
CANADA / JUDGMENT

Hucal v. GN Ventures Ltd.

2022 BCSC 144

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2022 BCSC 144 Hucal v. GN Ventures Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hucal v. GN Ventures Ltd.,

2022 BCSC 144

Date: 20220131

Docket: S-201524

Registry: Vancouver

Between:

Kelly Hucal

Plaintiff

And

GN Ventures Ltd.

Defendant

Before: The Honourable Justice Marzari

Reasons for Judgment

Counsel for Plaintiff:

M.B. Funt

H. Yu

Counsel for Defendant:

S.J. Evans

A. Hefford, Articled Student

Place and Dates of Trial:

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Place and Date of Judgment:

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Table of Contents

INTRODUCTION. 3

ISSUES. 6

BRIEF CONCLUSION. 7

BACKGROUND AND FACTUAL FINDINGS. 9

The June 2017 Meeting. 11

Timing of Share Issuance. 14

Early Acquisition Efforts. 15

Ravine Trading/GN Ventures. 16

Later Acquisition Efforts. 17

Early Investments. 18

Draft Written Agreements. 19

Employment 21

Mr. Hucul's Activities Post-April 2018. 25

Sale of Mr. Hucul's Interest in GN Ventures. 28

GN's Activities Post-March 2018. 30

DETERMINATION. 34

A. Was an Oral Contract Formed in June 2017?. 34

Parties' Positions. 37

Findings on Contract Formation. 44

Intention to Contract 45

Essential Terms. 46

B. Did GN Become a Party to the Contract?. 49

Findings on GN as a Party to the Contract 51

C. Did GN Continue to Owe Contractual Obligations to Mr. Hucul?. 56

D. What Damages would Mr. Hucul be Entitled to in Breach of Contract?. 57

E. Was GN Unjustly Enriched?. 60

Parties' Positions on Unjust Enrichment & Quantum Meruit 60

Law. 62

Findings on Unjust Enrichment & Quantum Meruit 66

CONCLUSION. 69

INTRODUCTION

- [1] The plaintiff, Kelly Hucul, seeks damages against the corporate defendant, GN Ventures Ltd. ("GN"), for breach of an alleged oral contract in relation to his share and salary entitlement in GN. Mr. Hucul seeks damages representing the value of 10 million GN shares and payment of \$150,000 per year in unpaid salary.
- [2] At the heart of the dispute is an oral contract that is alleged to have been formed in June 2017 when Mr. Hucul, his son Ryan Hucul (hereafter referred to as "Ryan" to differentiate him from the plaintiff), and businessman Dominic Colvin, met in a coffee shop in Kelowna to discuss emerging opportunities to develop a cannabis distribution company in light of the anticipated legalization of cannabis in Canada. It is apparent from the evidence before me that all three saw this as a significant opportunity with the potential to make them millions of dollars in a very short period of time. I will refer to this meeting as the "June 2017 Meeting," and I will include within that term the unspecified subsequent meetings and phone calls that month which Mr. Hucul also relies upon as forming part of the oral contract. Mr. Hucul refers to the participants in this meeting as the "founders" and I will refer to the participants individually by their names, and collectively as the "founders" as well, without intending to express a finding as to what was "founded" at that meeting.
- [3] What makes this case particularly difficult is that no one privy to the initial conversation, or subsequent conversations wherein the alleged oral contract was formed, gave evidence as to precisely what was said at those meetings. Furthermore, Mr. Colvin did not testify at all, although subpoenaed to do so by GN. What I have instead is evidence of what Mr. Hucul and Ryan understood from the June 2017 Meeting, but not the words that were said.

- [4] Mr. Hucul concedes that GN was not involved in the June 2017 Meeting. He alleges that in August 2017, Mr. Colvin introduced Ravine Trading Limited ("Ravine"), which later became GN, as the manifestation of the company through which the founders had agreed to pursue their venture. Mr. Hucul says that, at that time, GN assumed the obligations of the oral contract with respect to Mr. Hucul's salary and share entitlement agreed to by Mr. Colvin--either through Mr. Colvin's representations as GN's Chief Executive Officer ("CEO"), by its own conduct, or both. I will occasionally refer to GN as Ravine in these reasons in relation to events involving the defendant company prior to its name change to GN Ventures Ltd. in 2018.
- [5] At issue in this trial is what, if anything, was agreed to at the June 2017 Meeting, and whether any such agreement had contractual force as between the founders, and, ultimately, as between Mr. Hucul and GN. Mr. Hucul says that the founders contracted to form a company for the purpose of cannabis production, with each entitled to one-third ownership and 10 million shares in the future company. The founders were to use their best efforts to develop their business plan and acquire the interests of a company which had progressed to a late stage in Health Canada's application process for a cannabis licence. Mr. Hucul says that they also agreed that he would be the CEO of that company and receive a significant salary for his role.
- [6] GN acknowledges that a discussion occurred around the formation of a company for the purpose of purchasing a late-stage applicant cannabis company at the June 2017 Meeting. However, it says that no oral contract was formed and, in any event, GN was not a party to that discussion or any subsequent agreements.
- [7] The oral contract Mr. Hucul seeks to establish between himself and GN is somewhat slippery in its definition--it is alleged to have evolved in its timing, parties, and terms. Its alleged elements also evolved up to and through the course of the trial. It is sometimes described as a "business plan," other times as a "venture." Mr. Hucul also occasionally referred to it as a "partnership," although his counsel is quick to point out that this was not a legal description.
- [8] In his original notice of civil claim, filed February 10, 2020, Mr. Hucul defined the contract formed as follows:
11. On or about June 2017, Mr. Colvin, Mr. Hucul and Ryan entered into an oral agreement for the business venture, agreeing, inter alia, as follows:
- (a) that they would each receive 10 million shares in GN Ventures (at that time, Ravine), for a total initial share allotment of 30 million shares;
 - (b) the share certificates for the 30 million shares would be issued at the earlier of the company going public and the issuance of a cannabis cultivation license;
 - (c) that the new business would use Ravine as the corporate vehicle for the implementation of the founders' business plan;

(d) that Mr. Hucul would represent GN Ventures as its Chief Executive Officer and would earn a salary of \$150,000 per year, in addition to the 10 million founder shares; and

(e) Mr. Colvin and Ryan also were to be employed by GN Ventures and receive salaries.

(the "Agreement")

[9] In his opening statement at trial the plaintiff added additional terms to his description of the alleged agreement, including that the 10 million founders' shares would be issued at a price of \$.005/share in compensation for the founders' contributions to the company, and that "Mr. Colvin, Mr. Hucul and Ryan would all work toward the development of the business and the goal of acquiring a late stage applicant in order to produce, cultivate and sell cannabis."

[10] Finally, at the close of the plaintiff's case, the plaintiff amended his pleadings to plead the following essential elements of the contract:

11. On or about June 2017, Mr. Colvin, Mr. Hucul and Ryan entered into an oral agreement for the business venture, agreeing, inter alia, as follows:

(a) that they would each receive 10 million shares in the corporate vehicle they use to implement the founders' business plan GN Ventures (at that time, Ravine), for a total initial share allotment of 30 million shares;

(b) the share certificates for the 30 million shares would be issued at the earlier of the on or around the date the company was listed on a public stock exchange going public and the issuance of a cannabis cultivation license; and

(c) that the new business would use Ravine as the corporate vehicle for the implementation of the founders' business plan;

(d)(c) that Mr. Hucul would represent GN Ventures the company as its Chief Executive Officer and would earn a salary of \$15200,000 per year, in addition to the 10 million founders shares.; and,

(e) Mr. Colvin and Ryan also were to be employed by GN Ventures and receive salaries.

(the "Agreement")

12. In or around August 2017, Mr. Colvin, as director and chief executive officer of Ravine, suggested and the founders agreed that GN Ventures (at that time, Ravine) shall be the corporate vehicle they use to implement the founders' business plan. GN Ventures adopted the terms of the Agreement at this time with Mr. Calvin's authority. From that point on, the founders executed the business plan through GN Ventures.

13. Subsequently, the founders agreed to amend the terms of the Agreement, inter alia, as follows:

(a) The share certificates for the 30 million shares in GN Ventures would be issued to the founders on the date the company is issued a cannabis cultivation license: and

- (b) Mr. Hucul would earn a salary of \$150,000 per year instead of \$200,000 per year, in addition to the 10 million founders shares.
- [11] GN admits that Mr. Colvin was a director of GN (then Ravine) and had already been appointed its President and CEO in May 2017. GN also admits that Mr. Hucul "was engaged in pursuing for GN Ventures' late stage applicants that were in the process of applying for a licence to process, cultivate and sell cannabis." However, GN says that the time frame of Mr. Hucul's efforts on behalf of GN was limited to August 2017-April 2018, after which Mr. Hucul went on to pursue applicants on behalf of other companies.
- [12] More significantly, GN says that the discussions in June 2017 amounted to nothing more than an agreement to agree on a future endeavour and, at most, were the basis for a partnership agreement between Mr. Hucul, Ryan, and Mr. Colvin personally. Although Mr. Hucul, Ryan, and Mr. Colvin may have pursued their jointly discussed business goals in part using GN as a vehicle, GN was never a party to that preliminary plan or agreement. With respect to its subsequent conduct, GN says that it did not adopt or become a party to any contract with Mr. Hucul.

ISSUES

- [13] The issues that I must determine in this trial therefore include:
- a) Was an oral contract formed in June 2017?
 - i. Did the founders intend to contract with each other?
 - ii. What were the essential terms of the contract and were they certain?
 - b) If so, did GN become a party to the contract?
 - c) If GN became a party to the contract, did GN continue to owe those obligations to Mr. Hucul beyond April 2018?
 - d) If a breach of contract is established, what damages is Mr. Hucul entitled to?
 - e) If there was no breach of contract, was GN unjustly enriched by Mr. Hucul's contributions, and if so, what remedy is Mr. Hucul entitled to in unjust enrichment?

BRIEF CONCLUSION

- [14] I find that Mr. Hucul has not established that the founders formed an oral contract at the June 2017 Meeting. Although the founders developed a business plan at that meeting, I find that the business plan was still speculative and the terms of the agreement were amorphous. I find that the evidence does not establish an objective intention on the part of the founders to enter into a binding contract at that time.

- [15] Nor does the evidence as of August 2017 establish an intention to form a binding contract. The evidence as a whole establishes that Mr. Colvin's introduction of GN in August 2017 was not the crystallization of the business plan conceptualized by the founders, but just one more step in its evolution.
- [16] Although there were attempts to identify the terms of a contract, those terms were never settled or agreed to by all three founders. In particular, while there is evidence that there were continued references to 30 million or more "founders" shares, and that Mr. Hucul would be allotted 10 million such shares, key terms and conditions for the issuance of those shares--including what company they would be issued from and what the consideration for those shares would be--remained in flux and was never clearly agreed upon between the three founders. Those terms remained undetermined through to August 2019, when Mr. Hucul's professional relationship with Mr. Colvin ended.
- [17] In summary, I find that what could best be described as a business plan between the founders, did not advance beyond a speculative venture and never crystallized into an enforceable contract.
- [18] I also find that Mr. Hucul has not established that GN, as a corporate entity, adopted the terms of that agreement by its conduct or otherwise. GN was not incorporated around the purposes or principles of the founders' venture. For example, GN's corporate structure never reflected the ownership, officer positions, or share allocations contemplated by the founders in June 2017. Despite Mr. Colvin making representations regarding GN while he was its CEO, his representations about the company were often untrue; at best, they were aspirational and, at worst, they were fraudulent. With respect to Mr. Hucul, they were never contractually binding on behalf of GN.
- [19] Some investors appear to have acted to their detriment based on Mr. Colvin's representations while he was CEO of GN and may well be entitled to some relief either from GN, Mr. Colvin, or both. These include Jonathon MacKee and Gale Hucul (hereafter referred to as "Gale" to differentiate him from the plaintiff) who invested \$50,000 and \$10,000-20,000, respectively, in exchange for debentures in GN which were never properly recorded in GN's accounts, despite being signed by Mr. Colvin as GN's CEO.
- [20] However, the evidence does not establish that GN was unjustly enriched by Mr. Hucul's investment of time and effort. By his own admission, Mr. Hucul received over \$93,000 for his work with GN between August 2017 and March 2018--largely through off-the-books cash payments and other consideration provided by Mr. Colvin.
- [21] I find that GN was just one of several vehicles that Mr. Hucul, Ryan, and Mr. Colvin used to pursue their business plan. I also find that Mr. Hucul had ceased to contribute his time or efforts to GN by April 2018, when Mr. Colvin directed him to pursue acquisitions through different corporate vehicles. Therefore, there is no basis for a finding that GN was enriched by Mr. Hucul after April 2018. Before April 2018, I find that the \$93,000 Mr. Hucul admits he received from Mr. Colvin adequately compensates him for his contributions during that

period.

- [22] Furthermore, I find that Mr. Hucul was never an employee or officer of GN in name or in practice, but that he was, at best, Mr. Colvin's partner, and at worst, Mr. Colvin's pawn in their various business ventures.

BACKGROUND AND FACTUAL FINDINGS

- [23] Despite having a fundamentally different view of the import of the discussions in June 2017 and the introduction of GN in August 2017, the parties to this litigation have a remarkably unified view of many of the key events relevant to this claim. Where there is a contradiction in the evidence, I must resolve that contradiction based on the evidence before me. In this regard, I have had to assess the credibility and reliability of the various witnesses called at trial.
- [24] Credibility and reliability are two different, but related, considerations. Credibility has to do with a witness's veracity, while reliability has to do with the accuracy of the witness's testimony, with consideration of the witness's ability to accurately observe, recall, and recount events in issue: *R. v. H.C.*, 2009 ONCA 56 at para. 41.
- [25] In making this assessment, I am guided by Justice Dillon's summary of relevant factors in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, leave to appeal *ref'd*, [2012] S.C.C.A. No. 392 (S.C.C.), as well as Justice O'Halloran's analysis in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.S.C.) at 357. While I will address the weight I give to conflicting evidence more directly in relation to specific findings, I will briefly set out my general observations with respect to the credibility and reliability of the fact witnesses here.
- [26] I found Mr. Hucul to be generally sincere in his evidence, but not particularly reliable. His recollection of detail, including important details, was highly variable. His evidence, both at trial and between discovery and trial, was inconsistent with respect to key terms. Nevertheless, I did not form the impression that Mr. Hucul was attempting to be dishonest and, in many respects, he exhibited a sincere intention even in recounting transactions which were essentially fraudulent. My overall impression was that Mr. Hucul was inexperienced and not fully informed about many aspects of the founders' business venture, including some questionable business practices that he participated in, and even perpetuated. Consequently, Mr. Hucul's evidence suffers from a lack of both clarity and understanding, which leads to a significant reliability issue.
- [27] On the other hand, I found his son, Ryan, to be a much more reliable witness. One might think that Ryan would be, at least unconsciously, biased towards his father. However, he was cooperative with counsel for both parties, and I find that he did his best to assist the Court with information gleaned in his role as Mr. Colvin's personal assistant for many years. Generally, where there is a conflict, I prefer his evidence to that of other witnesses.

