despite them not working for the Company. In his affidavit evidence, Daniel explains that in 2016, Scott proposed an arrangement whereby the Company would make payments to him and Lucas through payroll as if they were employees, and that he and Lucas would then repay those amounts or similar amounts back to the Company. The purpose of this arrangement was to boost the Company's apparent activity level and payroll, thereby enabling the Company to claim a greater amount of Scientific Research and Experimental Development ("SR&ED") tax credits. Daniel explains that he and Lucas went along with this proposal, and at various points in 2016 and 2017, they received payments from the Company through its payroll and then repaid those amounts or similar amounts back to the Company. These payments from the Company (which were repaid to the Company) are reflected in the payroll figures and T4 statements Scott refers to. Daniel also tendered copies of some records of payments from the Company and repayments, including certain cheques and confirmations of electronic funds transfers, as well as Company bank records reflecting these payments; and
  - (d) Daniel's evidence is that payments he and Lucas received from the Company before the October 2017 Meeting were not payments of dividends or distribution of profits, and have nothing to do with Scott's agreement to purchase his and Lucas' shares.

- [69] After the plaintiffs filed reply affidavits, Scott filed an additional affidavit which addressed in part the claim that Scott and Lucas were used for the Company's SR&ED tax credits. The admissibility of portions of this affidavit is in dispute, but the relevant portions are:
- (a) Payments made to both Daniel and Lucas by way of Company payroll were never part of the Company's SR&ED tax credits claims;
  - (b) The payroll payments were made to Daniel and Lucas to pay back their investments and to offset the risk in funding a start-up company; and
  - (c) The cheques and electronic funds transfers from Daniel and Lucas to the Company were likely not repayments for payroll. Though it was "difficult to recall with precision", the back payments may have been for certain events that the Company had paid for on Daniel's and Lucas' behalf.
- [70] Counsel agreed at the hearing of this matter that any gross payroll figures credited towards Scott's payment obligations would need to be adjusted to account for tax and any source deductions.
- [71] Counsel did not deny in submissions that the payroll figure of \$85,721.50 included Tony's actual employment income.

## H. Cessation of payments

- [72] On August 27, 2018, Tony sent a WeChat message pointing out that the Company had paid him more than the agreed \$30,000 through payroll, and that the remainder of the money should be paid by Scott himself, not the Company. Scott agreed, but indicated that he did not have enough money personally and said that Tony would be paid once the Company received its SR&ED tax credits. At this time Tony stopped receiving payments from Scott or the Company.
- [73] On February 12, 2019, Tony followed up with Scott about the balance of the \$185,000. Scott told Tony that he may need to wait until about April 2019, which is when Scott expected that the Company would receive SR&ED tax credits.
- [74] On July 8, 2019, Tony followed up again with Scott about his non-payment. Scott then suggested to Tony that he was not going to be paid further, stating that "the Company hasn't really made any money".
- [75] Daniel and Lucas continued to receive payments through the Company's payroll beginning in October 2017, but those payments stopped in August 2019.
- [76] At his examination for discovery, Scott admitted that he hasn't paid the plaintiffs the full amounts agreed to and suggested that he stopped making payments because he did not have the money:

Q

And there was an agreement to pay Daniel and Lucas 180,000 or 190,000, but that wasn't fully repaid, right?

A

No.

...

812

Q

But suffice it to say you haven't paid Tony \$185,000; right?

A

Yeah.

813

Q

Okay. Why did that payment stop?

A

Again, that's -- well, first of all, he doesn't want monthly payment again. Secondly, I don't have one-time -- like, I don't have that much cash.

[77] On September 11, 2019, the plaintiffs issued a payment demand to Scott through counsel, but received no response.

#### I. Transfer of Shares

[78] Although the plaintiffs have received payments, the shares, or portions of them, have not been transferred.

[79] There was no specific mention of transfer of shares in the October 16 and 17, 2017 WeChat discussions.

[80] The first reference to the transfer of shares occurred in a July 2019 WeChat message between Daniel and Scott. During these messages, Scott told Daniel that the "Company would for give them the money as soon as it has it". Scott then said that if Daniel insisted on getting the balance of the payment all at once, "the only way is to see if the shares can be transferred".

- [81] In examinations for discovery, both Daniel and Tony agreed that they had not discussed a timeline for the full or partial transfer of shares. Tony also stated that he and Scott had never gone to a lawyer to draw up a share purchase agreement because Scott had "not yet paid his money; right?"

