

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

1916458 ONTARIO LIMITED, JOHNNIE
MINERS AND LEANNE MINERS

Plaintiffs

– and –

DENIS BEAULIEU AND KAREN
BEAULIEU

Defendants

*Dhiren Chohan and Anderson Warren, for
the Plaintiffs*

*Scott Fairley and Alex Daley, for the
Defendants*

HEARD: June 2, 3, 4, 5, 6, 9 and
September 15, 16, 17, 2025

REASONS FOR DECISION

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ELLIES J.

OVERVIEW

- [1] The plaintiffs in this action seek damages for breach of contract in connection with their purchase of a heating, ventilation, and air conditioning (“HVAC”) business known as DenKar Controls Inc. (“DenKar”) in 2015. They claim that the defendants breached the terms of their agreement by failing to operate DenKar in the ordinary course of business, both before and after the agreement was reached.
- [2] As a result, the plaintiffs seek damages equivalent to the difference between the \$500,000 they agreed to pay for DenKar and the \$56,000 they say it was actually worth. In the alternative, they seek damages equivalent to the amount of money they expected to earn from the business.
- [3] For the following reasons, I am not satisfied that there was any breach of contract. The plaintiffs have failed to prove that the acts complained of were outside of the ordinary course of DenKar’s business and were not the result of deterioration of the markets in which DenKar engaged. Even if I was satisfied that there was a breach, I would find the plaintiffs entirely responsible for their damages for failing to avail themselves of their contractual right to investigate the financial affairs of the company they were buying.
- [4] As a result, the plaintiffs’ claim is dismissed and the defendants’ counterclaim for the balance of the purchase price is allowed.

BACKGROUND

The Parties

- [5] On the surface, this case is about a business. However, at its core, the case is really about two hard-working couples.

The Plaintiffs

- [6] Johnnie Miners has a background in robotics and automation. In 2013, he was working for a multi-disciplinary engineering consulting firm in Sudbury as an instrumentation and controls specialist. However, he and Mrs. Miners were interested in going into business for themselves, if the right opportunity presented itself.

The Defendants

- [7] Denis Beaulieu is no longer with us. He passed away in 2017, at the age of 66 leaving his wife of 41 years, Karen Beaulieu, behind. She is now his estate trustee.
- [8] Mr. Beaulieu grew up in the North Bay area. He had a background in instrumentation. He worked locally for Johnson Controls, a large HVAC supplier and service provider, for about 10 years before deciding to go into business for himself. In 1993, he started DenKar with the intention of filling a need for a small, local controls company in the North Bay area. In the early years, Mrs. Beaulieu worked outside of the business. However, in 2006, Mrs. Beaulieu also began to work at DenKar.

- [9] DenKar had two sources of revenue: HVAC services and building automation systems (“BAS”). On the HVAC side of the business, DenKar supplied rooftop units to school boards, other large institutions, and commercial customers in the North Bay and surrounding areas, working on projects at least as far away as Iroquois Falls to the north. On the BAS side, DenKar was the only supplier of KMC HVAC controls, a competitor of companies like Johnson Controls, Honeywell, and Siemens. At the time, the controls manufactured by these companies were not as compatible as they later became. This provided DenKar with an exclusive service market for buildings using the KMC controls that it supplied.
- [10] Mr. Beaulieu was the “face” of DenKar. Originally, he was also the “hands” of DenKar, performing the installation and service work himself. To ensure that he was able to do all the work necessary, Mr. Beaulieu became a master electrician in 2007. Eventually, however, he was no longer physically capable of performing the HVAC services himself and, therefore, DenKar hired employees to do so. Mr. Beaulieu continued to seek out and quote the jobs the company was hired to do. He met each morning with the employees to discuss the day's work and to provide direction. He was also the liaison between the company and its customers. It is clear from the evidence to which I will refer later that it was Mr. Beaulieu's reputation and his interaction with customers, project engineers, and other tradesmen that were the driving force behind DenKar's success and represented most, if not all, of its goodwill.
- [11] Between 1999 and 2009, DenKar's gross revenues grew from about \$185,000 to about \$882,000. However, according to Mrs. Beaulieu, in 2009, the couple began to think about selling the company and taking up other opportunities. Thus, they formed a plan to grow DenKar over the following five years for the purpose of selling it.
- [12] By 2013, Mr. and Mrs. Beaulieu had grown DenKar into a company with revenues that regularly fell into the \$800,000 to \$1,000,000 range. The company had three employees who installed HVAC equipment and performed the service work. DenKar also owned the building in which it was located.

The History of the Negotiations

- [13] In May of 2013, Mr. and Mrs. Beaulieu placed an ad on a website called “Business Sell Canada”. The ad listed a “turnkey” HVAC and controls company for sale in Northern Ontario at a price of \$850,000. The asking price did not include the building. Among the features listed in the ad was the company's “most valuable asset”: its “loyal customer base”.
- [14] On May 13, 2013, Mr. Miners responded to the ad. That response began a negotiation process that lasted for roughly one and one-half years. I will deal in more detail with various aspects of those negotiations during the course of my analysis of the issues, below. In this part of my reasons, I will provide just an overview, to give a context for what follows.
- [15] Mr. Miners involved his accountant, Paul Innocente, early in the process. On May 29, 2013, Mr. Innocente wrote to DenKar, requesting DenKar's financial statements for the preceding three fiscal years, which were provided. Using those statements and other information supplied by the defendants, Mr. Innocente drafted a valuation of DenKar's worth for Mr. and Mrs. Miners to consider.

- [16] Mr. and Mrs. Beaulieu also involved their accountant, Claude Daigle, early in the process. He, too, provided his clients with a valuation of the business. The valuations prepared by the accountants were significantly different. Mr. Daigle valued the business at between \$713,621 and \$812,673, with a mid-point of \$763,000.¹ Mr. Innocente valued the business, including the building, at between \$435,000 and \$510,000, with a mid-point of \$473,000.²
- [17] In December 2013, the parties met together with their accountants to try to agree on a price for DenKar. Not surprisingly, they were unsuccessful. Nonetheless, on February 20, 2014, Mr. and Mrs. Miners sent the defendants a Letter of Intent (“LOI”), in which they offered to purchase DenKar for \$450,000, excluding the building. The offer was structured such that the purchasers would pay \$400,000 in cash and the vendors would take back a promissory note in the amount of \$50,000, to be repaid over three years at the Royal Bank of Canada prime rate, plus 2 percent.
- [18] On March 26, 2014, the vendors sent back their own LOI, using the purchasers’ LOI as a template. They offered to sell the business for \$600,000. The offer required the purchasers to pay \$575,000 in cash and to sign a promissory note in favour of the vendors for the balance (\$25,000), repayable over two years at the rate of 7 percent. The vendors’ LOI removed an exclusivity clause from that of the purchasers, which would have precluded the vendors from negotiating with any other buyers pending the sale of the business to the purchasers.

The Agreement in Principle

- [19] To borrow Mr. Miners’ phraseology, the parties went “back and forth” after the defendants’ LOI, but they were unable to come to an agreement. On April 16, 2014, Mrs. Beaulieu wrote via email to advise Mr. Miners that she and Mr. Beaulieu had decided to delay the sale of DenKar until the fall. She wrote that there had “been some changes to the economy [and] how business is going to be done in the future” and stated that they needed time to address those changes.
- [20] However, not long after, on May 6, 2014, Mr. Beaulieu sent his own email to Mr. Miners, asking him if he would be in North Bay that weekend and, if so, whether they could meet alone. The two men met on Saturday, May 10, 2014, at DenKar’s business premises. They were unable to reach an agreement during that meeting, but they did agree to continue their discussions.
- [21] Two weeks later, on May 24, 2014, Mr. Beaulieu and Mr. Miners met again at DenKar. This time, they succeeded at reaching an agreement on the purchase price of \$500,000. They also agreed that the vendors would take back a promissory note for \$25,000 of the

¹ This valuation was sent by Mr. Daigle to Mr. Innocente along with a letter dated January 10, 2014 (Ex. #153). However, in an email from Mrs. Beaulieu to Mr. Miners dated April 9, 2014, Mrs. Beaulieu refers to Mr. Daigle’s valuation as having a mid-point of \$621,147. The difference in the valuations has not been explained in the evidence.

² A draft valuation prepared by Mr. Innocente “For discussion only” and introduced early in Mr. Miners’ evidence valued DenKar as of May 31, 2013, at between \$589,000 and \$643,000, with a mid-point of \$535,000 (Ex. #3). Again, the difference between the valuations has not been explained in the evidence.

purchase price and that there would be \$61,000 of working capital left in the company, among other things.

Delays in the Closing

- [22] Among the things agreed upon between Mr. Beaulieu and Mr. Miners on May 24 was a closing date of July 18, 2014. However, the deal did not close until much later.
- [23] The main reason for the delay was financing for the purchase. The purchasers had only \$100,000 of their own money to put towards the purchase of DenKar, including some money that they had borrowed from family members. To finance the remainder, the purchasers had approached two financial institutions: BDC (which I understand to mean the Business Development Bank of Canada) and Desjardins (which I understand to mean the Desjardins Bank). On July 9, 2014, Sheldon Root wrote to the purchasers on behalf of BDC to advise that it would not be proceeding further with the financing, leaving only Desjardins. Mr. Miners wrote to the vendors on the same date, advising them of BDC's concerns, apologizing for the length of time the failed purchase had taken, and wishing them well.
- [24] However, the deal did not die. The parties continued to communicate in a series of emails throughout the summer of 2014 until the vendors agreed to take back a promissory note in the amount of \$50,000. Mr. Miners testified that financing continued to be a source of delay even into January 2015. How the purchase was eventually financed is not clear from the evidence, although it is not particularly relevant beyond the delay it caused.
- [25] The deal finally closed on January 19, 2015.

Key Terms of the Share Purchase Agreement

- [26] The terms of the agreement of purchase and sale of DenKar were captured in a share purchase agreement ("SPA") between 1916458 Ontario Limited ("191", the holding company owned equally by Mr. and Mrs. Miners), Mr. and Mrs. Beaulieu, and DenKar. The agreement is dated November 28, 2014, and was signed by the parties in December 2014.
- [27] The SPA included several clauses under the heading "Representations and Warranties". In particular, clause 4(1) contained the following relevant clauses:
 - (m) Financial Statements – The Items reported in the Financial Statements are reported in accordance with GAAP applied on a basis consistent with that of the preceding period and present fairly:

...

