CITATION: Gel-Don Investments Inc. v. Miori Investments Inc., 2021 ONSC
COURT FILE NO.: CV-19-00632390-00CL
DATE: 20210609

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
GEL-DON INVESTMENTS INC. and CON-STRUCT GENERAL CONTRACTORS LTD.	)	*Colin P. Stevenson* and *Michael F. Cooper*, for the Applicants
	)	
Applicants	)	
	)	
– and –	)	
	)	
MIORI INVESTMENTS INC., DAVID DE SYLVA, DEL RIDGE (EAST MARKHAM I) INC., DEL RIDGE (EAST MARKHAM II) INC., GREENLIFE ENERGY INC., DEL RIDGE (WEST HARBOUR) INC., LEIGH ALLAN LIMITED, OKRA (BRONTE) INVESTORS INC., DEL RIDGE (GOLDEN) INC., DEL RIDGE (MID-TOWN) INC., DEL RIDGE (WEST SIDE) INC., KENNISON PROPERTIES INC. and BRONTE PROFESSIONAL PLACE INC.	)	*Mark Veneziano* and *Aoife Quinn*, for the Respondents
	)	
Respondents	)	
	)	
– and –	)	
	)	
MIORI INVESTMENTS INC., DAVID DE SYLVA and DAGIN DEVELOPMENTS LTD.	)	*Mark Veneziano* and *Aoife Quinn*, for the Applicants by Counter-Application
	)	
Applicants by Counter-Application	)	
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– and –	)	
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DEL RIDGE (EAST MARKHAM I) INC., DEL RIDGE (EAST MARKHAM II) INC., GREENLIFE ENERGY INC., DEL RIDGE (WEST HARBOUR) INC., LEIGH ALLAN LIMITED, DEL RIDGE (GOLDEN) INC., DEL RIDGE (MID-TOWN) INC., DEL RIDGE (WEST SIDE) INC., KENNISON PROPERTIES INC., AVANT INVESTMENTS INC., GEORGE LEDONNE, GEL-DON INVESTMENTS INC., LEED WALL SYSTEMS INC., and CON-STRUCT GENERAL CONTRACTORS LTD. Respondents by Counter-Application	)	*Colin P. Stevenson* and *Michael F. Cooper*, for the Respondents by Counter-Application **HEARD:** January 25, 2021 and March 10, 2021

DIETRICH J.

OVERVIEW

[1] George LeDonne ("LeDonne") and David De Sylva ("De Sylva") worked together in the condominium construction business and real property development for 19 years.

[2] Their joint ventures involved the development of condominium properties and an investment in commercial real estate. They share an indirect ownership interest in a group of companies called the "Del Ridge Group." Each individual company in the Group is referred to as a Co-Tenancy. Generally, a Co-Tenancy holds either a condominium development project or an interest in a multi-unit commercial rental property in Milton, Ontario or Markham, Ontario (the "Rental Properties").

[3] When the working relationship between De Sylva and LeDonne began to falter, they entered into a governance agreement (the "Governance Agreement") through their respective investment corporations, Miori Investments Inc. ("Miori") and Gel-Don Investments Inc. ("Gel-Don"). The Governance Agreement was executed on April 25, 2017 and governs the ownership, operation and management of nine of their Co-Tenancies, each of which is a respondent in this application and counter-application.

[4] The Governance Agreement calls for unanimous decision making between Miori and Gel-Don. It also provides for a winding up of the nine Co-Tenancies in an orderly manner and a division of all the underlying assets between De Sylva/Miori and LeDonne/Gel-Don.

[5] Unanimous decision making between Miori and Gel-Don is no longer possible. The relationship between De Sylva and LeDonne is marked by a lack of trust and confidence. Both claim to have endured oppressive conduct in their business relationship.

[6] There are several disputes between them relating to their joint ventures. Each of De Sylva and companies he controls, and LeDonne and companies he controls, claim to be owed significant sums of money by the other and the Co-Tenancies. Both seek the court's direction on several issues, primarily related to accounting and winding up the joint ventures.

[7] For the reasons that follow, on the consent of the parties, the Rental Properties shall be sold, using CBRE as the listing agent, on the terms to which the parties are agreed. The net proceeds of sale shall be distributed once all the accounting issues respecting the Co-Tenancies have been resolved between the parties, and the parties either agree to a distribution, or a distribution is ordered by this court. The remaining joint ventures, including all Co-Tenancies between Miori and Gel-Don, shall be wound up following receipt of an accounting of the Co-Tenancies from an independent accountant, appointed by this court, and the resolution of the issues in dispute raised in this application and counter-application.

The Applications and the Parties

[8] Gel-Don and Con-Struct are the applicants in this application. The respondents include Miori and De Sylva, and ten Co-Tenancies. The applicants allege oppressive conduct by Miori, as well as De Sylva in his capacity as a director of the Co-Tenancies, and they seek a variety of remedies for such conduct, including the appointment of an independent accountant and a winding up of the Co-Tenancies.

[9] Miori, De Sylva and Dagin Developments Ltd. ("Dagin") are the applicants by counter-application. They allege oppressive conduct by the respondents by counter-application, which include the same Co-Tenancies and other corporations in which the applicants by counter-application are shareholders and creditors. They, too, seek remedies for oppressive conduct, including an accounting and a winding up of the Co-Tenancies.

Background Facts

[10] The Co-Tenancies involved in the development of condominium properties in the Greater Toronto Area are respondents in both applications. This includes: Del Ridge (East Markham I) Inc. ("Gem I"), Del Ridge (East Markham II) ("Gem II"), Greenlife Energy Inc. ("Greenlife"), Del Ridge (West Harbour) Inc. ("West Harbour"), Del Ridge (Golden) Inc. ("Golden"), Del Ridge (Mid-Town) Inc. ("Mid-Town"), Del Ridge (West Side) Inc. ("West Side"), and Avant Investments Inc. ("Avant"). Each of these Co-Tenancies holds title to a real property in trust for Miori and Gel-Don pursuant to a Co-Tenancy Agreement.

[11] The Co-Tenancies that hold an interest in the Rental Properties are: Okra (Bronte) Investors Inc. ("Okra"), Bronte Professional Place Inc. ("BPP"), Greenlife, and Kennison Properties Inc. ("Kennison").

[12] There are Co-Tenancy Agreements between Miori and Gel-Don for nine of the Co-Tenancies, namely, Gem I, Gem II, Greenlife, West Harbour, Okra, Golden, Mid-Town, West Side and Kennison. Each of the Co-Tenancy Agreements is substantially the same; however, in eight of the nine Co-Tenancy Agreements, the Management Committee decision making authority was changed to give control to Miori. This change was not brought to the attention of Gel-Don when it signed those Co-Tenancy Agreements. The Co-Tenancy Agreements provide that Miori and Gel-Don are required to contribute towards liabilities and obligations in respect of each of these Co-Tenancies in line with their shareholding, that is Miori: 75 percent/Gel-Don: 25 percent.