- [28] Although subpoenaed, Mr. Colvin did not testify at trial, nor provide the documentary discovery that was required of him. I do have his evidence, however, through the plaintiff's selective read-ins from Mr. Colvin's examination for discovery less than a month before the commencement of trial. As will become clear, the evidence at trial does not paint Mr. Colvin in a particularly honourable light. This may be in part because he was not available at trial to explain his conduct; however, I can only conclude that was by his own choice in ignoring counsel's communications and his subpoena. Nevertheless, the portions of his examination for discovery that the plaintiff has adduced at trial provide important insights into Mr. Colvin's actions and intentions. Some of these are admissions that the plaintiff is entitled to rely upon as part of its case, and others I rely upon with due caution.
- [29] The plaintiff called a number of witnesses who essentially invested in GN (then Ravine) in 2017 and 2018, based on representations made to them by Mr. Hucul and Mr. Colvin. One of these was Mr. Hucul's legal counsel in his family law proceeding. I found all of these witnesses to be credible and reliable.
- [30] Finally, Marco Marrone testified on behalf of GN. He became a director of GN (then Ravine) in May or June of 2018. It is apparent that he had little knowledge of GN's activities prior to his involvement, other than what GN disclosed in its financial statements and corporate records. He had no dealings with Mr. Hucul prior to this litigation. I found Mr. Marrone to be a highly knowledgeable and intelligent witness, with a slight tendency towards argument. Nevertheless, I found that his evidence was both credible and reliable on the points on which he had direct knowledge.
- [31] Based on the concessions, agreements, evidence, and my resolution of contradictory evidence, I make the following factual findings.

The June 2017 Meeting

- [32] Sometime in early June 2017, Ryan arranged for Mr. Hucul to meet with Mr. Colvin. Mr. Colvin was a businessperson who was involved in at least two corporate entities at that time: Ravine and PLC International Investments Inc. ("PLC"). At that time, Ryan was dating Mr. Colvin's daughter and working at a squash club where Mr. Colvin played squash. Mr. Hucul was or had been involved with various businesses, including carpet cleaning, muscle car restoration, and constructing a medical marijuana facility in Kelowna.
- [33] Mr. Hucul, Ryan, and Mr. Colvin met at a coffee shop in Kelowna to discuss opportunities arising from the anticipated legalization of cannabis in Canada. I accept the evidence of Mr. Hucul, corroborated by his son Ryan, that Mr. Colvin was receptive to the idea of starting a cannabis production business and that he suggested that the best way to do so would be to buy out a company that had already made an application to Health Canada for this purpose and had reached one of the later stages of approval, referred to as a "late stage applicant."

- [34] I find that Mr. Hucul and Ryan understood from this meeting that Mr. Colvin had access to tens of millions of dollars, and that he would be able to fund up to \$40 million for the purchase of one or more late stage applicants. Because Mr. Colvin himself did not testify, and because neither Mr. Hucul nor Ryan testified as to precisely what Mr. Colvin said about the details of this fund, I cannot determine whether they based their understanding on Mr. Colvin describing a fund that he controlled, or one that he could solicit investment from, or some other possibility.
- [35] Nevertheless, I find that Mr. Colvin sketched out a corporate structure that would involve Mr. Hucul in some sort of operations role and Ryan acting as Mr. Colvin's executive assistant. I accept Mr. Hucul and Ryan's evidence that they both understood that their roles would be paid by the future company, and that Mr. Hucul expected to be CEO (although in his testimony he was entirely unclear on what was involved in that role, including any understanding of corporate boards, corporate roles, or corporate governance). I also accept that both Ryan and Mr. Hucul believed that Mr. Colvin would be in charge of all corporate governance and decision-making. Again, as both Mr. Hucul and Ryan's testimony lacked precision in this regard and Mr. Colvin did not testify, I am unable to find what was said that formed the basis for this understanding.
- [36] Based on the available evidence, I find that Mr. Colvin described to Ryan and Mr. Hucul a corporate structure that would involve each of them owning one-third of the company and holding 10 million shares. I also find that Mr. Colvin described the need to raise "seed funding" totaling \$500,000 to pay for administrative costs, distinct from Mr. Colvin's ability to access tens of millions of dollars for acquiring one or more late stage applicants.
- [37] With respect to the timing of the issuance of the 10 million shares, both Mr. Hucul and Ryan testified that their understanding coming out of the June 2017 Meeting was that the shares would be issued to them upon the corporate vehicle they used "going public."
- [38] I accept both Ryan and Mr. Hucul's evidence that they were agreeable to this proposal and wished to participate in it. At that point, they considered themselves "founders" of a to-be-created cannabis production company that would go public by the end of 2017.
- [39] In his discovery evidence read in at trial by the plaintiff, Mr. Colvin stated that he considered these conversations and proposals to be "speculative" at the time, and that any final share and corporate structure would depend on financing and the requirements of the investors. Mr. Colvin also agreed that the business plan "became less speculative" over time as the founders pursued late stage applicants, signed letters of intent ("LOIs"), and sought investors.
- [40] I find that Mr. Hucul did not understand at that time, nor at trial, the relationship between his proposed ownership of 10 million founders' shares, his proposed one-third ownership of the company, and the need to raise funds through the sale of shares. Mr. Hucul was also unclear about the relationship between ownership of shares and control of a company.

- [41] Although Mr. Hucul testified at trial that the three founders discussed the price of their 10 million shares at \$0.005 per share, and that their ownership would not be diluted, Ryan has no recollection of this. Furthermore, these are not aspects of the agreement that Mr. Hucul pleaded as elements of the agreement. On all the evidence, I find that share price was not something that was discussed or determined at the June 2017 Meeting, or at any time afterward by Mr. Hucul.
- [42] Mr. Hucul's understanding of how the late stage applicant that they acquired would go public was that the founders would also purchase a company that was already public, but that had no assets (he described this as the "shell company"). Although Mr. Hucul did not have a clear understanding of how this would work, he believed that Mr. Colvin did, and that they would go public by the end of 2017.
- [43] In reference to the formation of the company, Mr. Colvin stated in discovery:
46. Q: Okay. And part of the business plan that you formed at that meeting was that you, Ryan Hucul, and Kelly Hucul would all work together towards that goal of acquiring a late-stage licensed producer; isn't that right?
- A: We were going to work together to try and acquire a late-stage producer, yes.
- [44] My impression from Mr. Hucul and Ryan's testimonies was that, following the June 2017 Meeting, they believed that very little was required on their parts to become one-third owners in a multimillion-dollar cannabis company that would go public in the next six months. To this end, Mr. Hucul understood that his role would be to find late stage applicants willing to sell their business together with their licences; Mr. Colvin would raise \$500,000 for seed capital and contribute tens of millions of dollars to acquire the late stage applicants; and Ryan would assist Mr. Colvin with the paperwork. As Ryan testified, he "almost thought it was too good to be true," and that he was going to become a multimillionaire before his 19th birthday.

Timing of Share Issuance

- [45] At some unspecified point after the June 2017 Meeting, both Ryan and Mr. Hucul testified that Mr. Colvin represented to them and other investors that their shares would be issued upon the company obtaining a licence from Health Canada, rather than waiting for the company to go public. I find that both Mr. Hucul and Ryan had this understanding sometime after Ravine was introduced as part of their business plan, and after their efforts to quickly acquire a late stage applicant and a public shell company had proven more difficult than expected.
- [46] Mr. Colvin's discovery evidence was that he could not recall any conversations in this regard, but that the timing of share issuance would have been "dictated by exchanges and investors" and the need to attract investment.

Early Acquisition Efforts

- [47] I accept Mr. Hucul's testimony that he gave up his various other projects (none of which were earning him any significant income) and dedicated himself to finding a late stage applicant for acquisition by the founders.
- [48] Mr. Hucul got in touch with a broker, Cannabis Compliance Inc. ("Cannabis Compliance"), who emailed Mr. Hucul information regarding several late stage applicants looking to sell their companies. From mid-June to early July 2017, Mr. Hucul was involved in "negotiating" three LOIs for the purchase of a late stage applicant. I put "negotiating" in quotation marks because my understanding from Mr. Hucul was that the extent of his negotiation was to ascertain the seller's asking price and determine whether they were willing to sell 100% of their interest. Mr. Hucul did not conduct any analysis or due diligence on these potential acquisition targets or negotiate the purchase price. Instead, I find on the evidence that his role was primarily as a middleman between the broker, the potential sellers, and Mr. Colvin.
- [49] As a result of Mr. Hucul's efforts in this regard, Mr. Colvin signed LOIs with three companies as follows:
- a) Gaia Bio-Pharmaceuticals Inc. ("Gaia") on July 17, 2017;
 - b) Alternative Medical Solutions ("AMS") on July 31, 2017; and
 - c) Essex County Feed Lots Ltd. ("Essex") also in July 2017.
- [50] All three LOIs were signed by Mr. Colvin on behalf of his personal holding company, PLC, on PLC letterhead.
- [51] Once the LOIs had been signed in July 2017, Mr. Hucul's primary role appears to have been to reassure the acquisition targets that the company would honour its LOI commitments, and to bring the targets back to the table when the company failed to produce the purchase money set out in the LOIs throughout the fall of 2017.
- [52] At some time in August 2017, Mr. Colvin introduced GN (then Ravine) as the corporate vehicle by which the founders would raise the necessary seed money and pursue the LOIs that PLC had signed. In August 2017, Mr. Colvin sent an email to Mr. Hucul, to be sent to AMS's principal, Joseph Groleau, stating that "the strategy is to assign the existing LOI to Ravine, which will then enter into a share exchange agreement with USSE Corp (a public shell being restructured for this purpose) which will take over the financing."

Ravine Trading/GN Ventures

- [53] Starting in August 2017, the documentary evidence indicates that the founders began using Ravine as the primary corporate vehicle for their business plan.

- [54] GN was incorporated almost two years earlier in September 2015 in Alberta, under the name Ravine Trading Limited. At incorporation, Lance Larsen was its sole director and shareholder.
- [55] On December 31, 2016, Ravine appointed Mr. Colvin as a director, alongside Mr. Larsen. On May 1, 2017, Ravine appointed Mr. Colvin as its President and CEO. There is no evidence as to what business, if any, Ravine was involved in during this time.
- [56] In September and December of 2017, three new people were appointed as directors, and Mr. Larsen resigned as a director. At that same time, Ravine reappointed Mr. Colvin as its President and CEO, and appointed John Cassels as its Secretary and Chief Financial Officer ("CFO").
- [57] The parties to this litigation presented little evidence in relation to these and other past directors or their involvement or contribution to GN's board during their tenures. Mr. Larsen remained GN's sole shareholder until June 2018.

Later Acquisition Efforts

- [58] By December 2017, only AMS was still negotiating with Ravine regarding Ravine's July LOI to acquire them.
- [59] On January 4, 2018, Ravine entered into an equity purchase and sale agreement with AMS wherein Ravine agreed to pay \$15 million to purchase 100% of the shares of AMS. The agreement required Ravine to produce \$3 million upon closing, and another \$2.4 million upon AMS obtaining a licence to sell cannabis. Ravine would pay the remaining \$9.6 million by issuing a convertible debenture, which AMS could convert to shares or cash once Ravine filed a registration statement with the Securities and Exchange Commission. The agreement was signed by Mr. Colvin on behalf of Ravine. There is no evidence that Ravine's board considered or approved of this agreement.
- [60] Ravine did not have \$3 million at the time of entering into this agreement with AMS. Ravine's 2017 financial statements (which were not prepared until July 30, 2019) showed it with \$1,550 in total assets as of December 31, 2017. Indeed, Ravine had only recently opened a bank account at the end of November 2017. Ryan and Mr. Hucul believed that Mr. Colvin would produce the \$3 million required to close the sale.
- [61] When the principals of AMS became concerned that the money was not forthcoming, Mr. Colvin had Mr. Hucul forward to them a document purporting to be a wire transfer showing that Mr. Colvin had transferred \$1.8 million US from a Caribbean bank account to Ravine's solicitors. None of these funds, or any portion of the \$3 million, were ever transferred to AMS to close the purchase and, consequently, AMS walked away from the sale.

[62] In February and March 2018, Mr. Hucul was involved in issuing two additional LOIs for the purchase of two new late stage applicants on behalf of Ravine for \$12 million and \$25 million each. There is no evidence that these LOIs ever progressed beyond the LOI stage. The evidence also establishes that Ravine did not have the financial ability to fund the acquisitions contemplated in either of these LOIs, and that Mr. Colvin's anticipated millions of dollars for this purpose never materialized.

Early Investments

- [63] In addition to Ravine, the founders also continued to pursue the acquisition of a publicly traded shell company that would ultimately hold any successfully acquired late stage applicants for a cannabis licence. Mr. Colvin told Mr. Hucul and Ryan that such a company was available for \$100,000 and Ryan personally paid \$40,000 towards that acquisition to Mr. Colvin from an insurance settlement he received. It would appear that that public company was never purchased, and Mr. Colvin never directly accounted for Ryan's contribution. Nor does it appear that payment was deposited into Ravine's accounts or recorded in Ravine's financial records.
- [64] In August 2017, Mr. Hucul convinced his friend, Mr. MacKee, to become Ravine's first seed investor. Mr. Colvin, Mr. MacKee, and Mr. Hucul met at a restaurant in Kelowna. Mr. MacKee testified, and I accept, that he asked about Ravine's share structure, what percentage of shares his potential investment of \$50,000 would constitute, and whether that percentage would be diluted. He understood that \$50,000 would constitute 10% of the seed investment of \$500,000 to be raised to take the company public, and he was seeking a corresponding interest in the company. However, Mr. Hucul informed him--and Mr. Colvin "begrudgingly admitted"--that the founders would each get 10 million shares. He testified that they agreed that his \$50,000 investment would constitute a 1% interest in the company and would not be diluted. At that time, Mr. MacKee was eager to get into this market "on the ground floor" and believed that it could yield a 10-20 times return on this investment within five to seven months.
- [65] At that meeting, Mr. MacKee wrote a cheque directly to Mr. Colvin for \$43,500 (Mr. Hucul owed Mr. MacKee \$6,500 at that time, which was credited towards Mr. MacKee's \$50,000 investment). A few days later, Mr. MacKee received a contract of purchase and sale for a \$50,000 portion of Mr. Colvin's \$250,000 debenture with Ravine, and a separate debenture agreement signed by Mr. Colvin as the CEO of Ravine granting Mr. MacKee a \$50,000 debenture in Ravine, at an interest rate of 12% that was convertible into shares after one year. Although nothing in the documentation stated anything about his agreed upon non-dilution rights, Mr. MacKee testified that he trusted Mr. Hucul on this point, having done business with him before.
- [66] While the debenture agreement between Ravine and Mr. MacKee appears on its face to be valid and enforceable, I should note that the purchase and sale agreement--wherein Mr. Colvin represents that he holds a \$250,000 debenture in Ravine (\$50,000 of which he is

transferring to Mr. MacKee)--does not appear to have existed. There is no evidence that Mr. Colvin invested \$250,000 into Ravine, or that Ravine issued a \$250,000 debenture to him, in August 2018 or at any other time. Aside from the fact that GN has no records of such a debenture being issued, including in its debenture register, the disclosed documents and evidence at trial establish that Ravine did not have a bank account until the end of November 2017. I therefore find as a fact that Mr. Colvin did not actually deposit \$250,000 of his own money into Ravine's accounts in August 2017, and Ravine did not issue him a \$250,000 debenture in exchange for that investment. Nor was Mr. MacKee's debenture recorded in GN's debenture register.