(iii) the sales and earnings from operations of the Company for the period ended May 31, 2014.

Except as disclosed in Schedule "R" attached hereto, the financial position of the company is now at least as good as shown or reflected in the Financial Statements. For greater certainty, the Financial

Statements do not include any additions or deductions for income taxes and interest.

(n) Absence of Changes – Since May 31, 2014, to the best of the Vendor's knowledge, there has not been:

(i) any material change in the condition or operations of the Company other than changes in the ordinary and normal course of business and other than changes resulting from a general deterioration of markets in the industries in which the company is engaged;

(w) Insurance – The Company maintains such policies of insurance, issued by responsible insurers, as are appropriate to the Business and its property and assets, in such amounts and against such risks as are customarily carried and insured against by owns of comparable businesses, properties and assets; all such policies of insurance are in full force and effect, and will continue to be so until the Closing Date, and the Company is not in default, whether as to the payment of premium or otherwise, under the terms of any such policy, nor has the Company failed to give any notice or present any claim under any claim under any such insurance policy in due and timely fashion.

(jj) Inventories – The Inventories are in good and merchantable condition and are usable or saleable in the ordinary course of business for the purposes for which they are intended and are carried on the books of the Company at the lower of cost and net realized value;

(ll) Disclosure – None of the foregoing representations, warranties and statements of fact contains any untrue statement of material fact or omits to state and material fact necessary to make any such representation, warranty or statement not misleading to a prospective purchaser of the Shares seeking full information concerning the matters which are the subject of such representations, warranties and statements...

[28] Schedule "R" referred only to "[t]hose matters reflected in pre-closing reorganization summarized in Claude Daigle's instruction letter of November 12, 2014."

[29] Clause 4(5) of the SPA dealt with the ongoing effect of the representations and warranties:

All representations, warranties, covenants and agreements contained in this Agreement on the part of each of the Parties shall survive the Closing, the execution and delivery hereunder of any bills of sale, instruments of conveyance, assignments or other instruments of transfer of title to any of the Shares and the payment of the consideration contemplated under this Agreement, except that the representations and

warranties contained in this article shall only survive for two years following Closing...

- [30] The SPA also contained terms relating to the ongoing operations of the business after the closing date under the heading "Covenants of the Parties". In particular, clause 5(1) provided:
- (a) Conduct Business in Ordinary Course -- Except as otherwise contemplated or permitted by this Agreement, the Company shall conduct the Business in the ordinary and normal course and shall not, without the prior written consent of Purchaser, enter into any transaction which, if entered into before the date of this Agreement, would cause any representations or warranties of the Vendor contained in this Agreement to be incorrect or constitute a breach of any covenant or agreement of the Vendor contained in this Agreement. The Vendor shall use its best efforts to preserve intact the Company and the Business and the relationship existing with the customers of the Company.
 - (b) Continue Insurance -- The Company shall continue in force and in good standing all existing insurance maintained by it.
 - (d) Material Changes -- The Company shall not take any action which would result in any material adverse change, in or to the Business or sell, transfer or dispose of any of the assets of the Company, other than in the ordinary course of business.
- [31] Finally, clause 7 of the SPA permitted either party to terminate the agreement if the other failed to satisfy its obligations under the agreement, including the truthfulness and accuracy of the representations made by that party.

Revenues After Closing

- [32] As I will come to, DenKar's revenues dropped significantly between May 31, 2014, and January 19, 2015. That drop is at the heart of this lawsuit.
- [33] In 2016, the company's revenues began to climb. Mr. Miners testified that it was only through his hard work and that of Mrs. Miners, as well as their financial sacrifices, that the company managed to succeed. He testified that, although they began by paying themselves an hourly wage, by March of 2015, they were only able to pay that amount to one of them and eventually had to stop paying it to either of them. He said that it was not until 2018 that they were able to draw any salaries for themselves.

Difficulties with Inventory Evaluation

- [34] The SPA provided that DenKar's inventory was to be part of the \$61,000 in working capital to be left in the company. The agreement called for the parties to meet for the purpose of identifying the inventory and provided a process for agreeing on its value. The vendor's position was that the inventory was worth \$42,000 as of the closing date.
- [35] Following the closing, Mr. Miners and Mrs. Beaulieu undertook a thorough review of DenKar's inventory. As a result of the review, Mr. Miners formed the opinion that the inventory was only worth \$17,500, as he believed that many of the older parts in stock were obsolete. Mrs. Beaulieu testified that Mr. Miners' opinion failed to take into account the value of older parts as they related to the repair of older HVAC and control systems.

[36] The issue of the value of the inventory was never settled.

Dismissal of the Karen and Denis Beaulieu

[37] The agreement between the parties required Mrs. Beaulieu to remain as an employee with DenKar for one month following the closing, so that she could educate Mrs. Miners with respect to the duties she performed for the company. It also required that Mr. Beaulieu remain with DenKar for between one and six months, on an as-needed basis. Besides Mr. Beaulieu's obvious value as the former face of DenKar, the purchasers were required in certain circumstances to have a master electrician on staff.

[38] However, Mrs. Beaulieu was let go after three days. Mr. Miners testified that she was let go because there was nothing further Mrs. Beaulieu could teach Mrs. Miners. Mr. Beaulieu lasted a little longer. He was let go on July 31, 2015. Mr. Miners testified that Mr. Beaulieu was let go because he was not being very helpful and because he was unable to trust him after receiving DenKar's financial statements for the year ending January 19, 2015.

Post-closing Documentary Discoveries

[39] The vendors were instructed by their advisors not to delete any of the data stored on the company's computers pending the sale of the business. As a result, after the purchasers took over the business, they discovered a number of emails and other documents upon which they rely to argue that the vendors breached their obligations under the SPA. I will refer specifically to many of them when I address each of the various ways in which the vendors say that the SPA was breached.

Default on the Promissory Note

[40] The promissory note that formed part of the consideration for the transaction required that 191 pay Mr. and Mrs. Beaulieu the sum of \$50,000, together with interest at the rate of seven percent in sixty monthly installments of \$291.66, representing the payment of interest only. The principal was due and payable on the fifth anniversary of the date of the note, which was January 16, 2015. The obligations of 191 under the promissory note were guaranteed by Mr. and Mrs. Miners by way of a personal guarantee of that same date.

[41] By its terms, 191's obligations under the promissory note were subject to the adjustments to the purchase price relating to inventory and accounts payable called for in the SPA.

[42] 191 made four monthly payments under the promissory note following the purchase of DenKar. However, the purchasers stopped making the payments in May 2015. According to Mr. Miners, they stopped making the payments after they received the January 19, 2015, financial statements for the company because they believed that the defendants had failed to hold up their end of the bargain.

Commencement of the Action

[43] This action was commenced on June 27, 2016. In it, the plaintiffs seek damages in the amount of \$500,000 "or such greater amount as may be determined", as well as special and punitive damages against the defendants.

- [44] The defendants deny the plaintiffs' claims and advance a counterclaim for the amount owing on the promissory note and the balance owing on the purchase price on the basis of their view of the value of the inventory.

POSITIONS OF THE PARTIES

The Plaintiffs' Position

- [45] Although the plaintiffs' statement of claim alleges both fraudulent misrepresentation and breach of contract, in his closing submissions, counsel for the plaintiffs relied only on the breach allegation.
- [46] The plaintiffs submit that the defendants breached the representations and warranties in the SPA that stipulated that DenKar had been operating in the ordinary course of business as of May 31, 2014. They also submit that the defendants breached the terms of the SPA that required them to continue to operate the company in the ordinary course. They contend that there were material changes in the conditions or operations of the business that were not in the ordinary and normal course of business and were not a result of a general deterioration of the markets in the industries in which DenKar engaged.
- [47] In their statement of claim and in Mr. Miners' evidence, the plaintiffs allege that there were five ways in which the company was not being operated in the ordinary course:
- (1) Mr. Beaulieu's health was failing;
 - (2) DenKar was being poorly managed, resulting in deteriorating relationships with clients;
 - (3) the company had laid off all of its staff;
 - (4) DenKar was poorly serving its customers; and
 - (5) the defendants were being "short-sighted".
- [48] In his closing submissions, counsel for the plaintiffs added the following additional ways in which his clients allege that DenKar was not being operated in the ordinary course:
- (6) the company had to threaten a former employee with litigation for soliciting customers of DenKar;
 - (7) DenKar had to take steps to counter rumours that it was going out of business;
 - (8) the company's revenues dropped substantially;
 - (9) DenKar's insurance was reduced from \$5M to \$2M; and
 - (10) Mr. and Mrs. Beaulieu reduced their management salaries.
- [49] The plaintiffs seek damages based on the difference between what they paid for DenKar and what they say it was really worth.

The Defendants' Position

- [50] The defendants submit that nothing was misrepresented about the nature of DenKar's business or its operations. They submit that the plaintiffs were provided with any and all information they requested throughout the course of their dealings with one another.

- [51] On behalf of the defendants, counsel submits that the only material changes in the operation of the business were those permitted under clause 4(n) of the SPA relating to changes in the normal course of business and the general deterioration of the markets in the industries in which DenKar was engaged.
- [52] In the alternative, counsel for the defendants submits that the plaintiffs have failed to prove any damages resulting from any breach of contract. In the further alternative, counsel submits that, if they have, the plaintiffs are entirely responsible for them.
- [53] As a result, the defendants seek the dismissal of the plaintiffs' claim and judgment on the counterclaim for the amount owing on the promissory note.

ISSUES

- [54] The claim and counterclaim give rise to the following issues:
 - (1) Were there any material changes in the condition or operations of DenKar other than changes in the ordinary and normal course of business and other than changes resulting from a general deterioration of markets in the industries in which it engaged?
 - (2) If so:
 - (a) Did the plaintiffs suffer any damages resulting from the material changes?
 - (b) Are the plaintiffs responsible for any of their damages?
 - (3) Are the defendants entitled to judgment on their counterclaim?

