SUPREME COURT OF NOVA SCOTIA
Citation: *Lin v.* Song, 2023 NSSC 265

Date: 20230825
Docket: No. 520469
Registry: Halifax

Between:

Haiyan Lin Lin and 3340435 Nova Scotia Limited

Applicants

v.

Mingming Song and Eman Beauty Inc.

Respondents

Judge:	The Honourable Justice Timothy Gabriel
Heard:	May 16, 2023, in Halifax, Nova Scotia
Final Written Submissions:	June 9, 2023
Counsel:	Michael Blades and Grace Levy, for the Applicants Ziad R. Lawen, for the Respondents

By the Court:

[1] The Applicants, Haiyan Lin (“Lin” or “Ms. Lin”) and 3340435 Nova Scotia Limited (“Landlord Corp”) seek an order pursuant to Section 5 of the *Companies Winding Up Act*, R.S., c. 82, s. 1 (“the Act”).

[2] The Respondents are Mingming Song (“Song” or “Ms. Song”) and Eman Beauty Inc. (“Eman”). Due, in part, to the lateness with respect to which the Respondents’ materials were filed, no notices of cross-examination had been provided by either party. Only Ms. Song was cross-examined when the application was heard, and there was no objection to same, in any event.

A. Background

[3] Lin and Song appear to originally have had an amicable and friendly relationship. They each owned and operated a business within a shared commercial condominium unit. The PID number of this unit is 40617318, and it is located at 5553 Clyde Street, Halifax, Nova Scotia (the "condo unit"). Lin's business was that of a clothing retailer. She operated under the auspices of a numbered company, 3337668 Nova Scotia Limited (which will be hereinafter referred to by its business name “Zyta”). Song operated a beauty salon through Eman.

[4] Together, Lin and Song incorporated Landlord Corp in the fall of 2020. Its *raison d'être* was to own the condo unit and the anticipated equity in the building, as the mortgage was progressively paid down. Lin and Song were the only two directors, and each held 50% of the issued and outstanding shares. Zyta and Eman were tenants of Landlord Corp. They each paid $2,012.50 per month in rent. The leases were not committed to writing. The amount of rent each tenant paid was intended to satisfy approximately one half of Landlord Corp’s monthly operational needs, and also included an agreed incremental contribution towards other yearly corporate expenses such as property taxes.

[5] Businesswise, things did not go so well for Zyta. Lin’s evidence is that the business failed – she was losing money each month. As a consequence, she caused Zyta to give notice to Landlord Corp, in April 2022, that it was terminating its unwritten lease with respect to the premises. She saw to it that Zyta’s rent was paid up to the end of that month. Additionally, she performed an historical rent review of payments that had been made by Zyta since the inception of Landlord Corp. Upon finding that Zyta had missed a payment over that span of time, a further payment was made in June 2022, in the amount of $2,012.50, to remedy the oversight.

[6] The parties' relationship, after Zyta gave its notice, became extremely problematic. Lin alleges (in paraphrase) that:

> (a) Song immediately began refusing to cause Eman to pay any rent to Landlord-Corp despite the fact that Eman remained operational in and in possession of [the entire] the Condo Unit;
>
> (b) Song refused to attend Landlord-Corp directors meetings to address the problems that were arising and Landlord-Corp's inability to meet its recurring liabilities without rental income;
>
> (c) After Lin (acting in her capacity as a director of Landlord-Corp) took steps to terminate Eman's occupancy so that the Condo Unit could be re-let, Song unlawfully and forcibly broke back into the Condo Unit and began sleeping in the Condo Unit so as to keep Lin locked out;
>
> (d) Song took steps to exclude Lin's banking access in relation to Landlord-Corp's accounts;
>
> (e) When Lin took steps to protect the cash reserves of Landlord-Corp and deposit same into a new RBC bank account which could not be controlled by Song, Song attacked RBC representatives and refused to speak or deal with Lin on that issue;
>
> (f) Song refuses to be communicative with Lin regarding the operation and management of Landlord-Corp and yet appears to be actively attempting to deal in the Condo-Unit including by advertising it for rent, without any involvement or participation by Lin.
>
> *(Lin Affidavit, February 7, 2023, paras. 29-59)*

[7] Lin, through counsel, argues that she has made a number of attempts to sort this matter out and rectify the situation without involving the Court. She claims that the Respondents have repeatedly ignored, and actively attempted to thwart, these efforts (*Lin Affidavit, February 7, 2023, Exhibits 13-15, 18-20, and 23*).

