

SUPREME COURT OF NOVA SCOTIA

Citation: *Thornridge Holdings Limited v. Thomas*, 2026 NSSC 191

Date: 20260612

Docket: Hfx No. 509484

Registry: Halifax

Between:

Thornridge Holdings Limited

Plaintiff

v.

Alexander Francis Thomas, Clinton James Stewart, Dan Roy Richards, David
Jason Hodder,
Jeffrey Aaron Fraser, Robert Cliff Schwichtenberg, Scott Michael Sangster, Terry
Grant Kipper,
Michael Anthony Tringali and Michael Gordon Ryan

Defendants

DECISION

Judge: The Honourable Justice Glen G. McDougall

Heard: March 3, 4, 5, 6, 10, 11, 17, 18, 19, 20, 24, 25, 26 and 27, 2025 in Halifax,
Nova Scotia

Counsel: Christopher W. Madill, Sarah A. Walsh and James Pinchak, for the Plaintiff
Matthew McEwen and Sarah Dobson, for the Defendants Michael Gordon
Ryan and Michael Anthony Tringali

Daniel Wallace and Scott Hickman, for the Defendants Alexander Francis
Thomas, Clinton James Stewart,
Dan Roy Richards, David Jason Hodder, Jeffrey Aaron Fraser, Robert Cliff
Schwichtenberg, Scott Michael Sangster, Terry Grant Kipper

By the Court:**BACKGROUND**

[1] The claims advanced by Thornridge Holdings Limited in this litigation relate to promissory notes executed by the defendants in favour of Thornridge. The promissory notes arose out of Thornridge's February 2015 sale of a majority equity stake in its subsidiary, EnviroSystems Inc. ("EnviroSystems").

[2] Thornridge is a holding company, the shares of which are indirectly owned by various members of the Hennigar family. From 2010 until February 2015, Thornridge owned 100% of the shares of EnviroSystems, either directly or through subsidiaries.

[3] EnviroSystems carried on business as a provider of specialized waste-management and environmental solutions to a broad range of industrial sectors, including petrochemical facilities, refineries, and mining operations.

[4] In February 2015, the defendant Michael Ryan was President and Chief Executive Officer of EnviroSystems, while the defendant Michael Tringali was Chief Financial Officer. Mr. Tringali reported to Mr. Ryan, while Mr. Ryan reported to Nick Betts, then-President and Chief Operating Officer of Thornridge and Vice-Chairman of EnviroSystems. David Hennigar was the Chairman of EnviroSystems and Chairman of the Thornridge Board of Directors. The remaining eight defendants were all employees of EnviroSystems or a related company.

[5] In February 2015, Thornridge sold the majority of its shares in EnviroSystems to 3287166 Nova Scotia Limited, a holding company of TorQuest Partners Fund III ("TorQuest") a private equity company, in what I will refer to as the "EnviroSystems Transaction". The sale closed on February 26, 2015. The following individuals acted as counsel in connection with the EnviroSystems Transaction:

1. Victor Goldberg - legal counsel for EnviroSystems;
2. Blois Colpitts - legal counsel for the defendants;
3. Christine Pound - legal counsel for Thornridge.

Promissory notes and agency agreement

[6] One of TorQuest's conditions for purchasing a majority equity stake in EnviroSystems was that key employees, including Mr. Ryan and Mr. Tringali, purchase shares of EnviroSystems. It was important to TorQuest that executive team members have a financial stake in the newly acquired company's continued success. None of the defendants were shareholders in EnviroSystems at the time.

[7] Michael Ryan testified that he first learned that employees might be required to purchase shares as a condition of the EnviroSystems Transaction in September or October 2014, when TorQuest presented its first Letter of Intent ("LOI"). Mr. Ryan recalled reviewing the LOI, and, in his interpretation, it contemplated that the employees would purchase shares using a combination of their own money and funds loaned to them by TorQuest.

[8] On October 1, 2014, at 7:54 am, Nick Betts emailed David Hennigar, with a copy to Robert Gillis, Thornridge's corporate secretary and recognized agent at the time, with the subject line "Share purchase plan":

Under the draft proposal, Torquest require Mike Ryan and Mike Tringali purchase shares, and if possible a number of other key employees. Thornridge would get the \$\$.

This morning I suggeste[d] to Mike that instead of accepting financing from Torquest up to half the purchase, Thornridge might be receptive to providing all the financing, with pledge of the shares and control of the votes as security, and a kicker clause on any upside.

Mike indicated he would be interested in that, and it would be a much easier sell to a number of his Team.

I told him this would be between us, and none of Torquest's business.

I also told him this was not to be discussed with anyone else yet.

[Emphasis added]

[9] Michael Ryan recalled the discussion with Nick Betts referenced in this email. He confirmed that it was the first time the idea of Thornridge financing the purchase of shares was raised with him.

[10] Later on October 1, 2014, at 11:23 am, Mr. Betts emailed David Hennigar again:

David, I believe under the resolution passed by the Thornridge Board this falls in the category that allows any two of me, you and Laurie to agree on, and does not need to go any further.

Time will be important, and this is something mike will need in his pocket, with as few moving parts as possible.

I have in mind a simple promissory note, with recourse to the shares only, control of the votes, and repayment when the shares are sold.

Interest would be Bank prime, paid annually.

There would be a kicker clause giving Thornridge a piece of the upside, I'd start at 20%, in view of the limited recourse and see where we get.

Do you concur with the process requirement?

If so, can you also give me your thoughts on pricing so i can start putting things in motion with Mike as soon as possible.

[Emphasis added]

[11] David Hennigar replied that evening, at 10:28 pm, with a copy to Robert Gillis:

The only comment is that it should be whatever we pay bank Eg. Prime plus ½ or whatever it may be

[12] On December 5, 2014, TorQuest provided Thornridge with a revised LOI outlining its proposal to acquire a majority equity stake in Envirosystems. The second page of the LOI stated:

Acquisition Proposal

Subject to the terms and conditions of this letter, we are pleased to present the following proposal:

1. Purchase Price and Shares Acquired. TorQuest (the "Purchaser") contemplates purchasing 62.9% of the equity value of the Company, with members of the Executive Team purchasing the remaining portion of the shares to be sold by Thornridge Holdings (2.1% of the equity value of the Company) at a purchase price that reflects an enterprise value of \$235,000,000. This enterprise value assumes a debt-free, cash-free business with a normal level of working capital delivered at closing. Based on the assumptions set out in Table 1 below, this translates into an equity value of \$128,000,000 and proceeds to Thornridge of \$82,100,000.

[Emphasis added]

[13] The LOI also stated:

1. Management Compensation Plan. We believe that the alignment of interests between management and equity holders is critical to the success of our

investments, and we seek to ensure that Envirosystems' Executive Team shares significantly in equity value creation. ...

[14] By early January 2015, Nick Betts was concerned that his plan for Thornridge to facilitate the employees' purchase of equity by way of non-recourse promissory notes would be unacceptable to TorQuest. On January 7, 2015, at 12:45 pm, Mr. Betts emailed Michael Ryan, David Hennigar, Victor Goldberg, Blois Colpitts, Robert Gillis, Trevor Hennigar (David Hennigar's son and a director of Thornridge), and Christine Pound as follows:

We had a civilized conversation over the compensation for the non-comps, but it is clear Torquest expects an at risk commitment from employees, and the non-recourse note would probably cause issues.

I think we handled the roll over of Mike's position adequately, however we avoided any discussion on the employee notes, despite some pressure from Torquest.

In the circumstances I asked Victor to slow down the note and pledge documents until we see how they react to the escrow and put clauses, and give Mike time to consider today's discussion, and what he may want to do to insulate things.

[Emphasis added]

[15] Later the same day, Nick Betts proposed a new approach. He wrote to Michael Ryan, David Hennigar, Robert Gillis, Victor Goldberg, Trevor Hennigar, Christine Pound, and Blois Colpitts at 10:11 pm as follows:

Mike, another thought would be to make no reference to recourse in the note, then appoint you and Mike Tringali as irrevocable agents to administer collection, with power to accept settlement in the event of default.

That would put complete control in your hands.

We would not need to disclose this in my opinion, but let's keep thinking.

[16] Victor Goldberg, legal counsel for Envirosystems, replied to everyone involved at 10:16 pm:

This could be a tough one but your imagination is impressive. Is the concept of "at risk" total?

[17] Mr. Betts replied to everyone at 10:32 pm:

As far as I know.

This could give Mike an additional hammer to use in the unlikely event the shares dropped, and he was not happy with the attitude of one of the participants.

Keep thinking, we'll get there.

[18] Michael Ryan testified that he discussed the above emails with Nick Betts. He wanted Mr. Betts to explain what he meant by appointing him as an "agent." Mr. Ryan said he had never been anyone's agent before. Mr. Ryan left the conversation with the understanding that Mr. Betts did not want "non-recourse" to appear in the promissory notes, so he proposed to make Mr. Ryan and Michael Tringali agents with the authority to settle the promissory notes on behalf of Thornridge if the share value ever dropped below the value of the liability. In other words, while the promissory notes would appear to be full recourse, the agency agreement, which TorQuest would never see, would protect the defendant employees from any downside risk. Mr. Ryan said he understood that the agency agreement would empower him to settle the promissory notes for nothing if he saw fit. He would have complete control and discretion.

[19] Michael Ryan testified that Mr. Betts wanted him, Mr. Tringali, and the other employees to all use Blois Colpitts as their counsel for the transaction, with Thornridge paying Mr. Colpitts's fees. Mr. Ryan said Mr. Betts asked him to assist Mr. Colpitts in bringing the employees on board and legally documenting the arrangement.

[20] On January 8, 2015, Nick Betts emailed Michael Ryan, with a copy to Victor Goldberg, Blois Colpitts, David Hennigar, Robert Gillis, Christine Pound, Trevor Hennigar, and Laurie Hennigar (David Hennigar's brother and a director of Thornridge). Beneath his message was a copy of his earlier email proposing that instead of making the promissory notes non-recourse, Mr. Ryan and Mr. Tringali be appointed as agents with the power to administer collection and accept settlement. Mr. Betts wrote at 2:34 pm:

Mike thinks this will work.

Thornridge would be guaranteed to collect the value of the pledged shares, and it would be up to Mike to go after any shortfall in the unlikely event the pledged security diminished. We would make the note much more conventional.

We are still going to defer dealing with this until we see their response to the put agreement.

I think we will find the pony in this manure pile if we keep looking.

[21] Michael Ryan testified that he believed that Mr. Betts was referring to him when he said, "Mike thinks this will work."

[22] On January 16, 2015, at 6:09 pm, David Reid, a lawyer at Cox & Palmer, circulated a revised draft of the employee promissory note to Nick Betts, Michael Ryan, Blois Colpitts, Walter Chornoby (Mr. Colpitts's associate), Christine Pound, and Victor Goldberg. Nick Betts responded to Mr. Reid at 6:34 pm, adding Robert Gillis, David Hennigar, and Trevor Hennigar as recipients:

David, is it clear enough that failure to pay annual interest is an event of default? Also, my understanding is that a a [sic] Torquest entity will hold the proxy, not Thornridge, which given the concessions on Governance is no issue at this time. I'd like to see a draft agency agreement which gives Mike Ryan, or in his absence Mike Tringali, the responsibility to administer the note, in their discretion, including, extensions or renewals, or settlement in the event the value of the shares pledged reduces below the amount owing without recourse to them providing Thornridge is at a minimum allowed to seize the shares under it's [sic] pledge. I view this as a highly unlikely event, but it is consistent with the commitment we made to Mike to give him "wiggle room".

[Emphasis added]

[23] Michael Ryan testified that Nick Betts's description of the proposed agency agreement aligned with his understanding from their earlier conversation.

[24] David Reid replied to Nick Betts's email at 6:43 pm, with copies to Victor Goldberg, Michael Ryan, Blois Colpitts, Christine Pound, Robert Gillis, David Hennigar, and Trevor Hennigar:

Thanks Nick. I'm out of the office right now but will confirm the default language later tonight / tomorrow.

Blois / Warren - are you able to circulate the revised version of the appointment of agent agreement?

[25] Blois Colpitts responded at 7:37 pm, attaching the draft "Appointment of Agent Agreement" ("Agency Agreement"). Nick Betts then replied to the whole group at 7:46 pm:

This should work, subject to any comments Mike Ryan or Mike Tringali have.

[26] Nick Betts forwarded the email to Michael Tringali at 7:55 pm, with the message, "Any comments?" Mr. Tringali replied Mr. Betts at 9:36 pm:

Looks ok to me. Thanks

[27] Michael Ryan testified that the draft circulated on January 16, 2015, reflected the final version of the Agency Agreement, with no edits made other than details like the date, the names of the employees who would be executing promissory notes, and so on.

[28] Michael Tringali testified that the January 16, 2015, email from Nick Betts was the first time he saw the Agency Agreement and understood his role under it. He said his role was to administer Michael Ryan's loan on a non-recourse basis. In other words, his role as agent was to ensure that Mr. Ryan would not be out of pocket any money if the shares declined in value. He would also serve as a back-up agent in the event that something happened to Mr. Ryan.

[29] On January 17, 2015, at 11:53 am, David Reid replied to Nick Betts's earlier question about whether the draft promissory note was clear enough that a failure to pay annual interest is an event of default. He wrote to Mr. Betts, with copies to Victor Goldberg, Michael Ryan, Blois Colpitts, Christine Pound, Robert Gillis, David Hennigar, and Trevor Hennigar:

Nick - I think the Note is clear that a failure to pay annual interest is an event of default. The 2nd covenant under the Note (1st page, 4th para) states that interest is payable annually on the anniversary date of the Note. The 5th covenant (2nd page, 1st full para) provides that "the failure to perform any obligations, liabilities or indebtedness owed by the Debtor under this Note within thirty (30) days of receipt of notice by the Debtor of such failure to perform" is an event of default. Linking the 2 clauses I think its [sic] clear a failure to pay interest is a default under the Note. Let me know if you think otherwise.