ANALYSIS

Framework for the Analysis

- [55] In the analysis that follows, I propose to deal with the plaintiffs' allegations by collapsing what I believe are those that overlap. However, before I do that, a brief discussion of the applicable legal framework is in order.
- [56] There is no general pre-contractual duty to bargain in good faith, except where the parties are in a "special relationship": *Martel Building Ltd. v. R.*, 2000 SCC 60, [2000] 2 S.C.R. 860, at paras. 55 and 72. Where a special relationship is found to exist, a duty of care will arise on the part of a party making a representation. That party will be liable where: (1) the representation is untrue, inaccurate, or misleading; (2) the representor acted negligently in making the representation; the representee reasonably relied on the representation; and (3) the reliance results in the representee suffering damages: *Hedley Byrne & Co. v. Heller & Partners Ltd.* [1964] A.C. 465 (H.L); *Esso Petroleum Co. Ltd. v. Mardon*, [1976] Q.B. 801; *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87, at para. 34.
- [57] Where a pre-contractual representation becomes a contractual term, the aggrieved party may sue in either contract or tort, subject to any clear limitation the parties themselves have placed on the right by the terms of their contract: *B.G. Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 S.C.R. 12.
- [58] While there is no general duty to *negotiate* a contract in good faith, the law does recognize a general duty of good faith in the *performance* of a contract: *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 484.

- [59] The plaintiffs have chosen to pursue only their breach claim. For that reason, the focus must be on the specific representations and warranties contained in the SPA. If an alleged representation falls outside of the terms of the SPA, it cannot result in liability, even if it might have so resulted if pursued as a tort.
- [60] In interpreting the scope of the representations and warranties, I am required to determine “the intent of the parties and the scope of their understanding” by reading 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 the formation of their contract: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 54, [2014] 2 S.C.R. 633, at para. 47, citing *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21, [2006] 1 S.C.R. 744, at para. 27.
- [61] I will deal in greater depth with my interpretation of the relevant provisions in the SPA as I proceed through the various allegations of the plaintiffs, to which I turn now.

The Allegations of Breach

Slumping Sales

- [62] DenKar’s revenues for the years 2009 to 2014 were as follows:

May 31/09	\$881,543
May 31/10	\$826,087
May 31/11	\$1,005,373
May 31/12	\$1,213,634
May 31/13	\$827,038
May 31/14	\$719,126

- [63] Mr. Miners testified that, during his meeting with Mr. Beaulieu on May 24, 2014, Mr. Beaulieu told him that DenKar’s revenues for that year were down 10 to 15 percent. In a message to Mr. Miners dated June 5, 2014, Mr. Beaulieu wrote that the sales had decreased by approximately 13 to 15 percent. In a message dated June 12, 2014, Mr. Beaulieu wrote further to Mr. Miners:

Our year end seems to indicate that our sales are only down approx. 8-9% and not 13-15% as we originally said and our operating expenses decreased approximately by 26% over last year which aligns itself well below the adjusted sales revenue.

- [64] As it turned out, Mr. Beaulieu was right the first time: revenues for the May 31, 2014, fiscal year end were down 13 percent from the year before, not 8 or 9 percent. However, they dropped substantially from that point onward. The company’s revenue for the period ending on January 19, 2015 (the closing date) was \$235,851. Annualized, this was the equivalent of \$377,362, about a 48 percent drop from 2014. DenKar’s revenue for the period between January 19, 2015, and September 30, 2015 (its new fiscal year end), was \$270,279. Annualized, this was the equivalent of \$381,570, approximately a 47 percent drop from 2014.

- [65] The plaintiffs allege various causes for the further slump in sales, each of which I will address. However, they also allege that DenKar breached the SPA by failing to disclose this substantial drop in revenues, regardless of the cause. I disagree, for two reasons, both of which relate to the wording of the SPA itself.
- [66] For the sake of convenience, I will reproduce the relevant clauses here:
- Absence of Changes – Since May 31, 2014, to the best of the Vendor’s knowledge, there has not been:
- (i) any material change in the condition or operations of the Company other than changes in the ordinary and normal course of business and other than changes resulting from a general deterioration of markets in the industries in which the company is engaged
- [67] This clause must be read together with the other clauses in the SPA, including clause 4(1)(l), which reads:
- Disclosure – None of the foregoing representations, warranties, and statements of fact contains any untrue statement of material fact or omits to state any material fact necessary to make any such representation, warranty or statement not misleading to a prospective purchaser of the shares seeking full information concerning the matters which are the subject of such representations, warranties and statements.
- [68] Clause 4(1)(n) uses the words “since May 31”, rather than “as at May 31”. This was not a “point in time” representation. Therefore, I agree with the plaintiffs that, by virtue of these clauses, the defendants had an ongoing obligation to disclose any material change in the condition or operations of the company after May 31 and before closing date of the sale.
- [69] However, not all material changes had to be disclosed. The defendants were obliged to disclose only those material changes that were outside of the ordinary course of business and that were not the result of a general deterioration of the markets in which the company was engaged.
- [70] As I have shown above, it was not outside of the ordinary course of DenKar’s business for its revenues to fluctuate. For example, between 2009 and 2010, its revenues dropped by about six percent. Between 2012 and 2013, its revenues dropped by about 32 percent. Between 2007 and 2008, the drop was even higher, at 33 percent. DenKar also experienced significant *increases* in income from year-to-year. For example, between 2010 and 2011, revenues went from \$826,087 to \$1,005,373, a 22 percent increase.
- [71] DenKar’s revenues post-closing also show significant fluctuations. To the purchasers’ credit, revenues grew steadily after 2015. Nonetheless, it will be recalled that Mr. Miners testified that it was not until 2018 that he and Mrs. Miners could both draw a salary. In that year, DenKar’s revenues were \$897,472. However, there was a 23 percent drop the following year, where revenues were only \$691,036. There was a 27 percent drop in revenues between 2023 (\$1,186,413) and 2024 (\$859,087). As Mr. Miners explained during his testimony, it is the controls projects that are usually responsible for the fluctuations, as the income earned from them can span several years.

- [72] I agree that the drop in revenues between May 31, 2014, and January 19, 2015, was significant. But was it outside of the ordinary course of business? I cannot say. Based on the evidence of significant fluctuations in revenues throughout DenKar's history, I am not able to conclude on a balance of probabilities that it was outside of the ordinary course. Had the percentage drop been 50 percent or more, it would have been an easier call. But a decrease of 48 percent in the face of other decreases in the range of 30 percent does not strike me as obviously outside of the ordinary course of business.
- [73] However, even if it could be said that the drop in revenues was out of the ordinary course of business, I am not persuaded that it was not due to a general deterioration of the HVAC market. As I will come to, the plaintiffs allege that layoffs in early May 2014 were at least partly responsible for the slump in sales. They point to the speed with which one of the employees, Mr. Stanley, found work with a competitor of DenKar as proof that the HVAC market in 2014 was a good one. However, other evidence leads to a different conclusion.
- [74] On consent, the defendants introduced a report from Statistics Canada Entitled "Recent Developments in the Canadian Economy: Spring 2014". Both sides seemed to rely on the report in support of their case. However, I do not find the report to be very helpful. Overall, it seems to suggest that the construction industry was in a decline in the last part of 2013. However, it also seems to say that some sectors of the economy were doing better than others.
- [75] What I find more helpful are two emails that were sent by Mr. Miners about the slump in sales after his meeting with Mr. Beaulieu on May 24, 2014. In an email to Mr. Beaulieu dated June 13, 2014, Mr. Miners admitted that "(t)he economy is affecting all sectors and a lot of companies have seen their earnings decline". In an email exchange between Mr. Miners and Jeffrey St-Onge at Desjardins on July 11, 2014, Mr. St-Onge asked Mr. Miners how concerned he was about the drop in DenKar's sales that year from the year before. Mr. Miners responded:
- It is a concern. There are signs that the economy is coming back and with a Liberal government there should be more government spending on schools, etc. which is a large portion of the [company's] clients.
- [76] These emails show that, contrary to the position he took at trial, Mr. Miners shared Mr. Beaulieu's opinion that the HVAC industry itself was in a slump.
- [77] Because I am not satisfied either that the slump in sales was out of the ordinary course of business or that it was not due to a deterioration of the HVAC market, I am unable to agree that the defendants breached the SPA by failing to disclose them after May 31, 2014.

Mr. Beaulieu's Health

- [78] After taking over DenKar, the plaintiffs found a number of documents relating to Mr. Beaulieu's health that they contend show that his health was failing. They submit that Mr. Beaulieu's declining health was a material change in the operations of the business and the failure to disclose it was a breach of the contract.
- [79] I do not accept this submission for several reasons, as I will explain.

- [80] The documents found by the plaintiffs fall into three categories. The first was an email dated November 16, 2013, from Mrs. Beaulieu to the Pro Cathedral of the Assumption in which she thanked them for their prayers and advised that they “almost lost” Mr. Beaulieu. In the email, she wrote that Mr. Beaulieu was still in the ICU and not yet breathing on his own, but that he was progressing.
- [81] Mrs. Beaulieu explained in her testimony that Mr. Beaulieu had been diagnosed with myasthenia gravis (an autoimmune disease) in 2011. She testified that Mr. Beaulieu's illness ordinarily had no impact on him, as it was controlled by medication and exercise. She said that Mr. Beaulieu's hospitalization in late 2013 was the result of him being placed on the wrong medication for his disease.
- [82] I accept Mrs. Beaulieu's evidence about the effect of Mr. Beaulieu's disease because, as I have pointed out, DenKar's revenues steadily climbed between 2009 and 2013. If the disease had any impact on Mr. Beaulieu, it did not seem to affect his work. Mr. Miners met with Mr. Beaulieu several times in May 2014 and never said that he noticed any deficits in Mr. Beaulieu's engagement with him.
- [83] Mrs. Beaulieu also testified that Mr. Beaulieu ended up in the hospital for four days in September 2014, and again in October 2014, with a back infection of unknown origin. She testified that the hospitalization had no impact on the business. She testified that Mr. Beaulieu resumed his normal routines when he got out of the hospital. Again, I accept this. The illnesses were of a short duration and there is no evidence that they had any lingering effect. Mr. Beaulieu worked in the office after the sale of DenKar and Mr. Miners did not say he witnessed any health-related impacts on Mr. Beaulieu's work performance while he was there.
- [84] The second category of documents relied upon by the plaintiffs also consists of one document: a document that Mrs. Beaulieu was unable to identify in her evidence, but which I conclude was something akin to a diary entry by Mr. Beaulieu about symptoms he was “still” suffering. The document is dated Sunday, April 27, but there is no year. At the latest, the year would have been 2014 because April 27 was on a Saturday in 2013.
- [85] Again, I conclude that whatever symptoms Mr. Beaulieu was suffering at the time he created this document did not impact his ability to conduct business. Not only do I accept Mrs. Beaulieu's evidence for the reasons mentioned, but I also find support for this conclusion in the evidence of Mr. Miners. Mr. Miners met with Mr. Beaulieu on two occasions in May 2014. There is no evidence that Mr. Miners noticed any deficits in Mr. Beaulieu during those meetings.
- [86] Finally, the plaintiffs rely on a series of electronic calendar entries that appear to relate to Mr. Beaulieu's medical appointments. These entries span the year 2014 and show that Mr. Beaulieu had numerous appointments with his family physician, an optometrist, and a neurologist. The plaintiffs argue that these show that Mr. Beaulieu was missing a lot of time from work and that, therefore, the business was not being run in the ordinary course. Again, I reject this submission.
- [87] Mr. Beaulieu's family doctor and optometrist were both in North Bay. No travel was involved in going to see either one of them. The neurologist was not local. However, Mrs.