#### IV. discussion

##### A. Suitability

- [82] Pursuant to Rule 9-7(15)(a), of the Supreme Court Civil Rules, the Court may grant judgment on a summary trial application unless it is unable to find the facts necessary to decide the issues, or it is of the opinion that doing so would be otherwise unjust.
- [83] The law regarding the interpretation of Rule 9-7(15) was set out by Gomery J. in *Perrick v. RJS Electrical Contracting Ltd.*, 2020 BCSC 211 at paras. 21-23:
- [21] The first question - whether the court can find the facts necessary to decide the issues of fact or law - requires an assessment of the evidence and the law that determines what must be proved to establish or defeat a claim.
- [22] It was established by *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) at paras. 43 and 56, in the early days of the summary trial procedure, that a judge conducting a summary trial may find facts on conflicting affidavit evidence, where there is admissible and believable evidence before the court to permit resolution of the conflict on a balance of probabilities. The judge must have a basis for preferring one sworn statement over another; *Cory v. Cory*, 2016 BCCA 409 at para. 10.
- [23] The second question - whether it would be unjust to decide the issues on a summary trial - involves the exercise of judicial discretion, taking a variety of factors into account. The list includes the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, the cost of the litigation, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices; *Gichuru v. Pallai*, 2013 BCCA 60, at paras. 28-31.
- [84] I find that there is a sufficient basis on which the Court can find all necessary facts to determine this action, and that doing so by summary trial will be consistent with justice and the object of the Rules, including Rule 9-7.
- [85] Having reviewed the evidence and submissions I find that this action is suitable for determination by way of summary trial. It concerns the enforcement of share purchase agreements which terms are set out in WeChat messages and are confirmed by the admissions in Scott's examination for discovery evidence. The evidence tendered by Scott in response to this application which conflicts with that of the plaintiffs also conflicts with his

Response to Civil Claim and his evidence at examination for discovery. Internal inconsistencies in a party's evidence are not a bar to a summary trial, if as here, the necessary facts can be determined.

- [86] The defendants dispute suitability on the basis that, inter alia, a conventional trial is required to find facts with respect to the terms of the share purchase agreements and whether there was any "Profitability Condition". However, the share purchase terms are set out in the WeChats. Scott offers no alternative explanation for those messages in his affidavits, and the alleged Profitability Condition is not pleaded by the defendants. Scott has tendered no evidence that the plaintiffs agreed to any such condition, nor offered any explanation of how this condition was or should be applied in relation to Scott's obligations to the plaintiffs in light of his evidence at discovery. Assessing the evidence therefore can be done on the basis of the affidavits and by reference to other admissible and believable evidence.
- [87] With regard to the issue of whether it would be unjust to decide the matter by way of summary trial, I have considered the relevant factors. No unnecessary complexity would be created as the entire lawsuit would be decided. The sum involved, approximately \$235,000 plus interest and costs, is appropriate for a summary trial in these circumstances with a relatively straightforward issue of whether the parties entered into a contract. Proceeding in this manner is consistent with the object of the Rules as set out in Rule 1(5) and will be "just, speedy and inexpensive".

#### B. Investments or Shareholder Loans?

- [88] In the RCC, the defendants pleaded that the plaintiffs paid the funds to the company as shareholder loans. Following the discovery of Scott, and at the hearing counsel for the defendants confirmed that this position has been abandoned. The RCC has not been amended to reflect the abandonment.

#### C. Were there Share Purchase Agreements between the plaintiffs and Scott?

- [89] To be binding, the parties must have reached consensus on the essential terms of the contract. The essential terms of a purchase and sale transaction are: (a) the parties, (b) the subject matter, and (c) the price. *Bank of Nova Scotia v. Yoshikuni Lumber Ltd.* (1992): 74 B.C.L.R. (2d) 19 at para. 34 (Cumming J.A. dissenting) (C.A.); *Plan VIS6599 v. Strata Plan VIS4843*, 2013 BCSC 1263 at para. 80.
- [90] In *Leemhuis v. Kardash Plumbing Ltd.*, 2020 BCCA 99 at paras. 15-17, Madam Justice MacKenzie set out the applicable principles for the determination of a binding and enforceable contract as follows:

[15] While the existence of a binding and enforceable contract requires an intention to contract, it is not subjective intention that is relevant, but objective intention: *Aubrey v. Teck Highland Valley Copper Partnership*, 2017 BCCA 144 at para. 35; *Rudyak v. Bekturova*, 2018 BCCA 414 at para. 23. This principle stems from the seminal case, *Smith v. Hughes* (1871), L.R. 6 Q.B. 597 at 607:

If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that [the] other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.