...

Also on January 17, 2015, at 8:37 am, Nick Betts emailed David Hennigar, Trevor Hennigar, and Robert Gillis:

I spoke to Mike Ryan this morning, and he is fine with the agency agreement document. He has explained the process to his employees, and they have all agreed to use BLOIS Colpitts to co ordinate closing, which simplifies things since all we need to do is send Blois a cheque in trust, which he will tie in to the notes, and then return the funds to us to complete the share purchase and sale.

[30] Michael Ryan testified that by this time, he had explained to the employees who were expected to purchase shares that he would have an agreement in place with Thornridge to protect them from any downside risk. Mr. Ryan's testimony on this point is consistent with the evidence given by the individual defendants. They

each recalled being told by Mr. Ryan that there was no risk to them in signing the promissory notes. Employees would pay nothing out of pocket for the shares. If the shares increased in value, the employees would be entitled to the benefit upon a sale of the shares; if the shares were sold for less than the amount owing, the employees' liability would be limited to the amounts received for the shares. As Michael Tringali testified, "It was kind of an obvious no-brainer." Mr. Tringali further testified to his understanding that the interest owing on the promissory notes would be treated in the same fashion. If the shares rose in value, any accrued interest would be paid out of the proceeds. If the shares did not rise in value, he would not owe anything.

[31] On January 26, 2015, at 2:09 am, Trevor Hennigar forwarded Blois Colpitts's email of January 16, 2015, attaching the revised draft of the Agency Agreement to Robert Gillis, and wrote:

Hi Rob,

I assume this is to ensure Mike & Mike are obligated to try and enforce to terms on anyone who defaults [*sic*], is my understanding correct?

We are loaning Mike & Mike money as well. I assume we are not appointing them to be the agent of their own debt?

[32] There is no reply from Mr. Gillis in evidence.

[33] On January 28, 2015, at 3:05 pm, Victor Goldberg forwarded an email to Nick Betts from Jonah Mann at Stikeman Elliott LLP, TorQuest's counsel for the EnviroSystems Transaction. Mr. Mann had written to Mr. Goldberg at 2:40 pm seeking the following:

Hi Victor,

We have two very specific diligence requests and were hoping C&P would have these documents handy to share;

The form of employee loan agreements; and

All documents relating to the VTBS, including any subordination agreements if they exist.

I know how much you like to receive our diligence requests everyday so I did not want to disappoint.

Victor Goldberg wrote to Nick Betts:

Please advise how you wish me to handle this.

[34] On the same day, at 4:00 pm, Nick Betts replied to Victor Goldberg, with copies to Michael Ryan, Christine Pound, David Reid, David Hennigar, Robert Gillis, and Trevor Hennigar:

Victor, as discussed, the Proposed Agency Agreement is not part of the pledge documents, and will not be executed or become official until the Thornridge Board has approved, and that will likely take place sometime in May, well after the closing.

No disclosure of this "hypothetical" document is required.

[Emphasis added]

[35] Michael Ryan testified that after he read the above email, he called Nick Betts and instructed him that he was not giving a commitment to the employees that he had an agreement in place unless the agreement was in place. He told Mr. Betts that unless the Agency Agreement was in effect before the Envirosystems Transaction took place, he would not sign any of the transaction documents. Mr. Ryan testified that Mr. Betts assured him that it would not be an issue, and that he would take care of it. Mr. Ryan said he then called Mr. Colpitts, defendants' counsel whose fees were paid by Thornridge, and repeated the same instructions to him.

February 22, 2015 Board meeting and the "Authorized Persons Resolution"

[36] On February 12, 2015, Robert Gillis emailed a memo and a directors' resolution (the "Original Resolution") to the Thornridge Board of Directors, with a copy to Nick Betts. The memo explained the purpose of the Original Resolution:

This Resolution is an omnibus Thornridge authorizing resolution to approve the transaction and all of the documents / Steps to effect the transaction. The Resolution captures all of the key documents and components of the transaction and includes the Draft Grant Thornton Steps Memo and Draft Stewart McKelvey Pre-Closing Working Agenda as Schedule A and B respectively. Note that both of these documents are fluid and continue to be revised as required. The Resolution authorizes David Hennigar and one other Officer or Director, as applicable, to execute all of the ancillary documents required to effect the transaction.

...

Could you kindly arrange for the necessary signatures and return them to me at your earliest convenience.

[37] Neither the Draft Grant Thornton Steps Memo nor the Draft Stewart McKelvey Pre-Closing Working Agenda referenced the Agency Agreement. Page 4 of the Draft Grant Thornton Steps Memo stated only:

Step 9 Funding of management's purchase Acquisition Corp. common shares

Thornridge will loan \$2,738,000 to Management to fund their purchase.

NTD: Subsection 15(2) should not apply to the loans as Thornridge not related to EnviroSystems for income tax purposes. Further additional loan to be made in the case where EBITDA targets are met, sufficient to avoid dilution of management's equity percentage.

[38] The Original Resolution provided definitions for key terms, including "Transaction Documents":

RECITALS:

1. The Company proposes to enter into a share purchase agreement (the "**SPA**") pursuant to which the Company will divest approximately 69.3% of its shares of EnviroSystems Incorporated ("**EnviroSystems**") to various TorQuest entities and management of EnviroSystems (the "**Transaction**");
2. The draft Steps Memo prepared by Grant Thornton LLP in connection with certain pre-closing reorganization steps for the Transaction has been presented to the directors of the Company (the "**Draft GT Steps Memo**") and is attached as Schedule "A";
3. In addition to the Draft GT Steps Memo, Deloitte has prepared a draft steps memo with certain pre-closing reorganization steps and closing steps for the Transaction (the "**Draft Deloitte Steps Memo**"), including without limitation the amalgamation of EnviroSystems with Acquireco as described in the memo (the "**Amalgamation**");
4. The draft working agenda (based on the Draft GT Steps Memo) prepared by Stewart McKelvey has been presented to the directors of the Company (the "**Draft Pre-Closing Working Agenda**") and is attached as Schedule "B";
5. The Draft Pre-Closing Working Agenda describes certain documents to be entered into by the Company in connection with the Transaction (all such documents being hereinafter collectively referred to as the "**Pre-Closing Documents**");
6. In connection with the Transaction, the Company and the other shareholders of EnviroSystems proposed to enter into a shareholders' agreement to govern their relationship as shareholders of EnviroSystems after the closing of the Transaction (the "**Shareholders' Agreement**");

7. The SPA and the Draft Deloitte Steps Memo describes certain ancillary documents to be entered into by the Company in connection with, and to give effect to, the Transaction (the "**Closing Documents**");
8. In connection with the Transaction, the Company and Envirosystems have agreed to enter into a stock option plan with Mike Ryan whereby Mike Ryan will receive up to 3.5% share interest in Envirosystems or its successor (the "**ESOP**");
9. In connection with the Transaction, the Company has agreed to loan certain management employees funds to acquire shares of Envirosystems (or the purchase company to be formed for the Transaction as described in the Draft Deloitte Steps Memo) in exchange for promissory notes and with certain security to be agreed by the Company and such management employees (collectively, the "**Management Loan Documents**");
10. In order to proceed with the Transaction, the Company has entered into severance adjustment agreements and non-competition payment agreements with certain management employees of Envirosystems (the "**Management Agreements**" and together with the SPA, Shareholders' Agreement, Pre-Closing Documents, Closing Documents, the ESOP and Management Loan Documents, the "**Transaction Documents**");
11. It is in the best interests of the Company to approve the SPA and the transactions as set out in the Draft GT Steps Memo, the Draft Deloitte Steps Memo, the Draft Working Agenda and as contemplated in the SPA and to enter into the Transaction Documents in order to effect the Transaction.

BE IT RESOLVED THAT:

1. It is in the best interests of the Company to enter into the Transaction on the terms and conditions set forth in the SPA, with such final SPA being determined by David Hennigar together with any one other officer or director of the Company (collectively, the "**Authorized Persons**");
2. The Transaction and the Company's participation therein in accordance with the Draft GT Steps Memo and the Draft Working Agenda, with such changes as may be approved by the Authorized Persons, be and are hereby authorized and approved;
3. The Company is hereby authorized to enter into each of the Transaction Documents and perform its obligations under each of the Transaction Documents, with such final forms of Transaction Documents as the Authorized Persons may approve, such approval to be conclusively evidenced by the execution and delivery of each of the Transaction Documents by such Authorized Persons;
4. The Company hereby approves the Amalgamation and the Authorized Persons are hereby authorized for and in the name of and on behalf of the Company to execute (whether under the corporate seal of the Company or otherwise) all documents required in connection with the Amalgamation and with such changes thereto and in such final forms as such Authorized Persons may approve, such approval to be

conclusively evidenced by the execution and delivery of the Amalgamation documents by such Authorized Persons;

5. The Authorized Persons are hereby authorized, for and in the name of and on behalf of the Company to execute (whether under the corporate seal of the Company or otherwise) and to deliver each of the Transaction Documents with such changes thereto and in such final forms as such Authorized Persons may approve, such approval to be conclusively evidenced by the execution and delivery of the Transaction Documents by such Authorized Persons;
6. The Authorized Persons are hereby authorized, for and in the name of an on behalf of the Company to execute (whether under the corporate seal of the Company or otherwise) and to deliver all such other agreements, instruments, certificates and other documents and to do all such other acts and things as such Authorized Persons may determine necessary or advisable in connection with or to carry out the intent of the foregoing resolutions and to give effect to the Transaction, the execution and delivery of any such agreement, instrument, certificate or other document or the doing of any such other act or thing by such Authorized Persons being conclusive evidence of such determination.
7. Any and all action heretofore or hereafter taken by the Authorized Persons in accordance with the preceding resolutions is hereby ratified, confirmed and approved as the acts and deeds of the Company.

[39] On February 10, 2015, at 3:35 pm, Christine Pound sent Robert Gillis an email with the subject line "Revised Resolution", attaching an earlier version of the Original Resolution. Mr. Gillis then forwarded the document to Nick Betts at 3:53 pm, and wrote:

Nick

I provided Christine my comments on this and the revised version is attached. Let me know if this [is] ok with you in this form or if you have any changes?

With this signed in advance we should be able to execute all of the documents including any necessary revisions.

Nick Betts responded at 4:17 pm as follows:

Rob, why is it necessary to put in 8&9 dealing with management loans and severance top ups.

It doesn't look like we bother dealing with Mike Ryan's option agreement.

Mr. Gillis replied at 4:20 pm:

Nick,

I expect it is because they are components of the transaction that will require signatures of the authorized persons - but I will find out I will also find out about Mike' [sic] option.

Mr. Betts replied again at 4:27 pm:

Rob, these are not part of either the Shareholder Agreement or Share Purchase Agreement, and are all within the \$4,000,000 limit David and I have to execute without Board Approval.

I don't think it causes a problem one way or another, just curious.

Mr. Gillis replied on February 11, 2015, at 11:49 am:

Nick,

Christine's reasoning was this ...

She included reference to the loan documents and severance adjustment agreements because although they are part of the overall transaction - but they are not described in the SPA or in the Steps Memo's [sic] and Thornridge is a party to the agreements so she listed them - that makes sense to me.

The Option agreement is also an important piece so it is also listed.

Many of the other documents are legal "paperwork" that support the deal but aren't really components of the business transaction.

If you are ok with that explanation I will forward it to David because we need to get it in Joe's hands along with the Shareholders Resolution today.

[Emphasis added]

At 3:04 pm, Robert Gillis emailed Christine Pound as follows:

Can you please add one recital that somehow references that Mike Ryan will [be] issued a Stock Option to acquire up to 3.5% of the whatever entity he will ultimately end up with stock in?

Nick thinks we should reference it because we reference the other documents and we don't just want it buried in one of the Steps memos.

Ms. Pound replied at 8:18 pm, with a copy to Victor Goldberg:

I will revise and recirculate.

[40] On February 22, 2015, Thornridge held a Special Purpose Board of Directors Meeting to discuss and approve various resolutions in connection with the Envirosystems Transaction. One of the directors' resolutions passed on that date

amended the Original Resolution's definition of "Authorized Persons" (the "Authorized Persons Resolution"). The Authorized Persons Resolution stated:

RECITALS:

1. Whereas the Directors of the Company passed the resolution attached hereto (the "**Original Resolution**") approving the share purchase agreement (the "SPA") pursuant to which the Company will divest approximately 69.3% of its shares of EnviroSystems Incorporated ("**EnviroSystems**") to various TorQuest entities and management of EnviroSystems (the "**Transaction**") and the execution, delivery and performance of the Company of the Transaction Documents (all as described in the Original Resolution);
2. And Whereas it has been determined that it is [sic] the best interests of the Company to amend the Original Resolution to provide that any two officers or directors of the Company acting together shall act as "Authorized Persons" rather than David J. Hennigar with any one officer or director as set out in the Original Resolution;

BE IT RESOLVED THAT:

1. It is in the best interests of the Company to enter into the Transaction on the terms and conditions set forth in the SPA, with such final SPA being determined by either any two directors of the Company acting together, or any one director and any one officer of the Company acting together (collectively, the "**Authorized Persons**");

[...]

The remaining resolutions (2-7) mirrored those in the Original Resolution.

[41] Two days before the Special Purpose Board Meeting, on February 20, 2015, Robert Gillis sent Nick Betts, Christine Pound, and Michael Ryan an email with the subject line "Conference Call - Sunday February 22, 2015 at 5pm Atlantic". The email attached a notice which stated:

This is a Special Purpose meeting to deal with the following items:

1. A Directors' Resolution, requiring the approval of ALL Thornridge Directors, approving the Stock Option for Michael Ryan. This Resolution is required by TorQuest.
2. A Directors' Resolution, requiring the approval of ALL Thornridge Directors, authorizing the Company to deliver a limited recourse guarantee to partially secure the CIBC loans and to pledge its shares of EnviroSystems to CIBC as security for the guarantee.
3. A Directors' Resolution approving the settlement of the LTI Plan as recommended by the Thornridge HR Committee. This is a condition precedent integral to the

Closing of the transaction as it is required to provide necessary representations to TorQuest.