Beaulieu testified that Mr. Beaulieu had a driver bring him to and from those appointments, during which time Mr. Beaulieu would work. There is no evidence that Mr. Beaulieu's health had any impact whatsoever on the company's revenues. Indeed, even in 2015, while he was working for DenKar after the sale of the business, Mr. Beaulieu underwent surgery. He continued to work for the plaintiffs until they terminated him in July or so of that year, for reasons unrelated to his health.

- [88] For these reasons, I accept the defendants' submission that Mr. Beaulieu's health issues were not outside of the ordinary course of business for DenKar, beginning in at least 2011.

Laying Off DenKar's Employees

- [89] As of 2013, DenKar had three employees: Peter McKenny, Grant Wilkie, and Darryl Stanley. Mr. McKenny was the most senior employee. He was an HVAC and programming specialist. Mr. Wilkie was a gas fitter, and Mr. Stanley was both a gas fitter and an HVAC specialist. Mrs. Beaulieu testified that Mr. Stanley's experience in the HVAC industry was somewhere between that of the other two employees.
- [90] Mr. Miners testified that, after taking over DenKar, he and Mrs. Miners discovered that the company had laid off all three employees on May 9, 2014, the day before Mr. Miners met with Mr. Beaulieu to try to reach an agreement on the purchase price for DenKar. This was the first lay off in DenKar's history.
- [91] The plaintiffs argue that the defendants breached the SPA by failing to disclose these lay offs. They submit that the layoffs were a material change in the conditions or operations of the business and were outside the ordinary and normal business course. While I accept that these layoffs were not in the ordinary course of business, at least for DenKar, I am unable to accept that the failure to disclose them constitutes a breach of the SPA. I say this for three reasons.
- [92] First, the SPA representations and warranties relate only to the period after May 31, 2014. The evidence shows that DenKar wrote to Mr. McKenny on May 14, 2014, to recall him for May 20, 2014, and that DenKar wrote to Mr. Wilkie on May 20, 2014, to recall him for May 26, 2014. Although DenKar did write to recall Mr. Stanley, he wrote to DenKar on May 18, 2014, to say that he had found other employment. In fact, Mr. Stanley found work with one of DenKar's competitors, KRB Mechanical Ltd. ("KRB"). All of these events took place before May 31, 2014. There were no layoffs thereafter.
- [93] Second, Mr. Miners was aware of the fact that an HVAC employee was no longer working for DenKar after May 31, 2014. This is obvious from two emails. The first is dated August 4, 2014. In it, Mr. Miners asked Mr. Beaulieu if DenKar ever hired a new HVAC mechanic. The second is an email dated August 19, 2014, from Mr. Beaulieu to Mr. Miners in which Mr. Beaulieu argues that it is a good thing that the HVAC mechanic has not been replaced because of all the cold weather.
- [94] My third reason for rejecting the plaintiffs' submission of a breach relating to the layoffs is that I am not persuaded that the layoffs were not caused by a general deterioration of the HVAC market. Mrs. Beaulieu testified that DenKar was experiencing a drop in revenues at the time she and Mr. Beaulieu decided to lay off the employees. There is no doubt that this is true. During the trial, Mr. Miners said several times that he believed that the slump

in sales after May 31, 2014, was due to the layoffs, an allegation that I will address shortly. Whatever the merits of Mr. Miners' opinion about the cause of the slump *after* the layoffs, something else has to have been responsible for the slump *before* the layoffs. The plaintiffs have failed to persuade me that it was anything other than a deterioration of the HVAC market.

- [95] I agree that, like some of the other events upon which the plaintiffs rely in support of their claim, it would have been prudent for the defendants to disclose that they had laid off their employees for the first time ever. However, for the reasons I have expressed, I do not believe that the failure to do so constitutes a breach of clause 4(1)(n) of the SPA.

Solicitation of Customers by a Former Employee

- [96] Among the documents the plaintiffs found when they took over DenKar were some letters relating to the solicitation of DenKar customers by Mr. Stanley. One of them was a copy of a letter dated June 20, 2014, to Mr. Stanley demanding that he desist from actively soliciting DenKar customers and from "misrepresenting the operations of DenKar" to them. In the letter, DenKar threatens to pursue the matter "in the courts" if the company suffers any losses as a result of Mr. Stanley's conduct.
- [97] The plaintiffs submit that the failure to disclose the facts underlying the June 20 letter constitutes a breach not only of clause 4(1)(n) relating to material changes, but also of clause 4(1)(aa) relating to litigation. That clause reads:
- (aa) Litigation – to the best of the knowledge of the Vendor, there is no suit, action, litigation, arbitration, proceeding, governmental proceeding, including appeals and applications for review in progress, pending or threatened against or involving the Company, and there is not presently outstanding against the Company any judgment, decree, injunction, rule or order of any court, government, governmental department, commission, agency, instrumentality or arbitrator.
- [98] Once again, I cannot agree with the plaintiffs' submissions.
- [99] There is no evidence about what Mr. Stanley actually did to solicit DenKar's customers or to ruin DenKar's reputation, if anything. If such evidence was available, I would have expected the plaintiffs to call it, as Mr. Stanley eventually returned to work for them in 2020. In the absence of any such evidence I can only conclude that the June 20, 2014, letter to Mr. Stanley was sent to *prevent* him from doing any harm, not to *mitigate* harm already being done. I cannot accept that sending one threatening letter to prevent a former employee from harming the business constitutes a material change in the conditions or operations of DenKar outside of the ordinary and normal course of business of the company.
- [100] Nor can I accept that such a letter constitutes the type of threatened litigation involving the company contemplated by clause 4(1)(aa). As I interpret it, that clause was intended to apply to litigation of the type that would constitute a potential financial liability to the company. DenKar was in no way obliged to commence an action against Mr. Stanley as a result of sending the June 20, 2014, letter and Mrs. Beaulieu testified that they had no intention of doing so. Nor is there any evidence that Mr. Stanley ever threatened any litigation of his own.

- [101] For these reasons, I reject the submission that the failure to disclose the letter was a breach of the SPA.

Deteriorating Business Efforts

- [102] The plaintiffs also allege that the defendants breached the SPA by failing to conduct their business as vigorously after May 31, 2014, as they did before. The evidence they rely upon falls into several different areas.

Vacation Plans

- [103] After taking over the business, the plaintiffs discovered that Mr. and Mrs. Beaulieu had been trying to book a holiday in early May 2014, just before Mr. Beaulieu reached out to Mr. Miners to meet for the first time. The plaintiffs submit that this, combined with the lay offs I have discussed and other things I will come to, shows that Mr. and Mrs. Beaulieu were about to close DenKar, whether they sold the business or not.
- [104] I do not accept that the evidence of trying to take a holiday, alone or in combination with any of the other evidence I will discuss, can possibly support a conclusion that the defendants were going to close DenKar. There is no evidence that a spring vacation to a warmer country was out of the ordinary for Mr. and Mrs. Beaulieu. It is certainly not out of the ordinary for most of us living in Northern Ontario. With respect to the timing, as I have shown, DenKar was experiencing a slump in sales. It makes sense that the Beaulieu's would try to take a vacation when it was less busy at work, so that it would have the least impact on the business. As it turns out, according to Mrs. Beaulieu, they never did go on the vacation that Mr. Beaulieu was trying to plan.

Messages Exchanged Between Mr. and Mrs. Beaulieu

- [105] The plaintiffs rely on a couple of messages exchanged between Mr. and Mrs. Beaulieu in July and August 2014 to argue that they were not interested in continuing in business, sale or no sale.
- [106] On July 31, 2014, Mrs. Beaulieu wrote to Mr. Beaulieu. The message had no content, but the subject line read, "Maybe we can sit down & discuss how we are going to move forward as a company or not". Mr. Beaulieu replied, "Any time you want".
- [107] On August 20, 2014, at 2:20 p.m., Mrs. Beaulieu wrote a message to Mr. Beaulieu entitled "Closing options". In it, she listed five options relating to "our discussion on closing and/or selling the company". These options included selling part or all of the company to various parties; telling "Pete" (whom I understand to be Mr. McKenny) to look for another job or work part-time; and not bidding on any construction contracts, which she said would bind them for one more year; and doing "only service and short construction projects until Christmas then close." Mrs. Beaulieu's email ended with "No matter what January 2015, DenKar will be closed."
- [108] Mrs. Beaulieu explained during her testimony that she was frustrated during this period of time with the lack of progress being made in the sale of DenKar to the plaintiffs and that she was merely "venting". I accept this evidence. Mr. Miners had been expressing an interest in purchasing DenKar since May 2013. It appeared that the parties had an

agreement in principle in May 2014. However, as I indicated above, Mr. Miners wrote to the defendants on July 9, 2014, to tell them that the deal was off because BDC had withdrawn its support. It makes sense that Mrs. Beaulieu would be frustrated.