- [67] The same observations apply to an investment made by Mr. Hucul's uncle, Gale Hucul. Like Mr. MacKee, Gale also wrote at least one \$10,000 cheque to Mr. Colvin directly. Gale was also issued a signed debenture agreement by Ravine for his contribution, together with a purchase and sale agreement transferring the corresponding amount of Mr. Colvin's ostensible \$250,000 debenture to Gale.

Draft Written Agreements

- [68] Mr. Hucul argues, and Ryan's evidence corroborates, that there were several attempts to reduce their alleged "founders' agreement" to writing.
- [69] I find that in December 2017, Ryan and Mr. Hucul attempted to describe their agreement with Mr. Colvin as a written partnership agreement between the founders, described as the "Partners." I accept that neither Ryan nor Mr. Hucul understood the legal difference between a partnership and a corporation at that time, and that Ryan relied on an online precedent in creating this document. I do not accept Mr. Hucul's evidence that he did not have input into the various drafts or its final form, as this is contradicted by both Ryan and Mr. MacKee. I also find that it is the first somewhat contemporaneous written statement of what Mr. Hucul and Ryan understood their agreement with Mr. Colvin to be at that time regarding their shares. Salient portions of the final iteration of that draft agreement included the following terms:
1. By this Agreement the Partners enter into a general partnership (the "Partnership")
 2. The firm name of the Partnership will be: Ravine Trading Limited.
 - .
 4. The Partnership will begin on November 1, 2017 and will continue until terminated as provided in this Agreement,
 - .
 6. The Partners will each receive an equal portion of the voting block of (Insert PubCo Name) upon execution of this Document.

7. Ravine Trading Limited will sell 100% of its revenue stream to (Insert PubCo Name).
 8. The Partners will receive 35,000,000 common shares of (Insert PubCo Name) and will divide them equally amongst themselves. These 35,000,000 shares can not be diluted, and/or the number of shares can not be lessened in any way without the written consent of all Partners.
- [70] Mr. Colvin was provided with a copy of this draft partnership agreement but he did not sign it. Ryan testified that Mr. Colvin always postponed the finalization or execution of this agreement and that Mr. Hucul's constant attempts to put this agreement in writing was often a source of friction between Mr. Colvin and Mr. Hucul.
- [71] I find that the draft partnership agreement indicates that, in December 2017, both Mr. Hucul and Ryan were still defining the terms of their agreement with Mr. Colvin, and were still pursuing a publicly traded shell corporation as the vehicle by which their proposed business would go public and issue them shares. Ravine was their anticipated vehicle for the purchase of the late stage applicants at that time, but it was intended that Ravine would be owned by the public company, rather than the issuer of their shares. The use of "Ravine Trading Limited" as the name of the partnership indicates that Ravine was in the minds of Mr. Hucul and Ryan, but is not evidence that Ravine was an intended party to this agreement.
- [72] The anticipated public shell company never materialized. Mr. Colvin's discovery evidence confirms that the founders were using Ravine "as the vehicle for the business plan" for some period of time.
- [73] Later, in the summer of 2018, Ryan and Mr. Hucul once again attempted to reduce what they understood as their founders' agreement with Mr. Colvin into writing by exchanging a number of drafts of a "Statement of Understanding." Among other things, these drafts provided that Ravine would issue no more than 115,000,000 common shares and that Mr. Colvin, Mr. Hucul, and Ryan would each receive 10 million shares in GN for their efforts in building the company. At that time, Ryan and Mr. Hucul also prepared and circulated a second "Statement of Understanding" in relation to another company the founders were working with: Greenhouse Solutions Inc. ("GRSU"), which provided that GRSU would issue no more than 115,000,000 shares, and that Mr. Colvin and Mr. Hucul would each receive 21 million shares while Ryan would receive eight million shares, "for their efforts in building" GRSU.
- [74] None of these Statements of Understanding were ever finalized nor executed. Mr. Hucul testified that he did not seriously attempt to have them signed by Mr. Colvin as he did not want to irritate Mr. Colvin, or "push the limit" with him. This is consistent with Ryan's testimony that Mr. Colvin continued to put off any discussions about these documents or the issues addressed in them.

Employment

- [75] Ryan does not recall any discussions regarding salary at the June 2017 Meeting, and Mr. Hucul's evidence is ambiguous in this regard.
- [76] After the June 2017 Meeting, Mr. Hucul was not paid anything for two months in relation to his efforts to secure a "target" for purchase. Mr. Hucul's evidence was that he accepted that a salary was premature at that point, but that he did ask Mr. Colvin how much he would be paid by the company and that Mr. Colvin responded something to the effect that "he pays his CEOs \$200,000 a year." Mr. Hucul also asked Mr. Colvin what his job title was and Mr. Colvin responded something to the effect that job titles were irrelevant, and that Mr. Hucul could call himself whatever he wanted.
- [77] Mr. Hucul testified that he pushed Mr. Colvin for a salary commitment and that, on August 29, 2017, Mr. Colvin emailed him a draft employment agreement. That draft employment agreement provided that Mr. Hucul was to act as Ravine's Chief Operating Officer ("COO") (although Mr. Hucul believed at trial that it was a contract making him the CEO) with an annual salary of \$150,000. This was less than the \$200,000 Mr. Colvin had mentioned earlier, but was nonetheless acceptable to Mr. Hucul. Mr. Colvin's cover email mentions that a bonus structure needed to be worked out. Neither the email nor the draft contract mentions shares or share entitlements.
- [78] This employment contract was never signed and Mr. Hucul never received a salary from Ravine or GN. He did, however, receive intermittent cash payments, bank drafts, and other consideration from Mr. Colvin directly totaling \$30,500 in late 2017 and early 2018. I understand that his travel expenses were also covered. In March 2018, Mr. Hucul received another \$12,500 from his friend, Mr. MacKee, on the understanding between Mr. Colvin and Mr. MacKee that this was a loan to Ravine, to be repaid directly by Ravine, and used as salary to Mr. Hucul. While Mr. MacKee was not prepared to loan the money directly to Mr. Hucul, he was prepared to lend it to Ravine, and he accepted Mr. Colvin's word that it would be repaid. It was not.
- [79] In January 2018, Ryan prepared an email setting out money owed to himself and Mr. Hucul. Ryan testified that this email was a summary of a meeting that the three founders had had earlier that month and was agreed to in principle by Mr. Colvin. Although the math set out in that email is difficult to follow, aspects of the email were confirmed by Mr. Hucul as reflecting his understanding of money owed to him, including that Mr. Colvin had committed to paying him an annual salary of \$150,000 on a quarterly basis, to be paid in advance, commencing August 1, 2017.
- [80] Mr. Hucul also acknowledged that he agreed that the first \$50,000 of his salary was already received by him by way of Mr. Colvin making a \$50,000 investment on his behalf. The email calculates that Mr. Hucul is still entitled to \$116,200 as of January 18, 2018, but it is not possible to reconcile how this figure was arrived at from the evidence before me or the document itself.

- [81] At trial, Mr. Hucul acknowledged receiving \$43,000 in cash or other consideration directly or indirectly from Mr. Colvin as salary and \$50,000 that he directed Mr. Colvin to invest for him. The plaintiff argues in closing submissions that he never saw that \$50,000 again; however, I have no evidence of what became of that investment. Based on Mr. Hucul's own evidence, I find that he received acknowledged compensation of \$93,000 from Mr. Colvin, for his efforts between August 2017 and April 2018.
- [82] Other than Mr. Hucul's evidence that he believed Mr. Colvin had made him CEO, and the August 2017 draft unsigned employment agreement, there is little indication that Mr. Hucul was a salaried employee of Ravine. Ravine did not provide him with a phone, email address, or computer. There was no evidence that he had business cards or a title. According to his own testimony, Mr. Hucul did not use or need a computer to do his work because he was not preparing or drafting documents. Although he occasionally used his wife's laptop if necessary, Mr. Hucul did most of his work on his personal cell phone using his personal email address.
- [83] Nor does it appear that Mr. Hucul had an office. The evidence establishes that, sometime towards the end of 2017, PLC leased office space in Kelowna, which is where Ryan worked (Ryan worked and was paid as Mr. Colvin's personal assistant, primarily through PLC, but also in relation to other companies Mr. Colvin was involved in). The evidence establishes that Mr. Hucul had meetings at that office, but it does not establish how often. Ravine's registered and records office was in Alberta, where it had been since its incorporation in 2015.
- [84] Externally, other than in one slide deck prepared for investors in February 2018 in which Mr. Hucul is named as "President," no other presentations to outside investors listed Mr. Hucul as an employee or officer, or in any other capacity with Ravine. This is in contrast to Mr. Colvin, who was regularly listed as both President and CEO. The role of COO was from time to time attributed to John Carroll, a consultant on retainer with Ravine to provide his expertise in the area of the design and construction of cannabis facilities.
- [85] In addition to his lack of title and access to company resources, the evidence does not suggest that Mr. Hucul was performing the role of CEO or any other officer position for Ravine. According to his own testimony, he was unaware of the bylaws and articles of the company, and had no dealings with the board. He was not permitted to speak to key potential investors, other than to forward information or documents to people as directed by Mr. Colvin. At one point, Mr. Hucul attempted to talk with a firm, Emerging Equities, through which Mr. Colvin was attempting to raise capital. Mr. Colvin reprimanded him for this and told that he could not speak to anyone without Mr. Colvin's permission. Mr. Hucul conducted himself accordingly going forward.

- [86] Mr. Hucul also did not consider himself entitled to speak to any officers, such as the CFO of Ravine, to determine, for example, the share structure or financial position of the company. In fact, it appears that he was entirely unaware of these people or their role in the company. He relied entirely on Mr. Colvin for direction and information, and did not act independently.
- [87] I do not have evidence as to the amount of time or effort Mr. Hucul invested in Ravine or GN after the initial busy period of identifying late stage applicants and preparing LOIs in June and July 2017. The documentary evidence suggests that he was involved in emails and phone calls with the three acquisition targets in the second half of 2017 and that he was involved in preparing two more LOIs in early 2018--neither of which went any further. The most concrete evidence of Mr. Hucul investing time and effort on behalf of Ravine was his participation in two trips to Ontario with Mr. Colvin: one in September 2017, when they met with Mr. Carroll and the principals of AMS, and one in the spring of 2018, when they met with a new potential investor and a new potential acquisition. Neither trip led to a completed acquisition or investment by Ravine.
- [88] I accept Mr. Hucul's evidence that pursuit of the founder's business plan was his primary focus from June 2017 to August 2019 when he had a falling out with Mr. Colvin. However, I find that by April 2018, Mr. Hucul had largely ceased pursuing projects, investments, or acquisitions on behalf of Ravine. Instead, I find that the evidence establishes that he was pursuing acquisitions on behalf of other companies, as directed by Mr. Colvin.

Mr. Hucul's Activities Post-April 2018

- [89] Mr. Hucul did not distinguish between acquisitions and projects pursued on behalf of Ravine and GN, and those pursued on behalf of other companies Mr. Colvin was involved with, viewing them all as part of the same business plan orchestrated by Mr. Colvin. However, there is no evidence that these other companies and their pursuits were advanced on GN's behalf. To the contrary, the evidence establishes that the other companies that Mr. Colvin and Mr. Hucul were working with to pursue late stage applications were likely competing with GN in the same market for investors and late stage applicants.
- [90] I accept the evidence of Mr. Marrone that the pool of available financing for cannabis projects in Canada was limited by numerous factors in 2018 and 2019, including a lack of available financing from Canada's big banks for projects that had not yet received their final licences, and from foreign investment in most jurisdictions where cannabis was not yet legalized.
- [91] In the spring of 2018, Mr. Colvin instructed Mr. Hucul to pursue the acquisition of one or both of Essex (a former target of Ravine's) and/or Thrive Cannabis Inc. ("Thrive") on behalf of a new company: GRSU. I accept that Mr. Hucul may have worked for both GRSU and GN in April 2018 before working exclusively on behalf of GRSU by May 2018.

- [92] To this end, Mr. Hucul represented himself as being part of GRSU and signed at least one document as an authorized signatory of GRSU, even though he admitted that he lacked that authority. Mr. Hucul also expected to be paid by GRSU and to receive 21 million GRSU shares for his efforts.
- [93] It is clear that Mr. Hucul was expecting or hoping to receive shares in GRSU on August 3, 2018, when Ryan circulated the "Statement of Understanding" detailing Mr. Hucul's proposed entitlement to 21 million GRSU shares. Mr. Hucul also admitted to selling a portion of his "entitlement" to non-existent GRSU shares for \$160,000 to a third party.
- [94] Beginning in or about November 2018, Mr. Hucul, Mr. Colvin, and Ryan also worked together in pursuit of a joint venture agreement between another public company, Catalina Gold Corp. ("Catalina"), and Thrive. The goal of the joint venture was to have Catalina fund the construction of cannabis facilities for Thrive, which already possessed a cultivation licence. Mr. Hucul held himself out as a representative of Catalina. He testified that he expected to have a role in that company and to receive a commission for having brought the parties together.
- [95] The latest Catalina document produced is dated July 24, 2019, though it is not clear if this is when Mr. Hucul's work on behalf of Catalina came to an end.
- [96] Mr. Hucul testified that he remained involved with GN after April 2018 and that he was reporting to Mr. Colvin and investors regarding GN's efforts for over a year after that date. However, there are no emails or other documentary evidence to suggest that Mr. Hucul performed any work for GN during this period. The only "investors" he appears to have been reporting to were his uncle, Gale, and his friend, Mr. MacKee. He was also communicating with individuals to whom he was attempting to sell his "shares," although this cannot be characterized as work on behalf of the company.
- [97] Mr. Hucul acknowledged during his testimony that it was strange to expect to receive a salary from GN and to simultaneously be issued shares in Catalina in relation to the work he performed for the Catalina and Thrive negotiations. Mr. Hucul testified that this was Mr. Colvin's idea, which Mr. Hucul did not question.
- [98] Mr. Hucul testified that he believed, even during the time he worked under the name GRSU, that he continued to be employed by GN, as he believed GN would eventually acquire GRSU. Ryan also testified that he understood GRSU to be under the umbrella of GN. While Mr. Hucul argues that this means that he was instructed to work for GRSU by GN, Mr. Hucul made no distinction between GN and Mr. Colvin in his testimony.
- [99] I find that Mr. Colvin continued to have distinct business interests from GN, and that Mr. Hucul had in fact ceased working on behalf of GN, though he continued to follow Mr. Colvin's direction. The larger "umbrella" that Ryan and Mr. Hucul continued to work under was not GN, but Mr. Colvin's personal direction.