[13] Each of these nine Co-Tenancies is governed by the Governance Agreement.

[14] There is also a Co-Tenancy Agreement for BPP, but it is not included in the Governance Agreement.

[15] De Sylva is the principal of Miori and LeDonne is the principal of Gel-Don. Generally, Miori and Gel-Don own the shares of each Co-Tenancy on a 75-percent/25-percent basis, except for Okra, which has a 10-per cent silent investor. Also, the percentage ownership of Avant is disputed, and Gel-Don claims a greater than 25-percent interest in Avant.

[16] De Sylva is also the principal of Dagin, which claims to be owed money by the Co-Tenancies or Gel-Don.

[17] LeDonne is also the principal of Con-Struct General Contracting Services ("Con-Struct"), which provided construction services to the Co-Tenancies. Con-Struct claims to be owed amounts from the Co-Tenancies and seeks nearly $2 million for work it provided to the Co-Tenancies.

[18] Income from the Co-Tenancies that hold the Rental Properties, other than Okra is distributed on a 75-percent/25-percent basis between Miori and Gel-Don.

[19] Leed Wall Systems Inc. ("Leed Wall"), a respondent in the counter-application, is a corporation in which each of LeDonne and De Sylva are shareholders. It provided forming work to the Del Ridge Group.

[20] Kenborough Land-Scape Inc. ("Kenborough") is a construction company in which De Sylva has an interest. It provided sewer and water main works, plumbing, landscaping, maintenance, concrete form work, and supervision, among other services to the Co-Tenancies. It also provided financing to the Del Ridge Group and to LeDonne personally.

[21] In 2019, counsel to Gel-Don wrote to De Sylva and Miori demanding to be paid for the construction work that it had provided to the Co-Tenancies and demanding that De Sylva refrain

from causing the Co-Tenancies to pay Kenborough monies to which it was not entitled. De Sylva and Miori did not respond to these demands.

[22] In early November 2019, Gel-Don called a Management Committee meeting, in accordance with the Governance Agreement. The meeting was called for later that month to discuss cheque signing authority, accounting for each of the Co-Tenancies, and payments from the Co-Tenancies for each of Con-Struct and Kenborough. Miori and De Sylva did not attend the meeting.

[23] Subsequently, De Sylva directed a payment of $139,160 to a contractor, Maxum Drywall, for extra work provided to Gem II. LeDonne alleges that the payment was improper because the work done was part of the scope of the work that Maxum Drywall was hired to do and not an extra service as De Sylva alleged.

[24] In mid- to late-December, LeDonne was denied access to the Del-Ridge email servers for some time. LeDonne was not advised that the email servers would be taken down and they were only restored after LeDonne's counsel intervened. However, the email servers that had been restored were later taken down again, which was disruptive to LeDonne and Gel-Don's ability to conduct business.

[25] The accounting and payout of income from the Rental Properties is controlled by Miori and De Sylva. The cheques provided to Gel-Don did not include a breakdown of the distributions on the Rental Properties. Though Gel-Don made requests for such breakdowns, it did not always get a response. As such, Gel-Don cannot satisfy itself that it has received its fair share of the income distributions from the Rental Properties.

[26] De Sylva and Miori allege that LeDonne, Gel-Don and Con-Struct owe $6.9 million, consisting of amounts that De Sylvia and Miori were required to advance to the Co-Tenancies, under the Co-Tenancy Agreements, when LeDonne and Gel-Don failed to do so; interest on the amounts advanced by De Sylva and Miori; and payments that LeDonne allegedly took from the Co-Tenancies without authorization. Included in the alleged unauthorized payments were salaries paid to LeDonne and LeDonne's spouse that De Sylva alleges were paid by the Co-Tenancies through Con-Struct, and in respect of which there was no agreement.

POSITIONS OF THE PARTIES

The LeDonne/Gel-Don Applicants

[27] The applicants allege that Miori and/or De Sylva have acted unilaterally, contrary to the Governance Agreement, and contrary to the interests of the applicants, the minority shareholder, by:

- refusing to participate in Co-Tenancy Management Committee meetings, including one organized by the applicants for November 22, 2019;

- denying access to the Del Ridge Group computer server, which prevented access to relevant documents and information relating to the Co-Tenancies such as accounting information, purchaser contracts, and consultants' reports;

- unilaterally signing cheques and making unauthorized payments, including to Kenborough, without explanation or approval;

- refusing to pay Con-Struct for services rendered;

- failing to provide financial records, including bank records, in support of internally-generated "state of the union" reporting on the financial status of the Co-Tenancies and loans;

- failing to provide copies of the commercial leases of the Rental Properties and to seek LeDonne's approval of them;

- refusing to wind down the Co-Tenancies in accordance with the Governance Agreement and refusing to deal with the remaining jointly-owned properties in a reasonable manner; and

- restating construction costs and reducing projected profit on the Gem II project.

[28] The applicants seek a wide variety of remedies for this alleged oppressive conduct, including:

- production of all financial records and an accounting regarding the Co-Tenancies;

- the appointment of an independent accountant for an accounting of the Co-Tenancies;

- the appointment of an auditor and a receiver; and

- payment of 75 percent of $1,959,544.77 for unpaid construction work provided to the Co-Tenancies.

The De Sylva/Miori Applicants by Counter-Application

[29] The applicants by counter-application, in their capacity as shareholders of certain of the Co-Tenancies, and as creditors of them, seek a remedy for alleged oppressive conduct against them. By way of remedy, they seek relief including:

- a declaration that the respondents by counterclaim have acted in a manner that is oppressive;

- an accounting;
- a just and equitable winding up of the Co-Tenancies and a division of their assets;
- a return and payment of monies owing to the applicant by counter-application, totaling $6,921,852.86; and
- a declaration that there are no further monies owing by the applicants by counter application to Con-Struct.

ISSUES

[30] There is a myriad of issues to be resolved between the parties. Some of these issues cannot be resolved based on the evidentiary record before the court, and others that will need to be adjourned. A proper accounting is essential and some of the disputes involve issues of credibility requiring resolution through the trial of an issue.