[8] In addition, she says:

> 11. Throughout all of the foregoing, what documentation Lin has been able to compile (despite the exclusion efforts of Song) demonstrate significant concerns regarding the conduct of Eman and Song in terms of rental revenue being paid to Landlord-Corp and whether and how that rental revenue is being used and allocated. Specifically:
>
> (a) After taking steps to exclude Lin's access to the original BMO bank account, Song attempted to drain Landlord-Corp's funds from that BMO account by way of irregular bank drafts, only one of which Lin Was able to reverse [Lin Affidavit para. 52 and Exhibits "12" and "27"];

(b) Since that time, to the best of Lin's knowledge, Song appears to be intermittently funneling apparent rent payments in (and immediately out) of the traditional BMO account usually in the approximate amount of $4.025 [Lin Affidavit Exhibit "27"];

(c) Song, to the best of Lin's knowledge, then on injects whatever portion of those funds is required into a Credit Union Atlantic ("CUA") bank account to cover recurring expenses such as mortgage and condo fees [Lin Affidavit para. 58 and Exhibit "26"]; and

(d) Lin has no knowledge of what Song has done with any excess funds that may be fleetingly deposited into the BMO account and then never injected into the CUA account.

(Applicants Brief filed March 7, 2023)

[9] Lin has been unable to determine the financial status of Landlord Corp, and/or what is being done by Song with respect to the monies being removed from Landlord Corp's bank account, despite having expended a great deal of legal cost in attempting to do so. She says that some of the information that she needed was not made available until Song was cross examined when this Application was heard. Some of it has still not been made available.

[10] The Respondents say that:

16. The facts, as admitted ***repeatedly*** by Mr. Blades at the May 16th 2023 hearing date, are that Ms. Lin abandoned the Corporation, the Condo Unit, the mortgage, all relevant expenses, and the Respondent Ms. Song. The Applicants insist that "rent" was paid in satisfaction of the "leases" between the Corporation and their respective tenant corporations; the reality of the matter is that the directors of the Corporations (Ms. Lin and Ms. Song) were running businesses from the premisses of the Condo Unit and, in implied and explicit design, each shared the benefits and burdens of doing so. Furthermore, the realities that govern Canadian business practices are exactly that – business partners ought to know that they share the expenses and burdens when they are equal 50% shareholders and directors of an incorporated company. The same application of business practices applies to the mortgage which may be in the name of the Corporation, but was guaranteed and executed by each Ms. Song and Ms. Lin ***personally***.

17. Any notation that there was nothing compelling Ms. Lin to pay her monthly dues is disregard [sic] for their duties, obligations, and personal guarantees to the mortgage, expenses, and the health of the Corporation.

18. Any notion that Ms. Lin was in approval of a new tenant and continuing the health of the Corporation comes in complete contradiction of her communications to Ms. Song . . .

> 19. Any notion that Ms. Lin's abandonment of the mortgage, the Corporation, the Condo Unit, and the expense is [sic] not reckless nor a breach of her duties to those aforementioned is a totally incomprehensible position when considering the fiduciary duties owed from directors to corporations and shareholders. As stated above, these facts are vividly told by the behavior of the parties and not something to be enlightened by verbal positions of the interests of the parties – hence our election to not cross-examine Ms. Lin.
>
> 20. With great emphasis, Ms. Lin's abandonment placed the Corporation, the Condo Unit, the mortgage, Ms. Song and Ms. Lin in harm's way. Again, it should be acknowledged that Ms. Lin personally guaranteed this mortgage *inter alia*, and by way of not paying it and abandoning the remainders, Ms. Lin placed herself in harm's way. Such behavior is prima facie reckless and irresponsible **nullifying** any position that she was acting in best interest of the Corporation.
>
> [Emphasis in original]
>
> *(Respondents Post Hearing Brief filed June 5, 2023)*

[11] Song admits that she set up another account for Landlord Corp (in addition to the one at Bank of Montréal "BMO", of which Lin was aware) at Credit Union Atlantic ("CUA"). Her *viva voce* evidence confirmed that amounts were taken from the BMO account, with sufficient funds injected into CUA to cover Landlord Corp's current monthly expenses such as mortgage and condo fees. No accounting has been offered as to what was done with the monies in excess of what were required to cover the bare monthly operational expenses of Landlord Corp.

