

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF LONGUEUIL

No.: 505-17-014098-232

DATE: September 2, 2026

BY THE HONOURABLE MAUDE GRENIER, J.S.C.

ENTREPRISES D'ÉLECTRICITÉ E.J. LTÉE

Plaintiff

v.

LES ENTREPRISES E.J. ELECTRIQUES INC.

and

DAVID MURRAY

Defendants

JUDGMENT¹
(Claim for amounts collected)

OVERVIEW

[1] On August 29, 2023, les Entreprises d'électricité E.J. Ltée (**Ltée**), owned by James Murray (father), James Murray (son), and the defendant David Murray, filed an originating application seeking the recovery of alleged misappropriated funds (**Application**) against the defendant Les Entreprises E.J. Électriques inc. (**Inc.**), owned by the defendant David Murray, as well as against David Murray personally.

¹ The unofficial French translation of the signed English version is attached.

[2] Ltée alleges that the defendants collected amounts owed by one of its clients and deliberately failed to remit those funds, for a maximum amount of \$286,611.07, according to the evolving position it has adopted throughout the proceedings.

[3] Ltée further alleges that the defendants failed to remit the sum of \$4,500, representing the amount received pursuant to the settlement of a litigation involving Ltée, less the applicable legal fees.

[4] For their part, the defendants:

- 4.1. acknowledge having retained the sum of \$4,500 following the settlement but contend that they did so with Ltée's consent;
- 4.2. acknowledge having collected amounts from one of Ltée's clients at its request;
- 4.3. maintain that they remitted to Ltée all amounts so collected, save for \$72,546.63;
- 4.4. deny having misappropriated any funds;
- 4.5. submit that Ltée has failed to establish its claim, at least for the most part;
- 4.6. argue that, in any event, any claim for an amount that may be owing is prescribed.

[5] In the Court's view, the following questions arise for determination:

- 5.1. What is the total amount, if any, owed by the defendants to Ltée?
- 5.2. Is that amount wholly or partly prescribed?
- 5.3. If any portion is not prescribed, may David Murray be held personally and solidarily liable with Inc. for its payment?

[6] For the reasons that follow, the Court grants the Application in part and orders Inc. to pay Ltée the sum of \$72,546.63 with interest at the legal rate and the additional indemnity provided for in article 1619 of the Civil Code of Québec (**CCQ**), from the date of the demand letter, June 5, 2023.

CONTEXT

[7] Ltée is an electrical contracting business specializing in repair and maintenance services for commercial clients of various kinds. It was owned initially by James Murray (father) and his wife, together with a business partner, Erwin Wexberg.

[8] When Erwin Wexberg retired, James Murray (father) decided to bring his son, David Murray, into Ltée as a shareholder. They worked together for many years as electricians and managers.

[9] The evidence establishes that, ultimately, and as of the date of this judgment, James Murray (son) is also a shareholder of Ltée. However, apart from providing occasional administrative assistance over several years, James Murray (son) was not initially employed by Ltée.

[10] Around 2012, David Murray incorporated his own company, Inc., whose name is similar to that of the family business, Ltée. During certain periods, he continued to receive a salary from Ltée. The evidence establishes that some contracts were performed by Inc. and others by Ltée. It also shows that employees of Inc. carried out work for Ltée without the latter being billed accordingly. In short, beyond the similarity of their names, there was a degree of overlap in the use of their resources, even though they were two separate corporations with separate accounting records.

[11] Around 2013, one of Ltée's clients, 6036821 Canada Inc. (**603**), retained its services for a major project involving one of the apartment buildings it managed, known as the Regency project.

[12] During 2016 or 2017, James Murray (father) asked his son, David Murray, to assist him in collecting the amounts owed by 603 in connection with the Regency project. At the time, several invoices remained unpaid, amounting, depending on the period, to several hundred thousand dollars.

[13] During 2017 and 2018, Inc. collected a series of payments from 603. Without remitting all amounts collected to Ltée, Inc. transferred slightly more than \$80,000 to Ltée between April 2017 and January 2018.

[14] Inc.'s procedure was to issue invoices in its own name based on Ltée's work orders, then cancel those invoices and issue credit notes. This was because the amounts were collected exclusively on behalf of Ltée and did not relate to work performed by Inc.²

[15] Between 2017–2018 and 2022, James Murray (father) questioned David Murray about the collection of these amounts on various occasions. David Murray responded that he was attempting to obtain additional payments, that 603 was not paying, or that certain amounts remained outstanding. He did not disclose that he had already collected funds and had not remitted them to Ltée.