[31] The issues are as follows:

1. Has there been oppressive conduct by or against one or both of Gel-Don/LeDonne and Miori/De Sylva/Dagin?
2. Should an accountant be appointed to review the accounting prepared by or on behalf of all parties relating to the Co-Tenancies?
3. How should the sale of the Rental Properties be conducted?
4. Is Con-Struct owed money pursuant to its construction contracts with the Co-Tenancies based on the difference between the amount billed and the fixed price of the contracts?
5. Is Con-Struct entitled to payments for “extra” construction work on the Co-Tenancies?
6. Was Con-Struct overpaid on its contracts with the Co-Tenancies, including management fees and alleged hidden profit?
7. Did Miori/De Sylva make unauthorized payments to Kenborough or Maxum Drywall?
8. Does Gel-Don owe money to the Avant Co-Tenancy?
9. Does Leed Wall owe money to Miori and/or Dagin and should there be a set off against monies Dagin owes to Leed Wall?

10. Is Con-Struct liable to the Co-Tenancies for salaries paid to LeDonne and his spouse?

11. What amounts are owing by Gel-Don/LeDonne under the Co-Tenancy Agreements for unpaid capital calls and interest?

12. Does LeDonne owe interest on the $300,000 loan related to the West Harbour Co-Tenancy, and if so, in what amount?

13. What directions ought to be given with respect to a winding up of the Co-Tenancies, including a) a letter of credit relating to West Side; and b) securities in BPP and FIT contracts relating to the Rental Properties?

ANALYSIS

Issue 1: Has there been oppressive conduct?

[32] I find that Miori, as the majority shareholder in the Co-Tenancies, has acted in a manner that is unfairly prejudicial and that unfairly disregards the interests of the minority shareholder Gel-Don.

[33] Examples of this conduct include gaining control over decision making in respect of eight of the Co-Tenancies by instructing the solicitor who drafted those agreements to change the voting structure from one in which unanimous decision making was required between the co-tenants to one in which Miori could control decision making. Though De Sylva submits that there is no evidence to support the conclusion that he instructed John Morrison to make this change to the Co-Tenancy Agreements, I find that it is more likely than not that he did. Mr. Morrison says that he cannot recall how the change came about, but LeDonne did not instruct Mr. Morrison on the Co-Tenancy Agreements, De Sylva did. Gel-Don had a reasonable expectation that the Co-Tenancy Agreements would not be changed in a material way without notice to him.

[34] Further examples of conduct that was prejudicial to Gel-Don and disregarded its interests include denying access to the email server without notice when Gel-Don was dependent on it to conduct its business, Miori's failure to attend a Management Committee meeting scheduled with a view to resolving a number of the issues that arise in this application and counter-application, and its failure to provide all of relevant financial information, including banking records relating to the Co-Tenancies and in support of the "state of the union" reporting by Miori, as requested by Gel-Don.

[35] Based on the evidentiary record, I do not find that the Co-Tenancies or Gel-Don have acted in a manner that is oppressive, unfairly prejudicial or that unfairly disregards the interests of Miori/De Sylva/Dagin. It may be that Miori/De Sylva/Dagin are creditors of the Co-Tenancies, just as Gel-Don and LeDonne may be creditors of the Co-Tenancies, but whether this is so, and if so, the extent of the indebtedness, has yet to be determined.

Issue 2: Should an accountant be appointed?

[36] Section 248 of the *Business Corporations Act* (Ontario) (the "*OBCA*") permits the court to make any order it thinks fit where the business affairs of the corporation have been conducted in a manner that is oppressive or unfairly prejudicial, or that unfairly disregards the interests of any security holder or creditor of the corporation.

[37] I have found such conduct, and it is appropriate that an independent accountant be appointed to undertake the required accounting to determine the entitlements of the various parties on a winding up of the Co-Tenancies. Each of De Sylva and LeDonne have deposed that he does not trust the accounting that the other has provided, and both agree that a proper accounting for the Co-Tenancies is required.

[38] The applicants also seek the appointment of an auditor and a receiver. I do not find that either of those appointments is necessary currently. An independent accountant, provided with all the relevant financial records of all parties, should be able to address many, if not all, of the accounting issues in dispute.

[39] The applicants suggest the appointment of either Froese Forensic Partners Ltd. or RSM Canada Fuller Landau, LLP. The applicants by counter-application oppose the appointment of an independent accountant and prefer to rely on their own internal accounting. I disagree with that approach. If the parties cannot agree on the appointment of an independent accountant within 14 days of these reasons, RSM Canada Fuller Landau, LLP shall be appointed. The independent accountant appointed hereunder shall be referred to as the Accountant.

[40] The Accountant will be tasked with analyzing and reconciling competing claims for payments to and from the parties involving loans, expenses and work performed relating to the Co-Tenancies, and reporting to Miori and Gel-Don on its findings. The Accountant will review all necessary financial books and records, including bank records, as determined by it to be necessary to its task of determining what amounts are owed to which party and by whom. The Accountant may seek the advice and direction of this court as required.

[41] Each of the parties shall provide to the Accountant all relevant books and records in their possession relating to the issues set out herein and shall continue to provide such relevant information as requested by the Accountant.

[42] The costs of the Accountant, on an interim basis, shall be borne by Miori/De Sylva and Gel-Don/LeDonne on a 75-percent/25-percent basis. The allocation of the costs may be reassessed following receipt of the Accountant's report.

Issue 3: How should the sale of the Rental Properties be conducted?

[43] De Sylva/Miori and LeDonne/Gel-Don have agreed that the Rental Properties should be sold, and they have agreed on CBRE as the listing agent. Certain terms relating to the listing on

which the parties are agreed are attached hereto as Schedule "A." The parties may seek further advice and direction from this court with respect to the sale of the Rental Properties.

[44] A distribution of the net sale proceeds from the sale of the Rental Properties shall not take place until there has been a proper accounting by the Accountant in respect of all income distributions from the Rental Properties, or the parties agree on the distribution, or a distribution is ordered by this court.

Issue 4: Is Con-Struct owed money pursuant to its construction contracts with certain of the Co-Tenancies?

[45] Gel-Don submits that it entered into fixed-price contracts with each of West Side, Golden, Midtown, Gem I, and Gem II, but it billed each of these Co-Tenancies less than the contract price. LeDonne deposed that the choice of a fixed-price contract was deliberate to ensure cost certainty for the parties. Accordingly, LeDonne asserts that Gel-Don is entitled to the difference of $1,959,544.77 that resulted from this underbilling. LeDonne asserts that the parties agreed that the underages in payment on the fixed-price contract would be carried forward until the final fixed-price contract, being the Gem II project, was completed, and would be paid then. LeDonne denies De Sylva's suggestion that there was an agreement that any surplus above the Gem II contract fixed price of $2,300,000 was destined for "others" and not Con-Struct. LeDonne argues that there was never any such agreement.

[46] De Sylva disputes LeDonne's claim but has offered no evidence of another agreement. De Sylva has given inconsistent testimony on this point. Contrary to his affidavit evidence and his evidence on cross-examination, De Sylva now submits that the contracts were "time and materials" contracts, that Con-Struct was overpaid on these contracts, and that therefore Con-Struct owes money to the Co-Tenancies.