[12] Moreover, Song testified that, for a period of time, she caused Eman to withhold its own rent, to a total of $12,075. These arrears were not made up until June 2022. She says that, from then onwards, a further $4,025 per month was injected. Song explained that she had originally withheld monies (or, more accurately, that she had caused Eman to do so) in an attempt to equalize historical imbalances in rent payments. She said this, despite the fact that it appears these had been (mostly) equalized as of April 2022 (*Lin Affidavit, February 7, 2023, para. 28 and Exhibit 12).*

[13] Ms. Song also acknowledged that the amount of $4,025 per month was what the parties had originally set as an appropriate global amount of rent for Landlord Corp to receive each month in relation to the totality of the condo unit space. Until Zyta provided its notice, Zyta and Eman had each contributed one half of this monthly figure. Ms. Song also agreed that, after April 2022, Eman was the sole entity occupying the condominium unit.

[14] The Applicants have argued:

> 32. Noted above, Lin may have caused Zyta to terminate its tenancy due to its business failing, but Lin never "abandoned" Landlord-Corp as the Respondents repeatedly try to suggest. Lin in fact tried ***repeatedly*** to act in the best interests of Landlord-Corp including trying to make numerous demands for Eman to resume paying rent (to protect the condo unit from foreclosure) and then ultimately trying to terminate Eman's tenancy in favour of re-letting the condo unit to a new tenant. Lin took those steps in a lawful manner. Eman's tenancy at will was capable of being terminated by Landlord-Corp for any reason at any time. That tenancy was so terminated due to non-payment of rent on June 21, 2022, after multiple demands for resumption of rent payments were ignored by Song, and the locks were changed accordingly [Ref: Lin Affidavit paras. 29-35 and Exhibits 13, 14, 15].
>
> 33. Later that same day, as Song has admitted in cross-examination, she destroyed the newly changed condo unit lock and forcibly re-entered the premises, causing Eman to continue operating its business out of the space uninterrupted. Song began sleeping in the unit, which was confirmed when the police were called to investigate (Ref: Lin Affidavit para. 37 and Exhibit 16).
>
> 34. Song admitted in cross-examination that she subsequently put a new lock on the door and never provided Lin with a key.
>
> 35. In other words, Song broke into the condo unit and forcibly caused Eman to continue with sole-occupancy of the condo unit, refused to work with Lin in terms of finding a new tenant, and enjoyed sole and exclusion use and possession of the space ever since June 21, 2022.
>
> [Emphasis in original]
>
> *(Applicants Brief filed May 23, 2023)*

[15] Lin, feeling at an impasse, attempted to set up a Landlord Corp directors meeting. Her selected date of June 24, 2022, was inconvenient for Song, so it was rescheduled to the following day. The latter did not attend on June 25, 2022 either, in an apparent "protest" as to the manner in which this was being conducted. *(Lin Affidavit, Exhibits 17 and 18; Song Affidavit, para. 59)*

[16] The Applicants take the position that the directors meeting occurred and, with Lin in attendance, there was a quorum present. Eman's tenancy was terminated by Landlord Corp. It was shortly after this (June 24, 2022) that Song caused Eman to make a deposit of $12,075, consisting of most of the rent which it had withheld. She also broke the locks on the condo unit (which Lin had caused to be changed) and began to sleep there, frustrating any efforts on Lin's part to re-let the premises.

[17] This was also the point at which Song began causing Eman to make ongoing rental payments of $4,025 each month, which she testified have continued to the present day. Corporate business records reflect that Eman made these payments. However, as Song acknowledged in cross-examination, after the payments are deposited, the practice is to immediately withdraw all of that money from Landlord Corp's BMO account in cash and inject just enough of it into the CUA account to cover the current ongoing monthly corporate expenses.

[18] As earlier stated, what has happened to the rest of that money is one of the *casus belli* in this matter. The Applicants contend:

> 42. How Song dealt in that cash remains unknown to this day. Certainly, Song, as she admitted in cross-examination, never informed or explained this practice to Lin. All Lin could discern was that Song was performing these mysterious "in-and-out" transactions, leaving Landlord-Corp with virtually no money in the bank.
>
> *(Applicants Brief filed May 23, 2023)*

[19] Song counters (Notice of Contest, para.3) that Lin herself retained roughly $6,500 in cash from Landlord Corp's BMO bank account. Lin admitted this but argued that there is a distinction to be made. She explained that her actions were attempts to protect the financial integrity of the company when she realized monies were going missing from the account, in the absence of any explanation from Song. The funds were placed by Lin in an RBC account, and she told Song what she was doing. In fact, the RBC account that was set up by Lin required dual signatures in order for the money to be withdrawn.

[20] Remarkably, once she was advised of this, Song immediately attended the RBC branch and made a unilateral attempt to obtain that money. Some type of commotion ensued, and RBC subsequently asked Lin to close the account. Ms. Lin did so and used all of the funds to pay a property tax bill owed by Landlord Corp. Song does not contest Lin's assertions as to the use to which these funds were ultimately put.