The notice did not mention the Authorized Persons Resolution.

[42] Michael Ryan attended a portion of the Special Purpose Board Meeting on February 22, 2015, by telephone. He was not a Board member and did not receive an agenda or other materials beforehand, other than the above notice. Mr. Ryan testified that he was asked to attend in case there were any questions for him about the Envirosystems Transaction. He could not recall the discussion about the Authorized Persons Resolution. Mr. Ryan testified that he was not asked any questions about the Agency Agreement during the meeting.

[43] Michael Tringali did not attend any portion of the Special Purpose Board Meeting, nor did he hear anything about it from Michael Ryan or anyone else.

[44] The meeting minutes indicated that the Authorized Persons Resolution was the fourth resolution considered, after the three listed in the notice:

The fourth Resolution was an amendment to the original omnibus Thornridge Resolution signed by all Directors previously. The amended Resolution provides for any two Directors acting together or a Director and Officer acting together to have the authority to sign the necessary transaction documents.

UPON MOTION duly made, seconded and carried unanimously, the Resolution attached hereto as Schedule D was approved.

[45] The meeting began at 5:00 pm and concluded at 6:50 pm. The minutes indicated that Mr. Ryan excused himself from the meeting at 5:50 pm.

The Envirosystems Transaction closes

[46] When Mr. Ryan went to Mr. Colpitts's office on February 26, 2015, to sign the transaction documents, he requested to sign the Agency Agreement before anything else. He said Mr. Colpitts told him that the Agency Agreement was there to be signed, and showed him an email from Thornridge's counsel, Christine Pound, giving Mr. Colpitts the direction to have Nick Betts sign the document. Ms. Pound sent the email to Mr. Colpitts at 3:38 pm on February 24, 2015, in reply to an email from him at 3:17 pm, attaching a copy of the Agency Agreement. Ms. Pound stated:

Please have Nick sign.

[47] Michael Ryan saw that Nick Betts had already signed the Agency Agreement on behalf of Thornridge. There was only one signature line on the Agency Agreement for Thornridge. Beneath Mr. Betts's signature was the statement, "I have the authority to bind the company". Mr. Ryan said he and Michael Tringali signed the Agency Agreement at the same time.

[48] The Agency Agreement identified Thornridge Holdings Limited as the "Creditor", Michael G. Ryan as the "Primary Agent", and Michael A. Tringali as the "Secondary Agent". It further provided:

WHEREAS the Creditor has lent funds to each of Michael G. Ryan, Michael A. Tringali, David Jason Hodder, Clinton James Stewart, Mark Stephen Power, Alexander Francis Thomas, Robert Schwichtenberg, Danny Roy Richards, Terry Grant Kipper, Jeffrey Aaron Fraser, and Scott Michael Sangster (each a "**Debtor**" and collectively, the "**Debtors**") to assist with the financing of the purchase of shares in the capital stock of 3287166 Nova Scotia Limited.

AND WHEREAS each of the Debtors has executed a promissory note of even date hereof in favour of the Creditor (each a "**Note**" and collectively, the "**Notes**").

AND WHEREAS each of the Debtors has executed a share pledge agreement in favour of the Creditor as security for each of the Debtors' obligations under the Notes (each a "**Pledge Agreement**" and collectively, the "**Pledge Agreements**").

THEREFORE in consideration of the sum of \$2.00 paid by each party to each of the other parties and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. All capitalized terms used in this Agreement, but not expressly defined herein, shall have the meaning ascribed to such terms under the Pledge Agreements.
2. Subject to paragraph 3 below, the Creditor hereby irrevocably appoints each of the Agents to act as its agent upon an Event of Default to exercise any and all of the rights of the Creditor under the Note and the Pledge Agreement, including without limiting the generality of the foregoing, the right to settle, extend or compromise any of the Obligations on behalf of the Creditor.
3. The Agents shall have authority in respect of all matters related to any Event of Default.
4. The Secondary Agent shall be entitled to act and shall act as Agent for the Creditor only in the following circumstances: (i) if and while the Primary Agent is unable or unwilling to act as an agent of the Creditor pursuant to this Agreement; or (ii) an Event of Default has occurred under the Primary Agent's Pledge Agreement, in which case the Secondary Agent shall act

as Agent for the Creditor only in respect of the Primary Agent in his capacity as a Debtor.

5. The Creditor undertakes not to revoke the authority of the Agents under this Agreement and if, for any reason, either of the Agents ceases to be able to act as an Agent, the Creditor shall be entitled to appoint a replacement Agent. An Agent may resign and be discharged from his duties under this Agreement after giving the Creditor 30 days' written notice or such shorter notice as the Creditor may accept. An Agent shall automatically be released from all responsibility and liability under this Agreement when such Agent ceases to act as an Agent.
6. The Agents shall have no duties or responsibilities other than those expressly set forth in this Agreement, and no implied duties or obligations shall be read into this Agreement against the Agents.
7. None of the provisions contained in this Agreement shall require the Agents to expend or risk their own funds or otherwise incur financial liability in performing their duties. The Creditor agrees to be responsible for all costs, fees and expenses reasonably incurred.
8. The Agents shall have no duty to commence any legal proceedings and shall notify the Creditor if, in the opinion of the Agents legal action is required.
9. The parties agree that this Agreement and the facts surrounding it are confidential and shall not be disclosed or discussed in any way unless disclosure is reasonably required in the course of or as a result of the Agents or either one of them exercising their authority and performing their duties pursuant to this Agreement or unless a party is required to do so by law, and in any event only to the extent that such disclosure is necessary. Each of the parties agrees that all of the foregoing confidentiality and non-disclosure obligations will continue in full force and effect following the termination of this Agreement for any reason, and each of the Agents further agrees that such obligations will continue in full force and effect when an Agent ceases to act as agent for the Creditor pursuant to this Agreement.
10. An Agent shall not be liable for any action taken or omitted by the Agents or either one of them, or any action suffered by the Agents or either one of them to be taken or omitted, in good faith, and shall not be liable for any error in judgment made in good faith, unless it shall be proved that the Agent was grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith.
11. The Creditor shall keep each Agent indemnified at all times against all actions, proceedings, losses, liabilities, costs, claims, damages, penalties, actions, suits, expenses, disbursements and demands incurred or sustained by the Agents or either one of them in respect of any matter or thing done

by the Agents or either one of them under, pursuant to or in connection with this Agreement, or otherwise arising in connection with the duties of the Agents hereunder, except in so far as the same arose through the gross negligence or wilful misconduct on the part of the Agent seeking indemnification or otherwise arose from any breach by the Agent seeking indemnification of such Agent's obligations under this Agreement. For greater certainty, the indemnification provisions of this Agreement do not apply with respect to the liabilities and obligations of an Agent as a Debtor.

12. This Agreement is effective as of the date noted above and shall continue until all of the Obligations are discharged.

[49] On February 26, 2015, at 2:34 pm, Nick Betts emailed Blois Colpitts, Robert Gillis, David Hennigar, and Trevor Hennigar, with the subject line "Tringali":

When do you propose releasing the Annapolis funds to Mike?

Also, we should finalize the Agency Agreement for Mike regarding administration of the employee loans one of these days.

Mr. Colpitts replied to Nick Betts and Robert Gillis only, two minutes later, at 2:36 pm:

Agency is done and signed.

[50] On February 26, 2015, the EnviroSystems Transaction closed. As part of the transaction, Thornridge lent the defendants the funds to acquire an equity stake in EnviroSystems, with the loans secured by promissory notes endorsed by the individual employees and a pledge of their shares, on a full recourse basis. Thornridge loaned the total principal sum of \$2,154,888 to the defendants, broken down as follows:

- (a) The principal sum of \$147,410 to Alexander Francis Thomas;
- (b) The principal sum of \$157,067 to Clinton James Stewart;
- (c) The principal sum of \$186,000 to Dan Roy Richards;
- (d) The principal sum of \$177,734 to David Jason Hodder;
- (e) The principal sum of \$140,533 to Jeffrey Aaron Fraser;
- (f) The principal sum of \$150,586 to Robert Cliff Schwichtenberg;
- (g) The principal sum of \$103,333 to Scott Michael Sangster;
- (h) The principal sum of \$169,467 to Terry Grant Kipper;

- (i) The principal sum of \$401,958 to Michael Anthony Tringali; and
- (j) The principal sum of \$520,800 to Michael Gordon Ryan.

[51] The seven-volume common documents book at trial (exhibits 1-7) included the 1750-page "Complete Closing Book - Acquisition of Envirosystems Incorporated, dated February 26, 2015, and all accompanying documents". Although the employee promissory notes and share pledge documents were all included, the Agency Agreement was not.

After the closing

[52] On March 1, 2015, Nick Betts received the following email from Laurie Hennigar:

Good morning, Nick:

The dust has settled from the sale and a lot of people deserve a big thank you - even though the final price came in well under what was expected at first.

One question I have on rereading some e-mail is about the \$2,301,434 deducted from the proceeds to Thornridge. According to Christine's e-mail of Feb. 25th it's there because of management loan proceeds and I didn't see that figure anywhere else. Could you enlighten me on what that is?

Thanks and Florida is heading for 78 degrees today!

Mr. Betts replied later that day, with a copy to David Hennigar. He wrote, in part:

You are correct in allocating the \$2.3 million from the proceeds that technically went to Thornridge first, then we advanced a series of loans to a [sic] Senior Management for the same amount to finance their acquisition of shares, over which we have security, and the loans bear interest which the employees are obligated to pay us annually, or they will have to return the shares to us.

We will get back the full \$2.3 million principal when Torquest sell their shares, and I suspect that will be somewhere between 5 to 7 years, unless they sell them for less than their current value, which is a low and acceptable risk.

...

As it stands now, if the Company performs at a reasonable level, we will receive over \$84,000,000 for 70%, putting a net value for equity of \$120,000,000.

I believe our original target was \$140,000,000 but that would have reduced by the working capital deficit of \$10,000,000, so we are off \$10,000,000.

The 30% will hopefully grow from \$36,000,000 to more than \$46,000,000 in the 5 to 7 year horizon. I know one thing, TorQuest want it to grow a lot more than that.

...

[Emphasis added]

Nick Betts then forwarded the above reply to Michael Ryan and Robert Gillis, writing:

The second guessing is starting.

[53] Michael Ryan stayed with Envirosystems until the end of December 2017. He explained that in the summer of 2017, Matt Chapman, a managing partner at Torquest whom Mr. Ryan considered to be his boss, advised him that Torquest was considering a merger with a company called Terrapure Environmental Ltd. ("Terrapure"). Terrapure had been a competitor of Envirosystems over the years. Mr. Ryan expressed to Mr. Chapman that he did not think the merger made sense, and he did not want to be involved. Mr. Ryan agreed to stay on until the end of December.

[54] Thornridge withheld a portion of Mr. Ryan's severance in the amount of \$51,768.95, which it said represented the interest payments due and owing up to the third anniversary of the promissory note.

[55] The defendants David Jason Hodder and Clinton Stewart also had amounts deducted from their severance payments for interest payments allegedly due and owing under their promissory notes when they were terminated in 2018 and 2019, respectively.

[56] In June 2018, Terrapure merged with Envirosystems, with all shares in Envirosystems exchanged on a pro rata basis for Terrapure shares. All shareholders in Envirosystems were also issued shares on a pro rata basis in Maviro Holdings L.P. ("Maviro"), a successor to Envirosystems which retained, inter alia, Envirosystems' United States business.

[57] Thornridge sold all its shares in Maviro in or around 2018 for approximately \$0.90 per share.

[58] Shareholders of Terrapure (including the defendants) received a cash distribution from Terrapure by way of a return of capital in an amount proportional to their respective shares in December 2019.

Meetings with David Hennigar

[59] Michael Ryan testified that he and David Hennigar stayed in communication from time to time after Mr. Ryan left EnviroSystems. Mr. Hennigar kept Mr. Ryan up to date with things happening in Terrapure, including potential exits for Thornridge by way of either an IPO or a sale of the business. Mr. Ryan said he knew that things "clearly weren't friendly" between Thornridge and Mr. Betts, who had left EnviroSystems in early 2016, and he also knew that David Hennigar was "not getting any younger", so he requested a meeting with Mr. Hennigar to discuss documenting some of the "understandings" that had been reached between Thornridge, himself, and the defendants in relation to the promissory notes and the Agency Agreement prior to the EnviroSystems Transaction closing. Mr. Hennigar agreed to meet but instructed Mr. Ryan not to discuss the matter with Nick Betts.

[60] The first meeting took place on January 23, 2019. Mr. Hennigar requested that a witness attend the next meeting, and he proposed Blois Colpitts. The second meeting took place on February 28. At that meeting, Mr. Hennigar and Mr. Ryan discussed the intentions behind the agreements at the time of closing, while Mr. Colpitts took notes. On March 5, 2019, Mr. Colpitts emailed Michael Ryan and David Hennigar as follows:

Following our meeting attached are the notes blacklined for review and comment.

[61] Attached to the email was a document entitled "Proposed Amendments discussed by David Hennigar and Mike Ryan on February 28, 2019 Relating to Promissory Notes issued to Executive Employees". Below this title were the words "FOR DISCUSSION PURPOSES ONLY". The document contemplated, inter alia, certain amendments to the defendant employees' promissory notes, including:

1. Amendments -

- a. 2020 maturity date of each note will be amended so that the maturity date to the extent of a payment will be the date when any dividends, proceeds, distributions and other consideration for the shares/LP units have been received to pay off the respective notes.
- b. Each note will be amended to reflect that the after tax portion of any dividends, proceeds, distributions and other consideration received in respect of the shares/LP units shall be paid to Thornridge and applied to the outstanding balances of each note per paragraph 3 below.
- c. Interest continues to accrue on each note until each note is repaid in full from distributions and receipts after tax and net of any selling costs.