[16] In 2022, James Murray (father) and James Murray (son) state that they discovered that 603 had paid Inc. an amount exceeding \$200,000, which Inc. had failed to remit to Ltée. James Murray (father) then confronted David Murray.

[17] According to David Murray's testimony, he then realized that he had mistakenly believed that he owed approximately \$67,000 to Ltée as a result of the collection of the

² Exhibit P-17.

amounts related to the Regency project. In fact, the amount owing was approximately \$234,000.

[18] Accordingly, in December 2022, David Murray unilaterally decided to pay \$162,339.97³ to Ltée. He nevertheless retained the remaining balance of \$72,546.63, on the grounds that Ltée owed money to Inc. In his view, before any additional payment was made, there had to be, at a minimum, a discussion between his father and himself, and the appropriate calculations had to be carried out.

[19] However, a dispute then arose. James Murray (father) and James Murray (son) became convinced that David Murray had, in essence, defrauded Ltée, which gave rise to the present Application.

[20] James Murray (father) and James Murray (son) further state that they subsequently discovered that David Murray had settled litigation on behalf of Ltée and had failed to remit the amount received under that settlement, less the legal fees incurred, namely \$4,500.

ANALYSIS

1. WHAT AMOUNT, IF ANY, IS OWING BY THE DEFENDANTS?

1.1 Conclusion

[21] Ltée has not established that Inc. owes it \$286,621.07 in connection with the Regency project. The evidence supports only the conclusion that a balance of \$72,546.63, collected by Inc., was not remitted to Ltée.

[22] As for the \$4,500 relating to the settlement of litigation by David Murray on behalf of Ltée in 2017, the Court concludes that David Murray informed his father of the settlement and that his father agreed that he could retain the amount in question.

1.2 Legal principles and their application to the facts

[23] In the present case, it is incumbent upon Ltée to establish the facts supporting its claim⁴ that the defendants owe it the amounts sought.

³ Exhibit P-3.

⁴ Art. 2803 CCQ.

a) *Regency project*i. The Parties' Positions

[24] Ltée submits that the defendants collected and failed to remit a total of \$286,621.07 in connection with the Regency project. Of that amount, the evidence establishes that \$72,546.63 was paid by 603 to Inc. by cheque and was retained by Inc.

[25] As for the remaining \$214,074.44, it corresponds to the balance of the unpaid invoices issued in relation to the Regency project. Since 603 maintains that it paid all amounts owing, Ltée invites the Court to infer that Ltée also paid this amount to Inc., despite the absence of supporting evidence, including any evidence of cheques issued by 603 in payment of those invoices. Ltée further contends - although the evidence is to the contrary - that 603 likely paid this amount to Inc. in cash.

[26] For their part, the defendants do not dispute that, at Ltée's request, they collected amounts owing for work performed by Ltée in connection with the Regency project. They also do not dispute that a certain period elapsed before they remitted to Ltée most of the amounts collected from 603.

[27] They explain this delay by relying on several factors, including the following:

- 27.1. Until 2022, David Murray believed that Inc. owed Ltée only approximately \$67,000 in respect of the amounts collected for the Regency project;
- 27.2. According to him, there was a certain degree of overlap between the two companies. For instance, Inc. provided equipment and employees to Ltée without invoicing it. Moreover, Ltée mistakenly deposited cheques relating to a project carried out by Inc., totalling approximately \$60,000, and never reimbursed Inc. for those amounts;⁵
- 27.3. David Murray therefore believed that he and his father would eventually take the time to reconcile the respective expenses of the two companies to determine the amounts owed by each to the other;
- 27.4. In any event, David Murray regarded Ltée as his company as well and, at no time, intended to defraud anyone. Given the overlap that existed in certain respects between the two entities, together with the fact that he was an owner of Ltée, he believed that ultimately it would all come out the same.

[28] In other words, in David Murray's view, there was no urgency in paying Ltée, as he believed that he would eventually "sort it out" with his father.

⁵ Exhibit D-10.