[21] Which brings us to another remarkable development: the Louis Vuitton box. Ms. Song brought it with her to court. She sat with her counsel at counsel table throughout the hearing. The box sat on the table in front of the two of them. At one point, when she was being cross-examined about missing funds, she adverted to the box. The impression which she conveyed was that the missing funds were right there. This not only came as a surprise to the Court, but also to counsel for the Applicants. Even more bizarrely, counsel for the Respondents indicated that he had

not known what was in the box until his client made the revelation under cross-examination.

[22] At this point, the Court directed a recess, and asked counsel to count the money and attempt to agree on how it should be characterized. Counsel are in apparent agreement that the box contained $11,900. The Applicants argue:

> 51. That Louis Vuitton box of cash apparently contained $11,900, which is ***significantly*** less than what Landlord-Corp should have in cash at this point in time. Additionally, for reasons that frankly remain unknown, Song certainly appears to believe that the Louis Vuitton box of cash belongs to her personally, rather than Landlord-Corp.
>
> 52. Ultimately, it does not matter how much cash was contained in the secret Louis Vuitton box. That cash is in Song's possession and Song considers it to belong to her personally, which it does not.
>
> 53. The more important question is how much cash ***should be*** in the Louis Vuitton box (or, more appropriately, how much cash should be in Landlord-Corp's bank accounts which Song has been depleting to effectively zero balances each month).
>
> [Emphasis in original]
>
> *(Applicants Post Hearing Brief, filed May 23, 2023)*

[23] The Respondents say:

> 33. In stark contrast, Ms. Song's behavior, not without flaw, has precisely upheld their [sic] fiduciary duty to the Corporation. As per the evidences [sic] before the Courts, Ms. Song has done their [sic] best efforts to make all required payments from the time of Ms. Lin's abandonment to the time of this writing.
>
> 34. Regarding the broken and changed locks, Ms. Song acted as any property owner would in the face of having their locks suddenly and shockingly changed. Ms. Song conducts business from her premises, and as such, breaking the locks and changing the locks is a natural response in protecting her property from malicious conduct.
>
> 35. Regarding Ms. Song's behavior at the time of Ms. Lin's abandonment in April 2022, Ms. Song reacted naturally – in a stressed and frightened fashion. But, soon after, Ms. Song gained composure, and began conducting herself as someone realizing that their co-director had abandoned all interests. Ms. Song responded in an expected way, and such behaviors ought not be held against her in light of her successfully paying all dues and liabilities for the last 14 months.

> 36. Regarding reletting the space to a new tenant, this position is without foundation or premise seeing that the dues and liabilities were being managed and satisfied by Ms. Song.
>
> 37. Regarding the box of money brough to Court on the May 16th 2023, this amount was simply the amount of funds being collected after liabilities were paid. The $11,900.00CAD accounted for on that date was an arbitrary figure that reflected some of the funds collected as residues less all the liability payments.
>
> 38. Regarding the behavior of paying and then withdrawing all funds from the joint account, Ms. Song was no longer in a position to trust Ms. Lin after their abandonment. Once Ms. Lin broke this trust, Ms. Song could not longer trust that funds being deposited in their shared banking account would be respected. As such, seeing that Ms. Song was the sole payor, Ms. Song would place the funds into the account, pay all required duties and liabilities, and then retrieve the remainder of the remainder of the [sic] funds. With emphasis, this was Ms. Song's money that they generated and as such felt reasonable in protecting it from Ms. Lin and her malicious behavior as reviewed above and throughout this submission.
>
> [Emphasis added]
>
> *(Respondents Post Hearing Brief filed June 5, 2023)*

[24] Another complicating factor is that the parties, at the beginning of the Hearing, had entered a Joint Exhibit Book. Unfortunately, settlement offers previously made by the Applicants were among the documents in that book. In fact, the Court's attention was drawn, at the outset of closing submissions, to the very Exhibits containing the settlement offers.

[25] At this point, the Court directed counsel to make their closing submissions in writing, and to address, preliminarily, their position as to whether the Court could continue to adjudicate this matter now that it is been made privy to the settlement positions.

[26] Subsequently, the parties jointly communicated with the Court (through counsel) to confirm that each was agreeable to my remaining seized with this matter and rendering a determination on all of the issues.

B. Issues

[27] There are only two issues before the Court for determination:

(i) Should an order for the winding up of the Landlord Corp be granted?

(ii) Should any party(ies) be obliged to pay special and/or punitive damages to any other(s)?

C. Analysis

(i) Should an order for the winding up of the Landlord Corp be granted?