- [100] I do not accept Mr. Hucul's explanation of his work for GRSU (and later Catalina) as being consistent with his previous role for GN. Since GRSU and Catalina were both already public, GN could not and would not have purchased them. It is more consistent with the founders' business plan that these companies were the public companies that the founders intended to use to purchase the acquisitions they had pursued with Ravine. I find that the founders had moved on to seeking to broker these acquisitions directly through these public companies.
- [101] I also find that after April 2018, Mr. Hucul ceased to pursue acquisitions or investments for GN, and instead worked on behalf of two of GN's competitors--GRSU and Catalina.

Sale of Mr. Hucul's Interest in GN Ventures

- [102] At the March 2018 meeting between Mr. Hucul, Mr. MacKee, and Mr. Colvin, Mr. MacKee and Mr. Hucul testified that Mr. Colvin agreed that Mr. Hucul should be allowed to sell portions of his anticipated entitlement to 10 million shares in Ravine. I accept this evidence, and that Mr. Colvin required that he approve any such transactions, including the price and number of shares.
- [103] Mr. Colvin, in his discovery evidence, acknowledges that Mr. Hucul pressed to be able to sell his shares, but says that he refused to allow it.
- [104] However, I find that Mr. Colvin did "authorize" Mr. Hucul to sell portions of his anticipated 10 million share entitlement in Ravine. I find this on the basis of the following evidence:
- a) Ryan prepared a purchase and sale agreement for this purpose stating that Mr. Hucul "was the owner of Ten million common shares (10,000,000) of GN Ventures, formally known as Ravine Trading Limited ("GNV")" which was sent to Mr. Colvin in July 2018. I accept Ryan's evidence that Mr. Colvin approved of this document before he provided it to Mr. Hucul and, specifically, that Mr. Colvin required that the Investor Certification appendix be added. I also accept Ryan's evidence that Mr. Colvin approved a number of the share sales that Mr. Hucul engaged in, but not all of them.
 - b) I accept Mr. MacKee's evidence that Mr. Colvin specifically approved of some share sales. Mr. MacKee directly loaned Mr. Hucul various amounts of money over the years, but Mr. MacKee also sought assurances from Mr. Colvin that Ravine was backing his larger loans to Mr. Hucul. I believe Mr. MacKee's evidence that Mr. Colvin approved of the share sales in principle.
 - c) Eric Watson testified that, when he agreed to accept some of Mr. Hucul's shares to cover Mr. Hucul's legal fees in unrelated litigation, Mr. Watson requested a change to the contract prepared by Ryan. Mr. Watson waited while Ryan called someone, who I find was most likely Mr. Colvin, to get approval for the change.

- [105] Ultimately, I accept that Mr. Colvin approved of Mr. Hucul "selling" his shares to Mr. Watson and Mr. MacKee, and likely other transactions. I also accept Ryan's testimony that Mr. Hucul sold more shares than approved by Mr. Colvin.
- [106] In total, Mr. Hucul received over \$200,000 in cash from the sale of these shares. Of this amount, he originally received \$160,000 of this cash for the sale of GRSU shares, that he also did not own, and which he later "converted" to Ravine shares when the GRSU deal failed. Mr. Hucul also used these shares to pay debts, such as his legal fees and consulting fees. In total, Mr. Hucul says he received, or was forgiven in debt, a value totalling over \$500,000 for these "shares." I note that Mr. Hucul did not update the representations in his subsequent purchase and sale agreements stating that he "owned" 10 million shares, even as he "sold" close to two million such shares.
- [107] I accept that Mr. Hucul sold these shares based on a belief that he would own these shares one day. However, this belief was not founded in reality. Mr. Hucul did not "own" 10 million shares in Ravine when he sold these shares, because Ravine had not actually issued any shares to him--on a performance-basis or otherwise. In fact, by the time many of these "sales" occurred, Ravine had a new chair of its board (Mr. Marrone) and shares and performance warrants had actually been issued by the board to persons other than Mr. Hucul, including Mr. Colvin.
- [108] I find that Mr. Colvin did not tell Mr. Hucul, or any of his would-be purchasers, that the GN board had approved the issuance of shares to himself and persons other than Mr. Hucul, even as he approved at least \$200,000 worth of share "sale" transactions by Mr. Hucul.

GN's Activities Post-March 2018

- [109] The end of Mr. Hucul's work for GN roughly coincides with the start of Mr. Marrone's involvement in the company in April 2018. At that time, Mr. Marrone had retired from his previous position as CFO and Executive Vice President of Canadian Tire. Mr. Marrone holds a Masters of Business Administration designation in finance and was a chartered professional accountant and legacy certified management accountant. He also has experience starting companies, managing companies, negotiating mergers and acquisitions, and acting as a director on company boards. In 2018, he was still doing some private consulting work and sitting on numerous boards. He had become curious about the emerging cannabis sector and, in the fall of 2017, he was introduced to Mr. Carroll, the consultant who had worked with Ravine, AMS, and other late stage applicants, in relation to a cannabis production start-up in Stevensville, Ontario, not far from where he lived.
- [110] In April and May 2018, Mr. Marrone was encouraged by Mr. Carroll to join Ravine's board. At this time, Mr. Carroll introduced Mr. Marrone to Mr. Colvin and a representative of Emerging Equities.

- [111] When Mr. Marrone was considering becoming involved, he was advised by Mr. Colvin that the company was pursuing two acquisitions, both of which had been brokered and could be assigned to GN by Mr. Carroll and his company P2P Green Energy Solutions Inc. ("P2P"):
- a) a project in Sault Ste. Marie, Ontario, which was assigned to GN by P2P through an LOI dated April 6, 2018; and
 - b) a new AMS acquisition deal, which was being negotiated by Mr. Carroll on behalf of P2P.
- [112] As a condition to becoming involved with Ravine, Mr. Marrone had discussions with Mr. Colvin regarding the company's finances and share structure. He understood that the company was a start-up, with no financial statements and few records (which was true). I find that he was not informed of most of the dealings that Ravine had been involved with to that date, including the debenture agreements Mr. Colvin had signed with Mr. MacKee, Gale Hucul, and a number of squash players at his club. I also find that none of these debentures had been properly recorded in the company's records.
- [113] I find that Mr. Marrone was not advised of Mr. Hucul's past involvement with GN and did not become aware of Mr. Hucul's existence until August 2019 when this litigation was first threatened. I find Mr. Marrone similarly had no knowledge at that time of past LOIs which Mr. Hucul had been involved with, including the previous AMS deal. Nor was he made aware that Ravine had entered into two new LOIs in February and March 2018, which were never developed or funded.
- [114] However, I find that Mr. Marrone would or should have been familiar with the debenture register that showed investment through Emerging Equities amounting to approximately \$1,265,000.
- [115] In the spring of 2018, Mr. Carroll was negotiating a new LOI between AMS and his company, P2P. P2P had agreed to pay AMS \$10 million and to assume \$2.7 million worth of debt, with all cash payment contingent upon AMS securing a cultivation licence and establishing a positive cash flow. AMS was unaware that Mr. Carroll was trying to get Ravine to back P2P's acquisition, with Mr. Marrone's assistance. However, AMS ultimately agreed to allow P2P to assign this more buyer-friendly purchase and sale agreement back to GN on June 21, 2018.
- [116] On June 11, 2018, Mr. Marrone and Bill Van Haeren were appointed as directors of GN's board. Mr. Marrone became the Executive Chair of the board.
- [117] Mr. Marrone instituted numerous cost savings requirements, including that none of the officers receive a salary, and that Mr. Colvin could not bill GN for Ryan's salary or expenses. He accepted that the CFO, Mr. Cassels, could continue to draw a salary, but not long afterward concluded that this also was an unnecessary expense for a company with no revenues.
- [118] In lieu of salaries, on June 21, 2018, GN's board authorized the issuance of shares to its directors and officers as follows:

- a) Mr. Colvin: 5 million shares at \$0.005/share;
- b) Mr. Marrone: 5 million shares at \$0.005/share;
- c) Mr. Orman: 1 million shares at \$0.005/share; and
- d) Mr. Cassels: 500,000 shares at \$0.005/share.

[119] On June 21, 2018, Ravine also changed its name to Great Northern Cannabis Ltd., which then changed its name to GN Ventures Ltd. on October 15, 2018.

[120] In August 2018, GN's board authorized the issuance of nine million performance-based warrants to its board members and officers as follows:

- a) Mr. Colvin: 2.5 million warrants exercisable at \$1/common share, expiring on August 28, 2021;
- b) Mr. Marrone: 3 million warrants exercisable at \$1/common share, expiring on August 28, 2021;
- c) Mr. Orman: 1 million warrants exercisable at \$1/common share, expiring on August 28, 2021; and
- d) P2P (Mr. Carroll's company): 2.5 million warrants exercisable at \$1/common share, expiring on August 28, 2021.

[121] According to GN's Consolidated Financial Statements (Years Ended December 31, 2019 and 2018, in CAD), the above warrants were to vest as follows:

- a) one-third upon the issuance of a valid and current development permit by the applicable regulatory authorities to construct a facility;
- b) one-third upon the issuance of a "producer's license" and receipt of all approvals to commence cultivation of cannabis; and
- c) one-third upon the issuance of a "producer's license" and receipt of all approvals to commence sales of cannabis.

[122] In the summer of 2018, GN contracted with an investment firm, EmergingEquities, to raise approximately \$22 million in support of the AMS and Sault Ste. Marie projects by way of a share and warrant sale priced at \$0.75 for one common voting share and one-half common share purchase warrant (the "Special Warrant Offering"). The warrant, when combined with another half warrant, could be exercised to purchase a share at a price of \$1.00. Ultimately, the Special Warrant Offering was unsuccessful, raising only \$670,324.50, much of which came from friends of Mr. Marrone and Mr. Carroll.

[123] Following the unsuccessful Special Warrant Offering, I accept Mr. Marrone's evidence that it was clear that the company would not have the money to complete any of its intended acquisitions, and would therefore fail.

- [124] It was at this point, in August 2018, that Mr. Marrone began discussions with Mr. Van Haeren about how GN could acquire Tykolis Real Estate Group Ltd./ 9869247 Canada Ltd. dba Stevens Green ("Stevens Green"), which Mr. Van Haeren's company, Trigon, was building and Mr. Van Haeren's family company, Gray Jay, had an agreement to acquire.
- [125] Mr. Marrone negotiated a deal with Mr. Van Haeren where GN would not have to put up any cash to acquire Stevens Green. Instead, it would only have to obtain the financing to pay out Gray Jay's mortgage. On September 12, 2018, GN entered into an LOI with Gray Jay for the purchase of Stevens Green. The acquisition was to complete on January 8, 2019.
- [126] Mr. Colvin was responsible for securing the financing for the Stevens Green acquisition but he failed to do so. This resulted in GN breaching its obligations to Gray Jay and, consequently, in GN having to offer further consideration to Gray Jay to keep the deal.
- [127] Mr. Marrone testified that, following GN's failure to obtain the financing required to pay out Gray Jay's mortgage, GN's directors and officers offered to resign from their positions. He testified that Gray Jay elected to have Mr. Marrone and Mr. Carroll (who was then COO), stay on with the company, while accepting the resignations of Mr. Colvin and Mr. Orman.
- [128] I find that after this meeting in late January 2019, Mr. Colvin did no work for GN. On May 14, 2019, he formally resigned as GN's director and CEO.
- [129] On July 5, 2019, Health Canada issued a cultivation licence to Stevens Green. I accept Mr. Marrone's evidence that this was a time-consuming and costly process, on which Mr. Marrone expended considerable effort in order to manage costs, negotiate supply agreements, and structure the company. Once it got the licence, Stevens Green was able to start production, but it was not until later in 2019 and early 2020 that Stevens Green was able to grow and sell a viable product to the market and earn any revenues.

DETERMINATION

A. Was an Oral Contract Formed in June 2017?

- [130] The parties to this litigation agree on the governing law on contract formation, though they disagree on its application to the facts of this case.
- [131] A contract is formed where there is "an offer by one party accepted by the other with the intention of creating a legal relationship, and supported by consideration": *Ethiopian Orthodox Tewahedo Church of St. Mary Cathedral v. Aga*, 2021 SCC 22 at para. 35.
- [132] The legal principles to determine whether an enforceable contract has been formed were succinctly summarized in *Oswald v. Start Up SRL*, 2021 BCCA 352 at para. 34 as follows:
- (a) there must be an intention to contract;
 - (b) the essential terms must be agreed to [by] the parties;

- (c) the essential terms must be sufficiently certain;
- (d) whether the requirements of a binding contract are met must be determined from the perspective of an objective reasonable bystander, not the subjective intentions of the parties; and
- (e) the determination is contextual and must take into account all material facts, including the communications between the parties and the conduct of the parties both before and after the agreement is made.

[133] A contract does not need to be written or signed to be binding, even in complicated commercial contexts: *Crosse Estate (Re)*, 2012 BCSC 26 [*Crosse Estate*] at para. 29.

[134] Justice Dickson (as she then was) in *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303 [*Le Soleil*] provides further guidance on how to interpret oral contracts:

[328] The interpretation of oral contracts turns on the same essential principles [as a written contract] . If the alleged agreement has not been reduced to writing, the Court must consider what the parties said and did and assess objectively whether, in context, their words and actions establish an intention to be bound . The genesis and aim of the transaction is an aspect of the relevant context for consideration . The credibility of witnesses will be particularly important and differing versions of events will increase the difficulty of establishing that an enforceable bargain was made . . .

[Citations omitted.]

[135] With respect to how to consider subsequent negotiations as part of contract formation, *Le Soleil* provides the following guidance:

[335] In *The Law of Contract*, 11th ed. (London: Sweet & Maxwell, 2003) Sir Guenther Treitel described the analytical approach to be adopted where subsequent negotiations form part of the relevant factual matrix. He wrote:

When parties carry on lengthy negotiations, it may be hard to say exactly when an offer had been made and accepted. As negotiations progress, each party may make concessions or new demands and the parties may in the end disagree as to whether they had ever agreed at all. The court must then look at the whole correspondence and decide whether, on its true construction, the parties had agreed to the same terms ... the Court will be particularly anxious to reach such a conclusion where the performance which was the subject-matter of the negotiations has actually been rendered...