[29] According to the defendants, the only amount collected ultimately on behalf of Ltée in connection with the Regency project that has not yet been remitted is \$72,546.63. David Murray maintains that this amount was retained because, following the discussions in 2022, he wished to discuss the matter with his father and reconcile the amounts allegedly owed by each company to the other. Such exercise never took place.

[30] At the outset of the hearing, the defendants indicated that, should the Court conclude that any amount was owing to Ltée, they would ask the Court to set off that amount against the sums they alleged were owed by Ltée to Inc. They, however, abandoned that position during the proceedings.

[31] As for the allegedly missing amount of about \$214,000, the defendants deny having collected it. They maintain that they never received any cash payments and have identified all cheques received from 603. According to them, there is only one possible explanation: 603 did not pay all the invoices that were issued.

ii. The Evidence and the Court's Findings

[32] Ltée filed various tables and documents in support of its claim. According to those tables, the amount allegedly owing varies.

[33] The document entitled "Customer Balance Detail"⁶ thus sets out invoices and payments made by 603 to Ltée - or by 603 to Inc. and subsequently remitted by Inc. to Ltée - between 2013 and 2018. The evidence, however, does not establish that all the invoices and payments listed in that document relate to the Regency project. Indeed, 603 and Ltée had been doing business together well before that project, and the testimony heard at trial does not make it possible to determine with precision the period during which that project took place. Some witnesses placed its commencement in 2011, others in 2013 or 2015. All witnesses, however, agreed that the project was completed in 2016-2017.

[34] According to that document, 603 still owed \$448,951.04 to Ltée. The sum of \$162,339.97, however, must be deducted because it represents the amount remitted by Inc. to Ltée in 2022 that was not recorded. The outstanding balance would therefore be \$286,611.07.⁷ One of two conclusions must therefore follow. Either:

34.1. 603 paid all or part of that amount to Inc., which, in turn, failed to remit all or part of it to Ltée; or

34.2. 603 simply did not pay that amount.

⁶ Exhibit P-9.

⁷ Exhibit P-11. The amount calculated here differs by \$10 from certain other calculations presented by Ltée.

[35] A second table prepared by James Murray (son)⁸ indicates that 603 paid a total of \$413,655.72 in connection with the Regency project.

[36] This amount was calculated by adding together the invoices issued by Inc. to 603, without taking into account the credit memoranda issued in relation to certain invoices and without any evidence that all of those invoices had in fact been paid by 603. In other words, regardless of whether there was proof of payment, James Murray (son) assumed that every invoice issued had been paid by 603 and that no credit had been applied.

[37] The table was prepared on the basis of, among other things, certain documents obtained from Inc. and 603,⁹ as well as James Murray (son)'s understanding of statements made by a representative of 603, Mr. André Mae (**Mr. Mae**), a shareholder and manager of 603. Mr. Mae informed him that 603 had paid all of the invoices that had been issued.

[38] Of that amount of \$413,655.72, the evidence establishes that 603 paid a total of \$316,778.80 to Inc. by cheque.¹⁰

[39] In James Murray (son)'s view, since 603 maintains that it paid all of the invoices, the remaining balance of \$97,276.37 must have been received by Inc., in cash or otherwise, and was never remitted to Ltée.

[40] The evidence establishes that Inc. remitted a total of \$243,732.17 to Ltée, namely \$30,543.36¹¹ in April 2017, \$50,848.84¹² in January 2018, and \$162,339.97¹³ in December 2022.

[41] Based on the table prepared by James Murray (son) and the amounts remitted by Inc. to Ltée, he contends that the amount remaining owing by Inc. to Ltée would instead be \$169,923.55, calculated by deducting \$243,732.17 from \$413,655.72. That calculation, however, still assumes that every invoice issued was paid by 603 to Inc., whether or not it was subsequently the subject of a credit memorandum.

[42] What, then, does the evidence establish?

[43] The evidence adduced by Ltée is not persuasive and does not support the conclusion that Inc. owes it either \$169,923.55 or \$286,611.07.

⁸ Exhibit P-14.

⁹ See, in particular, Exhibits P-3 and P-4.

¹⁰ 603 did not distinguish between Inc. and Ltée when making its payments. It believed that the funds were ultimately reaching the proper recipient, as David Murray was collecting them on behalf of Ltée.

¹¹ Exhibits P-7 and P-9, as well as paragraph 12 of the Application.

¹² Exhibits P-7 and P-9, as well as paragraph 12 of the Application.