- [109] It is clear from the evidence that, notwithstanding their frustration, the defendants did carry on their business as usual. Indeed, the evidence shows that, at 3:00 p.m. on August 20, 2014, about 40 minutes after Mrs. Beaulieu sent her “options” message to Mr. Beaulieu, Mr. Beaulieu wrote to obtain a price for a controller required for the work it had tendered at Jeunesse Active. It also shows that, a day later, on August 21, 2014, Mrs. Beaulieu was corresponding with the Coordinator for Contract Services at Defence Construction Canada about the new procurement process.
- [110] There is plenty of other evidence that the defendants carried on business in the ordinary course after May 31, 2014. To touch on just some of it:
- on June 6, 2014, DenKar quoted for work on a new school in Astorville (Saint-Thomas-d’Aquin)
 - on June 23, 2014, DenKar quoted for work repairing a glycol leak at the Nipissing Detention Centre
 - on June 30, 2014, DenKar quoted for work replacing the rooftop unit at the MCTV building in North Bay
 - on July 7, 2014, DenKar quoted for work installing “ductless splits” for a building owned by Eastview Construction
 - on July 14, 2014, DenKar sent a quote to North Bay City Hall for work replacing the glycol at the aquatic centre
 - on August 23, 2014, DenKar quoted for work relocating a thermostat, etc. for North Bay Fire & Emergency Services
 - on September 10, 2014, DenKar quoted for work at Hands (a family welfare agency in North Bay)
 - on September 16, 2014, DenKar quoted for work at St. Joseph Motherhouse in North Bay
 - on October 22, 2014, DenKar quoted for work at the YMCA in North Bay
 - on October 30, 2014, DenKar quoted Harwood Plumbing & Heating for work at Gold Fleet Subaru
 - on November 5, 2014, DenKar quoted North Bay Fire & Emergency Services for work on Fire Hall #1
 - on November 13, 2014, DenKar quoted for work at the Golden Age Centre after conducting an inspection there
 - on December 12, 2014, DenKar quoted KenGap Holdings for work at what appears to have been a building on McIntyre Street West in North Bay
 - on January 8, 2015, DenKar quoted the Conseil scolaire catholique Franco-Nord for work at La Resurrection School
- [111] The evidence shows that Mr. Beaulieu continued to conduct business as usual even after the sale of DenKar to the plaintiffs. To mention only some of the work that Mr. Beaulieu did before he was dismissed by the plaintiffs:

- on February 10, 2015, Mr. Beaulieu advised Mr. Miners about not needing an ESA inspection when changing out existing equipment at the public library
- on February 11, 2015, Mr. Beaulieu offered to give Mr. Miners a hand putting together quotes for a number of jobs
- on February 16, 2015, Mr. Beaulieu responded to a request from Mr. Miners about how to get paid for work done at Jeunesse Active at the request of KRB by writing to Patrick Cantin
- on February 19, 2015, Mr. Beaulieu advised Mr. Miners that KMC and Honeywell controls could communicate with one another if a “BacNet” system was already installed in a school with respect to which Mr. Miners was putting in a quote. Mr. Beaulieu suggested to Mr. Miners that he contact the engineer who stamped the drawing, whom he knew, and provided the engineer's phone number
- on March 3, 2015, Mr. Beaulieu advised Mr. Miners to attend a particular course relating to a certain type of boiler because DenKar had been maintaining a number of them for the French school board
- on March 13, 2015, Mr. Beaulieu forwarded an attachment relating to procurement at CFB North Bay and advised him that DenKar should be following up on the process, as it was closing on the 31st
- on March 25, 2015, Mr. Beaulieu wrote to Mr. Miners asking if he had yet started contacting customers regarding spring maintenance
- on March 30, 2015, Mr. Beaulieu wrote to Mr. Miners to suggest that he make contact with the individual who had recently replaced DenKar's contact at the City of North Bay
- on April 16, 2015, Mr. Beaulieu provided Mr. Miners with advice on the markup for Yashawa products and how to get the best price from the supplier
- on May 11, 2015, Mr. Beaulieu provided Mr. Miners with advice on drawing up a quote for work at La Resurrection school and offered to start working on the quote
- on July 5, 2015, Mr. Beaulieu provided Mr. Miners with advice on retaining a sub-contractor for certain work and maintaining a presence on site in order to preserve DenKar's relationship with the customer.

[112] From this evidence I conclude that, contrary to the submissions of the plaintiffs, the defendants were not determined to close their business by January 2015, sale or no sale.

Not Quoting Jobs

[113] The plaintiffs also rely on evidence that Mr. Beaulieu failed or refused to quote on a handful of projects, including work at Cementation (a mining contractor), a new school in North Bay, and what Mr. Miners said was likely work on the Canadian Tire store in North Bay. Even if there was no explanation for any of these failures or refusals to quote, I would not find them of much assistance to the plaintiffs in light of the plethora of evidence I have referred to that DenKar was actively bidding on projects.

[114] However, there are explanations for Mr. Beaulieu's actions in two of three situations relied upon. With respect to the new school, Mr. Beaulieu wrote to Denis Barbe at Bernard Rochefort on October 6, 2014, to explain that the job called for Honeywell controls only,

which DenKar did not carry at the time. With respect to the Canadian Tire building, Mr. Beaulieu wrote to “Kevin@plauto.org” on November 11, 2014:

After considerable time spent thinking about this project I have decide[d] not to quote on installing the BAS system for your building. Without mechanical drawings or specifications bidding on this would not be practical accurate (*sic*).

ATCO

- [115] In addition to DenKar's failure or refusal to quote on certain specific projects, the plaintiffs also rely on evidence that DenKar failed to properly submit or to re-submit an application to ATCO, a major contractor.
- [116] On October 30, 2014, Mrs. Beaulieu wrote to Lucian Oboroceanu at ATCO to inquire about whether a contract had yet been awarded on a bid submitted by DenKar in the spring. Mr. Oboroceanu forwarded the message to John Woolley at ATCO, who responded directly to Mrs. Beaulieu on November 4, 2014. In his message, Mr. Woolley advised that he could not find DenKar's “submission”.³ He asked Mrs. Beaulieu to re-submit something that was apparently attached to his message. He advised that, if DenKar did re-submit as requested, it “may” (his quotation marks, not mine) be called upon to provide repair, maintenance, or project work in the area.
- [117] There is no evidence that DenKar complied with Mr. Woolley's request. However, this is also no evidence that it did not. In her reply to Mr. Woolley, Mrs. Beaulieu indicated that she would be glad to re-submit DenKar's application. During cross-examination, Mrs. Beaulieu testified only that she believed she made the initial submission. She was not asked if she complied with Mr. Woolley's request.

Not Bidding on Long-term Contracts

- [118] The plaintiffs also contend that DenKar was not operating in the ordinary course because it was not bidding on any long-term contracts. However, they were told early in the negotiation process that DenKar did not operate with many long-term contracts. In a message sent by Mrs. Beaulieu to Mr. Miners on September 3, 2013, Mrs. Beaulieu wrote:

Please bear in mind that the company is not based solely on contracts. The sales revenue of the company is based rather on its reputation for excellent service and its expertise to troubleshoot and repair complex mechanical problems that other controls/electrical/mechanical companies cannot perform as well as the usual less complicated HVAC mechanical breakdowns.

- [119] When Mr. Miners expressed concern that there were not a lot of existing contracts and about how that would affect the transition to new ownership if the plaintiffs purchased DenKar, Mrs. Beaulieu responded:

³ The meaning of this term is not clear from the evidence.

The number of contracts should not be a large factor when considering the purchase of DenKar Controls; it's the company's reputation for excellence and qualified staff that is key. Contracts are considered relatively secure however as you know there is no guarantee. Most contracts [expire] anywhere from 30-90 days...

- [120] Based on this evidence, I am not convinced that it was in the ordinary course of DenKar's business to be bidding on long-term contracts.

Deteriorating Business Reputation

- [121] In addition to alleging that the defendants willingly reduced their revenues, the plaintiffs maintain that the defendants unwillingly reduced their revenues by delivering poor customer service. They rely on a series of missteps that DenKar had with several of its customers, as revealed by the documents the plaintiffs discovered after they took over the business. They also allege that DenKar fraudulently overbilled one customer. Finally, they rely on evidence that rumours were circulating that DenKar was closing. I will deal with each allegation separately.

Loss of the Contract with CFB North Bay

- [122] After he saw the ad listing DenKar for sale in 2013, Mr. Miners wrote to ask a number of questions. He was advised at that time that the contract with CFB North Bay was DenKar's only long-term contract. Mr. Miners wrote again on September 3, 2013, and asked about the status of the contract with CFB North Bay. Mrs. Beaulieu advised him at that time that the contract had accidentally expired because the project manager whose job it was to monitor contract due dates had failed to "submit the extension" before the expiry date of September 14, 2013. Mrs. Beaulieu went on to argue that this was a good thing because DenKar would be the strongest contender when the tender came up again in December 2013 and the renewal would be for three years, rather than for one year.
- [123] As it turned out, for reasons that are not clear to me on the evidence, DenKar did not get the renewed contract. Instead, it went to another local contractor, Canor. However, there is evidence that DenKar later did work for Canor at CFB North Bay.
- [124] The plaintiffs submit that it was the defendants' fault that the CFB contract expired without being renewed, and not that of a project manager. I am not persuaded that it was. On September 16, 2013, Bernard Morin (whom I believe to be the project manager) wrote to Mr. Beaulieu as follows:

I just noticed that the present HVAC contract expired on Sept.14th; I never had a contract expire in the middle of the month and my chart shows it due on Sept 30th but at this point it doesn't matter as it cannot be extended.

- [125] While I agree that it would have been prudent for the defendants to have noted the expiry date of the contract themselves and contacted Mr. Morin before September 14, I cannot agree that their failure to do so is evidence either that they were willingly reducing their revenues (especially at that point in time, nearly a year before the messages to which I referred earlier) or that their failure to do so unwillingly lowered their business reputation.

Failure to Respond to Patrick Cantin

[126] As indicated on his emails, Patrick Cantin was the “Chef des services d’installations” for the Conseil scolaire public du Nord-Est de l’Ontario in 2014. The plaintiffs rely on a series of messages that passed between Mr. Cantin and DenKar in the fall of 2014 as proof that DenKar was not operating in the ordinary course.

[127] On October 20, 2014, at 8:30 a.m., Mr. Cantin wrote to DenKar (“Good morning Karen and Denis”), saying:

Please cancel our previous request to attend Jeunesse Active due to heating issues.

We have since contacted someone else who will be on site this morning.

[128] Karen wrote back at 8:47 a.m. to say she was glad that they were able to get someone. Denis wrote at 11:47 a.m. to apologize to Mr. Cantin for the misunderstanding between him and Mrs. Beaulieu and asked to get together with Mr. Cantin on the telephone to discuss it. Mr. Cantin said that he was a little busy at the moment, that it was KRB who had attended, and that he would call Mr. Beaulieu a little later.