[16] This Court in *Berthin v. Berthin*, 2016 BCCA 104, put the requirement this way:

[46] The test, of course, is not what the parties subjectively intended but "whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract": see G.H.L. Fridman, *The Law of Contract in Canada* (6th ed, 2011) at 15. As stated by Mr. Justice Williams in *Salminen v. Garvie* 2011 BCSC 339:

The test for determining consensus ad idem at the time of contract formation is objective: it is "whether the parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract"; it is "whether a reasonable... [person] in the situation of that party would have believed and understood that the other party was consenting to the identical term": Fridman, *supra*, p. 15; see also *Smith v. Hughes* (1871), L.R. 6 Q.B. 597 at 607 adopted in *St. John Tugboat Co. Ltd. v. Irving Refining Ltd.*, [1964] S.C.R. 614, 1964 CarswellNB 4 at para. 19, and *Remington Energy Ltd. v. B.C. Hydro & Power Authority*, 2005 BCCA 191 at para. 31, 42 B.C.L.R. (4th) 31. The actual state of mind and personal knowledge or understanding of the promisor are not relevant in this inquiry: *Hammerton v. MGM Ford-Lincoln Sales Ltd.*, 2007 BCCA 188 at para. 23, 30 B.L.R. (4th) 183, citing S.M. Waddams, *The Law of Contracts*, 5th ed. (Toronto: Canada Law Book Inc., 2005) at 103. [At para. 27.]

[17] In determining intention to contract, a court is not confined to the four corners of the agreement, but may look at "all the circumstances" or "all the material facts": *Langley Lo-Cost Builders Ltd. v. 474835 B.C. Ltd.*, 2000 BCCA 365 at para. 21; *Vancouver Canucks Limited Partnership v. Canon Canada Inc.*, 2015 BCCA 144 at para. 75; *Lacroix v. Loewen*, 2010 BCCA 224 at para. 36 (per Finch C.J.B.C.). In *Langley, McEachern C.J.B.C.* observed that *McLachlin J.* (as she then was) in *Osorio v. Cardona* (1984), 15 D.L.R. (4th) 619 (B.C.S.C.), considered "evidence of past agreements involving other parties, the circumstances in which the alleged agreement was made, and future actions and representations by both parties."

[91] In this case there is persuasive evidence that the parties reached a consensus on the essential terms of a share purchase contract after the October 2017 Meeting and WeChat messages. Payments were made to the plaintiffs by Scott in accordance with those

agreements. Had the proceedings, after the pleadings closed and the examinations for discovery completed, been consistent with the RCC and the discovery of Scott, there would be little to discuss in these Reasons. I will therefore deal with those facts and submissions first, then consider the positions and facts later advanced.

- [92] The parties agree that they met in mid-October 2017. It is clear from the WeChat messages and from the payments that were later made by Scott that there was a discussion of payments to be made to the plaintiffs. The only question is whether the payments were made for the purchase of the plaintiffs' shares. I accept the plaintiffs' evidence that the discussion at the meeting was with regard to the sale of their shares to Scott. Their evidence is consistent with Scott's knowledge at the time that Tony was unhappy in the Company after his trip to China and Scott's frustration that Daniel and Lucas were not sufficiently active in the Company. Scott referred to the transaction in a WeChat message as a "buyout" and referenced a "capital gain". The subject matter of the agreement in which Scott agreed to make payments to the plaintiffs was therefore the Company shares held by the plaintiffs.
- [93] I accept Scott's evidence that he was looking for another investor and envisioned that there would be a sale of shares to that new investor. I also accept all of Daniel's evidence and therefore conclude that Scott was seeking to buy the plaintiffs' shares so that he would again be the sole shareholder prior to any sale to a new investor. The parties to the share purchase agreement were therefore Scott as purchaser and the plaintiffs as vendors of the shares.
- [94] With regard to price, I accept the evidence of the plaintiffs which is consistent with the WeChat messages and confirmed by Scott in his discovery. At the meeting Scott said that he would pay Tony, Daniel and Lucas the original purchase price for their shares, plus a premium to reflect a 20 percent annual return on their respective investments and extra if they would accept payments over time. Tony, Daniel and Lucas agreed to sell their shares to Scott on these terms, with the price to be determined following the meeting. The parties reached a consensus at the meeting.
- [95] After the meeting, Scott finalized the purchase prices in WeChat messages: he agreed to pay \$190,000 for Daniel and Lucas' shares collectively, and to pay \$185,000 for Tony's shares. Scott also stipulated the timing and amounts of the payments stating that he would pay the purchase prices over time, including by regular payments through the Company's payroll on his behalf. His repeated assurances that he would pay the tax on the payments from the Company so that the plaintiffs received the net amounts are further indications that Scott personally was the purchaser. The Company was not paying for an acquisition but rather being used as a vehicle for Scott's payments. (This, I would add is consistent with other evidence of Scott paying personal expenses through the Company, such as his BMW vehicle.)
- [96] Scott offered to pay Tony in full by December 31, 2017, and to pay Daniel and Lucas by December 2018. He later deferred the payment dates for Tony. It is not in issue that Scott did not complete the payments by these dates or at all.