¹³ Exhibit P-3, as well as paragraph 13 of the Application.

[44] First - and this is determinative - Ltée called Mr. Mae as a witness in support of its case. His testimony establishes the following:

- 44.1. 603 paid all amounts it owed and owes no sum to Ltée;
- 44.2. 603 never paid any invoices in cash;
- 44.3. Ltée had a practice of issuing invoices well after the work had been performed, sometimes as much as one year later;
- 44.4. He prepared document D-9 around 2023, after James Murray (son) contacted him and asked him to pay outstanding invoices. The purpose of the document was to demonstrate that all invoices relating to the Regency project had been paid. The document, however, indicates a total amount of \$316,378.80 paid to Inc., rather than \$413,655.72¹⁴ or \$448,951.04;¹⁵
- 44.5. He does not recall - and does not know - whether the sum of \$92,276.90,¹⁶ which James Murray (son) had indicated at the time remained outstanding, relates to invoices issued before 2017 that he had also paid but that were not included in the schedule at Exhibit D-9. All he can say is that everything was paid.

[45] Ltée is therefore incorrect in asserting that the defendants received payments in cash. Both Mr. Mae and the defendants deny that any such payments were made, and nothing in the evidence supports a contrary conclusion.

[46] The evidence also establishes that the total amount which the defendants acknowledge having received in relation to the Regency project is identical to the total amount that 603 states it paid for that project in 2017 and 2018, namely \$316,378.80.

[47] In an email dated January 17, 2023,¹⁷ Ms. Judith Parisien (**Ms. Parisien**), an employee of Inc. responsible for various accounting functions, states the following:

- 47.1. In 2017, a total amount of \$413,655.17 was invoiced in relation to the Regency project;
- 47.2. In 2017, 603 made payments to Inc. totalling \$154,038.83, and in 2018, payments totalled \$162,339.97, for an overall total of \$316,378.80 over those two years;
- 47.3. Accordingly, a balance of \$92,276.90 would remain outstanding. However, this is a calculation error, and the correct amount should have

¹⁴ Exhibit P-13.

¹⁵ Exhibits P-9 et P-11.

¹⁶ Exhibit P-17.

¹⁷ Exhibit P-17.

been \$97,276.37.

[48] The evidence, however, does not support a finding that this amount was received by the defendants. Mr. Mae merely filed a schedule that supports the defendants' position, namely, that 603 paid a total of \$316,378.80 during 2017 and 2018.

[49] Is it possible that the defendants received additional cheques in 2016 that could account for the allegedly missing amount?

[50] While anything is theoretically possible, no such fact was established by the evidence. Ltée could easily have asked Mr. Mae to conduct the necessary verifications and prepare a schedule like the one produced for the payments made by 603, but covering the period prior to 2017 and 2018. By omitting to do so, Ltée did not discharge its burden of proof.

[51] Moreover, the amount of \$413,655.72 corresponds to invoices issued in 2017, not 2016. The relevance of payments made in 2016 is therefore, at best, questionable.

[52] The schedule prepared by James Murray (son) is based in part on documentation received from the defendants and 603, but still does not support a finding that \$92,276.90 (or \$97,276.37)¹⁸ was paid by 603 to Inc. No cheques corroborate the payment of those amounts by 603. Once again, the cheques could readily have been obtained from 603, if they existed.

[53] The fact that David Murray allegedly took possession of the file relating to the Regency project - including the documents it contained - when his father asked him to collect payment from that client did not in any way prevent Ltée from obtaining the relevant documents. It could have been requested from 603. Although its Application had been initiated in 2023, Ltée failed to act diligently and did not take the necessary steps to obtain the relevant evidence. For instance, it could have asked its own witness, Mr. Mae, to conduct the necessary verifications.¹⁹ While the Court does not entirely disregard the schedule prepared by James Murray (son), as it is based in part on documentation in the record, its probative value with respect to the allegedly missing amounts remains very limited in light of the evidence submitted to the Court.

[54] In the circumstances, the Court cannot conclude - solely based on Mr. Mae's general assertion that to the best of his recollection, no invoices remained outstanding - that the defendants likely received the allegedly missing sum of \$97,276.37.