[129] Mrs. Beaulieu testified that Mr. Beaulieu did patch things up with Mr. Cantin. I accept this evidence. It appears from the tone of the messages between them even on October 20, 2014, after the failure to respond, that Mr. Beaulieu enjoyed a good relationship with Mr. Cantin and that Mr. Cantin was willing to work out the problem.

Failure to Properly Respond to Kirk Patrick

[130] As indicated on his emails, Kirk Patrick was the “Estimator/Project Manager” for Greater City Mechanical in November 2014. The plaintiffs rely on a series of emails that were sent by Mr. Patrick and a response sent by DenKar during that month as further proof that DenKar was poorly serving its customers and, therefore, operating outside of the ordinary course of business.

[131] On November 7, 2014, at 6:27 a.m., Mr. Patrick forwarded an email from someone who appeared to be working for the company constructing Jeunesse Active school, asking for a breakdown relating to some HVAC work. Mr. Patrick asked DenKar to “please submit today!!” Mr. Patrick wrote again on November 10, at 8:28 a.m. saying, “2nd request...please submit today!!” Mr. Patrick wrote a third time, on November 11, at 7:01 a.m., as follows:

I need your breakdown this morning...3rd request.

Not really sure what the issue is...but you are holding up previous draws from being finalized and moving forward.

[132] Mr. Beaulieu responded that day. However, Mr. Patrick wrote back that something was missing and asked Mr. Beaulieu to re-submit “ASAP”. The next day, on November 12, 2014, Mr. Patrick wrote again, asking “Please submit...5th request.”

- [133] DenKar sent a message that same day (November 12) with what appears to have been an attached breakdown, as requested. However, in the subject line, it said “Jeunesse Active Patrick Mechanical Percentage Breakdown.xlsx”. Mr. Patrick wrote back:

We are not Patrick Mechanical...wow. I can see this job becoming a mess when I can't even get a simple breakdown. Not impressed!!

- [134] While I agree with the plaintiffs that the defendants could have done a much better job of responding to Mr. Patrick, I do not agree that their failure to do so is evidence that they were not operating in the ordinary course of business. Mistakes happen in the ordinary course of business. There is no evidence that this one impacted DenKar in any way. As Mr. Miners admitted, DenKar was still working on Jeunesse Active when they took over the business in January 2015.

Rumours that DenKar was Closing

- [135] Among the documents that the plaintiffs discovered after January 19, 2015, were a number of messages sent by Mr. Beaulieu to business contacts dealing with rumours that DenKar was closing. The messages were all sent in the period between June 11 and June 16, 2014. The contacts to whom the messages were sent included contacts at KRB, school boards, and engineering firms. In the messages, Mr. Beaulieu referred to rumours that Denkar was closing or going bankrupt. He assured the recipients that this was not true and that DenKar was open for business as usual. He invited many of the recipients to call him if they had any concerns.
- [136] The plaintiffs allege that it was not in the ordinary course of business for Denkar to be dealing with such rumours. Further, they allege that DenKar breached the SPA by not disclosing the rumours or the steps DenKar took to deal with them. As with the plaintiffs' other allegations, I am not able to agree.
- [137] The dates of the messages sent by Mr. Beaulieu coincide with the layoffs that occurred in late May 2014. It is not unusual for layoffs to give rise to rumours like the ones Mr. Beaulieu was dealing with. Because the plaintiffs have failed to persuade me that the layoffs were not due to the deterioration of the HVAC market, then it follows that I am not persuaded that the rumours he was dealing with were also not caused by the same deteriorating market.
- [138] Therefore, I am not persuaded that the defendants breached the SPA in connection with the rumours that DenKar was closing.

Overcharging Customers

- [139] As part of its allegation that DenKar's business reputation was deteriorating, the plaintiffs introduced evidence through a witness called by the defendants, Alois Wenghofer. Mr. Wenghofer is the owner of a company called Novitium Management Consultants Inc. (“Novitium”). The company is headquartered out of Peterborough, Ontario. It manages 18 to 20 commercial properties in Ontario for foreign owners.
- [140] One of the properties Novitium manages is “Canada Place”, located on Sheriff Avenue, in North Bay. Mr. Wenghofer testified that he began managing Canada Place in 1994 and that

DenKar was already looking after the HVAC needs of the building at the time. In fact, after the company was sold, it continued to look after Canada Place.

[141] Mr. Wenghofer spoke highly of the service he received from DenKar while Mr. Beaulieu was managing the company. However, in cross-examination, the plaintiffs attempted to show that DenKar had been fraudulently overcharging Novitium, for example, by charging for “consumables” that were not necessary. In some instances, the invoices introduced by the plaintiffs appeared to show that Novitium was charged for work done by employees of DenKar who were laid off or working out of town at the time. In others, the plaintiffs contended that time sheets showed that Novitium was vastly overcharged for the time actually spent on the job.

[142] Mrs. Beaulieu was unable to explain these apparent improprieties in DenKar's billings, as it was Mr. Beaulieu who usually looked after this part of the business. One explanation relating to the allegation that Novitium was being billed for time spent by employees who were laid off may be found in a document introduced by the plaintiff entitled “Questions for Mark Friar”. Mrs. Beaulieu testified that Mark Friar was a lawyer they were consulting regarding the layoffs. One of the questions listed in the document is:

Programmer – to do warranty work & complete Étoile du Nord ... while laid off? Need a guarantee

[143] The evidence is that the only programmer on staff at DenKar was Mr. McKenny and he is the employee that the plaintiffs say was not available to work for Novitium because he was in Iroquois Falls at the time. École publique Étoile du Nord is a school in Iroquois Falls. It may be that Mr. McKenny was working during the time that it is said he was laid off.

[144] Another explanation may be found in an email dated February 11, 2015, from Mr. Beaulieu to Mr. Miners (referred to again below) during an exchange about a quote Mr. Miners was putting together for work at the public library. In response to a question from Mr. Miners, Mr. Beaulieu explained that a “consumable” was for miscellaneous items such as rags, oil for lubrication, nuts, and bolts for which DenKar could not fully charge. As he explained, “it's spreading the cost of a box of nuts and bolts over various projects”.

[145] Regardless of the explanations for the alleged billing improprieties that might have emerged had Mr. Beaulieu been alive to testify, I do not believe they have any impact on the case. Mr. Wenghofer was not aware of any billing anomalies during the time that the Beaulieus owned DenKar. As I have stated, he had nothing but praise for the service he received. Therefore, if there were billing improprieties with respect to Novitium, they had no effect on DenKar's business reputation prior to the sale of the company. Indeed, the only difficulties Mr. Wenghofer said he had with DenKar arose after the company was sold to the Miners, when he received a slew of invoices for work that was not invoiced at the time. Mr. Wenghofer testified that, while he had a “rough patch” with the new owners for a while, they eventually sorted things out.

[146] For these reasons, I give no weight to the evidence of alleged overbilling, rendering it little more than bad character evidence, which is ordinarily inadmissible in a civil proceeding.

Conclusion on the Allegations of Deteriorating Business Reputation

[147] Based on the evidence to which I have referred, I reject the plaintiffs' contention that the defendants breached the material changes clause of the SPA by failing to conduct business as usual.

Reducing Insurance Coverage

[148] As set out above, clause 4(1)(w) of the SPA required the vendors to maintain "such policies of insurance...as are appropriate to the Business...in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses".

[149] The plaintiffs discovered after taking over the business that DenKar had reduced its insurance coverage from the standard \$5M in coverage to \$2M. They submit that this was out of the ordinary course of business and resulted in DenKar being unable to bid on certain jobs. As I will explain, I do not accept either submission.

[150] The evidence upon which the plaintiffs rely consists of emails exchanged between Mrs. and Mr. Beaulieu and between Mrs. Beaulieu and Danielle Valois, an insurance agent. In an email dated November 6, 2014, Mrs. Beaulieu wrote to Mr. Beaulieu, asking if they should reduce DenKar's insurance coverage from \$5M to \$2M "since we don't use it", to which he responded in the affirmative on November 7.

[151] In an email exchange that took place *after* the plaintiffs purchased DenKar, Mrs. Beaulieu wrote to Ms. Valois, who confirmed that DenKar's coverage was reduced in 2014 to \$2M. Ms. Valois appears to indicate that the coverage was reduced in March 2014. Based on this information, Mrs. Beaulieu said the same thing at trial. However, I do not believe that the date is correct. It is unlikely that Mrs. Beaulieu would have written to Mr. Beaulieu about reducing their insurance coverage in November if it had, in fact, been reduced in March. For reasons that will become apparent shortly, this date is important.

[152] The plaintiffs contend that the reduction in insurance coverage handicapped DenKar in the type of work in which it could engage. I am unable to accept this submission.

[153] The plaintiffs point to a quote dated July 14, 2014, and a purchase order from Atlantic Power Corp. ("Atlantic") dated June 31, 2014, that indicates that DenKar required \$5M in insurance coverage to work for Atlantic. The plaintiffs suggest that DenKar did not get the job with respect to which they quoted due to a lack of insurance coverage. However, there is no evidence to support the plaintiffs' contention. There is no evidence either that DenKar did not get the job, or that it did not get the job due to insurance coverage issues. Moreover, given the dates involved, it is likely that DenKar did have the required \$5M in coverage at the time of the bid in July, as I have explained.

[154] The same is true with respect to another job that the plaintiffs contend DenKar could not bid on, namely the construction of École Publique Jeunesse Active in Sturgeon Falls. At one point in his evidence, Mr. Miners testified that DenKar could not bid on the job because it did not have enough insurance coverage. Mr. Miners testified that the school board required \$5M in insurance coverage. However, DenKar did not bid on the job through the school board. Instead, it bid on the job through a sub-contractor, Greater City Mechanical. A list of Greater City Mechanical's "General Conditions" attached to a purchase order dated

September 16, 2014, states that the minimum insurance limits were \$2M. The purchase order itself reflects the fact that DenKar did, indeed, get the job. So does Mr. Miners' evidence that DenKar was working on the job when the plaintiffs took over the business.

- [155] In addition to asserting that the reduction in insurance coverage hampered DenKar in certain specific projects, the plaintiffs also contend that reducing the insurance coverage was outside of the ordinary course of business. Again, I am not persuaded that it was.
- [156] I am not persuaded that lowering the amount of insurance coverage to save costs where more coverage was not necessary is out of the ordinary course of business. Mrs. Beaulieu testified that DenKar would obtain increased coverage when necessary for a job. Mr. Miners testified during cross-examination that they did not have much difficulty in doing so once they took over the business.