- d. The amount payable under each note will be amended so that it is limited to the lesser of the total outstanding principal and interest and the aggregate amount of all dividends, proceeds, distributions and other consideration received in respect of the shares/LP units that were acquired with the loan from Thornridge, which is in keeping with the original intention.

[62] The document also contemplated the cancellation of the Agency Agreement, which it described as the "debt collection agreement":

- 8. Debt collection agreement and confidentiality agreement - Debt collection agreement to be cancelled with the consent of Mike Ryan and Mike Tringali. A confidentiality agreement will be entered into by everyone with strict confidentiality.

[63] Michael Ryan testified that Thornridge wanted the Agency Agreement to go away. He said Mr. Hennigar was asking him to cancel it. There was a potential IPO on the horizon for the merged Terrapure business, and while Mr. Ryan testified that he could not say what role it played in this situation, he said the shares would become publicly traded, and that pledges and securities against them would "get kind of complicated in that whole process." Mr. Ryan said he articulated to Mr. Hennigar what the agreements were at the time of closing, and that Mr. Hennigar shook his hand and agreed. After the meeting, however, Mr. Hennigar advised that he was unable to convince the Thornridge Board of Directors to adopt the amendments. Mr. Ryan testified that Mr. Hennigar said he "told them the truth and they don't believe him." Mr. Ryan advised Mr. Hennigar that he "was going to have to review this with Mr. Betts", which he subsequently did.

[64] On October 10, 2019, David Hennigar emailed Mr. Ryan as follows:

At your request I am sending you this email To confirm my failure to convince the Board Of Thornridge to sympathetically support the Proposal from our February 26 th meeting with Bloise [sic].

On October 15, 2019, Michael Ryan replied to Mr. Hennigar:

David,

Thank you for your letter.

While I am surprised and disappointed to hear this, you and I put too much into trying to reach a comprise [sic] to throw in the towel. I am optimistic if we continue to work together we can get everyone onside.

The consequences of not reaching an agreement are not in anyone's interest.

I will give you whatever help I can to finalize these amendments.

That includes meeting with each G4 individually or collectively to clarify or provide my input on anything that concerns them.

I reviewed the agreement between us with Nick Betts in confidence, as I mentioned I would. My response incorporates his views.

Please let me know when you want me to meet and if they require anything else in the interim.

David Hennigar responded on October 18, 2019:

Mike

In my view the Thornridge Board will rely on counsels [sic] advice and not change its position.

However if you want to pursue the matter further I suggest you talk to Alan Bell directly.

...

To be clear, there was no agreement, which Bloise clarified at the close of our meeting in his office in February but rather a proposal.

[65] Mr. Ryan testified that even at this time, no one at Thornridge suggested that the Agency Agreement was null and void.

Sale of Terrapure to GFL Environmental

[66] On March 15, 2021, the majority shareholders of Terrapure entered into a definitive agreement to sell Terrapure's environmental solutions business to GFL Environmental ("GFL"). Terrapure's battery recycling business ("BatteryCo") would be retained by the existing shareholders. The closing was expected to occur in Q3 2021.

[67] On March 16, 2021, Michael Ryan forwarded Mr. Colpitts's March 5, 2019, email with the attached proposed amendments to David Hennigar, and wrote:

David

Further to our conversation today and last week about the Terrapure transaction and funds coming from the new deal. Attached is the last agreement between us that we have agreed to how the funds will flow. As the employee group are now aware of the deal in the public and are starting to ask me questions, I will remind them of these terms.

[68] Mr. Ryan explained that Mr. Hennigar had told him about a potential transaction with Terrapure and he was emailing Mr. Hennigar to try "to put back to paper where we left off." He said Mr. Hennigar never replied to his message. Mr. Ryan emailed him again on March 22, 2021, as follows:

David

I was expecting you to reply to confirm our agreement and conversation. If you do not reply within 24 hours of this email I will have to assume you plan to play a game keeping all your options open so you can pick the outcome the [sic] best suits you. I have played straight with you and ask that [sic] reply to confirm. If you do [sic] reply I will now have to engage others.

[69] On August 11, 2021, Robert Gillis, President and COO of Thornridge, advised Michael Ryan and Michael Tringali of Thornridge's position that the Agency Agreement was invalid. In letters to each of them, with the subject line "Document entitled Appointment of Agent Agreement dated February 26, 2015 and signed by Michael G. Ryan (MGR), Michael A. Tringali (MAT) and N. Betts purportedly on behalf of Thornridge Holdings Limited (the "Company") (the "Document)", Mr. Gillis wrote:

Reference is made to the Document.

Be advised that the Company is not bound by the Document. The board of directors of the Company neither approved nor authorized the Company to enter into or deliver the Document.

You are in an unconditional conflict of interest in respect of any actions you may take pursuant to the Document.

Notwithstanding your flagrant conflict of interest under the Document, any authority that you thought you may have thereunder, you should consider that it is void from the date of its signing and accordingly it is null, void and terminated.

As a result, the Company will hold you accountable for all direct and indirect losses, damages and expenses, it or its shareholders, officers, directors or employees may incur or suffer from any action you take or purport to take directly or indirectly under or pursuant to the Document.

[70] In August 2021, GFL acquired Terrapure. The transaction involved the sale of all the shares, including the shares of Terrapure still pledged by the defendants to Thornridge. BatteryCo was not party of the GFL purchase, and shareholders of Terrapure were provided shares in BatteryCo.

[71] Birch Hill Equity Partners Management Inc., the private equity fund which held the shares of Terrapure at the time of the sale to GFL, had KPMG value the BatteryCo shares and made an offer to purchase shares from all shareholders in BatteryCo.

[72] All the defendants' shares in Terrapure were sold for less than the principal amount of their respective promissory notes. Following the sale to GFL, the amounts received for the shares of each defendant were held in trust by Birch Hill (the "Held Funds"). The amounts were as follows:

1. \$68,325 for Mr. Thomas;
2. \$72,801 for Mr. Stewart;
3. \$92,187 for Mr. Richards;
4. \$82,830 for Mr. Hodder;
5. \$65,137 for Mr. Fraser;
6. \$81,933 for Mr. Schwichtenberg;
7. \$47,895 for Mr. Sangster;
8. \$78,548 for Mr. Kipper;
9. \$186,309 for Mr. Tringali; and
10. \$241,391 for Mr. Ryan.

[73] On August 19, 2021, Thornridge notified each of the defendants that they were in default under the promissory notes and demanded repayment of the face value of the respective notes, plus interest. Maurice Chiasson, Q.C. at Stewart McKelvey, counsel for Thornridge, couriered to each defendant a letter dated August 19, 2021. The content of the letters was identical other than the principal amount of the promissory note and the amount owing. For example, Jeffrey Fraser's letter stated:

Dear Mr. Fraser:

Re: Amounts owing to Thornridge Holdings Limited

We are counsel to Thornridge Holdings Limited ("**Thornridge**").

Reference is made to a promissory note dated February 26, 2015 executed by you in the principal amount of \$140,533 in favour of Thornridge (the "**Note**"). The terms of the Note provide that the amounts owing are to be paid on the occurrence of certain events - one of which is the fifth anniversary of the date of the Note which was February 25, 2020 (the "**Maturity Date**").

As little or no payments have been made on the Note and the Maturity Date has passed, we hereby advise that you are in default under the terms of the Note and further demand immediate full payment of the Note together with accrued interest.

We further remind you that the proceeds from the Note were used to acquire certain shares of Envirosystems Incorporated ("**Envirosystems**"). These shares were pledged by you in favour of Thornridge as collateral security for your obligations under the Note pursuant to a share pledge agreement (the "**Pledge**") dated the same date as the Note. The terms of the Pledge provide that in the event of a default in the repayment of the Note, Thornridge is entitled to the proceeds from any sale of the underlying shares and to apply such proceeds to the outstanding obligations under the Note.

As you know, through a series of reorganizations, the shares of Envirosystems were ultimately exchanged for shares of Terrapure Environmental Ltd. ("**Terrapure**"). Your shares in Terrapure received in exchange for your shares of Envirosystems originally charged under the Pledge now stand as security for your obligations under the Note.

We advise that the shares of Terrapure were recently sold. The proceeds relating to the sale of your shares purchased with the proceeds of the Note are being held in escrow by Terrapure's majority shareholder, Birch Hill Equity Partners, at the request of Thornridge.

Please be advised that if you do not make full payment of the principal amount of the Note and accrued interest which total as of August 16, 2021 (crediting any payments to date) the sum of \$172,929 and related costs within thirty days from the date hereof, Thornridge will exercise its rights under the pledge and apply the proceeds from the sale of your Terrapure shares to the amounts outstanding under the Note. You will remain liable for any amounts remaining due under the Note for principal, interest and enforcement costs. Please confirm the amounts owing with Thornridge at the time of payment. Thornridge may pursue any and all available legal remedies to collect the balance of the amounts owing without further notice to you.

We also advise that Thornridge considers the Appointment of Agent Agreement dated February 26, 2015 purportedly made among Michael G. Ryan, Michael A. Tringali and Thornridge to be null and void for various reasons including want of corporate authority on the part of the signatory on behalf of Thornridge. Thus, Thornridge considers that any action taken by you or to be taken by you under the terms of such agreement to be null and void and of no force or effect in relation to your obligations under the Note.

Attached is a copy of our notice provided under sec. 244 of the *Bankruptcy and Insolvency Act* (Canada) in relation to Thornridge's exercise of rights under the Pledge.

Please govern yourself accordingly.

Settlement agreements

[74] Following receipt of the notice of default and the demand for payment from Thornridge, Michael Ryan, acting pursuant to his authority under the Agency Agreement, entered into agreements on behalf of Thornridge with each of the other defendants to settle their obligations under the promissory notes. Michael Tringali assisted Mr. Ryan with the calculations used to arrive at the settlement amount for each defendant. Mr. Tringali, in his capacity as secondary agent under the Agency Agreement, entered into an agreement on behalf of Thornridge with Mr. Ryan to settle Mr. Ryan's obligations under his promissory note.

[75] Mr. Ryan and Mr. Tringali established the amounts of settlement for each of the promissory notes on the following basis:

1. For the Terrapure shares, the amount received by Thornridge for the sale of the shares in August 2021 (the Held Funds);
2. For the Maviro shares, the value at which Thornridge disposed of its shares in 2018;
3. For the BatteryCo shares, the value at which Birch Hill offered to purchase them in 2021;
4. Consideration of the amounts paid by some defendants to Thornridge from the cash distribution received from the Terrapure shares in 2019. If a defendant kept those funds in 2019, they were to be returned to Thornridge;
5. Consideration of any tax liability for the defendants based on the amount of the promissory note forgiven in their jurisdictions. These amounts were deducted from any amount owing;
6. Interest held back from some defendants' severance payment when their employment with Envirosystems ended. These amounts were deducted from the amount owing; and,
7. Legal fees for Mr. Ryan and Mr. Tringali.

[76] The settlement agreements forgave all interest payable under the promissory notes. Each defendant in their respective settlement agreement agreed that the Held Funds would be released to Thornridge.

[77] Mr. Ryan and Mr. Tringali testified that the settlement methodology was intended to reflect, to the greatest extent possible, the spirit of the original bargain with Thornridge. In Mr. Ryan's view, the settlement was somewhat unfair to the employees because they were having to write cheques for shares in Maviro and BatteryCo. when, under the original arrangement, they were not supposed to pay anything out of pocket for shares. Mr. Ryan testified, however, that he was determined to exercise his authority in good faith and to make sure that Thornridge recovered as much as it would have if it had always held the shares itself. With respect to deducting the employees' tax liability, Mr. Ryan explained that, to his understanding, Thornridge would be entitled to a tax deduction for forgiving the loans.

[78] The gross amount owing under each settlement agreement, after subtracting the Held Funds, was as follows:

1. Mr. Thomas owed \$13,421;
2. Mr. Stewart owed \$3,521;
3. Mr. Hodder owed \$17,017;
4. Mr. Richards owed \$23,196;
5. Mr. Fraser owed \$27,330;
6. Mr. Schwichtenberg owed \$22,643;
7. Mr. Sangster owed \$20,097;
8. Mr. Kipper owed \$35,216;
9. Mr. Tringali owed \$84,557; and,
10. Mr. Ryan owed \$49,515.

[79] The Held Funds were paid into court by Birch Hill Equity Partners in June 2022 and were subsequently released by consent to Thornridge in or about October 2022.

[80] Each defendant paid the amount of their settlement (less the Held Funds) to Cox & Palmer to be held in trust for Thornridge.

[81] Pursuant to Clause 5 of Mr. Tringali's settlement agreement, Cox & Palmer received \$41,996 in trust as a "legal fee reserve". Mr. Tringali paid the remaining \$42,561 to Cox & Palmer in trust for Thornridge.

[82] Pursuant to Clause 5 of Mr. Ryan's settlement agreement, he paid \$49,515 to Cox & Palmer in trust as a legal fee reserve.

[83] On September 21, 2021, Victor Goldberg wrote to Maurice Chiasson at Stewart McKelvey and informed him that Cox & Palmer held the amounts to satisfy the settlement agreements in trust. He stated that the funds would be released upon receipt of pledge agreement releases and full releases.

[84] Thornridge did not accept the amounts held in trust to satisfy the settlement agreements.

Robert Gillis's evidence

[85] Thornridge called only a single witness at trial - Robert Gillis. At the time of the EnviroSystems Transaction, Mr. Gillis was Thornridge's corporate secretary and recognized agent. Nick Betts was his boss. When Nick Betts left Thornridge in early 2016, Mr. Gillis became President and COO of Thornridge.