- [97] Once the prices were finalized, Scott began making payments to the plaintiffs toward the purchase prices for their shares. Between October 2017 and August 2019, Scott paid Daniel and Lucas a total of \$64,310.46, and he paid Tony a total of \$75,424.13, including \$50,000 from his personal account. I will return to a consideration of the amounts still owing.
- [98] In August 2019, Scott stopped making payments to the plaintiffs without explanation, and he did not respond to the plaintiffs' demand for payment. He had said to them that he did not have the money.
- [99] The essential terms of the contract are therefore established on the evidence -- the parties, the subject matter and the purchase price. The test for creation of a contract is one of objective intention: whether the parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract: *Leemhuis* at paras. 15-16. In this case I am satisfied that the test is met. By the WeChat messages following upon the oral agreement reached at the October 2017 Meeting, and then confirmed by the payments made to the plaintiffs by the defendant Scott, the parties indicated to the outside world their intention to contract and the terms of such contract including that Scott was the purchaser. On these facts I would find that a binding contract was formed for the sale of the plaintiffs' shares in the Company to Scott.

1. New Issues Raised by Scott

- [100] However, in addition to these facts which were pleaded by the plaintiffs in the NOCC and substantially confirmed in Scott's discovery, Scott raises new issues in the Application Response and supporting affidavits. He says that any agreement was inconsistent with the Shareholder Agreement (although only with Daniel and Lucas), and that there was no term in any share purchase agreement with regard to the delivery of the plaintiffs' shares. Further, he says there were additional terms in the share purchase agreement: the "Profitability Condition" and the "Promise of Friendship" terms.
- [101] In *Hoban Construction Ltd. v. Alexander*, 2012 BCCA 75 at paras. 49-50, the Court of Appeal found that a handwritten document hastily drafted and signed in a gravel pit constituted a legally binding contract for the sale of shares, notwithstanding that the agreement had a number of defects including that it did not have a term specifying a completion date.
- [102] One of the defects in the contract in *Hoban Construction* was the failure of the parties to comply with the provisions of the USA, or unanimous shareholders' agreement. At para. 47, the Court dealt with that defect. It stated:

There seems to be little doubt that the form of the contracts and the offers from which they arose did not strictly comply with the specification in the USA. However, the inquiry is not whether the contracts were competently drafted, but rather whether they disclose the parties' intentions to the substance of their agreement.

[emphasis in original]

The court then cited a fundamental rule of contract construction: that every effort should be made by a court to find a meaning, looking at substance and not mere form.

[103] In the present case, Daniel, Lucas and Scott did not turn their minds to the Shareholder Agreement. Indeed, it was not mentioned in the RCC. I find that Scott's late reliance on the Shareholder Agreement is without merit or credibility. In my view, the failure of these parties to refer to the provisions regarding the sale of shares in their Shareholder Agreement does not detract from the fact that the contract entered into for the sale of the shares owned by Daniel and Lucas disclosed those parties' intentions as to the substance of their agreement.

[104] The written agreement with Tony was a Share Purchase Agreement. It had no terms regarding share sales.

[105] The defendants also raise the issue of the absence of a term with regard to the delivery of the plaintiffs' shares. I understand that they say that this term was necessary in order that there be a contract.