[47] De Sylva submits that, notwithstanding that each of the contracts stated on the first page that it was a fixed-price contract, in practice they were not treated as such. Rather, they were treated as time and materials contracts with an up-set limit, and the agreement was that the Co-Tenancy would reimburse Con-Struct for its actual costs, but there was no agreement that Gel-Don would profit from the contract. De Sylva submits that it was necessary to put a fixed price on each contract for bank financing purposes, but that was the only purpose that including a fixed price served. He argues that Gel-Don accepted that practice and never sought to recover any amount underbilled until this litigation was commenced.

[48] The nature of the construction contracts between Con-Struct and the Co-Tenancies is relevant not only to Gel-Don's claim for the amount underbilled, but also to Miori's claim that Con-Struct was overpaid. Miori claims that Gel-Don and LeDonne profited from several of the construction contracts, in ways that were never intended, such as through administration fees, hidden profits and salaries for LeDonne and his spouse. See Issues 6 and 10 below.

[49] Ontario courts have held that where the express, or even implied, terms of a contract set out the fixed-price nature of a contract, it will be interpreted as a fixed-price contract: *The Gatti Group Corp. v. Zuccarini*, 2020 ONSC 2830, at paras. 105-107, and *Balmoral v. Biggar*, 2016 ONSC 319, at paras. 13, 15, and 17. However, in the case at bar, there is evidence to suggest that the parties may have had a different understanding. De Sylva's evidence is inconsistent. LeDonne has not adduced any documentary evidence of an agreement to carry the underages forward. He made his intention to seek the underages known once this litigation was commenced.

[50] This issue cannot be determined on the record before the court. Credibility is in issue and *viva voce* evidence would assist the court in determining the intention of the parties with respect to the Co-Tenancy Agreements. Accordingly, a trial of this issue is necessary.

Issue 5: Were there overpayments to Con-Struct that are owing to the Co-Tenancies?

[51] Miori asserts that Con-Struct is not entitled to the $585,938.21 it claimed as an "extra" expense for its work on the Gem II Co-Tenancy, over and above the fixed contract price of $2 million.

[52] LeDonne asserts that this work was appropriately billed as an extra because it was beyond the scope of the contract, it was provided beyond the occupancy date, and it involved services and materials. LeDonne acknowledges that he did not give written notice of his intention to claim this extra, as required. However, in support of his request for payment, LeDonne produced a purchase order. De Sylva submits that the purchase order is unsigned and undated and that LeDonne, on his cross-examination, could not say for certain that he had sent it to De Sylva for payment on behalf of Gem II. Accordingly, De Sylva argues that this payment should be denied.

[53] In addition to payment for the $585,938.21 for additional services and materials, LeDonne asserts that he is entitled to $171,884.99 for unpaid invoices for work performed from May to October 2019 on the Gem II Co-Tenancy. LeDonne submits that he has provided all the necessary backup documentation to support the request.

[54] De Sylva argues that this further claim for an "extra" should also be denied. He submits that the Gem II project was substantially completed in April 2019, and that there would have been no amounts payable to Con-Struct for construction services following that date. Further, he disagrees that LeDonne submitted the proper documentation in support of his claim.

[55] This issue of what constitutes an "extra" in the context of the construction contracts is also one that turns on credibility and should be tried together with the issue of whether the construction contracts were fixed-price or time and materials.

Issue 6: Was Con-Struct overpaid on its contracts with the Co-Tenancies, including: i) administration or management fees, and ii) alleged hidden profit?

[56] Miori/De Sylva assert that Con-Struct was overpaid by the Gem I Co-Tenancy for "contract administration fees" of $353,000. Part of the contract cost involved an "administration fee" for

Con-Struct's office staff. When Gel-Don and Miori separated their offices in April 2017, Gel-Don claimed that its administrative costs increased. Miori/De Sylva submit that they agreed to pay $15,000 per month as an administrative fee on the basis that LeDonne would later prove Con-Struct's actual costs. Miori/De Sylva assert that LeDonne did not prove this administrative cost, but, rather, demanded $28,000 per month in "contract management fees" for which there was no agreement.

[57] Gel-Don/LeDonne assert that these administration/management fees were agreed to and that De Sylva was well aware that they were being charged to Gem I as De Sylva was signing the cheques in payment of these fees.

[58] Miori/De Sylva assert that Con-Struct was also overpaid on its contracts with the Co-Tenancies because it charged a premium of $1,451,462 (the "hidden profit"). This premium is the difference between the amounts charged to the Co-Tenancies for the services provided by its employees and its labourers and the wages paid to the same employees and labourers. LeDonne admitted that he paid his employees at Con-Struct a salary but charged the Co-Tenancies for their services based on an hourly rate. Miori/De Sylva assert that there was no agreement that would entitle Gel-Don and LeDonne to this profit, which was in addition to the salary that LeDonne paid himself and his wife.

[59] Gel-Don/LeDonne assert that Gel-Don agreed to and was entitled to collect the fixed price on each of the contracts with the Co-Tenancies. Accordingly, if it was paid the fixed price or less on the contract, how it spent those funds was for it to determine and not the concern of Miori, De Sylva or the Co-Tenancies.

[60] Further, LeDonne submits that there was an agreement that each of De Sylva's office and Con-Struct's office would be entitled to charge the same administrative costs commencing May 2017, but neither would charge administrative costs after June 2018. LeDonne submits that, in fact, each charged administrative fees from May 2017 to June 28, 2018, as agreed, and that Miori made the payments for all of these administration/management fees without question or qualification.

[61] These issues should be resolved in the determination of whether the construction contracts were fixed-price or time and materials. If it is determined that the contracts were time and materials, the trial will also need to address whether there was a separate agreement between the parties regarding the payment of administration/management fees. Similarly, in that case, the Accountant will need to review and analyze Miori's calculation of the "hidden profit", to determine the actual cost of the time and materials. Miori's calculation of the "hidden profit" was internally generated with no input from Gel-Don.

Issue 7: Did Miori/De Sylva make unauthorized payments to Kenborough or Maxum Drywall?

[62] Gel-Don/LeDonne assert that neither De Sylva nor Kenborough has provided consistent backup documentation regarding work provided to the Co-Tenancies for which Kenborough seeks to be paid. De Sylva asserts that Stephanie Stephens, of De Sylva's office, met with LeDonne monthly to review the Kenborough invoices. LeDonne denies that such meetings took place and asserts that he has not met with Ms. Stephens since early 2019. He submits that since that time, Kenborough has billed over $1 million for work it claims to have provided to the Co-Tenancies.

[63] LeDonne admits that De Sylva and Miori provided four boxes of documents relating to Kenborough after the commencement of these proceedings but that he has only had time to undertake a superficial review of the documents. Based on that superficial review, he concludes that it appears that Kenborough has received funds to which it is not entitled. LeDonne submits that these documents require analysis by the Accountant.