[86] Mr. Gillis testified that, to his knowledge, the Agency Agreement was never disclosed to TorQuest. Mr. Gillis acknowledged receiving multiple emails discussing the Agency Agreement prior to closing. He agreed that he never responded that Board approval or a second signature was required on behalf of Thornridge.

[87] Robert Gillis testified that from February 2015 until August 2021, he never told any of the defendants that he considered the Agency Agreement to be null and void. He said that at some time in 2018, Thornridge took the position that the Agency Agreement was invalid after receiving a legal opinion.

[88] Mr. Gillis testified that he did not consider the Agency Agreement to be a promissory note or security. In his view, it was a "hypothetical document" until it was passed by the Board of Directors, which did not occur. He opined that if the Agency Agreement had been passed by the Board of Directors, it might have been captured by the definition of "Transaction Documents" in the Authorized Persons Resolution.

[89] With respect to the Authorized Persons Resolution, Mr. Gillis testified that David Hennigar was away on vacation in Jamaica and the closing date for the EnviroSystems Transaction "was fluid". As a result, it was decided that instead of requiring Mr. Hennigar to be one of the two signatories for all the documents,

Thornridge would authorize any two directors or a director and an officer to sign on its behalf.

[90] Mr. Gillis confirmed that Michael Tringali and Michael Ryan did not receive copies of the February 12, 2015, memoranda or of the minutes of the February 22, 2015, Board meeting.

[91] Thornridge did not collect interest on February 26, 2016, the first anniversary of the note. Mr. Gillis said a decision was made by Mr. Betts that Thornridge would not collect interest because the defendants were not receiving any dividends on the shares that they'd acquired and, if they had to pay interest, they would be out of pocket money. So, Thornridge agreed not to enforce the collection of the interest. Mr. Gillis said he did send statements of accrued interest once or twice between February 26, 2016, and August 2021, but Thornridge never attempted to collect the interest, other than in the case of the three defendants who had interest deducted from their severance payments after their employment was terminated. According to Mr. Gillis, it seemed fair to him to collect the interest because at that point, the employees were receiving money.

THE PLEADINGS

[92] In its amended statement of claim, filed on August 10, 2023, Thornridge claims against each of the defendants for breach of contract for their failure to pay the outstanding amounts due and owing to Thornridge under each of their promissory notes. Thornridge further states that each of the defendants has been unjustly enriched by receipt of the loan proceeds. Thornridge pleads in the alternative that if the Agency Agreement is found to be valid, Thornridge claims against the defendants Michael Ryan and Michael Tringali for breach of fiduciary duty, negligence, and breach of contract in relation to their actions under the Agency Agreement.

[93] As against all defendants, Thornridge claims, inter alia, special damages in an amount representing the amounts owing under the promissory notes, with interest. In the alternative, as it pertains to Mr. Ryan and in the event the Agency Agreement is found to be valid, Thornridge claims special damages in the amount of the difference between the full amounts due under each of the defendants' promissory notes and the amount that Mr. Ryan purported to settle them for, plus interest, and less any amount received by Thornridge to date in respect of the defendants' promissory notes. In the alternative, as it pertains to Mr. Tringali, Thornridge claims

special damages in the amount of the difference between the full amounts due under Mr. Ryan's promissory note and the amount that Mr. Tringali purported to settle it for, plus interest, and less any amount received by Thornridge to date in respect of Mr. Ryan's promissory note.

[94] The defendants Mr. Thomas, Mr. Stewart, Mr. Richards, Mr. Hodder, Mr. Fraser, Mr. Schwichtenberg, Mr. Sangster, and Mr. Kipper (collectively, the "Employee Defendants") retained the same counsel and filed virtually identical statements of defence. The Employee Defendants plead that in February 2015, they each entered into a new employment contract with Envirosystems Inc. whereby they were expected to purchase common shares in Envirosystems in an amount equal to their respective annual salaries. The Employee Defendants plead that Michael Ryan, then-CEO of Envirosystems, informed them that Thornridge would lend them the money to purchase the shares, and told them that if the shares decreased in value, they would not be responsible for the difference between the amount of the promissory note and the amount received by Thornridge for the sale of the shares. The Employee Defendants say they relied on this representation by Thornridge's agent and senior ranking officer of their employer, in executing the promissory notes, and that the representation constituted a term, warranty, and condition of the promissory notes. The Employee Defendants plead that they each entered into a settlement agreement with Thornridge, through its agent Mr. Ryan, and that Thornridge has no further legal recourse against them under the promissory notes.

[95] The defendants Michael Ryan and Michael Tringali also retained the same counsel. In their amended statements of defence, they plead that as part of the sale of the majority of Thornridge's shares of Envirosystems to a third party, Thornridge wanted them and several other key employees to acquire shares in Envirosystems. They say Thornridge attempted to entice them to purchase shares by offering to lend the full purchase price of the shares in exchange for Thornridge taking the acquired shares as collateral for the loans. Mr. Ryan and Mr. Tringali plead that the loan was presented as a quasi-option whereby, upon a sale of the shares, they would have the benefit of any excess received beyond the purchase price of the shares and any interest incurred on the loan. If the shares were eventually sold for below the purchase price, they would face no personal liability for any difference between the net proceeds of the sale and the original share purchase price. To assure them that any loans to them and other employees for the purchase of shares would effectively be non-recourse loans, Thornridge proposed that Mr. Ryan be appointed as its primary agent, with Mr. Tringali as secondary agent, to negotiate settlements in the event that any key employee defaulted on their loan from Thornridge. Mr. Ryan and

Mr. Tringali plead that Thornridge represented to them that the Agency Agreement was a mechanism to protect their interests if the value of the EnviroSystems shares reduced, and to ensure that they would not owe any amount above the net proceeds of the sale of the shares if that occurred. They say they agreed to accept a loan from Thornridge to purchase the shares based on the existence of the Agency Agreement and Thornridge's commitment that the loan would be non-recourse.

[96] Mr. Ryan pleads that he entered into a settlement agreement with Thornridge through its agent, Mr. Tringali. Mr. Tringali pleads that he entered into a settlement agreement with Thornridge through its agent, Mr. Ryan. They each deny breaching any duties owing to Thornridge while acting under their authority pursuant to the Agency Agreement.

[97] Mr. Ryan and Mr. Tringali plead in the alternative that if the Agency Agreement is determined to be inoperative, Thornridge is estopped from pursuing the full value of the promissory note due to its representations that it would not seek repayment beyond the net proceeds of the shares held as collateral at the time of their disposition. They say they agreed to the promissory note, the share pledge, and the proxy based on these representations and would not have agreed to them otherwise.

ISSUES

1. Is the Agency Agreement invalid for want of corporate authority?
 - a. Is the Agency Agreement a "Management Loan Document" as defined in the Original Resolution and therefore a "Transaction Document" under the Authorized Persons Resolution?
 - b. If the Authorized Persons Resolution required that the Agency Agreement have two signatures to bind Thornridge, does the indoor management rule apply to prevent Thornridge from relying on that requirement?
 - c. If the Authorized Persons Resolution required that the Agency Agreement have two signatures to bind Thornridge and the indoor management rule does not apply, did Thornridge ratify the Agency Agreement?
2. If the Agency Agreement is valid, are the settlement agreements valid and binding on Thornridge?

3. If the settlement agreements are valid, have the defendants been unjustly enriched?
4. If the settlement agreements are valid, are Mr. Ryan and Mr. Tringali liable to Thornridge for breach of fiduciary duty, negligence, and/or breach of contract?

Is the Agency Agreement invalid?

Positions of the parties

[98] Thornridge argues that the Agency Agreement under which Michael Ryan and Michael Tringali purported to settle the promissory notes on Thornridge's behalf is invalid for want of corporate authority.

[99] The Agency Agreement, dated February 26, 2015, bears only one signature on behalf of Thornridge. According to Thornridge, the Agency Agreement falls within the definition of "Transaction Documents" contained in the Original Resolution and incorporated by reference in the Authorized Persons Resolution, passed at the Special Purpose Board of Directors Meeting on February 22, 2015. It follows that the Agency Agreement could only be validly executed by two "Authorized Persons", and not by Nick Betts, Thornridge's then-President and COO, acting alone.

[100] Thornridge submits that determining whether the Agency Agreement is a "Transaction Document" requires an exercise of contractual interpretation, where the court will need to consider several separate contracts within the larger factual matrix of the EnviroSystems Transaction. Thornridge relies on *Thornridge Holdings Limited v. Ryan*, 2023 NSSC 108, where Jamieson J. (as she then was) explained the doctrine of related contracts:

[77] Individual contracts that are part of a series of related contracts should not be interpreted in isolation. The doctrine of related contracts is simply an extension of the cardinal principle that a contract is to be interpreted as a whole, in accordance with the language used in the written document, having regard to the context in which the contract was signed. The doctrine can, where appropriate, help to achieve interpretive accuracy and give effect to the intentions of the parties. If contracts are considered in isolation from related contracts, different interpretive results could ensue (See *Canadian Contractual Interpretation Law*, 4th ed., *supra*, at 2.2.6).

[101] Thornridge also cites *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 45, which confirmed the approach to contractual interpretation at para. 47:

[T]he interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" [citations omitted] To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning ...

[102] Thornridge says the analysis with respect to whether the Agency Agreement is a Transaction Document must start with the wording of the resolutions themselves. The Original Resolution states:

RECITALS:

1. The Company proposes to enter into a share purchase agreement (the "**SPA**") pursuant to which the Company will divest approximately 69.3% of its shares of EnviroSystems Incorporated ("**EnviroSystems**") to various TorQuest entities and management of EnviroSystems (the "**Transaction**");
[...]
9. In connection with the Transaction, the Company has agreed to loan certain management employees funds to acquire shares of EnviroSystems (or the purchase company to be formed for the Transaction as described in the Draft Deloitte Steps Memo) in exchange for promissory notes and with certain security to be agreed by the Company and such management employees (collectively, the "**Management Loan Documents**");
10. In order to proceed with the Transaction, the Company has entered into severance adjustment agreements and non-competition payment agreements with certain management employees of EnviroSystems (the "**Management Agreements**" and together with the SPA, Shareholders' Agreement, Pre-Closing Documents, Closing Documents, the ESOP and Management Loan Documents, the "**Transaction Documents**");
[...]

BE IT RESOLVED THAT:

1. It is in the best interests of the Company to enter into the Transaction on the terms and conditions set forth in the SPA, with such final SPA being determined by David Hennigar together with any one other officer or director of the Company (collectively, the "**Authorized Persons**");

[...]

[103] Accordingly, Transaction Documents are defined in Recital #10 as including Management Loan Documents as defined under Recital #9.

[104] The Authorized Persons Resolution modifies the previous definition of "Authorized Persons", and states:

RECITALS:

1. Whereas the Directors of the Company passed the resolution attached hereto (the "Original Resolution") approving the share purchase agreement (the "SPA") pursuant to which the Company will divest approximately 69.3% of its shares of EnviroSystems Incorporated ("**EnviroSystems**") to various TorQuest entities and management of EnviroSystems (the "**Transaction**") and the execution, delivery and performance of the Company of the Transaction Documents (all as described in the Original Resolution);
2. And Whereas it has been determined that it is [sic] the best interests of the Company to amend the Original Resolution to provide that any two officers or directors of the Company acting together shall act as "Authorized Persons" rather than David J. Hennigar with any one officer or director as set out in the Original Resolution;

BE IT RESOLVED THAT:

1. It is in the best interests of the Company to enter into the Transaction on the terms and conditions set forth in the SPA, with such final SPA being determined by either any two directors of the Company acting together, or any one director and any one officer of the Company acting together (collectively, the "**Authorized Persons**");

[...]

3. The Company is hereby authorized to enter into each of the Transaction Documents and perform its obligations under each of the Transaction Documents, with such final forms of Transaction Documents as the Authorized Persons may approve, such approval to be conclusively evidenced by the execution and delivery of each of the Transaction Documents by such Authorized Persons;

[...]

5. The Authorized Persons are hereby authorized, for and in the name of and on behalf of the Company to execute (whether under the corporate seal of the Company or otherwise) and to deliver each of the Transaction Documents with such changes thereto and in such final forms as such Authorized Persons may approve, such approval to be conclusively evidenced by the execution and delivery of the Transaction Documents by such Authorized Persons;

6. The Authorized Persons are hereby authorized, for and in the name of and on behalf of the Company to execute (whether under the corporate seal of the Company or otherwise) and to deliver all such other agreements, instruments, certificates and other documents and to do all such other acts and things as such Authorized Persons may determine necessary or advisable in connection with or to carry out the intent of the foregoing resolutions and to give effect to the Transaction, the execution and delivery of any such agreement, instrument, certificate or other document or the doing of any such other act or thing by such Authorized Persons being conclusive evidence of such determination.
7. Any and all action heretofore or hereafter taken by the Authorized Persons in accordance with the preceding resolutions is hereby ratified, confirmed and approved as the acts and deeds of the Company.

[105] Thornridge submits that Management Loan Document is defined broadly as follows: "the Company has agreed to loan certain management employees funds to acquire shares of Envirosystems (or the purchase company to be formed for the Transaction as described in the Draft Deloitte Steps Memo) in exchange for promissory notes and with certain security to be agreed by the Company and such management employees." Thornridge says the Agency Agreement clearly falls within the definition of a Management Loan Document, which in turn is defined as a Transaction Document.

[106] Thornridge notes that the first paragraph of the Agency Agreement states that Thornridge "lent funds to each of [the Management Employees] to assist with the financing of the purchase of the capital stock of 3287166 Nova Scotia Limited." It says the Agency Agreement clearly relates to Thornridge's loan of funds to the defendants to acquire shares of Envirosystems in exchange for promissory notes, and, as a result, it meets the definition of a Management Loan Document. Thornridge further notes that the second and third paragraphs of the Agency Agreement refer to the promissory notes and the pledge agreements, which it says reinforces its position that the related contracts doctrine must apply here.