[55] For the same reasons, the argument that the credit notes demonstrate that amounts were collected and that Inc. took steps to conceal them cannot be accepted. Moreover, David Murray's explanation that Inc. issued invoices that were subsequently

¹⁸ The discrepancy between the two amounts advanced appears to result from a calculation error, and the correct amount is \$97,276.37.

¹⁹ *Hoffman c. Nadeau*, 2024 QCCS 968, par. 55-60.

cancelled because the amounts had been collected on behalf of Ltée and were ultimately remitted to it is plausible.

[56] The only evidence established on a balance of probabilities is that the defendants collected a total of \$316,378.80 from 603 on behalf of Ltée, retained \$72,646.63, and remitted a total of \$243,732.17 to Ltée.

[57] Subject to the arguments based on prescription and the lifting of the corporate veil, which will be addressed below, the defendants therefore owe Ltée a total amount of \$72,646.63, with interest at the legal rate and the additional indemnity provided for in article 1619 of the CCQ, from the date of the demand letter, June 5, 2023.

b) *Sums Collected in Relation to the Litigation Between Ltée and Themis Ephraïmidis*

[58] During 2011, criminal charges were laid against David Murray following allegations made by one of Ltée's clients, Themis Ephraïmidis.

[59] In 2012, Ltée instituted legal proceedings against Themis Ephraïmidis in respect of unpaid invoices. David Murray was instructed by his father to manage the file. Themis Ephraïmidis subsequently filed a counterclaim.

[60] In 2016, David Murray was acquitted of the criminal charges. The following year, he sent a formal notice to Themis Ephraïmidis alleging, among other things, defamation and damages.

[61] In September 2017, after the trial had commenced with respect to Ltée's claim for unpaid invoices and the counterclaim, David Murray, acting under the authority of James Murray (father), entered into a settlement resolving all litigation between the parties.

[62] Ltée alleges that David Murray failed to inform it of the settlement and failed to remit the proceeds of the settlement, after deduction of the professional fees incurred, leaving a balance of \$4,500. James Murray (son) claims that neither he nor his father became aware of these facts before the examinations for discovery conducted in October 2024 in connection with the present proceedings.

[63] For his part, David Murray states that he informed his father of the settlement and that his father expressly instructed him to retain the \$4,500 as compensation for the difficulties arising from the matter, including the legal fees incurred in connection with the criminal proceedings.

[64] James Murray (father) testified at trial. He had recently suffered a fall requiring hospitalization. His memory is impaired, and his testimony was confused. He stated that he does not believe he authorized his son to retain that amount but was unable to testify unequivocally to that effect.

[65] In these circumstances, based on a balance of probabilities, the evidence favours David Murray's version of events. James Murray (father) was aware of the ongoing litigation and had instructed his son to resolve it. Moreover, the trial had already begun in 2017 and was scheduled to continue in September of that year, had the parties not reached a settlement.

[66] The fact that James Murray (son) was not informed of the settlement does not warrant a different conclusion. Although he was living with his father at the time, he was not yet regularly involved in the management and operations of Ltée.

[67] Accordingly, no amount is owing.

2. IS THE AMOUNT OWING PRESCRIBED, IN WHOLE OR IN PART?

2.1. Conclusion

[68] In the Court's view, the amount of \$72,646.63 is not prescribed and must be paid to Ltée.

2.2. Legal Principles

[69] Extinctive prescription begins to run from the time the right of action arises²⁰, that is, once the plaintiff has [TRANSLATION] "...knowledge, not perfect but sufficient, of the facts underlying the right being asserted."²¹

[70] Prescription cannot begin to run [TRANSLATION] "[...] before the earliest time at which the aggrieved party had the ability to act, namely when it had knowledge of all the elements giving rise to liability, including the fault, the damage, and the causal connection," including in contractual matters.²²

[71] Moreover, prescription does not run against a person who is in fact unable to act. In such circumstances, it is suspended.²³ This impossibility may arise where [TRANSLATION] "...the aggrieved party was kept unaware of the facts giving rise to its rights through the fault of the opposing party."²⁴

[72] The burden rests on the party invoking prescription to establish that the action is prescribed.²⁵

²⁰ Article 2880 CCQ.

²¹ *Djamad c. Banque Royale du Canada*, 2021 QCCA 371, par. 36.

²² *9104-2523 Québec inc. c. Syndicat des copropriétaires du 5701 de Normanville*, 2022 QCCA 95, par. 15, 16 et 21.