[106] It is not a condition of enforceability that the parties reach a clear consensus on every term of the contract or transaction, particularly non-essential terms. Angela Swan and Jakub Adamski, the authors of *Canadian Contract Law*, 3rd ed. (Markham: LexisNexis, 2012) at 287-88 describe the proper approach to "indefiniteness" as follows:

The attitude of the courts to the problem of indefiniteness is very practical most contracts have some room for uncertainty. In such relations (or transactions) the question will not be whether there is enough to make the agreement enforceable. The courts' attitude was well expressed by Megarry J. in *Brown v. Gould* [1972 Ch 53 (Q.B.)]. He said:

I readily accept that the words of [the lease] might have been more precise. But that is not the point: the point is whether it is void for uncertainty. If one approaches the [lease] with reasonable goodwill, as I think I am entitled and, indeed, required to do, does it appear to embody such uncertainty of concept as to make it void? The question is not, I think, whether the clause is proof against wilful misinterpretation, but whether someone genuinely seeking to discover its meaning is able to do so.

A similar attitude was expressed by the British Columbia Court of Appeal in *Marquest Industries Ltd. v. Willows Poultry Farms Ltd.* and by the Federal Court of Appeal in *Canada v. CAE Industries Ltd.* The important point is not whether the contract leaves room for disagreement but whether "there was a lack of agreement on any essential terms when the contract was first created".

[107] In cases where there is agreement on the essential terms, but disagreement on other terms or on the mechanics relating to the completion of a transaction, those terms may be implied by the court, or as stated in the quotation from Megarry J. above, found by someone genuinely seeking to discover its meaning who is able to do so.

- [108] Here I am able to do so. With regard to the delivery of the shares, it is not difficult to imply or understand the term regarding delivery to be that when the purchase price was paid, the share certificates would be delivered by the plaintiffs.
- [109] The defendants also now seek by way of the Application Response and supporting affidavits to include in the contract two additional terms: the "Profitability Condition" and the "Promise of Friendship" terms.
- [110] Scott submits in the Application Response that the Profitability Condition is that he told the plaintiffs that as long as the Company made some money, he will ensure that the plaintiffs recover all of the money that they invested in the Company and more. In other words, he would repay the investments with returns on the investments as long as the Company made money.
- [111] However, in his first affidavit Scott initially refers only to repayment of the investments, and at first with no reference to a condition. He states that he told the plaintiffs during the meeting that he "will try to make as much as I can so that their initial investment would be slowly covered by the company", and that he did "give them money slowly so as to pay back their initial investments, only because they were my friends ". Later in the affidavit he states that "[his] intention was always for Daniel, Lucas and Tony to get returns on their investments when and only when the Company makes a profit" and that is what he told the plaintiffs at the meeting. This follows his statement that he would give priority to ensuring that the plaintiffs received a positive return on their initial investments.
- [112] At best the affidavit evidence is incomplete. It may mean that the payments actually made were for repayment of capital, with a return on the investment due only when the Company was profitable, thus going to the amount of the contract to purchase the shares. However, when read with the Application Response it is internally inconsistent: the alleged term was that the plaintiffs' investments together with a return would be repaid only when the Company was profitable. The affidavit evidence of Scott is internally inconsistent. It is also inconsistent with the evidence of the plaintiffs, all of which I accept in its entirety. In the result, I find that Scott's evidence is not credible.
- [113] While it may be possible for a party to change their position and evidence throughout a proceeding, in this case it results in a finding that the defendant Scott is not credible in asserting further terms and conditions post-discovery as the litigation progressed to a summary trial. This condition, even assuming that it can be construed, is not pleaded in the Response to Civil Claim or referred to in any of the WeChat messages. There is no credible evidence that such a condition was discussed at the October 2017 Meeting. In any event, Scott does not depose that any of the plaintiffs agreed to this condition, and he offers no information as to whether the Company was profitable at the time payments were being made to the plaintiffs, or whether the Company is profitable now. The alleged Profitability Condition is also inconsistent with the more than 50 payments made to the plaintiffs.

- [114] The "Promise of Friendship" condition is stated in the Application Response as being that the consideration given by the plaintiffs for the payments received by them was the apparent maintenance of their friendship with Scott and not promises to transfer their shares in the Company to Scott or to have their shares redeemed by the Company. It was withdrawn or vitiated by the plaintiffs when they commenced this lawsuit. The affidavit evidence of Scott is that the more than 50 payments made to the plaintiffs between October 2017 and August 2019 were essentially gratuitous, and that "I did what I did only because they were my friends".
- [115] Gratuitous payments or lack of consideration are not pleaded in the RCC. On the contrary, the RCC alleges that the payments were made to Daniel and Lucas to repay shareholder loans. This condition is also inconsistent with the content of the WeChats and the discovery evidence of Scott.
- [116] These internal inconsistencies in the positions taken by the defendants and the evidence relied upon by them, and absence of evidence, lead me to conclude that their positions with regard to the existence of the Profitability and Friendship terms are without any merit. I do not find Scott's allegations of the existence of these two terms or explanations of their application to have any credibility.
- [117] The plaintiffs' evidence regarding the meeting and the WeChat messages establish the negotiation, terms and part performance of the share purchase agreements. Scott's admissions on examination for discovery, particularly of agreements with the plaintiffs, confirm the agreements as pleaded by the plaintiffs.