Business men do not, any more than the courts, find it easy to say precisely when they have reached agreement, and may continue to negotiate after they appear to have agreed to the same terms. The court will then look at the entire course of the negotiations to decide whether an apparently unqualified acceptance did in fact conclude the agreement. If it did, the fact that the parties continued negotiations after this point will not normally affect the existence of the

contract; it will do so only if the continuation of the negotiations can be construed as an agreement to rescind the contract. A fortiori, the binding force of an oral contract is not affected or altered merely by the fact that, after its conclusion, one party sends to the other a document containing terms significantly different from those which had been orally agreed.

[Citations omitted; Emphasis added.]

- [136] The existence of an enforceable contract requires an objective intention to contract. The test is not what the parties subjectively intended but rather whether a reasonable person in that party's situation would believe that the party was assenting to the terms proposed by the other party. The actual state of mind and personal knowledge or understanding of the other party are not relevant. In assessing intention to contract, a court is not confined to the four corners of the alleged contract, but may look to all the circumstances, including evidence of past agreements involving other parties, the circumstances in which the alleged agreement was made, and future actions and representations by both parties: *Leemhuis v. Kardash Plumbing Ltd.*, 2020 BCCA 99 at paras. 15-17.
- [137] To determine whether a binding contract was created, a court may consider both parties' conduct leading up to and after concluding the agreement. For example, if the parties acted on their own understanding of the agreement and incurred expenses, a court may be reluctant to find there was only a non-binding agreement to agree. Conversely, if further negotiations took place after the alleged agreement was concluded, it may suggest that definitive agreement was never achieved--though subsequent negotiations are not necessarily inconsistent with a fully formed contract: *Le Soleil* at para. 334.
- [138] The underlying business context is also relevant in a determination of whether a contract was formed: *Crosse Estate* at para. 33, citing *Copcan Contracting Ltd. v. Ashlaur Trading Inc.*, 2010 BCCA 597 at para. 8. Objective agreement can be implied by conduct: *Crosse Estate* at para. 32 and *Start Up SRL*. Although subsequent conduct is not direct evidence of the formation of a contract, I accept that it may be highly persuasive circumstantial evidence of an original intention to form a contract at the relevant time.
- [139] The issue of whether the parties intended to form an enforceable contract and what is evidenced by their conduct is often entangled with the issue of whether there is certainty in the essential terms of an alleged contract. Courts cannot enforce an alleged contract if its terms are unclear. Where the terms are vague, ambiguous, or incomplete, it cannot be said that the parties came to a meeting of the minds: *Le Soleil* at para. 339. While it is not necessary for every conceivable matter to be resolved to create an enforceable contract, the law does not recognize a contractual "agreement to agree": *Le Soleil* at para. 330.

[140] The overarching question in the certainty of terms analysis is whether the parties have agreed on all matters that are "vital or fundamental" to the arrangement or whether they intended to defer legal obligations until a final agreement has been reached: *Le Soleil* at para. 330. What constitutes an "essential term" is fact specific and is not readily addressed in the authorities: *Vancouver Canucks Limited Partnership v. Canon Canada Inc.*, 2013 BCSC 866 at para. 188.

[141] If agreement on all essential terms is established, courts may imply some terms to give business efficacy to the bargain. However, courts should not imply a term unless it is necessary, and the courts should not imply terms which would effectively rewrite the contract or contradict its other terms: *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216 at paras. 25-26.

Parties' Positions

[142] The plaintiff's central position is that the evidence establishes that Mr. Hucul had an enforceable oral contract entitling him to 10 million GN shares upon GN obtaining a cannabis licence from Health Canada and a \$150,000 salary.

[143] The plaintiff argues that Mr. Hucul, Ryan, and Mr. Colvin entered into an oral agreement at or around the time of the June 2017 Meeting with the following essential terms:

- a) each would receive 10 million shares in the company used to implement their business plan, to be issued when that company was listed on a public stock exchange (the "Shareholders Term"); and
- b) Mr. Hucul would earn \$200,000 annually for his role in developing the business plan and using his best efforts to facilitate the acquisition of a late stage applicant (the "Employment Term").

[144] The plaintiff submits that no other terms were essential, including the share structure, the price of the shares, or the actual terms of Mr. Hucul's employment. With respect to the price of shares, the plaintiff submits that the evidence establishes that the founders agreed to pay an insignificant or nominal amount per share, but that the exact share price was not essential to the agreement. As for the rest, Mr. Hucul trusted Mr. Colvin to make all the corporate decisions, including selecting the best share structure and all other "corporate aspects of the business venture."

[145] With respect to the certainty of the timing of the issuance of the shares, Mr. Hucul relies on the evidence establishing that, at the June 2017 Meeting, the founders believed that they could take their company public by December 2017 and that the founders would get their shares once the company went public.

- [146] The plaintiff submits that the requirements of contract formation as set out in *Le Soleil* are satisfied. He argues that a reasonable person would conclude that the founders intended to, and did, contract on the above essential terms.
- [147] The plaintiff submits that, at an unspecified time in the following months, the founders amended the terms of their agreement such that the shares would be issued on the date that GN obtained a cannabis licence, rather than on going public, and that Mr. Hucul's salary would be \$150,000 rather than \$200,000 annually.
- [148] Although Mr. Hucul concedes that GN was not a party to the June 2017 Meeting, he submits that GN adopted this agreement and these essential terms in August 2017, when Mr. Colvin introduced GN as the corporate vehicle to carry out their business plan. Specifically, Mr. Hucul says that Mr. Colvin, through his conduct as GN's President and CEO, objectively signalled GN's intent to be bound to the founders' agreement by:
- a) "telling Mr. Hucul that this was so";
 - b) acting in accordance with the agreement;
 - c) taking the benefits of the agreement through Mr. Hucul's contributions to building the company; and
 - d) approving Mr. Hucul's sale of a portion of the 10 million shares at various times in 2018.
- [149] No evidence was led of any words spoken by Mr. Colvin that GN intended to adopt or become a party to the founders' agreement. Mr. Hucul relies on his impression of things Mr. Colvin said, without a recollection of what specifically was said to give him this understanding.
- [150] With respect to Mr. Colvin's actions, the plaintiff submits that the following evidence of the founders' conduct establishes the existence and certainty of the agreement and its essential terms:
- a) Mr. Hucul and Ryan's evidence that at some point the founders agreed that they would each receive 10 million shares in GN;
 - b) various investor slide decks that represent the existence of a previous allocation of at least 35 million shares in Ravine;
 - c) the documentary evidence, including the draft employment agreement which was sent by Mr. Colvin to Mr. Hucul in August 2017, the draft partnership agreement prepared by Ryan and Mr. Hucul in December 2017, and the draft Statements of Understanding prepared by Ryan and Mr. Hucul in August 2018; and
 - d) the evidence of other credible witnesses, like Mr. Watson regarding Mr. Colvin's approval of Mr. Hucul's sale of his shares.

- [151] The defendant's central position is that the agreement alleged to have been formed by the founders fails to satisfy the requirements of an enforceable contract as both the required intention to contract and certainty of terms are lacking. While the defendant accepts that, while it is probable that the parties discussed a possible business venture and possible terms for that venture, at most, the outcome of the June 2017 Meeting was an "agreement to agree."
- [152] In support of its position that the founders demonstrated no intention to contract, the defendant points to the inconsistencies in the founders' evidence and conduct on this point. Mr. Colvin's discovery evidence contradicts Mr. Hucul's testimony, and the defendant says it is more credible than Mr. Hucul's on this point. The defendant submits that an objective reasonable bystander would find it improbable that Mr. Colvin would, after merely a few discussions with Mr. Hucul, agree that:
- a) Mr. Hucul would be retained as the CEO of a business venture, despite Mr. Hucul's lack of education and lack of corporate experience;
 - b) Mr. Hucul would be paid \$200,000 salary in quarterly instalments paid in advance;
 - c) Mr. Hucul and his 19-year-old son Ryan would each receive equal shares in the business venture as Mr. Colvin, who would be providing or securing all of the financing and performing all of the analytical and corporate decision-making work;
 - d) each retain a one-third ownership structure in the eventual public company, given that this would exclude any outside investment.
- [153] The defendant says this case is analogous to *Gaukel v. Buksh*, 2021 BCSC 1751. *Gaukel* concerned the plaintiff and the defendants' dreams, discussions, and negotiations in connection with their plans to build a ski-hill in Chilliwack--which had not yet been acted upon. In finding that there was no contract between the parties, the Court acknowledged a long history of dealings between them and its reluctance to find a contract void for uncertainty. However, the Court ultimately found that this history of negotiation and dealings was insufficient to ascertain an enforceable contract, stating at para. 213 that "[t]o find a contract in this situation would be to create a contract for the parties that never existed."
- [154] On the question of certainty of essential terms, the defendant argues that this case is analogous to the facts in *Burton v. Marwest Utilities Services Ltd.*, 2019 BCSC 490. In *Burton*, the plaintiff sued the defendant company for breach of contract and/or restitution for unjust enrichment pursuant to an oral employment contract. The plaintiff alleged that the terms of this oral contract were that he would purchase shares in the defendant company, in a number and manner to be determined by lawyers and accountants at the direction of the company's principal, through a credit given to him for 12.5% of the profit for projects that the plaintiff successfully managed for the company. The defendants argued that the plaintiff failed to establish an intention to contract between the parties and that the

terms of the alleged contract lacked sufficient certainty, including on the parties and the value of the shares. Justice Donegan concluded that neither party was ever able to precisely identify the terms of any agreement struck, and that a reasonable bystander would not be able to do so either.

[155] The defendant submits that certainty with respect to the following terms were essential to any binding agreement and are lacking:

- a) when the shares would be issued;
- b) what company would issue the shares;
- c) the degree of ownership in the company and any anti-dilution terms;
- d) the price to be paid for the shares; and
- e) the terms of Mr. Hucul's employment.

[156] With respect to when the shares would be issued, the defendant says that the exact triggering event changed throughout Mr. Hucul's evidence.

[157] With respect to which company would issue the shares, the defendant points to the fact that Mr. Hucul and Ryan originally pursued late stage applicants under the name of PLC, and that GN (then Ravine) was not involved until August 2017. Even after GN had been introduced, the founders continued to look for a public company to acquire and use as the corporate vehicle that would ultimately purchase the late stage applicant, go public, and issue shares. For example, pursuant to the draft partnership agreements prepared by Ryan and Mr. Hucul in December 2017 (and unsigned by Mr. Colvin), the shares were anticipated to be issued in an unnamed public company--with the placeholder "PubCo"--not GN.

[158] With respect to the extent of ownership, the defendant points to the following inconsistencies in alleged terms which Mr. Hucul testified to at trial:

- a) Mr. Hucul, Mr. Colvin and Ryan were to each hold a one-third interest in the eventual public company;
- b) the [shares] could not be diluted; and
- c) Mr. Hucul, Mr. Colvin and Ryan were to retain 51% voting control of the company in perpetuity.

[159] With respect to the price to be paid for the shares, the defendant points to several inconsistencies in the evidence on this point. For example, while neither Mr. Hucul's pleadings nor the draft partnership agreements and Statements of Understanding indicate any price for the shares, Mr. Hucul testified at trial that the founders agreed at the June 2017 Meeting that the price of the shares would be \$0.005 per share. This just happens to be the price that the board set in June 2018 for the issuance of founders' shares to GN's directors and officers. However, it is not consistent with any other evidence, including

documents that suggest Mr. Colvin was anticipating a lower price in the spring of 2018, and Ryan's evidence that he does not recall share price being discussed at all at the June 2017 Meeting.

- [160] With respect to Mr. Hucul's employment terms, the defendant highlights as uncertain: the discrepancies in terms as between the plaintiff's pleadings in his February 2020 notice of civil claim; Mr. Colvin's discovery evidence; Mr. Hucul's trial evidence; and the plaintiff's subsequent changes to his pleadings at trial.
- [161] The defendant also points more generally to the evolving nature of the plaintiff's pleadings regarding the terms of the alleged agreement as evidence of this uncertainty.
- [162] In sum, the defendant submits that the totality of the evidence with respect to the plaintiff's alleged agreement reveals numerous ambiguities, such that an objective reasonable bystander would not find that sufficient certainty of terms existed.
- [163] In response, the plaintiff rejects GN's submission that anything other than the number of shares he would receive and the salary he would receive from GN are "essential" to the agreement and notes that uncertainty on non-essential terms will not void an entire agreement, relying on *Canadian Bedding Company Ltd. v. Western Sleep Products Ltd.*, 2009 BCSC 1499. He says the case is not analogous to either *Burton* or *Gaukel*, but falls somewhere between the cases where there was clearly a contract and the cases where there clearly was none.
- [164] With respect to the defendant's assertions regarding the absurdity of the share structure that Mr. Hucul testified had been agreed to, the plaintiff argues that the test for certainty of terms is not whether a reasonable objective bystander would consider an impugned term to be commercially reasonable, but rather whether the parties have indicated to the outside world their intention to contract and the terms of such contract. He says that there is no suggestion that at any point after the June 2017 Meeting there was any limit on dilution or control expressed by any of the individuals, and Mr. Hucul simply trusted Mr. Colvin to determine what would be best.

Findings on Contract Formation

- [165] For the reasons that follow, I find that Mr. Hucul has not established that he, Ryan, and Mr. Colvin entered into an enforceable oral contract in June 2017, or at a later date when it is alleged that GN subsequently adopted this contract.
- [166] I do not have any evidence of any words stated that may be objectively construed to have formed such a contract. Nor do I have any contemporaneous documents, emails, or text messages that might be used to supplement the evidence of the words said to be utilized to form the contract.
- [167] Seen in its best possible light, what I have instead is evidence of the following:

- a) that Ryan and Mr. Hucul came away from the June 2017 Meeting believing that they would start a cannabis production company with Mr. Colvin;
- b) that the three of them would take that company public by the end of 2017;
- c) that they would each own one-third of that company; and
- d) that they would each get 10 million shares in that company.

[168] They also understood that Mr. Colvin had access to millions of dollars and that he would provide up to \$40 million for this future company, but that they would have to raise about \$500,000 for seed financing to cover salaries and office space.

[169] Finally, they understood that Ryan would act as Mr. Colvin's executive assistant and that Mr. Hucul would leverage his contacts and knowledge from building a medical marijuana facility in Kelowna to bring late stage applicants to Mr. Colvin for acquisition.

[170] I accept that Ryan and Mr. Hucul understood from Mr. Colvin that the best way to realize their goal was to purchase a publicly listed "shell" company, and that their 10 million shares would be issued once the company had acquired the licensed producer and was public.

[171] While not all the evidence was consistent with the above characterization, I accept that this was the essence of Ryan and Mr. Hucul's understanding from the June 2017 Meeting, though at least Ryan acknowledged that it was almost "too good to be true."