Reducing Management Salaries

- [157] In the years leading up to the sale of DenKar, Mr. and Mrs. Beaulieu had been paying themselves a salary. The company's financial statements show "management wages" beginning in or about 2002. By 2014, they were each being paid the sum of \$1,679 per week. However, in or around the month of September 2014, Mr. and Mrs. Beaulieu reduced their salaries to \$500 each per week.
- [158] The plaintiffs say that the defendants breached the SPA by failing to disclose this salary change, which they contend was a material change outside of the course of business. Once again, I am unable to agree.
- [159] The plaintiffs have failed to satisfy me that a drop in salary that was outside of the ordinary course of business for DenKar. While it is true that the management wages at DenKar generally went up each year, and not down, that is not true of every year. For example, although revenue went up between 2004 and 2005, the management wages went down. The same thing happened between 2010 and 2011.
- [160] As with the allegation relating to the layoffs, and for the same reasons, I am also not persuaded that, even if a salary reduction of this much was outside of the ordinary course of business, it was not due to a general deterioration of the HVAC market. As Mrs. Beaulieu testified, they had never experienced such a drop in revenues before.

Conclusion on the Allegations of a Breach

- [161] For all of the foregoing reasons, the plaintiffs have failed to prove that the defendants breached the terms of the SPA relating to operating DenKar in the ordinary course of business.

Damages

- [162] The plaintiffs called Laura Sandblom to testify about the value of DenKar's shares as of the date of the purchase by the plaintiffs on January 19, 2015 ("the valuation date"). Ms. Sandblom is a chartered business valuator with KPMG LLP and was permitted by me to provide expert opinion evidence in that field. Ms. Sandblom testified that she reviewed DenKar's financial data for the five years preceding the valuation date and also some of the financial data post-closing.

- [163] Ms. Sandblom testified that DenKar's shares were worth approximately \$56,000 as of January 19, 2015. To arrive at that figure, she assumed that DenKar had no goodwill whatsoever. Ms. Sandblom testified that goodwill usually takes the form of contracts, either present or future, that will generate income. Because DenKar had no such contracts, she calculated the value of the shares by valuing the company's assets. In doing that, Ms. Sandblom relied on information from the plaintiffs that the inventory of DenKar had been overvalued by \$22,552 and that the accounts payable had been overvalued by \$3,442.
- [164] On behalf of the plaintiffs, counsel asks that I find that the plaintiffs' reliance damages are the difference between what the plaintiffs paid for DenKar (\$500,000) and what Ms. Sandblom says it was worth (\$56,000), being the sum of \$444,000. In the alternative, he asks that I find that the plaintiffs expectation damages are \$86,000 for each of Mr. and Mrs. Miners, which is the amount they expected to earn based on the defendants' representations. Although it was not specified in his submissions, I believe that counsel for the plaintiffs was asking me to award this sum for each of the years before 2018, during which the Miners were not able to draw a salary. If I am correct, this would amount to \$516,000 for the three years from 2015 to 2018.
- [165] I will start with the submission about reliance damages.
- [166] I am not able to accept Ms. Sandblom's premise that DenKar had no goodwill because it had no contracts. Mr. Miners admitted during his cross-examination that, despite his assertion that DenKar had a "tarnished reputation" when the plaintiffs took over the business, he continued to use DenKar's name and logo, and still does. He also admitted that DenKar has a lot of the same clients today that it did before it was sold. I accept Ms. Sandblom's evidence that valuation theory does not permit the valuator to use hindsight in arriving at a value. However, I am not so constrained. In my view, DenKar's revenues after the sale of the business show that it had value beyond the worth of its assets. The question is, what was it worth?
- [167] Denkar's revenues following the sale of the business on January 19, 2015 were as follows:
- | | |
|-------------------------------|-------------|
| (January 19/15) - Sept. 30/15 | \$270,279 |
| (annualized) | \$381,570 |
| Sept. 30/16 | \$488,468 |
| Sept. 30/17 | \$522,067 |
| Sept. 30/18 | \$897,472 |
| Sept. 30/19 | \$691,036 |
| Sept. 30/20 | \$597,344 |
| Sept. 30/21 | \$905,100 |
| Sept. 30/22 | \$843,834 |
| Sept. 30/23 | \$1,186,413 |
| Sept. 30/24 | \$859,087 |

- [168] I have examined DenKar's post-closing financial statements to determine the amount of net profits before taxes in an effort to assist me in determining what the value of the goodwill really was. I have not found them to be of much assistance. There are too many variables in expenses like wages from year to year to allow me to comfortably determine exactly how much money Mr. and Mrs. Miners made over time.
- [169] However, as the defendants correctly submit, even where it is difficult, a court should do its best to assess a party's damages based on the evidence presented at trial, even if it means resorting to guess work: *TMS Lighting Ltd. v. KJS Transport Inc.* 2014 ONCA 1, at para 61, citing *Martin v. Goldfarb*, [1998] O.J. No. 3403, 112 O.A.C. 138 (Ont. C.A.), at para. 75, leave to appeal to S.C.C. refused, (1999), [1998] S.C.C.A. No. 516 (S.C.C.).
- [170] In this case, Mr. Miners testified that he believed that DenKar was worth between \$450,000 and \$500,000 until May 2014. He was obviously willing to pay the higher amount, even though he knew that revenues were down at that point by approximately 10 to 15 percent. For this reason, I would estimate the reliance damages by reducing the value of DenKar as of January 19, 2015, by the further 35 percent by which the revenues actually dropped, to arrive at a figure to \$330,000. If reliance damages were appropriate, this is the amount that I would award.
- [171] I turn now to the submission about expectation damages.
- [172] The SPA addressed the damages obtainable by one party for breach of the agreement by the other. Clause 6(1) provided as follows:

Indemnification by Vendor

(a) Subject to this Article Six, if the transactions contemplated by this Agreement are consummated, the Vendor agrees to indemnify and hold the Purchaser harmless against and in respect of any loss, damage, claim, cost or expense whatsoever, including any and all incremental out-of-pocket costs, including, without limitation, all reasonable legal and accounting fees, which the Purchaser may incur, suffer or be required to pay, pursuant to any Claim that may be made or asserted against or affect the Purchaser, provided, however, that the subject matter of any such Claim relates to or arises out of or in connection with the following matters:

- (i) any misrepresentation or breach of any warranty, agreement, covenant or obligation of the Vendor contained in this Agreement or in any agreement, schedule, certificate or other document required to be entered into or delivered by the Vendor...

...

(c) The obligation of the Vendor to indemnify the Purchaser as set forth in Section 6(1)(a)(i) shall be limited to an aggregate amount equal to the Purchase Price and no Person shall be entitled to recovery for any losses pursuant to this Agreement until the total amount of losses exceeds \$5,000.00 in the aggregate.

- [173] Clause 6(4) provided that the provisions of the SPA concerning indemnification constituted the sole remedy available to either party:

Indemnification Sole Remedy

The provisions of this Article Six shall constitute the sole remedy to the Vendor and the Purchaser against the other party of this Agreement with respect to any and all breaches of any agreement, covenant, representation or warranty made by such party in this Agreement.

- [174] Thus, under the SPA, the damages are limited to the amount of the purchase price, being \$500,000. If expectation damages were appropriate, this is the amount at which I would assess those damages. However, as I am about to explain, even if the plaintiffs did suffer such damages, I have concluded that they are entirely at fault for them.

Contributory Fault

- [175] At trial, counsel for the plaintiffs submitted that the law of contract, unlike the law of torts, does not recognize the concept of contributory fault. With respect, I disagree.
- [176] In *Arcamm Electrical Services Ltd. v. Avison Young Real Estate Management Services LP*, the Ontario Court of Appeal resolved the “long-standing debate” in the jurisprudence about whether the courts can apportion damages in a breach of contract case based on a consideration of the fault of each of the parties. On behalf of the court, at para. 45, Gillese J.A. agreed with the Ontario first instance courts that “damages in contract cases can be apportioned based on fault”.
- [177] Ms. Sandblom testified that she believed that a prudent purchaser would not have purchased the company if the purchaser knew about the lack of existing contracts, the lack of potential future contracts, and the layoff of all of DenKar's employees for a period of time in May 2014. As I have demonstrated, the plaintiffs knew about at least two of these three things and still bought the business. With respect to the third, the layoff of employees, the plaintiffs knew that DenKar had lost one employee and have failed to prove to my satisfaction that they would not have purchased the business had they known about the layoffs of all three employees, for reasons I will explain.
- [178] An email between Mrs. Beaulieu and Mr. Beaulieu dated May 20, 2014, contained a list of what she called “talking points”. This message was sent after the meeting that took place between Mr. Beaulieu and Mr. Miners on May 10 and not long before the meeting that took place on May 24, 2014. The list of talking points included the fact that business was slow due to the economy, that there had been a one-week layoff, that DenKar would be hiring new staff when the economy rebounded, and that there were two large schools being built.
- [179] Mr. Miners testified that none of the talking points were addressed during his meeting with Mr. Beaulieu on May 24, 2014. However, as I have pointed out, the emails exchanged in August 2014 show that Mr. Miners knew that one HVAC employee was no longer working for the company. Other emails introduced into evidence also show that Mr. Miners knew about the fact that business was slow, that there were two schools being built, and that DenKar planned on hiring new staff when the economy rebounded. There is no evidence to explain how Mr. Miners knew this except for the discussion that he had with Mr.

Beaulieu on May 24, 2014. Nonetheless, I accept Mr. Miners' evidence that he did not know about the layoffs until after he purchased DenKar. However, I do not accept Mr. Miners' evidence that it would have made a difference.