[64] De Sylva asserts that LeDonne's allegations are vague and unspecified despite having over a year to specify any payment that he alleges was improper. On cross-examination, LeDonne asserted that Kenborough was charging the Co-Tenancies more for its labour than it was paying to its labourers, a practice that De Sylva also complained of with respect to Con-Struct. De Sylva submits that notwithstanding LeDonne's complaint about the labour costs, LeDonne signed the cheques payable to Kenborough.

[65] Given that LeDonne has access to four boxes of Kenborough documents, he, or his counsel, should be in a position to review the documents to give particularity to his claim against Kenborough. Following their review of the four boxes of documents, if LeDonne can support his theory that Kenborough may have been overpaid by the Co-Tenancies with documentary evidence, then the Accountant shall review and analyze this issue as well.

[66] LeDonne further asserts that De Sylva directed a $139,160 payment from Gem II to Maxum Drywall, which is now working on projects owned and managed exclusively, directly or indirectly, by De Sylva.

[67] De Sylva submits that the amount owing to Maxum Drywall by Gem II was for legitimate "extra" work done by Maxum Drywall. LeDonne disputes that this work was extra and asserts that it was part of the original scope of Maxum Drywall's contract with Gem II. Further, the Governance Agreement provides that Gel-Don must approve payables prior to issuing payment to sub-contractors/trades, which did not occur in respect of this payment.

[68] The Accountant shall consider the documentation relating to this payment to determine whether this expense was a proper expense of Gem II, and the Accountant shall be provided with all relevant documentation in support of the work done by Maxum Drywall.

Issue 8: Does Gel-Don owe money to the Avant Co-Tenancy?

[69] De Sylva asserts that Gel-Don has underpaid its share of the costs relating to the Avant Co-Tenancy and that $11,346 remains outstanding.

[70] Gel-Don asserts that the ownership interests in Avant between Miori and Gel-Don are two-thirds Miori and one-third Gel-Don. Miori disputes these ownership interests and asserts that the ownership interest is 75-percent Miori and 25-percent Gel-Don. The accounting records are not clear at this point. Miori's accountant, Melissa Coulson, sent an email to LeDonne, referring to internal accounting, confirming that in 2017- and 2018-income allocations were erroneously made in Avant on a 25/75 ownership basis. In other years, Ms. Coulson confirms that all profit allocations were distributed 70/30 "as per the joint venture."

[71] Gel-Don/LeDonne assert that if Gel-Don owns a two-thirds interest as opposed to a 30-percent interest, Gel-Don may not be in a negative capital position on this Co-Tenancy. Gel-Don asserts that it has not been provided with all the relevant information relating to the buyouts and changes in the co-tenant interests. This information will need to be provided to the Accountant so it can determine the proper ownership interests as between Miori and Gel-Don, and so it can reconcile the profit allocations and distributions to determine whether Gel-Don received more than it was entitled to and is indebted to Avant.

Issue 9: Does Leed Wall owe money to Miori and/or Dagin and should there be a set off against monies Dagin owes Leed Wall?

[72] Miori/Dagin/De Sylva submit that Miori and Dagin are owed $60,000 and $37,135, respectively, from Leed Wall. De Sylva submits that in 2017, each of Miori and Gel-Don advanced funds to Leed Wall, and that in 2018 and 2019, Gel-Don withdrew its $165,000 without notice to or authorization from Mioiri/De Sylva. Accordingly, De Sylva submits that Miori is entitled to withdraw its contribution.

[73] LeDonne refutes this submission with supporting documentation and asserts that, while in fact there are outstanding loans to Leed Wall from Dagin in the amount of $60,000 and from Miori in the amount of $105,000, there was also a loan from Leed Wall to Dagin in the amount of $143,535. LeDonne also asserts that Dagin should reimburse Leed Wall for costs it incurred on a project that Dagin was developing around 2019, and from that payment, the outstanding loans from Dagin of $60,000 and from Miori of $105,000 could be repaid or set off.

[74] Miori/Dagin/De Sylva and Gel-Don/LeDonne have very different views as to the accounting and liabilities as among Leed Wall and them. Unless they can come to an agreement on these issues, this matter shall be referred to the Accountant and the Accountant shall be provided with all relevant documentation respecting the loans made to and from Leed Wall to the parties so that it can determine the loan repayments to be made and any appropriate set off for the loan from Leed Wall to Dagin.

Issue 10: Is Con-Struct liable to the Co-Tenancies for salaries paid to LeDonne and his spouse?

[75] Miori/De Sylva assert that they did not approve any salary for LeDonne or his spouse, Lucy LeDonne, for work related to the Co-Tenancies. Their calculation of the total salary taken by LeDonne and his spouse between 2001 and 2018 for work related to the Co-Tenancies is $2,166,788. They arrive at this amount by taking the actual salaries paid in each of these years, $1,170,870 for LeDonne, and $45,210 for his spouse, Lucy LeDonne, as shown on the books and records of the Del Ridge Group, and then applying a factor to "adjust for current value." The adjusted current value as calculated by De Sylva is $2,166,788.

[76] De Sylva deposed that he did not take any salary for his work relating to the Co-Tenancies. He further deposed that in 2006, when he learned that LeDonne was taking a salary, LeDonne told him that LeDonne needed a salary to support his lifestyle. De Sylva deposed that, at that time, LeDonne had agreed to a future compensation adjustment between them that would benefit De Sylva in the same way as the salaries would have benefited LeDonne. De Sylva asserts that because no adjustment has been made in accordance with that agreement, it must be made now as part of the winding up process.

[77] De Sylva further asserts that in reliance on that oral agreement with LeDonne, De Sylva himself withdrew two amounts, $37,500 in 2014, and $208,624 in 2016, from the Co-Tenancies, on notice to LeDonne. He did this with the expectation that these amounts would be reconciled in the final adjustment between Miori and Gel-Don, and that he would be entitled to receive a similar amount on account of salary for his work on the Co-Tenancies.

[78] De Sylva deposed that of the total in adjusted salary payments, LeDonne is entitled to an "offset" of $722,262. The offset is not explained, but I assume that it takes into account a) the fact that LeDonne as a 25-percent shareholder in the Co-Tenancies would be entitled to 25 percent of any such reimbursement, and b) the payments taken by De Sylva in 2014 and 2016 would also be factored in, presumably, on an "adjusted to current value basis."

[79] LeDonne denies that there was any agreement, oral or otherwise. Further, he submits that De Sylva knew of and approved the payments from the Co-Tenancies to Con-Struct, which included payments for the salaries of LeDonne and his spouse. LeDonne further submits that the salaries were paid by Con-Struct to his spouse and himself from funds received on the fixed-price contracts, and, therefore, should be of no concern to De Sylva and Miori.