[172] Mr. Hucul says that this shared understanding between himself and Ryan, together with the subsequent conduct of Mr. Colvin and GN, is sufficient to establish that he and GN entered into an oral contract that included the Shareholders Term and the Employment Term, and that no other terms were essential. I disagree.

Intention to Contract

[173] The evidence does not provide enough information for the Court to establish an intent to form a binding contract on these terms, or on other terms that are essential to the asserted terms of this agreement. Rather, I find that the evidence establishes at best an "agreement to agree," subject to amorphous terms and contingent on a number of highly speculative events.

[174] Although Mr. Colvin did not testify, and I only have a select portion of his discovery evidence, the determination of Mr. Colvin's objective intentions are essential to a finding that all three founders intended to contract with each other. Mr. Colvin's discovery evidence, as read in by the plaintiff, is that the business plan discussed in June 2017 was speculative. That does not support a finding that he had an intention to contract.

- [175] Even without Mr. Colvin's discovery evidence--which is arguably self-serving and incomplete--I find that the totality of the evidence establishes that the June 2017 business plan was highly contingent on numerous speculative events occurring. Nor does the evidence of Mr. Colvin's conduct indicate an intention to contract.
- [176] Mr. Hucul and Ryan described Mr. Colvin as notoriously difficult to pin down and unwilling to commit to any concrete proposals, expenditures, or agreements. Mr. Colvin never signed the employment agreement, the partnership agreement, or the Statements of Understanding prepared by Ryan and Mr. Hucul. While I accept that Mr. Colvin's subsequent conduct establishes that he made efforts to pursue LOIs with late stage applicants, and that he continued to represent that he would be able to fund these LOIs, Mr. Colvin's objective conduct does not indicate that he felt bound by a legal obligation to do so.
- [177] The fact that Mr. Colvin was terrible at corporate recordkeeping and evasive when it came to committing himself or the company to anything does not assist the plaintiff. There is no reason to believe that Mr. Colvin's failure to sign any of the draft documentation prepared by Mr. Hucul and Ryan was merely accidental. The evidence of Mr. Colvin's behaviour instead suggests that Mr. Colvin's actions were deliberate and reflected his intention to not contractually commit himself (or later GN) to the outlined plan formed at the June 2017 Meeting, including as later set out in the draft Partnership Agreements and the Statements of Understanding prepared by Ryan and Mr. Hucul. The same is true of the employment contract that Mr. Colvin never signed or performed.
- [178] I have little evidence as to what Mr. Colvin's subjective intentions were in relation to the June 2017 Meeting, but his objective conduct is more consistent with an intention to pursue a speculative business venture and see where it led, than it is with intending to enter into a contractual obligation with Ryan or Mr. Hucul, including with respect to both the Shareholders Term or the Employment Term of the alleged founders' agreement.

Essential Terms

- [179] The establishment of all essential terms of an agreement is also a precondition for establishing a valid and binding contract.
- [180] I agree with the defendant's submissions that the inconsistencies and ambiguities in the evidence on various terms is such that a reasonable person would not be able to discern what it is that the founders intended to contract for at the June 2017 Meeting and afterwards.
- [181] I reject the plaintiff's assertion that the parties' conduct in this case resolves any of the uncertainty inherent in the alleged agreement. What I have found instead is that the evidence as a whole reveals an ever-evolving set of discussions, written representations, and versions of agreements that were not fully fleshed out, still subject to drafting and re-drafting, ongoing negotiation, and not well understood by either Ryan or Mr. Hucul.

- [182] I find that it is difficult to discern any fixed terms, let alone any essential terms, from the evidence regarding the June 2017 Meeting, or the parties' subsequent conduct. The terms chosen as "essential" by the plaintiff are merely the ones that would entitle him to something, and deem every other aspect of the business venture as inconsequential.
- [183] Most problematic for the plaintiff's case is the issue of consideration. At the heart of every contract is the exchange of consideration: *Rosas v. Toca*, 2018 BCCA 191 at 76 citing G.H.L. Fridman in *The Law of Contract in Canada*, 6th ed. (Toronto: Thomson Reuters Canada Ltd., 2011) at 84. However, in this case, the nature of the consideration to be exchanged is entirely unclear; in particular, what, if anything, Mr. Hucul was to contribute.
- [184] Mr. Hucul pleads and submits that he was promised 10 million shares presumed by the founders to be worth millions of dollars, but was unclear as to what he was to exchange for this promise. The plaintiff concedes that it is a legal requirement that shares be paid for upon issuance, but he argues that the cost of the shares was not an essential term because it was assumed to be insignificant. Even if I were to accept that suggestion, some discernable form of consideration for these shares is essential. Submissions in closing arguments that each of the founders would make "best efforts" for an unspecified period of time to achieve their business plan does not establish the required clarity of this essential term regarding Mr. Hucul's consideration for his shares.
- [185] The problem of consideration is also highlighted by the disparity between Mr. Hucul and Ryan's ostensible contributions, and the enormity of the contribution they expected from Mr. Colvin. Ryan expected to work as a personal assistant (and to be paid to do that while learning on the job) while Mr. Hucul would identify and communicate with late stage applicants and be paid \$200,000 (later, \$150,000) annually. Mr. Colvin, on the other hand, was to contribute up to \$40 million to the venture and be responsible for all the decision-making. That all three founders intended to contractually agree to terms in which each founder would receive equal thirds of a company for this incredibly disparate financial and professional contribution is difficult to believe.
- [186] The absurdity of the arrangement is highlighted by Mr. Hucul's perception that, although funds would have to be raised through the sale of shares for \$500,000 for administrative costs, no shares of the company would be lost or expended on obtaining the tens of millions of dollars required to actually purchase the late stage applicants.
- [187] Most problematic of all, however, with respect to the Shareholders Term was that the shares themselves did not yet exist at the time of the alleged agreement in June 2017, and that the company that would be bound to provide them had not yet been identified.

- [188] The same is true about the Employment Term. I find that Mr. Hucul did not know or understand what his position or job obligations would be when he says he formed a contract with Ryan and Mr. Colvin that he would be paid \$200,000. These are minimum essential terms for an employment contract and, in their absence, it is not possible to determine that an agreement regarding Mr. Hucul's employment or salary had been entered into in June 2017.
- [189] Like the alleged Shareholders Term, the most fundamental term of the employment contract was also unknown and unsettled in June 2017: the identity of the company that would employ Mr. Hucul.
- [190] I turn then to the issue of whether GN was that company, and whether GN, either through its corporate actions or through Mr. Colvin's representations as its CEO, entered into a contract regarding the share allocation of the founders, or otherwise "adopted" the alleged agreement, including the Shareholders Term and the Employment Term.

B. Did GN Become a Party to the Contract?

- [191] Mr. Hucul does not sue Ryan or Mr. Colvin for breaching the agreement he alleges they may made with him in June 2017. He argues, instead, that GN adopted the obligations of the June 2017 Meeting, and he assigns to GN the promises he says were made to him by Mr. Colvin with respect to share issuance and salary. In essence, Mr. Hucul treats GN and Mr. Colvin as interchangeable, and argues that Mr. Colvin and all his representations, promises, obligations, and actions became those of GN, mainly because Mr. Colvin was the CEO of GN.
- [192] While GN does not deny that Mr. Colvin had the authority to bind GN as its CEO, GN submits that Mr. Colvin was primarily acting in his personal capacity in his dealings with Mr. Hucul. GN submits that this did not change in August 2017 after Mr. Colvin introduced GN as the vehicle for the founders' business venture. GN argues that any agreement with Mr. Hucul continued to be with Mr. Colvin in his personal capacity. GN submits that, if any enforceable agreement was formed pursuant to the June 2017 Meeting, which is denied, it was a partnership agreement between Mr. Hucul, Ryan, and Mr. Colvin in his personal capacity--not GN.
- [193] Mr. Hucul responds to this argument by saying that, if the founders initially formed a partnership, which he denies, then s. 3 of the Partnership Act, R.S.B.C. 1996, c. 348 [Partnership Act] extinguishes all partnership agreements upon the formation of a company by members of that company. He says that s. 3 of the Partnership Act expressly excludes the relationship between "members of a company" from the broad definition of a partnership in s. 2 and ensures that persons who associate for the purpose of incorporating a company will not be burdened with the duties and liabilities that flow from a partnership. He relies on *Roussy v. Savage*, 2019 BCSC 1669 at para. 289 [Roussy] for this proposition. He further submits that, as a shareholder of GN, he fit within the definition of a "member of the company" pursuant to s. 3 of the Partnership Act. Although GN had not issued the shares to him, he says that he was nonetheless a "member" of GN as a beneficial

shareholder--on the basis that GN was holding his shares on a constructive trust in his favour.

- [194] Mr. Hucul accepts that courts have found a partnership where persons associate for the purpose of forming a corporation and carry out their business together, but fail to form the intended corporation: *Pitrie v. Racey et al.*, 1963 CanLII 522 (B.C.S.C.) [Pitrie]; *Holund Holdings Ltd. et al. v. Lewicky et al.*, 1970 CanLII 873 (B.C.S.C.) [Holund]; *Red Burrito Ltd. v. Hussain*, 2007 BCSC 1277 [Red Burrito]. However, he argues that, where these persons incorporate, "incorporation will bring any partnership that may have existed to an end" relying on *Red Burrito* at para. 23; *Holund*; *Roussy* at para. 289.
- [195] Mr. Hucul also points to cases where the courts, in light of s. 3 of the Partnership Act, were critical of attempts by parties to pierce the corporate veil by, for example, arguing that a partnership existed between corporations, or between individuals and a corporation. He relies on *Pine Valley Mining Corporation (Re)*, 2007 BCSC 926 at para. 39; *Bell v. River Rock Lodge Corp*, 2011 BCSC 9 at para. 60; *San Bao Investments Inc. v Sun*, 2018 BCSC 1128 at para. 21; *Pitrie*; *Holund*; *Red Burrito* for this proposition.
- [196] While Mr. Hucul concedes that the founders, on several occasions, worked outside of GN, including with GRSU and Catalina, he says that this external involvement was short-lived and associated, at least in Mr. Hucul's mind, with his work for Mr. Colvin and GN.
- [197] Mr. Hucul also argues that, in any event, no partnership was formed between the founders. He argues that the fact that the parties referred to themselves as "partners" is immaterial, as many courts have noted that the term "partner" is often used to describe persons who are not partners at law: see for example *Ness Training Ltd. v. Triage Central Ltd.* [2002] S.L.T. 675 (O.H. Scot.) at para. 17; *Bass Clef Entertainments Ltd. v. Hob Concerts Canada Ltd.*, 2007 CanLII 17186 at para. 52.

Findings on GN as a Party to the Contract

- [198] I agree with GN that the founders' business plan discussed in June 2017 was between Mr. Hucul, Ryan, and Mr. Colvin in his personal capacity--not GN. I also find that GN did not adopt, or otherwise become a party, to this arrangement.
- [199] I am not convinced that the founders formed a clear enough agreement to constitute a partnership agreement, so I need not determine whether that agreement was ended by the effect of s. 3 of the Partnership Act. However, had I been required to make such a determination, I would have found that Mr. Hucul was not a "member" of GN as a "beneficial" holder of non-existent shares, and I rely on my factual findings above and the analysis in *Lindholm v. Lindholm*, 2000 BCSC 269 in this regard. Furthermore, while incorporation may frequently replace a partnership, it will not always do so, particularly where the newly formed corporation does not capture the purposes of the partnership, does not have the same members as the partnership, or the partnership envisages a business venture incorporating numerous corporations within it: see for example *Libfeld v.*

Libfeld, 2021 ONSC 4670. I find that this is such a case, where a business plan between the founders contemplated the use of any number of corporations, both public and private, as vehicles for its realization. Throughout the relevant period, the founders used multiple corporate vehicles to pursue their speculative business ventures. GN was only one of these vehicles--it was neither the first nor the last.

- [200] Mr. Hucul relies heavily on the fact that Mr. Colvin was CEO of GN in 2017 and 2018, and he says that therefore everything Mr. Colvin said about Mr. Hucul's entitlement to GN shares and salary was binding on GN. I note that I have little evidence of any words spoken by Mr. Colvin in this regard, and no documentary evidence that any words to this effect were written by Mr. Colvin other than the unsigned draft employment agreement.
- [201] In determining whether an agent is acting with apparent authority, external representations are important: *De Cotis v. Hothi*, 2018 BCSC 2271. In *Argo Ventures Inc. v. Cho*, 2019 BCSC 85, Justice Shergill noted that "the court must consider the behaviour of all parties in determining whether a reasonable inference could be made that one party was acting as an agent for another party."
- [202] Mr. Hucul's most compelling evidence that GN recognized Mr. Hucul's entitlement to 10 million shares is his evidence, corroborated by Mr. MacKee and Mr. Watson, that Mr. Colvin, while he was GN's CEO between March and September 2018, approved of Mr. Hucul representing to others that he owned 10 million GN shares that he was entitled to sell. However, this representation does not take Mr. Hucul very far given that he knew he did not own those shares, and his entitlement to those shares was not assured.
- [203] It is also important to consider the conduct of GN (then Ravine) and Mr. Colvin at this time. Mr. Colvin's representations were made at a time when Mr. Colvin knew that Mr. Hucul did not own the 10 million shares that he was purportedly "selling" to others. Furthermore, at least some of Mr. Colvin's representations--including those pertaining to Mr. Watson's evidence--were made by Mr. Colvin after GN had issued shares to himself and other GN board members, to the exclusion of Mr. Hucul. Rather than suggesting that Mr. Colvin's misrepresentations bound GN, this conduct instead suggests that Mr. Colvin's representations were deliberately made without GN's knowledge or approval. Given these circumstances, I cannot equate Mr. Colvin's representations to those made on behalf of GN.
- [204] Furthermore, while Mr. Colvin was acting as President and CEO of GN, the evidence establishes that he frequently conducted himself with other hats on, including as the controlling mind of PLC, the CEO of Cannapharmax, and the anticipated CEO of GRSU and Catalina Gold. On several occasions, Mr. Colvin made financial commitments and personally received money other than by or on behalf of Ravine/GN, including:
- a) accounting for \$50,000 of Mr. Hucul's salary as a personal investment through Ravine;
 - b) selling his (non-existent) debentures in GN to investors, which he then paid to himself and not Ravine; and

- c) pursuing financing for Catalina Gold (a competitor) while also tasked by GN to secure financing to complete GN's purchase and sale agreement with Gray Jay for Stevens Green.
- [205] Mr. Colvin also kept his share subscriptions and investments secret from GN's corporate governance structures. For example, in May 2018, when Mr. Marrone was becoming involved with the board, Mr. Colvin instructed Ryan to make a list of the friends and acquaintances who had invested approximately \$450,000, ostensibly in Ravine, and told Ryan that the existence of these investors was "confidential information and not to be disclosed to anyone." He later asked Ryan, also apparently unbeknownst to GN's board, to send an email to these investors advising that their redemption period for their "debentures" was being extended from August 2018 to December 2018. There is no corporate record of GN having received these investments or issuing these debentures, and the evidence before me establishes that Mr. Colvin withheld this information from the board.
- [206] I find that Mr. Colvin was not acting on behalf of GN when making his alleged representations to Mr. Hucul regarding his share entitlement. I also find that Mr. Hucul was aware that Mr. Colvin was the directing mind of numerous business ventures, and, at the least, he was inattentive to the distinctions between them. I find that Mr. Hucul did not distinguish between Mr. Colvin's representations on behalf of GN, his representations on behalf of other companies, or his representations in pursuit of the founders' business plan.
- [207] Turning from Mr. Colvin's representations to the conduct of GN itself, I find that GN did not adopt the founders' business plan, through its conduct or otherwise.
- [208] Even after Ravine was introduced as the corporate vehicle for the founders' business plan, replacing PLC with the intention of having a number of PLC's LOIs assigned to it, Ravine's governance and share structure remained the same, unaffected by the founders or their business plan. While GN replaced PLC as the vehicle for the founders' plan to acquire late stage applicants between August 2017 and April 2018, this appears to be the only thing that GN did as a corporation that is consistent with the founders' business plan.
- [209] For example, the one-third ownership structure central to the founders' business plan and the June 2017 Meeting was never reflected in GN's ownership or corporate structure. Mr. Larsen remained GN's sole shareholder until months after Ravine ceased to be the vehicle by which the founders were pursuing their business plan, and there is no suggestion that he or the board of Ravine was ever informed of the proposed new distribution of ownership, let alone the distribution of 10 million new shares contemplated by the Shareholder Term. The evidence that is available regarding GN's corporate structure and records establishes that no aspects of the founders' business plan were discussed by GN's board, recorded in GN's minutes, documented in GN's corporate records, or reflected in GN's corporate structure.