[107] Thornridge summarized its position at para. 75 of its pre-trial brief:

- (a) When the words of the Authorized Persons Resolution and the surrounding circumstances are considered, the Proposed Agency Agreement is a Management Loan Document, which in turn makes it a Transaction Document.
- (b) As a Transaction Document, the Authorized Persons Resolution required that two Authorized Persons sign every Transaction Document.

- (c) The Proposed Agency Agreement only bears one signature on behalf of Thornridge. Therefore, it never validly came into existence.
- (d) Further, Mr. Ryan knew that the document required two signatures from Authorized Persons because he was present when the Authorized Persons Resolution was passed.

Thornridge says that as a result of the above, the Agency Agreement is not valid.

[108] The Employee Defendants submit that the Agency Agreement does not meet the definition of a Management Loan Document under the Authorized Persons Resolution. They submit in the alternative that the Authorized Persons Resolution is permissive, not mandatory. It does not restrict the contracts that Thornridge's then-President and COO would be able to enter into on behalf of the company.

[109] The Employee Defendants submit that Thornridge's position is not supported by the actual language of the definition of Management Loan Documents set out in the Original Resolution and incorporated by reference in the Authorized Persons Resolution. The Original Resolution states:

- 9. In connection with the Transaction, the Company has agreed to loan certain management employees funds to acquire shares of EnviroSystems (or the purchase company to be formed for the Transaction as described in the Draft Deloitte Steps Memo) in exchange for promissory notes and with certain security to be agreed by the Company and such management employees (collectively, the "**Management Loan Documents**");

[Emphasis added]

[110] The Employee Defendants say a document must meet two requirements to fall within the definition of Management Loan Documents:

- 1. It must be one of two types of documents specified: either (i) promissory notes or (ii) security; and
- 2. It must be "agreed by the Company [Thornridge] and such management employees."

[111] The Employee Defendants submit that the Agency Agreement does not meet either requirement. They state at para. 56 of their pre-trial brief:

- 1. The Appointment of Agent Agreement is clearly neither of those two types of documents. It is not a promissory note. It is not security. There are, of course, promissory notes and security in the current case, but the

Appointment of Agent Agreement is neither of those documents. Accordingly, it is not a Management Loan Document.

2. Furthermore, and in the alternative, Thornridge's position is that it never agreed to the Appointment of Agent Agreement. As a result, Thornridge cannot simultaneously argue that it was "agreed by the Company [Thornridge] and such management employees."

[112] The Employee Defendants submit that the Agency Agreement does not meet the definition of a Transaction Document on any other basis, either. Transaction Documents are defined in the Original Resolution as follows:

10. In order to proceed with the Transaction, the Company has entered into severance adjustment agreements and non-competition payment agreements with certain management employees of EnviroSystems (the "**Management Agreements**" and together with the SPA, Shareholders' Agreement, Pre-Closing Documents, Closing Documents, the ESOP and Management Loan Documents, the "**Transaction Documents**");

[113] The Employee Defendants say that for a document to be a Transaction Document, it must be one of the following:

1. Management Loan Documents;
2. Management Agreements, which are defined as severance adjustment agreements and non-competition payment agreements with certain management employees of EnviroSystems;
3. The Share Purchase Agreement;
4. The Shareholders' Agreement;
5. The Pre-Closing Documents;
6. Closing Documents; or
7. The "ESOP" (Employee Stock Option Plan).

[114] The Employee Defendants point out that the Authorized Persons Resolution and the Original Resolution are internal corporate documents, and that it was open to Thornridge and its corporate counsel, Ms. Pound, to define Transaction Document or Management Loan Document broadly enough to include the Agency Agreement. They say it was also open to Thornridge and its counsel to specifically include the Agency Agreement as a Transaction Document, just as it did with Michael Ryan's ESOP. The fact that Thornridge chose to include the ESOP and not the Agency

Agreement lends further support to the conclusion that the Agency Agreement is not a Transaction Document.

[115] The Employment Defendants submit that the Agency Agreement clearly does not meet the definition of a Transaction Document, and therefore, the requirement for two signatures simply does not apply to it.

[116] The Employee Defendants argue in the alternative that if the Agency Agreement meets the definition of a Transaction Document, there is still nothing in the Authorized Persons Resolution that prevents Thornridge's President and COO from exercising the powers and performing the duties that are customary in the business of the company or usual for the person holding those positions. They say the Authorized Persons Resolution is permissive, not mandatory. It authorizes the Authorized Persons to enter into certain agreements, but it does not restrict the President's authority. It follows that Nick Betts was well within his apparent authority to enter into the Agency Agreement on behalf of Thornridge. The Employee Defendants add that Thornridge's own corporate counsel appeared to recognize Mr. Betts's authority to sign on behalf of Thornridge by telling Blois Colpitts to "Please have Nick sign" and not directing that a second signature line be added to the Agency Agreement.

[117] Like the Employee Defendants, the defendants Michael Ryan and Michael Tringali argue that the Agency Agreement is not a Transaction Document. They note that it was not among the documents referenced in the Original Resolution, despite being contemplated, discussed, and drafted prior to the Original Resolution being passed.

[118] Mr. Ryan and Mr. Tringali submit that reviewing the applicable definitions of Management Loan and Transaction Document makes it clear that the Agency Agreement is not a Management Loan Document. Again, the Original Resolution defines "Management Loan Document" as follows:

9. In connection with the Transaction, the Company has agreed to loan certain management employees funds to acquire shares of Envirosystems (or the purchase company to be formed for the Transaction as described in the Draft Deloitte Steps Memo) in exchange for promissory notes and with certain security to be agreed by the Company and such management employees (collectively, the "**Management Loan Documents**");

[Emphasis added]

[119] Mr. Ryan and Mr. Tringali say Management Loan Documents captures the promissory notes and the pledges as the security agreed by Thornridge and the employees. The Agency Agreement, however, is a contract between Mr. Ryan, Mr. Tringali, and Thornridge. It is not security agreed to between Thornridge and the management employees. Mr. Ryan and Mr. Tringali point out that the Employee Defendants were not even aware of the specific terms of the Agency Agreement in 2015.

[120] Mr. Ryan and Mr. Tringali submit that the Agency Agreement does not fall within the definition of Transaction Documents either. If Thornridge intended for the Agency Agreement to be captured by this definition, it could have included specific reference to it, as it did with other documents. Unlike those other documents, the Agency Agreement was not disclosed to TorQuest and did not form part of the Closing Book of the Envirosystems Transaction. It was deliberately left out of disclosure because it did not form part of the Envirosystems Transaction as set out in the Deloitte Steps Memo.

[121] Mr. Ryan and Mr. Tringali argue that the Agency Agreement was not captured by the Original Resolution or the Authorized Persons Resolution. They say that it was executed in the normal course by Thornridge's President and COO and is therefore authorized, valid, and in effect.

Interpretive analysis

[122] Thornridge argues that standard contractual interpretation principles, including the doctrine of related contracts, apply to corporate resolutions. It says that when these other contracts are considered, it is clear that the Agency Agreement falls within the definition of a Management Loan Document. The defendants argue that corporate resolutions are not contracts, and that the doctrine of related contracts is irrelevant to their interpretation.

[123] Corporate resolutions are obviously not contracts in the traditional sense. Instead, they are "the means by which directors or shareholders of a company document decisions that have been made with respect to the governance of a company" (*Abby Pharmacy Ltd. v. Ghag*, 2021 BCSC 1402, at para. 27). In *R. v. Blair*, [1995] O.J. No. 3111 (Ont. Ct. J. (Gen. Div.)), the court described a corporate resolution passed by a Board of Directors as "an expression or record of corporate will" (para. 127).

[124] Although the parties provided no authorities applying contractual interpretation principles to directors' resolutions (and my research yielded none either), contract principles have been used to interpret other corporate documents, including articles of association. In *Polar Multi-Strategy Master Fund v. Stars Group Inc.*, 2018 ONSC 4397, for example, the court stated:

19 A court is required wherever possible to rely and give effect to the ordinary meaning of the words used in the corporate document in order to bring certainty for those who rely on it: *Beechwood Cemetery C. v. Graham*, [1998] O.J. No. 5289 (C.A.) at para. 43. In doing so, a court should look to the whole of the document, should endeavour to interpret the document in a manner that gives effect to all of its provisions and should adopt a purposive approach. While any interpretative exercise must remain grounded in the plain meaning of the provision at issue, a court can have regard to the "factual matrix" in which the document was negotiated or otherwise created: *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53 at para. 56-58, which, while it deals with the interpretation of contracts, is also understood to apply in the present context. Such factual matrix is, however, limited to objective facts and does not extend to evidence of the subjective intention of the parties involved. Significantly, a court should strive to avoid an interpretation that produces an absurdity, a commercially unreasonable result or a result which is unworkable: see *Holmes v. Lord Keyes*, [1959] Ch. 199 per Jenkins L.J. (C.A.). A court should also avoid extrinsic evidence unless the wording is unclear or ambiguous for the reason that it is unrealistic to expect that arm's length parties will have either the means or the capability of ascertaining the extrinsic facts: see *Beechwood* at para. 43.

[125] In *Rogers v. Rogers Communications Inc.*, 2021 BCSC 2184, the court described a corporation's articles of association as "a contract in law between the company and its shareholders":

81 A company and its shareholders are "bound by" the company's articles: [*Business Corporations*] Act, s. 19. Accordingly, the articles represent a contract in law between the company and its shareholders and the principles of contractual interpretation apply to the interpretation of those articles: *Boffo Family Holdings Ltd. v. Mountainview Developments Ltd.*, 2010 BCSC 560 at para. 36, citing *Minister of National Revenue v. Dworkin Furs (Pembroke) Ltd.*, [1967] S.C.R. 223; and, *Dusanj v. Appleton*, 2017 BCSC 340 at para. 37.

[126] In the end, nothing turns on whether the principles of contractual interpretation apply to the Original Resolution and the Authorized Persons Resolution because even if they do, those principles do not support Thornridge's proposed interpretation of the documents.

[127] In my view, when the Original Resolution is read as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances, including the Authorized Persons Resolution, the Agency Agreement, and other related documents, the Thornridge Board of Directors' intention as to the scope of the definition of "Management Loan Document" is unmistakable. Management Loan Documents was intended to capture the promissory notes and certain security (the pledge agreements) executed by the management employees in favour of Thornridge, in exchange for a loan of the funds to acquire shares of Envirosystems. The promissory notes and the pledge agreements were necessary to satisfy TorQuest's requirement for an "at risk commitment" from management employees, were disclosed to TorQuest, and were included in the Closing Book. The Agency Agreement, on the other hand, was never intended by Thornridge to be disclosed to TorQuest and did not form part of the Closing Book. As noted by the defendants Mr. Ryan and Mr. Tringali at para. 187 of their pre-trial brief:

Torquest required the employees to have an "at risk" investment in Envirosystems to close the transaction. The Agency Agreement was created to skirt this requirement, and its existence was not to be disclosed to Torquest from its inception.

[Emphasis added]

[128] Thornridge argues that "Management Loan Documents" captures the Agency Agreement on the basis that the Agency Agreement references and "relates to" Thornridge's loan of funds to management employees. In effect, Thornridge asks the court to ignore the plain meaning of the words chosen by the Board of Directors and to rely on the surrounding circumstances to expand the definition of Management Loan Documents to include the Agency Agreement. This approach is inconsistent with the direction in *Sattva, supra*, that the surrounding circumstances must never be used to overwhelm the words of the agreement:

[57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and *Hall*, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (*Hall*, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court

effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62).

[129] In my view, the Agency Agreement is not a Management Loan Document requiring two signatures to bind Thornridge. As a result, the Agency Agreement, executed by Thornridge's then-President and COO, is valid.

Indoor management rule

[130] Even if I am wrong and the Agency Agreement is a Management Loan Document that required two signatures to bind Thornridge, I agree with the defendants that the indoor management rule applies to prevent Thornridge from relying on this requirement.

[131] Section 30 of the *Companies Act*, R.S.N.S. 1989, c. 81, states:

30 A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company that

...

(d) a person held out by the company as a director, an officer or an agent of the company has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for the director, officer or agent; or

(e) a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine, except where the person has or ought to have, by virtue of his position with or relationship to the company, knowledge to the contrary.

[132] Section 30 is a codification of the common law indoor management rule. The indoor management rule "provides that parties dealing with a corporation, acting in good faith and without knowledge of any irregularity, are entitled to assume that a corporation's internal policies and proceedings have been followed and complied with" (*AOD Corporation v. Miramare Investment Incorporated and Alain Mercier*, 2022 ONCA 95, at para. 20). The court in *AOD Corporation* cited the following paragraph from *Midas Investment Corp. v. Bank of Montreal*, 2016 ONSC 3003, with approval:

4 The indoor management rule originated in the English case of *Royal British Bank v. Turquand* (1856), 119 E.R. 886 (Eng. Exch.). The principle is that if a corporation holds someone out as a director, officer or agent to third parties, the

corporation cannot deny that the person is duly appointed or that he or she has the authority customary or usual for such a director, officer or agent. A person dealing in good faith with a corporation is entitled to assume that the corporation's internal procedures have been followed. The outsider is not required to conduct an inquiry into compliance with those procedures unless that person has actual knowledge to the contrary or where the person ought to have had knowledge to that effect. The rule is based on the assumption that the company, which has hired and supervises its officers and holds them out as its agents, should bear the burden of their unauthorized activity, as opposed to the outsider dealing with the company in good faith who has no opportunity to investigate compliance with the company's internal procedures.