[80] These facts will need to be considered in the trial of the issue with respect to whether the contracts between Gel-Don and the Co-Tenancies were fixed-price or time and materials. If LeDonne is successful in proving that the contracts that Con-Struct entered into with the Co-Tenancies were in fact fixed-price contracts and not time and materials contracts, then the salary issue becomes moot as long as the salaries paid by the Co-Tenancies to Con-Struct do not exceed the total amount paid to Con-Struct in respect of the construction contracts. If the contracts were fixed-price contracts, how Con-Struct distributes the funds it receives for services provided under

those contracts should be of no concern to Miori, De Sylva or the Co-Tenancies. If the contracts were, as De Sylva asserts, time and materials contracts, then the issue of the salaries becomes an issue of credibility and whether De Sylva took certain action in reliance on LeDonne's alleged agreement to repay the salaries to the Co-Tenancies or account for them on the winding up of the Co-Tenancies.

[81] If, in the result, any amount is owing by Con-Struct in respect of the salaries, the amount, and any appropriate present value adjustment, will need to be analyzed by the Accountant and substantiated.

Issue 11: What amounts are owing by Gel-Don/LeDonne under the Co-Tenancy Agreements for unpaid capital calls and interest?

[82] Pursuant to Article 2.03 of each Co-Tenancy Agreement, Miori and Gel-Don are obligated to contribute toward the liabilities and obligations in respect of each of the development projects held by the Co-Tenancies, in accordance with their shareholdings, on a 75-percent/25-percent basis.

[83] Miori asserts that Gel-Don did not pay its share of capital calls to meet expenses related to the Co-Tenancies, and that, as a consequence, Miori was required to make the calls on its behalf. Miori is now looking to recover the amount of all of Gel-Don's unpaid capital calls, as well as interest on all capital calls made by Miori on Gel-Don's behalf.

[84] Based on the evidentiary record, I find that it is not possible to determine with certainty Gel-Don's obligation for unpaid capital calls. I also find that Gel-Don is not liable for the $2,026,670.72 in interest that Miori is seeking from Gel-Don.

[85] Respecting capital calls, the Co-Tenancy Agreement provides as follows:

> 3.02 If the Co-Tenancy shall require funds in excess of those available from a lender, as contemplated in Section 3.01, then unless the Management Committee otherwise determines, such funds shall be advanced by the Co-Tenants. The advances, if any, from time to time required of the Co-Tenants hereunder shall be made pro rata according to their shares. The determination as to whether any such funds are required and the date on or by which the same are to be advanced shall be made by the Management Committee acting in good faith and in the best interest of the Co-Tenants.
>
> 3.03 Unless otherwise determined by the Management Committee, amounts advanced by the Co-Tenant from time to time pursuant to Section 3.02 shall bear no interest.
>
> 3.04 Whenever funds are required to meet any obligation arising out of the business and affairs of the Co-Tenancy, as contemplated

> herein, any member of the Management Committee shall be entitled to notify the Co-Tenants in writing, which notice shall set out the specific purpose of which the amount of the contribution from each Co-Tenant and the date upon which funds are required. Each Co-Tenant shall advance the amount required on or before the date set forth in such notice by depositing the monies required by such notice in the bank account for the time being of the Co-Tenancy.

[86] From time to time, excess funds were required in the form of capital calls to advance a particular project or to pay legal fees for ongoing litigation, among other reasons. As a matter of practice, the determination of the need for excess funds was not made by the Management Committee. Based on the record, it was De Sylva, who took on the function of the Management Committee, for the purposes of determining when the funds were required and making the capital call. In taking on this role, he had a duty, per Article 3.02, to act in good faith and in the best interests of the Co-Tenants.

[87] Based on the record, I am not satisfied that De Sylva discharged his duty of good faith or acted in the best interests of LeDonne in determining whether the capital calls were required. He has shown no evidence of having satisfied himself that the needed funds were not available from a lender other than one of his own companies.

[88] In taking on the role of Management Committee for the purposes of capital calls, De Sylva's first responsibility was to determine whether the Co-Tenancy required funds in "excess of those available from a lender as contemplated in Article 3.01 …" Article 3.01 provides that "[a]ny and all amounts required, from time to time, for the purposes of the Co-Tenancy, … shall be obtained, to the maximum extent possible, by way of interim or long term mortgage financing of the Property."

[89] De Sylva/Miori have not provided any evidence to show that excess funding by interim or long-term mortgage financing was not available from a lender. By contrast, De Sylva's evidence is that "mezzanine financing" was available, but he perceived it to be too expensive and decided instead to borrow from Miori, Kenborough or Dagin, all companies in which he had a shareholding. De Sylva offered no evidence as to whether mortgage financing other than mezzanine financing was sought and found to be unavailable.

[90] De Sylva borrowed from companies related to him and paid the capital calls. He paid Miori's share of the capital call, and from time to time, paid Gel-Don's share as well. LeDonne submits that he did not have notice of some of these capital calls that Miori paid on behalf of Gel-Don. When LeDonne failed to repay the amounts advanced on his behalf, De Sylva attempted to rely on the default provision in the Co-Tenancy Agreement to charge interest. The prescribed rate of interest was the prime commercial lending rate of the Co-Tenancy's bankers plus percent, compounded monthly. LeDonne was not given any formal notice of De Sylva's intention to seek interest on these unpaid amounts. It was not until this litigation was commenced that LeDonne was made aware of Miori's intention to seek an interest payment in excess of $2 million.

[91] LeDonne submits that Gel-Don provided capital contributions in response to the notices he received. He asserts that neither Miori nor De Sylva provided notice under Article 3.04 of the Co-Tenancy agreements for Gem I and Gem II for alleged advances of $500,000 as claimed by Miori/De Sylva. LeDonne asserts that there were other alleged capital calls in respect of which he received no notice. In his cross-examination, De Sylva acknowledged that he could not recall whether proper notices were given with respect to loans and interest payments pursuant to Article 3.04. When asked to provide all documents in support of calls for capital that De Sylva stated were not paid by LeDonne, De Sylva was only able to produce a one-page document listing undated capital expenditures.

[92] The one-page document shows a total for unpaid capital calls of $589,233.14. LeDonne asserts that these amounts are unsubstantiated. LeDonne concedes, as he did on his cross-examination, that if Gel-Don is responsible for capital calls that it did not make, for lack of notice, or through error, it accepts that such amounts would need to be factored into the reconciliation between Gel-Don and Miori. For example, Gel-Don conceded that it underpaid its contribution to the West Harbour Co-Tenancy, but notes that Miori's accounting in respect of that obligation is not correct and does not account for all of the contributions that Gel-Don did make on the West Harbour Tenancy. Accordingly, Gel-Don submits that, without better evidence, it cannot accept that all capital calls were made as recorded in Miori's internal documentation. Gel-Don submits that it will pay any amount established, by the Accountant, to be outstanding and payable.