- [210] None of the founders were issued shares, or even formal promises of shares, when Ravine became the vehicle for their business plan.
- [211] Nor does the evidence support a finding that GN contracted with Mr. Hucul with respect to his alleged employment terms. Mr. Hucul was never appointed CEO, COO, or any other corporate officer position by GN, nor was he paid a salary by GN for his work. The draft employment agreement provided by Mr. Colvin to Mr. Hucul was not consistent in its job description or salary (or any other terms) with Mr. Hucul's recollection of the June 2017 discussions. In addition, it was not signed by either Mr. Hucul or Mr. Colvin, or endorsed by GN's board. Neither Ravine nor GN ever paid Mr. Hucul's salary from its accounts. Instead, Mr. Hucul was paid by Mr. Colvin in intermittent amounts by cash and other consideration.
- [212] Ryan was also supposed to be hired as Mr. Colvin's assistant pursuant to the business plan, and he was. However, other than a few early payments, there is no evidence that he was paid by GN, or that GN adopted that part of the founders' plan either. To the contrary, Ryan considered himself to be employed by Mr. Colvin's personal holding company, PLC.
- [213] Ravine's external representations to investors as evidenced in the investor presentation slide decks and emails also do not support Mr. Hucul's claim that he was an acknowledged part owner and principal of Ravine. Mr. Hucul's emails to potential targets also do not assist Mr. Hucul in this regard--he used his own email, not a corporate email, in all of these communications, and to a large extent was simply forwarding pre-approved messages vetted or prepared by Mr. Colvin.
- [214] In summary, GN's corporate structure and corporate conduct was inconsistent with the elements of the alleged founders' agreement formed in June 2017 in almost every respect, including:
- a) the one-third ownership of each founder;
 - b) the issuance of shares (even contingent ones) to the founders;
 - c) the appointment of Mr. Hucul as CEO; and
 - d) the payment of salary to Mr. Hucul.
- [215] Overall, almost nothing GN did or could do in its corporate capacity signalled that GN had adopted the terms of the founders' business plan that Mr. Hucul is now seeking to enforce.
- [216] While I accept Mr. Hucul's premise that he and Ryan expected to be issued shares in GN sometime after Ravine was introduced as the corporate vehicle for the founders' business plan, that is not the same as finding that GN, as a distinct corporate entity, contractually bound itself to Mr. Hucul (or to Ryan or Mr. Colvin) to issue 10 million shares to each of them. There is a significant legal difference between a company becoming a vehicle for a business plan, and a company contracting with its founders. Even if the founders were actually shareholders of GN at the time they are alleged to have made their agreements, a breach of a shareholders agreement in which the company is not a party does not attract

liability for the company in breach of contract: see e.g. *Donnelly v. Steward*, 2001 BCSC 1398.

[217] Corporations must act corporately, and I agree with the defendant GN that, in this case, Mr. Colvin's representations, reassurances, proposals, and pursuits in relation to the founders remained those of Mr. Colvin personally and not those of GN as a corporate entity. Furthermore, I find that Mr. Hucul's direction and loyalty belonged to Mr. Colvin alone, and not to the various corporate entities that Mr. Colvin directed or represented himself as directing.

[218] I therefore do not need to deal with the interesting question of whether the Supreme Court of Canada's decision in *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29 regarding the adoption by conduct of a pre-incorporation contract could apply to an already incorporated company that, by its conduct, adopts the terms of a contract. On the whole of the evidence before me, I find that GN did not adopt the alleged essential terms of the founders' business plan or the June 2017 Meeting.

C. Did GN Continue to Owe Contractual Obligations to Mr. Hucul?

[219] Because I have found that there was no contract, it is not necessary for me to consider whether the contract contained implied terms obligating Mr. Hucul to continue to work for GN or to make a material contribution in order to be entitled to the shares over a year after he ceased to contribute to GN.

D. What Damages would Mr. Hucul be Entitled to in Breach of Contract?

[220] Mr. Hucul seeks damages in lieu of shares for the alleged breach of contract. GN acknowledges that if it was contractually bound to issue 10 million shares to Mr. Hucul upon receiving a Health Canada licence, this event occurred on July 5, 2019 when Stevens Green was granted a cultivation licence for the production of cannabis. GN accepts that if it had this contractual obligation, it was in breach of that contract when it failed to deliver 10 million shares to Mr. Hucul, and that Mr. Hucul would be entitled to elect damages for the value of his shares as of July 5, 2019.

[221] Since I have found that Mr. Hucul had no contract with GN entitling him to 10 million shares, it is not necessary for me to deal with the valuation of those shares as of that date. Nevertheless, the parties have gone to considerable time and expense to determine the value of those shares, and in the event that I am found to be wrong in relation to the absence of a contract with GN, I will set out my findings here on the value of those shares as at July 5, 2019.

[222] Both parties adduced expert business valuation evidence as to the value of the 10 million shares in GN at the date of the licence issuance in July 2019.

- [223] The plaintiff relied on the expert evidence of Melanie Russell of Kalex Valuations Inc. who, after some modifications of her evidence at trial, valued the shares at approximately \$1.62, and at \$1.15 if fully diluted by the outstanding warrants priced at \$1.00 or less per share. Given that her valuation was in excess of \$1.00/share, Ms. Russell's opinion is that the fully diluted value is the more appropriate one. When Mr. Hucul's alleged entitlement to 10 million shares (but not any share entitlement to Ryan or additional entitlement to Mr. Colvin) is included in the calculation, Ms. Russell's valuation of GN's shares as at July 5 2019 on a fully diluted basis is just over \$1.00.
- [224] GN relied upon the expert evidence of Ron Martindale of Davis Martindale Advisory Services who valued GN's undiluted shares at \$0.50, and \$0.34 after the assumed exercise of warrants that cost less than this amount. Mr. Martindale's valuation of the fully diluted shares, including Mr. Hucul's alleged entitlement to 10 million shares, is just under \$0.29. After correcting a mathematical error identified at trial, Mr. Martindale's final valuation of the fully diluted shares is closer to \$0.27.
- [225] The primary difference between these valuations is that Ms. Russell relied on management projections in the second half of 2019 which projected the construction of a second facility that would significantly increase the capacity of Stevens Green. Although she did not treat this as a significant possibility, the very possibility of an expanded facility is the primary cause of the significant difference between the two valuations.
- [226] Had I ruled differently and found that there was an enforceable contract between the parties, I would have set the value of Mr. Hucul's 10 million shares at the fully-diluted value of \$0.27 per share as of July 2019, in accordance with Mr. Martindale's valuation opinion, for each of the following reasons:
- a) Based on the totality of evidence adduced at trial, I find that, on July 5, 2019, GN's continued existence was precarious and its future as a going concern uncertain. It had only just received its licence and had not proven it could produce a marketable crop. There is ample evidence of the precarious state, including GN's audited financial statements for 2018 and 2019 warning that "[t]he Company's ability to continue as a going concern is dependent upon obtaining additional financing and eventually achieving profitable production in the future." Although this is a statement made in 2020 about GN's condition at the end of 2019, I find that the evidence establishes that GN's position was even more precarious mid-July 2019 than it was at the end of 2019, when it had successfully begun cannabis cultivation.
 - b) I find that the management projections relied upon by Ms. Russell were prepared in pursuit of a significant capital investment, which could have provided the capital to proceed with a second facility. However, I find that the likelihood of GN obtaining that capital investment and actually building a second facility was so remote at that time that it was appropriate for Mr. Martindale to exclude it in his valuation of the company.

- c) The two experts considered the private placement price of GN shares both a month before and a month after the valuation date of \$0.25 per share. I accept the evidence of both Mr. Martindale and Ms. Russell that a private listing price is only one indicator of the value of shares, and that their method of share valuation by way of valuing the entire company is the primary and accepted method for determining share value at a particular point in time. However, I consider this \$0.25 share price shortly before and after the valuation date to be an additional indicator of the fair market value of the shares on July 5, 2019, particularly in the absence of evidence that these private placement sales were not at arm's length. This private placement price is much closer to Mr. Martindale's share valuation.
- d) I also note that, as of July 5, 2019, GN had already issued or sold warrants to officers, directors, and investors at a cost of \$1.00 per share, and none of these persons chose to exercise their warrants at this price upon the issuance of the licence on July 5, 2019, or at any time prior to their expiry. In her assumptions, Ms. Russell, in valuing the corporation at over \$1.00 per share, had to assume some level of dilution by the exercise of these warrants. However, the evidence establishes that none of these warrant holders chose to exercise their \$1.00 options at the time of licence issuance in July 2019 (or at any point thereafter).

[227] I recognize that, while GN management may have been playing up the prospect of an expansion to a second facility for the purposes of pursuing investment, GN management may well also have been more pessimistic in communicating with Mr. Martindale as to the reality of that prospect for the purposes of Mr. Martindale's expert report. Nevertheless, I find that the evidence, as a whole, establishes that GN has endured a long-standing struggle to obtain financing for any number of LOIs and purchase and sale agreements that it entered into and that the availability of such financing and capital was extremely limited up to and including July 5, 2019.

[228] As a result, should I be wrong in finding that Mr. Hucul is not entitled to damages for breach of contract in relation to his 10 million shares claim, I would award Mr. Hucul the value of those shares as at July 5, 2019 priced at \$0.27 per share.

E. Was GN Unjustly Enriched?

[229] Having found that GN and Mr. Hucul had not reached an enforceable contract, I must next evaluate Mr. Hucul's claim in unjust enrichment for quantum meruit for the work he carried out on GN's behalf. I note that Mr. Hucul abandoned his claim for disgorgement at trial.

Parties' Positions on Unjust Enrichment & Quantum Meruit

- [230] Mr. Hucul argues that all elements for unjust enrichment are made out. First, he says GN was enriched by his work throughout the relevant period. In particular, Mr. Hucul emphasizes his work on the (albeit unsuccessful) AMS deal which, he argues, contributed to a significant "unrealized gain" for GN. Mr. Hucul also submits that he brought Mr. Carroll into the company and assisted with the initial financing through the seed financing rounds. Cumulatively, he argues that these actions and efforts enriched GN.
- [231] Second, Mr. Hucul submits that he suffered a corresponding deprivation. To this end, he submits that he dedicated himself to finding acquisition targets and seeking investors for GN and, consequently, missed out on other opportunities in the cannabis industry.
- [232] Third, he submits that, in the event that no enforceable contract had been formed between the parties, then GN's benefit and his corresponding deprivation occurred without a juristic reason.
- [233] Mr. Hucul seeks a remedy in quantum meruit, in the amount of the value of five million shares in GN as of July 5, 2019. He submits that the case law on quantum meruit emphasizes that this is a fact-specific calculation, in which the court has broad discretion to calculate an award that seems fair and reasonable to both parties: *Palethorpe v. Bogner*, 1997 CanLII 2314 (B.C.C.A.) at para. 17 [*Palethorpe*]. He measures his contribution to GN as equivalent to that of Mr. Colvin as of that date. He says that Mr. Colvin was issued five million shares in June 2018 for Mr. Colvin's contributions, and that this is an appropriate measure of the value of Mr. Hucul's contribution to GN as well.
- [234] Although pleaded, Mr. Hucul does not seek a constructive trust over those shares, and argues that he has the right to elect damages in unjust enrichment similar to his rights in contract, rather than the issuance of the shares themselves. Nor does he seek damages in unjust enrichment in relation to his alleged employment by GN, only in relation to the shares.
- [235] GN argues that it was not unjustly enriched by Mr. Hucul's efforts.
- [236] First, GN argues that it was not enriched by Mr. Hucul's work. To this end, GN emphasizes that none of the deals that Mr. Hucul brought to GN were successful and that Mr. Hucul had no involvement in either the final AMS deal (which was assigned to another one of Mr. Colvin's companies), nor the Stevens Green acquisition which led to a cultivation licence.
- [237] Second, Mr. Hucul did not suffer a corresponding deprivation. To this end, GN argues that Mr. Hucul played a very limited role in working towards acquiring late stage applicants and was adequately compensated for this work, earning \$93,000 (inclusive of his \$50,000 investment) for his work over a span of approximately nine months.
- [238] GN argues that whether there was a lack of juristic reason ultimately depends on the Court's findings regarding contract formation.

[239] In terms of a remedy in quantum meruit, GN's first position is that Mr. Hucul's efforts provided no value to it, and that an award of five million shares is not appropriate compensation. GN also says that, while Mr. Hucul is entitled to elect damages for a breach of contract, he is not entitled to do so for damages for unjust enrichment. Therefore, the appropriate restitutionary remedy--should one be awarded in this case--ought to be shares, not damages. Otherwise, Mr. Hucul will enjoy a substantial benefit not enjoyed by any of GN's other principals or investors, namely, the ability to monetize the value of his private shares in a way that none of GN's current investors have yet been able to.