[28] Naturally, it is appropriate to begin with the Act itself:

> Winding up by Court
>
> 5 Where no such resolution has been passed, the court may, on the application of the Company, or any contributory or contributory's, or shareholder or shareholders, or member or members of the Company, make an order for winding up, where the court is of the opinion that it is just and equitable that the company should be wound up.
>
> Court-ordered option
>
> 6 (1) Where the Court is satisfied that it may make an order directing the winding up of a company pursuant to this Act, it may, subject to subsection (2),
>
> (a) fix the value of each share issued by the company and held by any person who is a party to the application and who is seeking an order directing the winding up of the company and declare that any party to the application who is not seeking an order directing the winding up of the company has an option, exercisable within such time as the Court orders, to purchase all or such number of the shares as the Court orders, at a price per share which is equal to the value of the share fixed by the Court; and
>
> (b) impose such terms and conditions on the option and the sale arising from the option as the Court thinks fit.
>
> Limitation on power
>
> (2) The Court shall not exercise the authority contained in subsection (1) where it appears that the company cannot by reason of its liabilities continue in business.
>
> Appraisers
>
> (3) The Court may appoint one or more appraisers to assist it in fixing a fair value pursuant to this Section.
>
> Restriction on winding-up order

> (4) Where a Court makes an order pursuant to this Section, it may not make an order for winding up unless it appears to the Court that the option declared by the Court pursuant to this Section has not been duly exercised.
>
> . . .
>
> 10(2) In case of an order authorizing a winding up, the court shall appoint such liquidators and determine the security and the remuneration.

[29] The above sections were considered by this Court in *Rafuse* v. *Bishop* (1979), 34 NSR (2d) 70. Glube, J., as she then was, considered the factors relevant to the "just and equitable" analysis mandated above. As she noted:

> [38] Although the two companies are presently active in that they are each fulfilling a contract, I must look at the governing principles on which a winding up should be based.
>
> [39] The case of *Re R.C. Young Insurance Limited*, [1955] O.R. 598, at pp. 601 and 602, set out certain principles as follows:
>
> > "I extract from those cases certain principles and propositions which govern the Court in forming its opinion on the question whether or not it is just and equitable that a corporation should be wound up by order made pursuant to the provisions of s. 255(d):
> >
> > 1. It is right to consider what is the precise position of a private company such as this, and in what respects it may be fairly called a partnership in the guise of a private company.
> > 2. The same principles ought to be applied where there is, in substance, a partnership in the form or guise of a private company. The circumstances which would justify the winding-up of a partnership are circumstances which should induce the Court to exercise its jurisdiction under the "just and equitable" clause and to wind up the company.
> > 3. <u>As the foundation of applications for winding-up on the "just and equitable" rule there must be a justifiable lack of confidence in the conduct and management of the company's affairs.</u>
> > 4. <u>That lack of confidence must be grounded on the conduct of the directors in regard to the company's business. It may rest on lack of probity, good faith, or other improper conduct on the part of a majority of directors.</u>
> > 5. It must not spring from dissatisfaction at being outvoted in the business affairs or what is called the "domestic policy" of the company."
> >
> > [Emphasis added]

[30] Ultimately, she concluded:

> [62] I find that there has been a 'freeze-out' of the plaintiff as demonstrated by the transfer of inventory without holding a proper meeting and that there has been improper conduct. I have found a lack of confidence in the conduct of the management of the two companies by Mr. Bishop. These factors outweigh the consequences of winding up and I find that the plaintiff is not, by his own conduct, responsible for the position in which he finds himself. It is just and equitable that Minas and Holdings be wound up.

[31] These provisions also received attention in *Nieforth* v. *Nieforth*, [1985] NSJ No. 254, a case in which one brother alleged that the other was using the company's principal asset for his own personal benefit, rather than that of the company.

[32] After observing that small privately held companies are "clearly the type of company contemplated for the application of the 'just and equitable' principle", where mutual confidence has been eroded or has dissipated completely (paras. 27 to 31) the Court went on to point out:

> [34] Alfred Nieforth, at least since 1967, has conducted the affairs of the company as his personal business operation. He has not followed the normal course of corporate activity in any substantial respect. In his decision to attempt to develop the Kerr Lake property for his own family, his actions confirm a further intention to use company assets, if possible, for his own interests as opposed to company interests. In reviewing his agreement with Ronald for the purchase of Ronald's shares, it appears that he has indicated that he is willing to use company assets to enable him to secure control of other shares in the company. In this and in other actions, I find that the petitioner has a justifiable apprehension as to the security of his continuing interest in the company.
>
> [35] Essentially, the whole nature of the initial corporate relationship has now been destroyed. The mother is now in a guest home and unable to contribute. Chester is working elsewhere, and because of the personal relations be-tween he and Alfred, does not contribute in any substantial respect to the company. Ronald is now retired and making only a minimal contribution to the benefit of the company. As the parties cannot agree on an informal winding up to confirm the end of this corporate relationship, the court must now so act.
>
> [36] There will be, as there usually is, some risk of adverse financial consequences on winding up, but I find the factors that I have referred to as out-weighing the consequences of winding up. I also find that the petitioner is not, by his own conduct, responsible for the position in which he now finds himself.
>
> [37] I find it, just and equitable that Nieforth Bros. Limited be wound up.

[33] It will be obvious, merely from a consideration of the facts outlined above, that the parties are at an impasse and Landlord Corp is in jeopardy as a result of the evident mistrust between Lin and Song. The female Respondent clearly regarded Lin's announcement to the effect that her Zyta business had failed, and that it would not be able to contribute its monthly rent payments after April 2022, as an "abandonment" and a betrayal. This led her to a state of extreme mistrust both with respect to Lin, and as to Lin's motives for virtually everything that she tried to do.

[34] Instead of rolling up her sleeves (figuratively speaking) and attempting to work with Lin with respect to a purchase of the latter's interest in the company, she surreptitiously caused Landlord Corp to change its banking account, and has removed monies from the corporate account – monies in respect of which no accounting has been made to date. She has withheld information which not only would have demonstrated where that money has been placed, but also information pertinent to the financial well-being of Landlord Corp.

[35] Song's demeanour on the stand, under cross-examination, was suggestive of one who feels completely justified and righteous in having taken the steps that she did. Despite her legal representation, she did not seem to have any conception of the difference between herself as a person, and her rights (and obligations), as well as those of Lin, as shareholder and director of a company.

[36] In particular, she simply did not appear to understand that it was not right to take assets owned by the company, and/or that the company was a legal entity separate and apart from herself, an entity in which Lin also has an interest, as a fellow shareholder and director.

[37] Despite the drama surrounding the Louis Vuitton box full of cash in the courtroom and adverting to it when she was asked on cross-examination about what had happened to the missing money, Song has not been forthcoming on this point. As earlier noted, the tenor of her remarks and accompanying "gesture" in court were to the effect that the missing cash would be found in the box. However, after it was counted, it appears to encompass less than 50% of what is said to be missing. Moreover, as has been noted earlier, her counsel acknowledged as much, "The $11,900... was an arbitrary figure that reflected some of the funds collected as residue less all the liability payments" (*Respondents Post Hearing Brief filed June 5, 2023, para. 37*).

[38] Faced with Song's conduct, Lin had retained some corporate money with which to pay some expenses on Landlord Corp's behalf. She advised Song about it.

The account in which Lin placed the funds, as noted, required each of their signatures before the funds could be withdrawn. Rather than accept that as a gesture of goodwill and transparency, Song promptly went to the banking institution (RBC) and demanded that the money be released to her personally. She caused such a commotion that the bank asked Lin to close the account. The latter did so and used the funds to pay a bill on Landlord Corp's behalf.

[39] The position of the Respondents in this matter has been amorphous and shifting. Their Notice of Contest does not admit or accede to the request for winding up. Despite the efforts of the Applicants to obtain information which would be relevant to the provision of an option to the Respondent Song to purchase Lin's shares from Landlord Corp on a fair market basis, the female Respondent has been exceedingly anxious to cloak the affairs of that company in secrecy. This is somewhat ironic, as at least some of the Respondents' submissions to this Court appear to concede that relief under the Act is necessary in the circumstances, and, as indicated, that Ms. Song wishes to purchase Ms. Lin's shares.

[40] For example, this is how the Respondents' pretrial brief of April 3, 2023 concludes:

> The respondent's first option [sic] to purchase the remainder of Lin's shares from the company on a fair and reasonable basis that reflects the last year of mortgage payments, original equity placed in the property, and other expenses, renovation costs, and payments that have occurred.
>
> d. [sic] the respondent's second option is to sell the property of the first option is not to be achieved for whatever reason this Honourable Court provides.
>
> e. **the respondent's interest in remaining in the property and continuing business as is.**
>
> f. Additionally, the following relief are[sic] sought:
>
> i. That the meeting held on June 25, 2023 be deemed illegitimate for sake of failure of proper notice;
>
> ii. that the courts dismissed the trespassing claim in light of the illegitimate meeting held on June 25, 2023;
>
> iii. That in the findings that [sic] Eman Beauty is evicted from the premise [sic], that the following ensue, respectfully:
>
> 1. Reasonable notice of eviction
>
> 2. reasonable time to relocate from premise [sic]