[93] By way of another example, Gel-Don submits that it did not receive proper notice respecting the advancements Miori made on its behalf for legal fees for the Kennison and Appleby projects. Gel-Don submits that it did not receive a proper request for a contribution for those fees. Further, LeDonne submits that Miori/De Sylva did not report to Gel-Don/LeDonne on the progress of the litigation related to these two Co-Tenancies. Copies of the invoices for legal services were never provided to Gel-Don until 2020, months after the applicants commenced their application. The Accountant will need to review the invoices to confirm that the services were provided to the Co-Tenancies and that the fees were properly incurred.

[94] De Sylva relies on Article 8.02 of each Co-Tenancy Agreement (other than the Co-Tenancy Agreement for Avant), which provides that when one party defaults on an obligation under the Co-Tenancy Agreement, and the other party is required to expend money to remedy that default, the party who does so will be owed the amount expended and interest compounded on that amount by the defaulting party. In accordance with Article 8.02 of the Tenancy Agreement, the amount paid by the non-defaulter shall bear interest from the date of payment to the date of accrual repayment at the prescribed interest rate, and the interest shall be a debt of the defaulter to the non-defaulter; and the defaulter shall be entitled to receive the defaulter's share of any cash surplus in respect of the Co-Tenancy including any fees or other sums due to the defaulter for services rendered to the Co-Tenancy. On cross-examination, De Sylva testified that he has no recollection, or evidence, of any notice being given to LeDonne with respect to the interest that Miori/De Sylva are now seeking to charge.

[95] It may be that De Sylva can produce persuasive back-up documentation to show that in fact Miori made capital payments on LeDonne's behalf even if LeDonne was not given notice of such payments. Given the lack of trust between the parties, this evidence would need to be reviewed by the Accountant to determine whether Gel-Don/LeDonne are in fact responsible for some unpaid capital amounts that should be factored into the final reconciliation on the winding up of the Co-Tenancies. But, without notice of a request for a capital contribution, there can be no default, and therefore no interest obligation.

[96] I find that Miori and De Sylva made no proper demand for interest pursuant to the Co-Tenancy Agreements. The only alleged demands for payment of interest were notes in the internally-generated "state of the union" documents prepared by Miori's office. In my view, these do not constitute formal demands, but, rather, an informal accounting. Miori's own accountant, Ms. Coulson, confirmed in an email exchange with counsel relating to the "state of union" statements, that they "cannot be relied on" and contained errors. No formal demand for interest was made prior to the commencement of this litigation.

[97] Further, if Miori had intended to collect unpaid capital amounts or interest on capital calls made on behalf of Gel-Don, it had the opportunity to assert its right to do so prior to the commencement of the litigation. Article 4.01 of the Co-Tenancy Agreements provides a scheme for distributing cash surplus of a Co-Tenancy and establishes a priority for payments to Co-Tenants of the amount of accrued interest, if any, owing to the Co-Tenants in respect of monies advanced pursuant to Section 3.02. There is no evidence that Miori attempted to rely on this section to enforce a right to interest at the time income distributions were made from any of the Co-Tenancies.

[98] Given the lack of effort by De Sylva to find a lender so that the Co-Tenants would not have to make capital calls themselves, the lack of notice with respect to certain capital payments, and the lack of notice of Miori's intention to charge interest, or any attempt by Miori to recover interest on a distribution of cash surplus from a Co-Tenancy, I find that De Sylva has not met his onus to show that LeDonne was in default of his obligations under the Co-Tenancy Agreement, such that the interest provisions of the Agreement apply, or that interest should otherwise be payable. Prior to this litigation, neither De Sylva nor Miori made any formal demand, nor produced any document requesting payment for any alleged amount owing by Gel-Don in respect of the loans and interest.

Issue 12: Does LeDonne owe interest on the West Harbour Co-Tenancy Loan?

[99] The West Harbour Co-Tenancy was sold about one year ago, and the net proceeds were distributed between Miori and Gel-Don on a 75-percent/25-percent basis. Notwithstanding that the proceeds have been distributed, De Sylva now alleges that LeDonne owes Miori interest on a loan Miori made to LeDonne on August 19, 2011 that permitted him to invest in the West Harbour Co-Tenancy.

[100] De Sylva deposed that on January 25, 2018, he met with LeDonne and raised the repayment of the $300,000 loan, with interest. De Sylva's evidence is that LeDonne agreed to pay 4.5 percent interest on the loan.

[101] LeDonne repaid the principal in 2019, but no interest. According to De Sylva's calculation, the interest outstanding on the loan (at 4.5 percent) is $287,514.

[102] LeDonne asserts that no demand for interest on the West Harbour Loan was made by De Sylva prior to the commencement of this litigation. LeDonne's evidence is that he told De Sylva that he did not wish to be involved in the West Harbour Co-Tenancy, but De Sylva pressured him to participate. He agreed to do so as a personal favour, and De Sylva agreed to lend him $300,000 so that he could make Gel-Don's 25-percent contribution, which it did. LeDonne's evidence is that he told De Sylva that if the intended sale of the West Harbour project could happen quickly (within two to three months), then LeDonne would consider an interest payment on the $300,000 loan, but only if the sale was completed. LeDonne denies ever acknowledging any interest obligation on the $300,000, and LeDonne says he was taken by surprise in 2018 when De Sylva mentioned interest on the $300,000 for the first time.

[103] There is no documentary evidence in support of LeDonne's agreement to pay 4.5 percent interest or any other amount. There is some evidence that De Sylva made a demand for interest in 2018 and that LeDonne would consider paying interest on certain terms. Nothing was reduced to writing at that time, and seemingly De Sylva never pursued his claim for interest. He is now statute-barred from doing so.

Issue 13: Directions on winding up the Co-Tenancies

[104] The applicants' request for an order for directions relating to the winding up of the Co-Tenancies and matters relating to a letter of credit relating to West Side, securities in BPP, and FIT contracts relating to the Real Properties shall be adjourned.

DISPOSITION

[105] An order shall issue:

1. Declaring that Miori has acted in a manner that is unfairly prejudicial and that unfairly disregards the interests of Gel-Don.

2. The Accountant, which shall be agreed upon in writing by De Sylva and LeDonne within ten (10) days of these reasons and, failing agreement, RSM Canada Fuller Landau, LLP, shall be appointed to review and analyze the books and records of the parties to determine what amounts are owing to and by the applicants and applicants by counter-application, and preparing a report.