[180] Mr. Miners testified that, had he known about the layoffs "that would have ended it right there". I cannot accept this in light of the overwhelming evidence that Mr. Miners wanted to purchase DenKar, no matter what the risk. In what follows, I intend to refer only to some of it:

- (1) As early as August 6, 2013, Mr. Innocente was advising Mr. Miners against purchasing DenKar. In an email of that date, Mr. Innocente told Mr. Miners that the purchase was a "no go" at DenKar's asking price of \$850,000. He suggested that the company was worth perhaps \$200,000 to \$300,000 "at best". In an email dated August 7, 2013, Mr. Miners purported to agree. Mr. Innocente clarified in his response that he meant \$200,000 to \$300,000 *with* the building.
- (2) An email from Mr. Miners to Mr. Innocente dated August 14, 2014, shows that Mr. Miners was very aware of the reasons why DenKar was not worth what they were asking, including fluctuating revenues, that "goodwill has some value but there is no guarantee that the goodwill will be transferable", and that there were a "lack of contracts". As I have pointed out, Mr. Miners knew in September 2013 that DenKar had lost its only long-term contract with CFB North Bay.
- (3) In an email to Mr. Miners dated September 27, 2013, in which Mr. Innocente was discussing what I believe was Mrs. Beaulieu's response to Mr. Miners' September 3, 2014, email inquiries, Mr. Innocente pointed out to Mr. Miners that reputational goodwill was only saleable if you can make money from it.
- (4) In an email dated October 7, 2013, again dealing with what I believe was Mrs. Beaulieu's response, Mr. Innocente suggested that Mr. Miners make an offer, but that if the defendants stuck to their price of \$600,000 to \$700,000 without the building, the Miners should "just walk away". He went on to write, "I don't see this as a great investment at that level. The two of you would starve for a while." Mr. Miners responded by saying:

I know this company isn't worth what they are asking, but
 Leanne and I are looking for a change and if we can make this
 work at a reasonable price then we want to proceed.
- (5) In an email dated December 5, 2013, Mr. Innocente advised Mr. Miners that his firm's valuation group valued DenKar at between \$439,000 and \$510,000, again, *with* the building, which they valued at around \$200,000.
- (6) On March 26, 2014, Mr. Innocente again advised Mr. Miners to "walk away", this time in response to the defendants' LOI.
- (7) On April 1, 2014, Mr. Innocente cautioned Mr. Miners not to "fall in love with this" deal because he did not want to waste any more of his time and the Miners' money.

[181] Mr. Miners had all of these warnings, as well as a warning from Mr. Root at the BDC, who pointed out in an email dated July 4, 2014, that DenKar's revenues had dropped 40 percent

in the preceding two years. And yet, Mr. Miners continued to pursue the purchase of DenKar and agreed to pay roughly the maximum amount that Mr. Innocente's firm said was reasonable had the building been included, even though that price did not include the building. In light of this evidence of dogged pursuit, I cannot accept Mr. Miners' evidence that he would have walked away from purchasing DenKar if he knew about the layoffs. If he had known about them, he would also have known that they lasted only a short time and that, by the end of May 2014, two of the three employees had returned to work, leaving DenKar in the situation it was in when he agreed to buy it.

[182] As I will now explain, even if I did accept Mr. Miners' evidence, I would find the plaintiffs entirely responsible for their own damages.

[183] As discussed earlier, Mr. Beaulieu advised Mr. Miners' on May 24, 2014, that DenKar's revenues were down for that year. In the message of June 12, 2014, in which Mr. Beaulieu mistakenly said that it looked as though DenKar's sales were only down 8 to 9 percent, rather than the 13 to 15 percent that they had actually dropped, Mr. Beaulieu also wrote:

It's a market correction which happens every 6-7 years. Fortunately, we are seeing a re-bounce and are pleased to say that we finished our year end better than we expected.

...

As you know, our Company operates all 4 seasons (heating & cooling) and occupies a substantial part of the HVAC and BAS market. We are very confident that our sales will return to the levels they were.

[184] Although the plaintiffs take full credit for it, the evidence shows that DenKar's revenues did eventually return to what they once were. The evidence also shows, however, that Mr. Miners knew there was a risk that they would not. As early as May 26, 2014, Mr. Miners was expressing doubt about the company's ability to re-bounce. In a message of that date, Mr. Miners wrote to Mr. Innocente. In his message, he wrote about Mr. Beaulieu's advice:

There is a red flag that I probably didn't address properly. He told me that sales were down 10-15% but expects them to come back later this year. Obviously there is no guarantee about them rebounding. I failed to take this into account when I told him that \$500,000 was the best we could do.

[185] Mr. Miners continued to express concern about sales not rebounding. In a message to Mr. Beaulieu of August 18, 2014, Mr. Miners wrote:

I am very concerned that the revenues are not rebounding like [they] should and as you felt they would. Given the fact that you have not hired a replacement HVAC mechanic, the PO for the school project has not been approved, and the peak construction period is behind us, then it looks to me that the revenues will not be rising in 2015, and may go down further. If that is the case then there's too much risk and the business is no longer worth \$500K.

[186] These messages, and others, show that Mr. Miners was fully aware of the risk that DenKar's revenues would not rebound as it was hoped they would. And yet, he did nothing to avoid that risk.

[187] The SPA provided the plaintiffs with access to all of DenKar's information. Clause 5(2) provided as follows:

The Vendor and the Company shall permit the Purchaser and its employees, agents, counsel and accountants or other representatives, between the date of execution of this Agreement and the Closing Time, without interference to the ordinary conduct of the Business, to have access after business hours to the premises and to all books, accounts, records, and other data of the Company (including, without limitation, all corporate and accounting records of the Vendor relating exclusively to the Company) and to furnish to the Purchaser such financial and operating data and other information with respect to the Company, as the Purchaser shall from time to time reasonably request to enable confirmation of the matters warranted in Section 4(1).

[188] As I mentioned earlier, clause 7 of the SPA allowed either party to terminate the agreement in the event of a breach by the other party. Mr. Miners admitted he knew this. He also admitted that the defendants had never denied him any of the information he sought either before or after the SPA came into existence.⁴ Mr. Miners testified that Mr. Innocente obtained the May 31, 2014, DenKar financial statements in October 2014. He also testified that Mr. Innocente requested and received only a balance sheet for the period of time after May 31, 2014, rather than an income statement. Mr. Miners also admitted during cross-examination that the plaintiffs could have found all of the information prior to closing that they found after closing and now rely upon to seek the return of their money.

[189] In response to the questions put to him during cross-examination, Mr. Miners testified that he did not seek any further financial information from DenKar after May 31, 2014, because he relied, instead, on the representations and warranties in the SPA. The problem with this evidence is that there was *no* SPA until November 2014 and, according to Mr. Miners, it was not signed until December 2014. In these circumstances, even if I am wrong in my conclusions about whether the defendants breached the SPA, it must be said that the plaintiffs could have avoided all of the losses they say they suffered based on all of the documents they found after they took over DenKar.

[190] For these reasons, I conclude that whatever damages the plaintiffs might have suffered by reason of any breach of the SPA, those damages should be reduced to nil to account for their failure to avail themselves of their contractual right to prevent them by obtaining the information they obtained later.

⁴ The evidence is that the plaintiffs signed a non-disclosure agreement in connection with their Letter of Intent. However, I do not believe it was filed as an exhibit. Therefore, I do not know if it was time-limited or, if it was, when the time expired.

Inventory

- [191] Clause 3(11)(iii) of the SPA required that the inventory be counted on the closing date by both the vendor and the purchaser jointly and valued at the lesser of the cost or net realizable value. Clause 3(12) required that, in addition, uncollectable accounts receivable be identified and the necessary adjustments be made to the purchase price. As mentioned, Mr. Miners and Mrs. Beaulieu did count the inventory, but were unable to agree upon its value. Nor was the process called for under the SPA to resolve such a dispute followed by either party.
- [192] In their counterclaim, the defendants sought the sum of \$28,750 as the amount owing by the plaintiffs for inventory. However, as they concede, the evidence from both sides on the issue of the inventory value is weak. Therefore, the defendants advised that, if I give judgment for the full amount owing on the promissory note, they would abandon this aspect of their claim.
- [193] However, the plaintiffs did not make any similar concessions. As mentioned, by the terms of the SPA, the purchase price is to be adjusted to take into account the value of the inventory. The plaintiffs ask that I find that the value of the inventory is \$17,500, which, as I understand the current state of affairs, would result in an adjustment.
- [194] The defendants are right: the evidence is insufficient to allow me to arrive at an exact value for the inventory. In the absence of better evidence, I would value the inventory at roughly what it was being valued by the defendants for income tax purposes in the time leading up to when the business was sold. I do so because of my understanding that business inventory is not depreciated under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). As such, the value reflected on the financial statements should represent a rough estimate of the actual value of the inventory. I use a historical value because the value of the inventory fluctuated significantly in 2014 and 2015. Whereas the inventory in the four years leading up to 2014 had hovered at or near the \$30,000 level, in 2014 it was valued at only \$20,000 as of May 31, 2014, and at roughly \$40,000 as of January 19, 2015.
- [195] The rough average value for inventory for the four years leading to 2014 was \$30,000. Therefore, I would value the inventory as of January 19, 2015, at that amount. I will leave to the parties the task of determining the effect of this valuation on the purchase price.

Promissory Note

- [196] The defendants provided an interest and payment schedule showing the outstanding amount owing on the promissory note as of May 26, 2025. That calculation is not challenged by the plaintiffs, who have asked instead that they simply get their money back.
- [197] The defendants' calculations show that the total amount of principal and interest owing as of May 26, 2025, was \$86,275.34. As I have found that there was no breach of the SPA by the defendants or that, if there was, the plaintiffs are entirely responsible for them, judgment will be given in favour of the defendants for this amount, together with prejudgment and postjudgment interest at the rates prescribed under the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

CONCLUSION

[198] For the foregoing reasons, I am not satisfied that the defendants breached the terms of the SPA. If they did, for reasons I have also explained, I find the plaintiffs entirely responsible for their own damages.

[199] As a result, the plaintiffs claim is dismissed. Judgment will issue in the defendants' favour for the amount owing on the promissory note, adjusted to reflect my valuation of the inventory.

COSTS

[200] I would urge the parties to agree on the issue of costs. If they cannot do so, written submissions, limited to five typewritten pages, excluding attachments, may be made as follows:

- (1) on behalf of the defendants, within 60 days of the release of these reasons; and
- (2) on behalf of the plaintiffs, within 90 days of the release of these reasons.

M.G. Ellies J.

Released: June 15, 2026

CITATION: 1916458 Ontario Limited v. Beaulieu, 2026 ONSC 3503
COURT FILE NO.: CV-6536
DATE: 2026/06/15

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

1916458 ONTARIO LIMITED, JOHNNIE MINERS
AND LEANNE MINERS

Plaintiffs

– and –

DENIS BEAULIEU AND KAREN BEAULIEU

Defendants

REASONS FOR DECISION

M.G. Ellies

Released: June 15, 2026