## 2. Parties to the Share Purchase Agreements

- [118] The defendants submit that the share purchase agreements if they existed were with the Company rather than with Scott personally.
- [119] I have found above that the parties to the contract were the plaintiffs and Scott. In so finding I have considered the evidence relied on by the defendants to support their position that the Company was the purchaser. This evidence includes: Scott's evidence that he only made the initial \$50,000 to Tony because he was under the impression that the Company would repay him at a later date when it became profitable; the evidence of Bairui Yu, who deposed that Scott had told him that "the Company should not pay the plaintiffs so much"; and a July 2019 WeChat message between Scott and Daniel, in which Scott told Daniel that "the Company would for sure give them the money as soon as it has it".
- [120] However, taking the evidence as a whole, including the plaintiffs' evidence which I find credible in its entirety, and considering the defendants' evidence in the context of the totality of the evidence, I find that the purchaser of the shares was intended to be and was Scott personally rather than the Company.

## D. Quantum of Judgment Against Scott

1. Scott's Third Affidavit

- [121] The plaintiffs dispute the admissibility of the balance of Scott's third affidavit, being paragraphs 15-20. In these paragraphs, Scott responds to Daniel's claim in his second affidavit that the payments he and Lucas received from the Company's payroll in 2016 and 2017 were for the purpose of enabling the Company to claim greater SR&ED tax credits.
- [122] There is no right of surreply under the Rules, and so the plaintiffs submit that the balance of Scott's third affidavit amounts to improper case splitting. It is improper, they submit, for Scott to tender T4's in a misleading fashion, and then to seek to get the last word when the plaintiffs offer an explanation in reply. In any event, they say that the disputed evidence is not useful to the Court, as Scott admits that it is "very difficult" for him to recall the transfers with precision.
- [123] The defendants submit that the Court has discretion to consider the evidence contained in Scott's Third Affidavit. They say that the defendants could not have anticipated, at the time of filing its response affidavits, the issue the plaintiffs raised in reply with respect to the SR&ED tax credits.
- [124] Although, for completeness I have exercised my discretion and considered the disputed paragraphs of Scott's third affidavit, I do not find the statements therein to be relevant to the issue of quantum. Further, for the reasons discussed above finding Scott not to be credible, I also prefer Daniel's and Tony's evidence with regard to quantum owing on the contract.
2. Breach of the share purchase agreements and amounts owing to the plaintiffs
- [125] Scott's cessation of payments to the plaintiffs toward the purchase price of their shares and his subsequent denial of any obligations to the plaintiffs in July and August 2019 amounts to a breach of the share purchase agreements.
- [126] I accept Daniel's evidence that \$64,310.46 has been paid and that \$125,689.54 remains owing on the purchase price for his and Lucas' shares, and Tony's evidence that \$109,575.87 remains owing on the purchase price for his shares with \$75,424.13 having been paid. This is supported by the documentation of payments received by the plaintiffs after the October 2017 Meeting.
- [127] I do not accept Scott's evidence that any other payments were made to the plaintiffs for their shares. It is not necessary to further discuss the Company practice of issuing T4s to non-employees.
- [128] The plaintiffs are entitled to judgment against Scott in these amounts, and to an order that Scott and the Company effect the purchase and sale transactions for the plaintiffs' shares.

V. CONCLUSION AND ORDERS

- [129] The following orders are therefore made:

- (a) judgment in debt against Scott in the amount of \$235,265.41, being \$125,689.54 in favour of Daniel and Lucas, and \$109,575.87 in favour of Tony;
- (b) an order that Scott and the Company effect the transfer of the plaintiffs' shares to Scott; and
- (c) interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79; from August 31, 2019 for Daniel and Lucas, and from July 31, 2019 for Tony.

[130] It is my preliminary view that the plaintiffs are entitled to their costs. However, if there are any matters regarding costs of which I am unaware, the parties are at liberty to make submissions in writing within 30 days of the date of these Reasons with reply submissions to follow 20 days thereafter.

"The Honourable Madam Justice Watchuk"

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