[240] Though not explicitly argued by Mr. Hucul, GN rejects the application of a constructive trust remedy to this case. GN argues that the shares over which Mr. Hucul seeks to have the Court impose a constructive trust do not exist because they have not been issued by the company. As such, it would be inappropriate to award Mr. Hucul this remedy.

Law

[241] The Supreme Court of Canada in *Kerr v. Baranow*, 2011 SCC 10 [Kerr] sets out the elements of unjust enrichment as follows at paras. 36-41:

- a) whether the defendant has been enriched by the plaintiff;
- b) whether the plaintiff has suffered a corresponding deprivation; and
- c) whether the benefit and corresponding detriment occurred without a juristic reason.

See also: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30 [Garland].

[242] With respect to the first element--the defendant's enrichment--the plaintiff must show that he contributed something to the defendant which the defendant received and retained. The benefit need not be permanently retained, but it must be something which has enriched the defendant and which can be restored to the plaintiff in specie or by money. The benefit may be positive or negative (e.g. in the sense that the benefit conferred spares the defendant an expense), but must nevertheless be tangible: *Kerr* at para. 38. The benefit must be demonstrable and not speculative: *Toronto Dominion Bank v. Bank of Montreal* (1995), 22 OR (3d) 362 (S.C.); *Moreira v. Ontario Lottery and Gaming Corp.*, 2013 ONCA 121.

[243] In cases like this one, where there is controversy in the evidence as to whether Mr. Hucul was contributing to GN or Mr. Colvin or both, it is important to clearly identify the nature of the enrichment being claimed. This point is elaborated upon by Professors Peter D. Maddaugh and John D. McCamus in *Law of Restitution*, looseleaf (Thomson Reuters: 2021) at § 3:4 as follows:

Although the articulation of a satisfactory general definition of the concept of "benefit" raises questions of some subtlety, the discernment of the existence of a benefit in a particular case is not likely, as a practical matter, to be a point of difficulty. Thus, where the benefit in question is constituted by moneys paid to the defendant by the plaintiff or by the partial performance of an

agreement entered into by the parties which is ineffective for some reason, or where it is constituted by profits acquired through the defendant's wrongful breach of a duty owed to the plaintiff, the existence of a benefit in the defendant's hands is likely to be both palpable and non-contentious. . .

More difficult analytical problems arise in cases where the benefit in question has not been requested by the defendant and where it is constituted by something other than the payment of money to the defendant. . .

In our view, the most useful analytical device for distinguishing cases in which recovery is appropriate from those in which it is not is to ask, in each instance, whether the defendant has been genuinely or, as others have said, "incontrovertibly" benefited by the conferral in question .

[Emphasis added.]

[244] The second element--the plaintiff's corresponding deprivation--is material only if the defendant has been enriched. This element requires the plaintiff to establish not only that the defendant has been enriched, but also that the enrichment corresponds to a deprivation suffered by the plaintiff: Kerr at para. 39.

[245] The third element--absence of a juristic reason--means that there is no reason in law or justice for the defendant to retain the benefit conferred by the plaintiff, therefore rendering it "unjust" in the circumstances: Kerr at para. 40. There is a two-step analysis for finding the absence of a juristic reason. In the first step, the plaintiff must establish that no juristic reason applies from the established categories to deny recovery. The established categories of juristic reasons include: a contract; a disposition of law; a donative intent; and other valid common law, equitable or statutory obligations. If none apply, the plaintiff has established a rebuttable prima facie case under this third element of unjust enrichment analysis. In the second step, the defendant can attempt to rebut the plaintiff's prima facie case by showing that there is another reason to deny recovery. In considering the defendant's attempt to rebut, courts should look to two factors: the reasonable expectations of the parties and public policy considerations: Kerr at para. 43; Garland at paras. 44-46.

[246] Quantum meruit is a remedy for unjust enrichment: Noh v. Plaza 88 Developments Ltd., 2010 BCSC 1491 at para. 46. Contractual quantum meruit does not apply in this case because I have found that there was no contract at all between Mr. Hucul and GN: see for example Gill Tech Framing Ltd. v. Gill, 2012 BCSC 1913 at paras. 253-255. What is at issue in this case is solely restitutionary quantum meruit, grounded in the principles of unjust enrichment.

[247] Awards in restitutionary quantum meruit require some evidence on which the court can value the services provided: Maradadi Pacific Holdings Ltd. v. Call, 2019 BCSC 607.

- [248] Quantum meruit can be difficult to quantify. In making such a calculation, the court must "do the best it can to arrive at a figure which seems to it fair and reasonable to both parties, on all the facts of the case": Palethorpe at para. 17, citing *Way v. Latilla*, [1937] 3 All E.R. 759 at 766. In *Infinity Steel Inc. v. B&C Steel Erectors Inc.*, 2011 BCCA 215 [Infinity Steel], Justice Huddart explains the court's broad discretion in calculating the appropriate award for restitutionary quantum meruit:
- [21] From this recent judgment, I derive the lesson that a trial judge's first task after rejecting a contractual remedy and finding unjust enrichment is to determine what measure is appropriate to remedy the unjust enrichment in all the circumstances of the case. Judges have described the appropriate measure in many ways: "the amount [the claimant] deserves" or "what the job is worth" . . . ; "the value of the benefit obtained by the defendant" or "the reasonable market value of the services" . . . ; the "fair value of the services rendered" . . . ; "the value of his services to the defendants" . . . Recently, in *Aerovac Systems Ltd. v. Darwon Construction (Western) Ltd.*, 2010 BCSC 654, Savage J. came to this conclusion at para. 49:
- [49] In my view these authorities support the view that the court has a broad discretion in determining the appropriate method to apply in calculating a quantum meruit claim. Estimates, reasonable costs and expenses, quoted rates, abortive negotiations on price, and expert opinions are all methods which a court can utilize in determining a fair value for the services rendered. This is not a closed list. The appropriate method or methods to use in any individual case will depend on the evidence before the court.
- [22] I respectfully agree. As I understand the authorities cited to this Court, in the light of Kerr, the appropriate measure for restitutionary quantum meruit is to be selected to meet the circumstances of the particular case. Important factors will include but not be limited to, the course of dealings between the parties, any estimates obtained, the costs incurred, the scope of work, the actual work done, the market value of the services provided.
- [Citations omitted.]
- [249] In some cases, it is the value of the plaintiff's contribution to the defendant which is paramount, as was stated by Justice Huddart in *Bond Development Corp. v. Esquimalt (Township)*, 2006 BCCA 248 [Bond]:
- [22] A claim for quantum meruit is for reasonable remuneration for the services provided, "the amount it deserves" or "what the job is worth" (*Ketza Construction Corp. v. Mickey*, 2000 YTCA 4 at para. 13). Thus, the trial judge was correct when he noted at para. 102 that, "[q]uantum meruit involves consideration of the amount and value of the services rendered, not potential profit." The amount to which a plaintiff is entitled on the basis of unjust enrichment is the value of the benefit obtained by the defendant, and not the loss to the plaintiff assessed as if the contract were fulfilled. If Bond is entitled to restitution it is to be for the value of benefit it conferred upon Esquimalt; that is, the market value of the development services it provided. That value must be determined from the evidence.

- [250] In other cases, the detriment to the plaintiff and the value of his or her services are primary considerations. In *Malik (Estate of) v. State Petroleum Corporation*, 2009 BCCA 505 [Malik], a claim for unjust enrichment was considered in the context of a claim for a finder's fee:
- [39] On an unjust enrichment analysis, the issue of whether the finder has earned the fee logically falls under the first consideration, the benefit accruing to the recipient of the services. It is here the "material contribution" test is applied. If the finder can show the service was an effective cause of the ultimate transaction, the test has been met.
- [40] The detriment to the finder may not always be apparent, as the work performed may involve extensive consulting and negotiations in addition to an introduction, or it may involve a bare introduction as in *Campbell v. National Trust Co.*, 1930 CanLII 327 (UK JCPC), [1931] 1 D.L.R. 705 (P.C.). In the first instance, the finder's detriment is easily measured in the time and effort expended; in the other, it may best be conceptualized as the loss of the opportunity to provide a valuable introduction to another.
- ...
- [42] It is for the court to do the best it can to determine a reasonable fee for the service provided, by assessing what the service was worth having regard for the relevant circumstances in any given instance. The court must determine the nature of the fee the parties could be said to have anticipated. No fee will be payable where nothing has been realized, i.e., found. The amount of a fee payable will depend in large measure on the value of the opportunity realized.
- ...
- [71] It is important to recognize that what is paid to a finder is indeed a fee for services. It may be paid in the form of a percentage commission, but it is nothing like a sharing of profits derived from a large return on an advantageous business investment. The amount of such a fee must be consistent with its purpose - compensation for the service rendered. It is to be no more and no less than what the service is worth.

[Emphasis added.]

- [251] Among the factors considered in *Malik* is that the 'value' must be assessed at the time the service was performed: para. 46.

Findings on Unjust Enrichment & Quantum Meruit

- [252] At the outset, it is important to note that the only claim advanced by the plaintiff in relation to unjust enrichment is for the value of five million shares (or the five million shares themselves, in the alternative) and not for an adjustment to Mr. Hucul's salary or income in relation to his perceived role as CEO of GN.

- [253] For the reasons that follow, I find that GN was not unjustly enriched by Mr. Hucul. I also find that Mr. Hucul did not suffer a corresponding deprivation.
- [254] With respect to GN's enrichment, although Mr. Hucul did work to find investors and late stage applicants for GN to acquire, I find that these efforts did not give rise to a "material contribution" to GN as discussed in Malik nor an "incontrovertible" benefit to GN as helpfully elaborated by Professors Maddaugh and McCamus. Nor has Mr. Hucul established that he was "an effective cause" of any transaction that benefitted GN.
- [255] In terms of Mr. Hucul's contributions to GN, Mr. Hucul did contribute to GN by acting as a go-between for Mr. Colvin and the various companies they targeted. Nevertheless, there were limits to his contributions. For example, the acquisition targets themselves were identified by a broker; Mr. Hucul did little to ascertain their value and did not draft or negotiate the LOIs in any meaningful sense; and, when Mr. Carroll became involved in September 2018, Mr. Carroll's professional knowledge of legal cannabis facilities eclipsed Mr. Hucul's more limited familiarity with such facilities.
- [256] I find that Mr. Hucul's contributions did not lead to any realized or realizable value for GN. Mr. Hucul was expressly prohibited by Mr. Colvin from making any contribution to GN's only successful late stage applicant acquisition: Stevens Green. His efforts at securing AMS as a target were also unsuccessful. After March 2018 Mr. Hucul's efforts were directed at acquisitions that I have found were in competition with GN for late stage applicants and financing. His efforts towards pursuing the founders' business plan after April 2018 were directed towards his own enrichment and that of Mr. Colvin, not GN.
- [257] In terms of Mr. Hucul's efforts to secure financing for the founders' business plan, rather than benefitting GN, the evidence establishes that these efforts only benefitted Mr. Colvin personally. While I accept that Mr. Hucul put time and effort into attracting investors like Gale and Mr. MacKee, which Mr. Hucul understood to be for GN's benefit, the evidence establishes that their investments were made to Mr. Colvin personally. None of the evidence suggests that these investments were ever received by GN. Thus, while not argued by the parties, had this case proceeded against Mr. Colvin, these investors, and perhaps Mr. Hucul as their finder, may have had an arguable case in unjust enrichment against Mr. Colvin personally. However, Mr. Hucul has established no benefit to GN in relation to these investments on the evidence before me.
- [258] I also find that there was no corresponding deprivation to Mr. Hucul. I accept that Mr. Hucul expended time and effort up until April 2018, which he believed was for GN's benefit. However, Mr. Hucul bears the onus of establishing that deprivation, and I do not have evidence of how much time or effort he actually invested beyond his initially busy period in June and July of 2017. Given that Mr. Hucul was not involved in drafting documents, corporate decision-making, or doing other work requiring regular use of a computer, I cannot imply from the evidence any significant investment of time or expertise on his part.

- [259] Mr. Hucul's efforts in June and July 2017 pre-dated any involvement on GN's part with the founders' business plan, and I find that any deprivation associated with those efforts do not correspond with any enrichment of GN. Even if I accept that Mr. Hucul expended some effort during that time, any resultant deprivation he suffered was attributable to Mr. Colvin, not GN.
- [260] Mr. Hucul has also acknowledged receiving approximately \$93,000 in cash or other consideration directly or indirectly from Mr. Colvin for his efforts between August 2017 and April 2018, while his focus was on GN. His evidence does not establish that receipt of this amount left him with an overall deprivation.
- [261] GN also argues that Mr. Hucul was "compensated" through his fraudulent sale of shares that he did not own: he received over \$500,000 in cash and debt forgiveness for those "shares." Mr. Hucul says that he did not benefit from this, because he still considers that he owes each of these "investors" the shares they purchased from him, or at least their equivalent value. He is even agreeable to any award to him in relation to his shares being subject to his repayment to these purchasers.
- [262] I believe Mr. Hucul when he says he needs to compensate these purchasers, and I accept that he still considers that he owes these amounts and will still owe these amounts in the absence of the materialization of his shares after this lawsuit. However, he has not established an entitlement to those shares from GN.
- [263] Finally, although not specifically argued by GN, I have difficulty in finding that there was no juristic reason for Mr. Hucul's efforts. He was pursuing a highly speculative business plan that, if successful, would have made him a millionaire within a very short period of time. By April 2018, that business plan had not been successful, and the founders had not managed to secure financing for any of the acquisitions of late stage applicants they had worked toward. Mr. Hucul (with the other founders) then turned his efforts to vehicles other than GN for the pursuit of that plan, and was still pursuing it through various vehicles with Mr. Colvin until August 2019, when he had a falling out with Mr. Colvin. The reward for his efforts could have been one-third ownership of a public company worth millions of dollars, and I find that was his primary motivation. On the evidence before me, I find that this speculative but potentially highly enriching outcome was the reason for Mr. Hucul's efforts throughout his involvement with GN and beyond, and that is a sufficient reason in equity for him to have made the efforts he did, despite the lack of his ability to achieve the pay-off he sought.
- [264] In the absence of any established unjust enrichment of GN by Mr. Hucul, it is not possible or appropriate to quantify any measure for restitutionary quantum meruit. Perhaps Mr. Hucul would have an arguable case for a claim against Mr. Colvin personally for a portion of the five million shares GN issued to him for his efforts; however, that is not the case before me.

CONCLUSION

[265] To summarize, I find:

- a) the plaintiff has failed to establish the existence of a contract between himself and GN entitling him to shares in GN or payment of a salary; and
- b) the plaintiff has failed to establish that GN was unjustly enriched by his efforts, or that he is entitled to restitution from GN for his contributions.

[266] The defendant has been substantially successful in defending this claim, and, subject to any offers or other matters to be brought to my attention, is entitled to costs at the ordinary scale. Should the parties seek to address costs, they should make arrangements with the Registry within 30 days of the release of these reasons to come before me.

"Marzari J."

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