[Emphasis added]

[133] Thornridge argues that Michael Ryan and Michael Tringali cannot rely on the indoor management rule because the exception under s. 30 applies. Thornridge says Michael Ryan's attendance at the February 22, 2015, Special Purpose Board Meeting "is enough to establish that he had or ought to have had knowledge that two signatures were required from Thornridge to authorize the Proposed Agency Agreement when it was signed on February 26, 2015." Thornridge further says that Mr. Ryan and Mr. Tringali knew or ought to have known that the Agency Agreement was invalid upon each receiving correspondence from Mr. Gillis on August 11, 2021, advising that Thornridge was not bound by the Agreement because the Board never approved or authorized it.

[134] Thornridge's argument cannot succeed. According to the minutes from the meeting, the Authorized Persons Resolution was described as follows:

The fourth Resolution was an amendment to the original omnibus Thornridge Resolution signed by all Directors previously. The amended Resolution provides for any two Directors acting together or a Director and Officer acting together to have the authority to sign the necessary transaction documents.

[135] Thornridge asks the court to conclude that Mr. Ryan, a stranger to the Thornridge Board, ought to have known that this resolution:

- applied to the Agency Agreement, which was never treated by Thornridge as a Transaction Document; and,
- created a strict requirement of two signatures on the Agency Agreement for it to be authorized and effective.

[136] Thornridge makes this argument notwithstanding the evidence that no one else at the meeting, including Robert Gillis, Thornridge's corporate secretary, and Christine Pound, its corporate counsel, walked away with that knowledge. Mr. Gillis testified that Thornridge did not conclude that the Authorized Persons Resolution applied to the Agency Agreement until 2018. With respect to Ms. Pound, she drafted the Authorized Persons Resolution and the Original Resolution, with input from Robert Gillis and others; reviewed the Agency Agreement, with its single signature line above the statement "I have the authority to bind the company"; and directed Blois Colpitts to "Please have Nick sign." Ms. Pound would have been involved in drafting and reviewing other Transaction Documents to which the Authorized Persons Resolution applied, and would have known that these documents included two signature lines for Thornridge, above the statement, "We have authority to bind the company." If she believed that the Agency Agreement required two signatures to be effective, she would have advised Thornridge and Mr. Colpitts of that belief.

[137] In my view, Mr. Ryan cannot reasonably be expected to have more knowledge and insight into Thornridge's internal procedures and requirements than Thornridge or its corporate counsel. Mr. Ryan was entitled to rely on Mr. Betts's ostensible authority, his assurance that the Agency Agreement would be effective prior to Mr. Ryan signing any other Transaction Documents, and the email from Ms. Pound to Blois Colpitts, which was shown to Mr. Ryan before he signed the Agency Agreement.

[138] Thornridge's argument that Mr. Ryan and Mr. Tringali had knowledge triggering the exception as of August 11, 2021, when they received the letter from Mr. Gillis is also untenable.

[139] The relevant time for the purposes of the exception under s. 30 is the time of contracting. In *Strata Plan KAS2662 v. Strata Plan VR1851*, 2015 BCPC 140, the court noted in relation to the indoor management rule provision in the *Business Corporations Act*, S.B.C. 2002, c. 57:

193 What really matters, in my view, is whether the contracting parties, here PVL, knew **when the contract was being negotiated and entered into**, that Robinson's authority to do so was limited or did not exist at all, or that there were other requirements, for example a need for Bellstar and the Adara board to approve it up front. There is no credible evidence that MacKenzie, also a Bellstar employee at the time, knew that there was any such limit or requirement. I do not accept as credible Strub's recollection that he told Robinson or anyone else that they had no authority to enter such a contract.

[Emphasis added]

See also *Blankenship v. Jenks-Cochrane Properties Ltd.*, 2016 ABQB 461, at para. 151.

[140] The indoor management rule is intended to protect third parties who deal with a corporation in good faith and without knowledge of any irregularity at the time of those dealings. Disclosure by the corporation of an irregularity years later does not invalidate the contract or transaction. As noted in *Sheppard v. Bonanza Nickel Mine* [1894] O.J. No. 141 (Ch. Div.), at para. 23:

The rule established by authority is, that where the proposed dealing is not inconsistent with the constitution of the company, the party contracting need not enquire into the regularity of the internal proceedings. It is to be assumed that all is being done in due course, and the disclosure that such was not the case, will not avail to displace or nullify a completed instrument or transaction.

[Emphasis added]

[141] Interpreting the rule otherwise would open the door to corporate manipulation, as explained in *Hydra-Dyne Industrial Cleaning Services Ltd., Re*, 2002 CarswellOnt 5111 (S.C.J.), aff'd 2003 CarswellOnt 192 (Ont. C.A.), leave to appeal ref'd 2003 CarswellOnt 3910 (S.C.C.):

38 Two of the documents signed by Mr. Dynes are the director's resolution authorizing the assignment, and the assignment. The Applicant says Mr. Dynes had no authority to sign either and they are therefore invalid. As a consequence, it is said the assignment [in bankruptcy] is unauthorized and a nullity.

39 Care must be exercised in encouraging such a result since it opens the door to corporate manipulation. That a corporation whose internal workings are not transparent could hold out to third parties an individual as manager and able to bind a corporation, then when it is beneficial to do so rescind an act done by him because he was not on corporate paper so authorized is wrong. It was to combat this the "Indoor Management Rule" arose. It is codified in section 19 of the Ontario Business Corporations Act which reads as follows: [...]

[Emphasis added]

[142] Accordingly, even if the Authorized Persons Resolution applied to the Agency Agreement, the indoor management rule prevents Thornridge from relying on the requirement for two signatures. Having so found, it is unnecessary to deal with the defendants' equally strong alternative argument that Thornridge ratified the Agency

Agreement through its actions and its continued silence from February 2015 until August 2021.

Are the settlement agreements valid and binding on Thornridge?

[143] The settlement agreements are valid and binding on Thornridge if there was an event that triggered the authority of Mr. Ryan and Mr. Tringali under the Agency Agreement to settle, extend, or compromise any of the debtors' obligations under the promissory notes.

[144] During closing arguments, Thornridge raised for the first time an argument that Michael Ryan and Michael Tringali did not have authority under the Agency Agreement until 30 days after the defendants received the notice of default from Thornridge's counsel, Maurice Chiasson, on August 19, 2021. Thornridge says it follows that they had no authority to enter into the settlement agreements, which were all executed prior to the expiration of those 30 days. Thornridge relies on the following paragraph in each of the promissory notes:

The following are acts or events of default under this Note: (i) the failure to perform any obligations, liabilities or indebtedness owed by the Debtor under this Note within thirty (30) days of receipt of notice by the Debtor of such failure to perform ... Upon such an event the balance of the Principal Amount together with all accrued and unpaid interest then outstanding shall, at the option of the Creditor, become immediately due and payable.

[145] However, the Agency Agreement does not incorporate the definition of an event of default from the promissory notes. The Agency Agreement provided that "[a]ll capitalized terms used in this Agreement, but not expressly defined herein, shall have the meaning ascribed to such terms under the Pledge Agreements." "Event of Default" was not expressly defined in the Agency Agreement. It must therefore be given the same meaning as under the pledge agreements, which define an Event of Default as follows:

If default is made in payment or other performance of or under the Obligations or if the Pledgor has revoked the Proxy (any of the foregoing being hereinafter referred to as an "Event of Default") ...

[146] "Obligations" is defined in the first section of the pledge agreements as "all obligations of the Pledgor to the Creditor under the promissory note delivered by the Pledgor to the Creditor dated February 26 2015". The promissory notes each

provide that the debtor promises to pay the principal amount, together with interest, on the following terms:

- (a) all dividends paid on the Subject Shares shall be directed by the Debtor to be paid to the Creditor and applied directly to the Principal Amount until such time as it is fully paid down;
- (b) in the event of the sale by the Debtor of the Subject Shares, the Debtor shall repay the Creditor all amounts owing under this Promissory Note, including the principal amount [sic] owing and any accrued and unpaid interest; and
- (c) on the 5th anniversary of the date of this Promissory Note, the Debtor shall repay the Creditor the balance of all amounts then owing under this Promissory Note, including the Principal Amount owing and any accrued and unpaid interest.

[Emphasis added]

[147] Taking all these provisions together, there was an Event of Default for the purposes of the Agency Agreement as of February 25, 2020. Indeed, Mr. Chiasson communicated exactly that in his letter:

Reference is made to a promissory note dated February 26, 2015 executed by you in the principal amount of \$140,533 in favour of Thornridge (the "Note"). The terms of the Note provide that the amounts owing are to be paid on the occurrence of certain events - one of which is the fifth anniversary of the date of the Note which was February 25, 2020 (the "Maturity Date").

As little or no payments have been made on the Note and the Maturity Date has passed, we hereby advise that you are in default under the terms of the Note and further demand immediate full payment of the Note together with accrued interest.

[Emphasis added]

[148] Mr. Chiasson did not advise the defendants that they would be in default if they did not make payment within 30 days of receiving notice. Thornridge's argument on this point has no merit.

Have the defendants been unjustly enriched?

[149] Thornridge summarized the basis for its unjust enrichment claim in its pretrial brief as follows:

97. In the alternative, Thornridge states that the Defendants have each been unjustly enriched by receiving the difference in the total amount owing under the Promissory Notes and the amount they allegedly agreed to settle their debts.

98. The Supreme Court of Canada in *Kerr v Baranow*, 2011 SCC 10 reiterated the elements of an unjust enrichment claim as follows:

[32] Canadian law, however, does not limit unjust enrichment claims to these categories. It permits recovery whenever the plaintiff can establish three elements: an enrichment of or benefit to the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment ...

[Emphasis Added]

...

101. Thornridge says that the elements are all established in the present case.
102. First, the Defendants have each been enriched by virtue of settling the debts under their respective Promissory Notes for considerably less than the amounts owing.
103. Second, there has been a corresponding deprivation of Thornridge as they have been deprived of the full amounts owing under the Promissory Notes. This deprivation is directly connected to the Defendants' gains.
104. Third, for the reasons discussed above, there was no juristic reason for the enrichment to the Defendants. Thornridge says that the Proposed Agency Agreement is invalid and the Defendants are unable to rely on the indoor management rule to claim that the Settlement Agreements are binding on Thornridge. Without a valid contract to rely upon, a prima facie unjust enrichment claim is established, and the burden shifts to the Defendants to show there is some residual reason to deny recovery, having regard to the parties' reasonable expectations and public policy.

[Emphasis added]

[150] As these paragraphs indicate, Thornridge's argument that the defendants have been unjustly enriched depends on a finding that the Agency Agreement is invalid and that the defendants cannot rely on the indoor management rule. The court makes no such findings. Thornridge's unjust enrichment claim cannot succeed, as the Agency Agreement is the juristic reason for any alleged enrichment.

Are Mr. Ryan and Mr. Tringali liable to Thornridge for breach of fiduciary duty, negligence, and/or breach of contract?

[151] Thornridge argues that during the time that Michael Ryan and Michael Tringali acted as agents under the Agency Agreement, they were in a fiduciary relationship with Thornridge and owed it a duty of care. Thornridge says Mr. Ryan and Mr. Tringali breached their obligations as agents and fiduciaries, and their conduct fell below the standard of care in that they, *inter alia*:

- failed to negotiate the settlements in the best interests of Thornridge, or at all;
- failed to perform their roles as agents in good faith;
- failed to obey the lawful authority of Thornridge within the agency relationship;
- failed to perform their agency duties with care and skill;
- failed to properly maintain accounts of their activities during the agency period and account to the principal, Thornridge, regarding their activities;
- failed to ascertain the debtors' abilities to pay the amounts owing under the respective promissory notes;
- failed to act in the best interest of Thornridge, as principal, and,
- allowed their own personal interests, against those of Thornridge, to affect the execution of their duties as agents by settling each of the promissory notes for significantly less than their value.

[152] Thornridge says the conduct of Mr. Ryan and Mr. Tringali demonstrated intentional bad faith and gross negligence.

[153] Michael Ryan and Michael Tringali argue that they did not breach any duties owed to Thornridge in executing the settlement agreements. On the contrary, they say, they completed the very task contemplated by the Agency Agreement and did so in good faith. They submit that they conducted a careful analysis in coming to the settlement agreements and that there is no evidence of bad faith.

[154] Mr. Ryan and Mr. Tringali argue that the Agency Agreement was proposed as an alternative to making the promissory notes non-recourse because TorQuest required an at-risk commitment from the employees as part of its proposal to purchase a majority equity stake in EnviroSystems. They refer to representations made by Nick Betts on behalf of Thornridge as to the purpose of the Agency Agreement, including the statements in his email sent on January 16, 2015:

I'd like to see a draft agency agreement which gives Mike Ryan, or in his absence Mike Tringali, the responsibility to administer the note, in their discretion, including, extensions or renewals, or settlement in the event the value of the shares pledged reduces below the amount owing without recourse to them providing Thornridge is at a minimum allowed to seize the shares under it's [sic] pledge. I

view this as a highly unlikely event, but it is consistent with the commitment we made to Mike to give him "wiggle room".

[Emphasis added]

[155] Thornridge argues that evidence about what Nick Betts said and what Michael Ryan and Michael Tringali understood is evidence of subjective intention which is inadmissible for the purposes of determining liability under the Agency Agreement. In my view, however, the evidence of the representations made by Thornridge's then-President and COO which induced Mr. Ryan and Mr. Tringali to sign the Agency Agreement and all of the documents related to the EnviroSystems Transaction, is parol evidence which is admissible in the circumstances of this case:

- to establish a collateral agreement; or,
- in support of an allegation that the Agency Agreement itself was not intended by the parties to constitute the whole agreement.

[156] In Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed. (Toronto: LexisNexis Canada Inc., 2020), the author addresses these two exceptions to the parol evidence rule at 3.1.4:

3.1.4 The rule does not apply where the written document is not the complete agreement or where there is a collateral oral agreement

Except where the terms of a written agreement would be contradicted, the parol evidence rule does not apply where the parties did not intend to encompass all contractual terms in their written agreement, or where they have entered into a collateral agreement (which is often, but not necessarily, oral). Taken together, these circumstances create a broad exception to the operation of the parol evidence rule, but they make sense from the perspective of contractual interpretation because they allow a court to give effect to the full context of an agreement.