> 3. payment for the lost income endured through out the eviction process as it may occur
>
> 4. payment for costs of relocation, both in the physical relocation of all materials, equipment, and supply in the costs of a new commercial lease
>
> *[Bolding in original]*

[41] There will be some risk of adverse financial consequences upon a winding up of the company. To put it mildly, it would have been preferable had Song been more forthcoming with her disclosure and provided information that is vitally necessary to a proper understanding of Landlord Corp's current circumstances.

[42] In sum, I make the following findings:

1. Zyta's and Eman's leases with Landlord Corp had not been reduced to writing. No evidence of the terms thereof, beyond the agreed upon monthly amount of the condo space, was led. Since the leases were verbal, they were "at will" within the meaning of the *Statute of Frauds*, RSNS 1989, c.442, s. 3;
2. Lin's business, Zyta, was not profitable. She effected a valid termination of the lease of her space in Landlord Corp in April 2022;
3. Lin ensured that the rent for the space occupied by her business was paid to Landlord Corp, and a month or two later, when she realized that an earlier payment had been missed, made that payment as well;
4. Lin thereafter attempted to work with Song to arrive at a solution in the best interests of Landlord Corp, however the latter reacted by "freezing out" the former, causing Landlord Corp to change its banking accounts, setting up a new account with CUA, and effectively played a "shell game" with its financial receipts;
5. Song began refusing to cause Eman to pay any rent to Landlord Corp, despite retaining full operation and possession of Landlord Corp's entire premises;
6. Song, even though provided with proper notice of a directors meeting, wilfully boycotted it, and refused any other attempts by Lin to address the problems that were rising as a result of Landlord Corp's (apparent) inability to meet its recurring liabilities, and to discuss what was being done with its income;

7. In the aftermath of the directors meeting, attended only by Lin, and steps having been taken to terminate Eman's occupancy so that the condo unit could be relet, Song broke the lock that had been installed, changed it, and began sleeping in the condo unit so as to keep Lin locked out;
8. Only after the directors meeting which purported to terminate Eman's tenancy, did Song cause that entity to make up the arrears of rent owed by it to Landlord Corp, which payments, she claims, have continued to date;
9. From that day forward, however, there has not been an accounting as to what has been done with these payments, and Song does not dispute the assertion that both the BMO and CUA accounts (at least as of May 16, 2023) contain essentially nil balances;
10. On the basis of the Respondents' own admission, the $11,900 brought to court by Song represents only a portion of the missing funds. She has retained those funds and has not explained what she has done with the balance;
11. Song has taken steps to advertise the condo for rent and has not consulted with or attempted to involve Lin in the process *(Lin Affidavit paras. 29 to 59)*;
12. Although causing Eman to make its rent payments as noted above, Song is taking these payments (almost immediately) out of the bank account and had been depositing only the portion (into CUA) needed to cover recurring expenses such as mortgage and condo fees. The remainder of these funds have not been accounted for.

[43] An order for the winding up of the Landlord Corp, pursuant to Section 5 of the Act, shall ensue. Prior to the winding up, however, the Respondent, Song, will be granted an option to purchase all of the shares of Landlord Corp owned by Lin for a purchase price to be fixed by an appraiser pursuant to Section 6 of the Act. More particulars of the process will be set forth in the conclusion of these reasons below. The Respondents shall cause the $11,900, originally brought to court with Song on May 16, 2023, to be paid to counsel for the Applicants, and it shall be retained in trust by counsel for the Applicants pending further order of this court. Ms. Song shall provide the Applicants and this Court with a full and accurate account of the provenance of the remainder of the outstanding monies (more on which will be said below) within 30 days of this decision.

(ii) should any party(ies) be obliged to pay special and/or punitive damages to any other(s)

[44] There appears to be general consensus as to Landlord Corp's recurring monthly expenses. They consist of the CUA mortgage payment ($1,525.83, condo fees of $391.20, and $92.00 Eastlink charge). (*Lin Affidavit, para. 21; Song Affidavit, para. 21*). One must consider, in addition, the "catch up" payments which Ms. Song admittedly made after the directors meeting which purported to evict Eman from the premises, as well as the full ongoing monthly rental payments which the female Respondent indicates that she has caused Eman to make to Landlord Corp ever since.