3. Directing the sale of the Rental Properties in accordance with the terms set out in the Schedule attached hereto as agreed by the parties.

4. Ordering a trial of the following issues: a) whether the construction contracts between Con-Struct and each Co-Tenancy are fixed-price contracts or time and materials contracts; and b) whether Con-Struct was entitled to amounts in excess of the fixed contract price on such contracts for: i) additional work done by Con-Struct, including pre-delivery inspection deficiency work, known as PDI, and ii) administration/management fees.

5. Directing the Accountant to review the books and records of the parties to determine whether Kenborough has been overpaid by the Co-Tenancies and whether the payment to Maxum Drywall was an expense properly incurred and paid by a Co-Tenancy.

6. Directing the Accountant to determine the correct ownership interests as between Miori and Gel-Don in Avant and the amount that Gel-Don is indebted to Avant, if any.

7. Directing the Accountant to determine whether Leed Wall is indebted to Miori and/or Dagin, and whether Dagin is indebted to Leed Wall, and whether a set off of indebtedness is appropriate.

8. Directing the Accountant to determine what amounts are owing by Gel-Don under the Co-Tenancy Agreements for unpaid capital calls.

9. Adjourning the applicants' request for the appointment of an auditor and a receiver, and an order winding up the Co-Tenancies and directing the parties with respect to a letter of credit relating to West Side, securities in BPP and FIT contracts relating to the Real Properties.

10. Permitting the Accountant, the applicants and the applicants by counter-application to seek the advice and direction of the court as required.

COSTS

[106] Overall, the applicants have been more successful on their application than the applicants by counter-application on their counter-application. Accordingly, the applicants shall be entitled to their costs, which I fix at $40,000, inclusive of disbursements and HST, payable by the respondents to the application within 30 days.

Dietrich J.

Dietrich J.

Released: June 9, 2021

Schedule C

Address	Unit	Exclusive Period			MLS / Market			% Drop
		Price	Sq Ft	PPSF	Price	Sq Ft	PPSF	
330 Bronte Street	207	$ 331,075	779	$ 425	$ 311,600	779	$ 400	5.9%
336 Bronte Street		$ 4,071,925	9,581	$ 425	$ 3,832,400	9,581	$ 400	5.9%
400 Bronte Street	107	$ 610,725	1,437	$ 425	$ 574,800	1,437	$ 400	5.9%
400 Bronte Street	204 & 205	$ 844,900	1,988	$ 425	$ 795,200	1,988	$ 400	5.9%
400 Bronte Street	212	$ 340,850	802	$ 425	$ 320,800	802	$ 400	5.9%
400 Bronte Street	217	$ 295,800	696	$ 425	$ 278,400	696	$ 400	5.9%
410 Bronte Street		$ 11,383,625	26,785	$ 425	$ 10,714,000	26,785	$ 400	5.9%
420 Bronte Street	102-109	$ 2,445,025	5,753	$ 425	$ 2,301,200	5,753	$ 400	5.9%
420 Bronte Street	114 & 115	$ 631,975	1,487	$ 425	$ 594,800	1,487	$ 400	5.9%
420 Bronte Street	214 - 216	$ 952,000	2,240	$ 425	$ 896,000	2,240	$ 400	5.9%
450 Bronte Street	214	$ 287,300	676	$ 425	$ 270,400	676	$ 400	5.9%
7800 Kennedy Road	102-107	$ 2,388,500	5,620	$ 425	$ 2,248,000	5,620	$ 400	5.9%
7800 Kennedy Road	102, 103 & 106	$ 1,360,000	3,200	$ 425	$ 1,280,000	3,200	$ 400	5.9%
7800 Kennedy Road	104 & 105	$ 616,250	1,450	$ 425	$ 580,000	1,450	$ 400	5.9%
7800 Kennedy Road	107	$ 412,250	970	$ 425	$ 388,000	970	$ 400	5.9%
7800 Kennedy Road	304	$ 563,550	1,326	$ 425	$ 530,400	1,326	$ 400	5.9%

Real Estate

1. 30 day exclusive period only.
2. All Milton & Markham space at $425/sq ft for an exclusive period and $400/sq ft for MLS period

* Figures based on actual recent sales both in Markham & Milton
* Listings should all say 'as is where is and buyer to confirm all assumptions and perform it's own due diligence.' No MLS data forms.

Solar Income

1. Milton solar infrastructure (ie., FIT Contract) should be attached to 450 Bronte's sale with the Contract valued at $385,000.00.
2. Markham solar infrastructure (ie., FIT Contract) should be attached to 7800 Kennedy's sale and sold with one or more of the units at 7800 Kennedy Road, to be determined and should be valued at $385,000.00.

* Based on an 8.5% cap rate and repayment of initial investment over the remaining 14 years of the FIT contract.

CITATION: Gel-Don Investments Inc. v. Miori Investments Inc., 2021 ONSC 2970
COURT FILE NO.: CV-19-00632390-00CL
DATE: 20210609

ONTARIO

SUPERIOR COURT OF JUSTICE

APPLICATION UNDER ss. 149, 154, 155, 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, C. B. 16 and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, C. 43

BETWEEN:

GEL-DON INVESTMENTS INC. and CON-STRUCT GENERAL CONTRACTORS LTD.

Applicants

– and –

MIORI INVESTMENTS INC., DAVID DE SYLVA, DEL RIDGE (EAST MARKHAM I) INC., DEL RIDGE (EAST MARKHAM II) INC., GREENLIFE ENERGY INC., DEL RIDGE (WEST HARBOUR) INC., LEIGH ALLAN LIMITED, OKRA (BRONTE) INVESTORS INC., DEL RIDGE (GOLDEN) INC., DEL RIDGE (MID-TOWN) INC., DEL RIDGE (WEST SIDE) INC., KENNISON PROPERTIES INC. and BRONTE PROFESSIONAL PLACE INC.

Respondents

– and –

MIORI INVESTMENTS INC., DAVID DE SYLVA and DAGIN DEVELOPMENTS LTD.

Applicants by Counter-Application

– and –

DEL RIDGE (EAST MARKHAM I) INC., DEL RIDGE (EAST MARKHAM II) INC., GREENLIFE ENERGY INC., DEL RIDGE (WEST HARBOUR) INC., LEIGH ALLAN LIMITED, DEL RIDGE (GOLDEN) INC., DEL RIDGE (MID-TOWN) INC., DEL RIDGE (WEST SIDE) INC., KENNISON PROPERTIES INC., AVANT INVESTMENTS INC., GEORGE LEDONNE, GEL-DON INVESTMENTS INC., LEED WALL SYSTEMS INC., and CONSTRUCT GENERAL CONTRACTORS LTD.

Respondents by Counter-Application

REASONS FOR DECISION

Dietrich J.

Released: June 9, 2021