...

The incomplete agreement exception and the collateral contract exception are closely related, to the point that they are virtually interchangeable. *Zippy Print Enterprises Ltd. v. Pawliuk* [[1994] B.C.J. No. 2778 (C.A.)] illustrates the point. A franchisor made certain precontractual representations regarding the likely cash flow of the franchised location in order to induce some prospective franchisees to enter into a contract. The representations turned out to be wrong, the franchise failed, and litigation ensued. The British Columbia Court of Appeal had little difficulty in finding that the precontractual oral representations formed part of the contract between the parties, either by concluding that the written agreement as incomplete or by finding a collateral oral contract:

The representations in this case were made on behalf of Zippy Print in order to induce Mr. Pawliuk and Mrs. Peniuk to enter into the license agreement. To exclude evidence of the representations on the basis of the Parol Evidence Rule, which is no longer, in the context of trials conducted by judges without juries, a rule of evidence at all, would be absurd. The real question raised by the Parol Evidence Rule is whether the license agreement in its printed form was intended to constitute the entire agreement and to supersede and replace the representations that were designed to bring it about and to nullify any prior agreement or any prior terms that were discussed but never incorporated in the written agreement.

In short, apart from the application of an exclusion clause, a commercial enterprise cannot make an intentional oral representation to persuade a customer or other party to enter into a standard form contract of adhesion and then, by invoking the Parol Evidence Rule, rely on the fact that the contract is in writing to escape liability flowing from the fact that the representation is untrue. In those circumstances the oral representation will be regarded as forming an essential element in the relations between the parties, *either on the basis that the written contract document was not intended to form the entire agreement between the parties (the one contract theory), or, alternatively, on the basis that the oral representation, when it was acted upon by the person to whom it was made entering into the written contract, became a separate or collateral contract on which liability may be founded (the two contract theory).*

It is clear that neither the incomplete agreement exception nor the collateral agreement exception applies where the parol evidence would contradict the terms of the written document. In that case, the written document prevails and the extrinsic evidence is inadmissible.

[157] Michael Ryan gave credible evidence concerning the representations made to him by Nick Betts as to the purpose of the Agency Agreement and Thornridge's expectations as to how Mr. Ryan and Mr. Tringali would exercise their discretion under it. His evidence was supported by the documents, which showed that these representations were made with the full knowledge of David Hennigar, Chairman of Envirosystems and Chairman of the Thornridge Board of Directors; Robert Gillis, then-corporate secretary and current President and COO of Thornridge; and Christine Pound, Thornridge's corporate counsel.

[158] Thornridge chose not to call David Hennigar, Christine Pound, or Nick Betts as witnesses to contradict Mr. Ryan's evidence, which was its prerogative. Although both sets of defendants asked the court to draw an adverse inference against Thornridge for its failure to call David Hennigar, it is not necessary to do so in the

circumstances of this case. As Peter J. Sankoff explains in *Law of Witnesses and Evidence in Canada* (Online: Thomson Reuters, 2025) at §7:13:

Just as parties in civil cases have freedom in deciding which witnesses they will have testify, they enjoy a similar freedom to select those witnesses who will not testify. Nonetheless, notwithstanding the fact that parties have a complete and unimpeachable legal right not to call any given witness, there exist clear practical consequences of exercising this right in certain circumstances. If it is the plaintiff who fails to call an important witness, it may well result in the court not being satisfied that the burden of proof has been met. If it is the defendant, while the failure to call a witness cannot supplement the case for the plaintiff, it may, if the plaintiff has at least made out a *prima facie* case, strengthen that case or weaken whatever defence is introduced.

[159] Thornridge is the plaintiff and had the burden to prove its claims against the defendants, including the claims against Mr. Ryan and Mr. Tringali for breach of fiduciary duty, negligence, and breach of contract in relation to the exercise of their authority under the Agency Agreement. By not calling David Hennigar, Thornridge assumed the risk that Mr. Ryan's evidence would be accepted and that Thornridge would be unable to meet its burden as a result. That risk has materialized, making an adverse inference unnecessary.

[160] Mr. Betts represented to Mr. Ryan that the Agency Agreement was a means of satisfying TorQuest's requirement for an "at risk commitment" from management employees while protecting those employees from any downside risk. To that end, Mr. Betts represented that if the shares were eventually sold for less than the amounts owing under the promissory notes, Mr. Ryan and Mr. Tringali would have complete authority to settle the notes, with the employees' liability to Thornridge being limited to the value of the pledged shares. Everyone stood to benefit from this arrangement. Thornridge would be able to complete the lucrative EnviroSystems Transaction, while the employees would have the opportunity to benefit from any increase in the share value without assuming any risk of liability if the share value declined. As Mr. Betts noted in his email, he viewed a reduction in the value of the shares below the amount owing under the promissory notes as a "highly unlikely event". As Mr. Tringali testified, the arrangement was an "obvious no-brainer" for the employees.

[161] Nick Betts's representations to Mr. Ryan on behalf of Thornridge do not contradict the express terms of the Agency Agreement. The Agency Agreement is not ambiguous. Its key terms are as follows:

- "[T]he Creditor wishes to appoint each of the Agents to act on its behalf in the event of a default under any of the Notes";
- "[T]he Creditor irrevocably appoints each of the Agents to act as its agent upon an Event of Default to exercise any and all of the rights of the Creditor under the Note and the Pledge Agreement, including without limiting the generality of the foregoing, the right to settle, extend or compromise any of the Obligations on behalf of the Creditor";
- "The Agents shall have authority in respect of all matters related to any Event of Default";
- "The Secondary Agent shall be entitled to act and shall act as Agent for the Creditor only in the following circumstances: ... (ii) an Event of Default has occurred under the Primary Agent's Pledge Agreement, in which case the Secondary Agent shall act as Agent for the Creditor only in respect of the Primary Agent in his capacity as a Debtor;"
- "The Creditor undertakes not to revoke the authority of the Agents under this Agreement ..."
- "The Agents shall have no duties or responsibilities other than those expressly set forth in this Agreement, and no implied duties or obligations shall be read into this Agreement against the Agents."
- "None of the provisions contained in this Agreement shall require the Agents to expend or risk their own funds or otherwise incur financial liability in performing their duties. The Creditor agrees to be responsible for all costs, fees and expenses reasonably incurred."
- "An Agent shall not be liable for any action taken or omitted by the Agents or either one of them, or any action suffered by the Agents or either one of them to be taken or omitted, in good faith, and shall not be held liable for any error in judgment made in good faith, unless it shall be proved that the Agent was **grossly negligent** in ascertaining the pertinent facts or acted intentionally in bad faith."
- "The Creditor shall keep each Agent indemnified at all times against all actions, proceedings, losses, liabilities, costs, claims, damages, penalties, actions, suits, expenses, disbursements and demands incurred or sustained by the Agents or either one of them in respect of any matter or thing done by the Agents or either one of them under, pursuant to or in connection with this Agreement, or otherwise arising in connection

with the duties of the Agents hereunder, except in so far as the same arose through the gross negligence or wilful misconduct on the part of the Agent seeking indemnification or otherwise arose from any breach by the Agent seeking indemnification of such Agent's obligations under this Agreement ..."

[Emphasis added]

[162] None of these terms is inconsistent with Thornridge's representations. This is not surprising. Thornridge wanted Mr. Ryan and Mr. Tringali to feel comfortable signing the Agency Agreement so that it could close the deal with TorQuest. Obvious inconsistencies between Mr. Betts's representations and the terms of the Agreement would undermine that objective.

[163] The Agency Agreement gives the agents broad authority over "all matters related to any Event of Default", and "the right to settle, extend or compromise" any of the obligations under the promissory notes on behalf of Thornridge. The Agency Agreement limits the agents' liability to situations where it is proved that the agents were "grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith." It contains no undertaking by the agents to act in Thornridge's best interests. It imposes no express restrictions on the agents' authority to settle, extend or compromise any of the obligations under the promissory notes. The Agency Agreement does not require the agents to ascertain the debtors' abilities to pay the amounts owing and to negotiate the highest settlement amount possible. Thornridge relies on equity to impose these and other fiduciary duties over and above the duties set out in the contract.

[164] In *Frame v. Smith*, [1987] S.C.J. No. 49, the Supreme Court of Canada summarized the law on fiduciary relationships as follows:

57 In the past the question whether a particular relationship is subject to a fiduciary obligation has been approached by referring to categories of relationships in which a fiduciary obligation has already been held to be present. Some recognized examples of these categories are relationships between directors and corporations, solicitors and clients, trustees and beneficiaries, agents and principals, life tenants and remaindermen, and partners. As well, it has frequently been noted that the categories of fiduciary relationship are never closed ...

...

60 Relationships in which a fiduciary obligation have been imposed seem to possess three general characteristics:

- (1) The fiduciary has scope for the exercise of some discretion or power.
- (2) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
- (3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

61 Very little need be said about the first characteristic except this, that unless such a discretion or power is present there is no need for a superadded obligation to restrict the damaging use of the discretion or power ...

62 With respect to the second characteristic it is, of course, the fact that the power or discretion may be used to affect the beneficiary in a damaging way that makes the imposition of a fiduciary duty necessary. Indeed, fiduciary duties are frequently imposed on those who are capable of affecting not only the legal interests of the beneficiary but also the beneficiary's vital non-legal or "practical" interests.

...

63 The third characteristic of relationships in which a fiduciary duty has been imposed is the element of vulnerability. This vulnerability arises from the inability of the beneficiary (despite his or her best efforts) to prevent the injurious exercise of the power or discretion combined with the grave inadequacy or absence of other legal or practical remedies to redress the wrongful exercise of the discretion or power. Because of the requirement of vulnerability of the beneficiary at the hands of the fiduciary, fiduciary obligations are seldom present in the dealings of experienced businessmen of similar bargaining strength acting at arm's length ... The law takes the position that such individuals are perfectly capable of agreeing as to the scope of the discretion or power to be exercised, i.e., any "vulnerability" could have been prevented through the more prudent exercise of their bargaining power and the remedies for the wrongful exercise or abuse of that discretion or power, namely damages, are adequate in such a case.

[Emphasis added]

[165] In *Scott v. Trophy Foods Inc.*, 1995 NSCA 74, 1995 CarswellNS 218, Hallett J.A. explained the historical basis for equity's imposition of fiduciary duties on agents:

32 It is trite to say that the principal and agency relationship gives rise to fiduciary duties but the extent of those duties must vary given the great range of activities that fall under this concept and the varying contractual arrangements that principals and agents make. The duties imposed by equity ought to reflect the nature of the particular principal and agency relationship and, in particular, the terms of the contract between the parties if both are commercial entities.

...

34 The essence of a true principal and agency relationship is the power of the agent to affect the legal position of the principal by entering into contracts with third parties that bind the principal (*Fridman's Law of Agency*, 4th Edition at pp. 8, 9, 12, 13 and 14).

35 As Fridman states at p. 13:

Once it is recognised that the essence of agency is this power to affect the principal's legal relations with the outside world, the law of agency can be more readily understood.

...

36 This power, vested in an agent, to affect the legal position of a principal by making contracts that are binding on the principal is the primary reason that history gave rise to equity's imposition of fiduciary duties on agents. I use the term "imposition" in the sense that they are imposed as obligations over and above those obligations that may be spelled out in a contract between a principal and an agent.

[Emphasis added]

[166] In this case, Thornridge induced Michael Ryan and Michael Tringali to enter into the Agency Agreement and the EnviroSystems Transaction documents by representing that if the shares were eventually sold for less than the amounts owing under the promissory notes, Thornridge expected Mr. Ryan and Mr. Tringali to exercise their authority under the Agency Agreement to settle the notes on Thornridge's behalf in a manner that protected employees from any liability for the shortfall. This arrangement, along with the irrevocable nature of the agents' authority, necessarily limited the scope of any fiduciary duties and any duty of care that could be found owing to Thornridge itself. It would therefore be grossly unjust to allow Thornridge, years after it has reaped the benefits of the arrangement, to invoke the parol evidence rule to exclude evidence of the essential terms that were left out of the Agency Agreement.

[167] Nick Betts's representations on Thornridge's behalf must be considered part of the contract between the parties, either on the basis that the Agency Agreement was not intended to reflect the entire agreement between the parties, or that the representations, once acted upon by Mr. Ryan and Mr. Tringali, became a collateral contract. To conclude otherwise would be to allow Thornridge to perpetuate an injustice under the guise of "equity".

[168] When the entirety of the arrangement between the parties is considered, it is obvious that Thornridge's claims for breach of fiduciary duty, negligence, and breach of contract have no merit.

[169] In entering into the settlement agreements with the defendants, Michael Ryan and Michael Tringali ensured, to the best of their abilities, that Thornridge recovered all amounts that it would have received had it owned the pledged shares from February 26, 2015, onward. In other words, Mr. Ryan and Mr. Tringali settled the promissory notes as if the defendants had been holding the shares in trust for Thornridge. In so doing, Mr. Ryan and Mr. Tringali acted in a manner consistent with the limited fiduciary duties they owed to Thornridge.

[170] There is no evidence to support a finding of gross negligence or bad faith, either. The only party who has acted in bad faith in this case is Thornridge.

CONCLUSION

[171] The Plaintiff's claims against the defendants should be dismissed.

[172] I will leave it to the parties and their respective counsel to try to reach an agreement on costs. The amounts withheld to help defray legal fees incurred by Messrs. Ryan and Tringali will have to be considered in these discussions. If the parties are unable to agree on costs generally and on how the withheld amounts should be factored into the overall costs discussion, counsel will have to address it in written submissions to the court which are to be filed within 30 calendar days from the date of release of this decision.

McDougall, J.