[45] As a consequence, I accept the Applicants' submission that the amount of funds that should have been contained in the latter's account (whether at BMO, or CUA) as of May 31, 2023 is the amount of $25,078.49. This is simply the cumulative amount rendered carrying forward the "monthly surpluses" after payment of Landlord Corp's recurring monthly expenses, less those additional expenses paid on behalf of the Landlord Corp that have been revealed by the Respondents to the Applicants and the Court, such as property taxes (*Lin Affidavit, paras. 53 - 57*) and/or additional interest and principal payments upon the mortgage (*Lin Affidavit, Exhibit 11 and Song Affidavit, Exhibits 14 and 16*).

[46] After May 31, 2023, one would expect the cumulative amount contained in the corporate Applicant's account to increase by an increment of $1,904.51 by the end of each succeeding month. As has earlier been pointed out, the $11,900 brought by the female Respondent to court in the Louis Vuitton box amounts to less than half of what is owed.

[47] I have mentioned earlier that Song shall immediately pay $11,900 directly to counsel for the Applicants to be held in trust pending further order of this court. She shall also present to the court and to counsel for the Applicants, within 30 days of this decision, an accounting with respect to the balance of the outstanding funds. In the event there are other expenses that were caused to be paid on behalf of Landlord Corp, she should have the opportunity to establish same. The accounting shall be up to and including the date that it is made.

[48] The Respondent Song shall be required to personally repay to Landlord Corp, by way of special damages, any monies for which she cannot satisfactorily account. If the parties are unable to agree as to the sufficiency of the accounting presented, and or the amount to be paid by the female Respondent thereafter, the parties can

have the matter set down before me for a further hearing, or it may be heard merely by written submissions, depending on counsel's perception of the complexity of the remaining issues. The payment shall also be made to counsel for the Applicants in trust and shall also be held pending further order of this Court.

[49] It is not appropriate that punitive damages be addressed presently. The matter is not concluded. There remains the accounting, including any necessary disclosure required pursuant thereto, the purchase of Ms. Lin's shares by Ms. Song, and/or the winding up and dissolution of Landlord Corp There may be further court appearances necessitated by this process. Costs will be addressed by written correspondence when the details of the sale of the shares and/or the winding up of the company have been concluded.

[50] Finally, the Respondents have made various other claims in their written submissions. For example, they have raised allegations of breaches of fiduciary duty on the part of Ms. Lin and have included requests that the Court "pierce the corporate veil" in relation to Ms. Lin and Zyta. They have also (somewhat vaguely) asked for various forms of financial redress and/or set off with respect to monies that are said to be owed to one or more of the Respondents. It suffices to observe that they have filed only a Notice of Contest. Nothing bearing any resemblance to a counterclaim and or a plea of set off is to be found therein.

Conclusion

[51] Landlord Corp will be wound up and dissolved by a liquidator appointed by the Court in accordance with the Act. This shall be subject to the option that will be granted to Ms. Song under Section 6 of the Act to purchase Ms. Lin's 50% shareholding in Landlord Corp for fair value to be assessed by an appraiser, in accordance with Section 6(3) thereof.

[52] Given that Turner Drake & Partners Limited performed a valuation approximately three years ago and returned a market value assessment of $350,000 (*Lin Affidavit, Exhibit 7*) they would appear to be the most logical and cost-effective entity to perform an updated present day market value appraisal of the condo unit.

[53] Upon receipt of the appraisal noted above, the parties shall retain the services of a Chartered Business Valuator ("CBV") to prepare an assessment of the fair value of Ms. Lin's 50% shareholding in Landlord Corp having regard to, among other things, the updated Turner & Drake appraisal referenced in the previous paragraph.

[54] Ms. Song shall have 45 days after receipt of the results of the fair value assessment noted in the previous paragraph to exercise for option and purchase Ms. Lin's shares in Landlord Corp by paying the CBV fair value assessment.

[55] If Ms. Song does not exercise a buyout option on the foregoing terms, the result is that the Landlord Corp shall be wound up and dissolved and all assets liquidated, and the net proceeds divided between Song and Lin. As the Court directed, the parties are to agree on the CBV to be utilized for the purposes of the above paragraph within 30 days, failing which the Court will receive written submissions with respect to same.

[56] Costs (including the allocation of costs of appraisal and valuation) will be assessed at the same time and in the same manner as punitive damages are addressed: by written correspondence after the share purchase has been agreed to, or upon the winding up of the company, as the case may be. In the meantime, the costs of the appraisal and valuation may be paid out of the funds to be held in trust by counsel for the Applicants, or otherwise as agreed to by the parties, pending the overall allocation of these expenses at the conclusion of this matter.

Gabriel, J.