²³ Article 2904 CCQ.

²⁴ *Silos Roy-Larouche inc. c. Ferme Coulée Douce inc.*, 2021 QCCA 704, par. 60.

²⁵ Article 2803 CCQ; *Djamad c. Banque Royale du Canada*, 2021 QCCA 371, par. 31 et 32.

2.3. Application to the facts

a) *The Parties' Positions*

[73] The defendants submit that the Court should conclude that Ltée had, as early as 2017, sufficient knowledge of the facts giving rise to its right of action. Such allegation is based on the fact that James Murray (father) stated that his son “only paid when he got caught” and the fact that the evidence establishes that, between April 2017 and January 2018, the defendants remitted a total of \$81,392.20 to Ltée in relation to the Regency project. Since the action was not filed until 2023, they argue that it is prescribed.

[74] Ltée disagrees. It was only at the end of 2022 that it learned that the defendants had collected additional sums from 603 and had retained them. It therefore submits that it was not until the end of 2022 that it learned the defendants had retained a portion of the amounts collected from 603. Until then, David Murray maintained that 603 continued to refuse to pay the outstanding balance of the invoices and that he was continuing his efforts to obtain payment. Ltée accordingly argues that its right of action arose only upon the exchanges between David Murray, James Murray (son), and James Murray (father) at the end of 2022 or, in the alternative, that its impossibility to take action ceased only at that time.

b) *The Action Is Not Prescribed*

[75] An analysis of the testimony and documentary evidence leads the Court to conclude that it was indeed only at the end of 2022 that Ltée learned that the defendants had failed to remit to it certain of the sums they had collected from 603.

[76] Around 2016 or 2017, Ltée's accountants informed James Murray (father) of the importance of collecting the amounts owed by 603 in respect of the unpaid invoices relating to the Regency project, as several hundred thousand dollars remained outstanding.

[77] During that same period, Ltée instructed David Murray to collect the outstanding invoices.

[78] Around 2017-2018, David Murray learned that the property associated with the Regency project was to be sold. Concerned that 603 might not pay, he contacted Mr. Mae and obtained a series of cheques from him. At that time, however, amounts remained owing by 603, either because certain invoices had not yet been issued and/or because others remained unpaid.

[79] Accordingly, between April 2017 and January 2018,²⁶ 603 paid approximately \$154,000 to Inc. by cheques.

²⁶ Exhibit P-4.

[80] Of that amount, Inc. remitted a total of \$81,392.20 to Ltée, either by bank transfers or by delivering directly to Ltée cheques made payable to Inc., which Ltée was able to deposit.²⁷

Date the Cheque Was Issued by 603	Cheque Number Issued by 603	Amount of the Cheque Issued by 603	Date Ltée Received the Funds
April 12, 2017 ²⁸	12262	\$10,181.12	April 25, 2017 ²⁹
April 20, 2017 ³⁰	12263	\$10,181.12	April 25, 2017 ³¹
April 27, 2017 ³²	12264	\$10,181.12	April 25, 2017 ³³
December 26, 2017 ³⁴	13299	\$10,000.00	January 6, 2018 ³⁵
December 19, 2017 ³⁶	13298	\$10,000.00	January 6, 2018 ³⁷
December 12, 2017 ³⁸	13297	\$10,000.00	January 6, 2018 ³⁹
December 5, 2017 ⁴⁰	13296	\$10,000.84	December 20, 2017 ⁴¹
January 6, 2018 ⁴²	13300	\$10,848.00	January 6, 2018 ⁴³
Total:		\$81,392,20.00	

²⁷ See also Exhibit P-7.

²⁸ Exhibit P-4, p. 13

²⁹ Exhibit P-9, p. 2.

³⁰ Exhibit P-4, p. 14.

³¹ Exhibit P-9, p. 2.

³² Exhibit P-4, p. 15.

³³ Exhibit P-9, p. 2.

³⁴ Exhibit P-4, p. 18.

³⁵ Exhibit P-9, p. 2.

³⁶ Exhibit P-4, p. 19.

³⁷ Exhibit P-9, p. 2.

³⁸ Exhibit P-4, p. 20.

³⁹ Exhibit P-9, p. 2.

⁴⁰ Exhibit P-4, p. 21.

⁴¹ Exhibit P-9, p. 2.

⁴² Exhibit P-4, p. 17.

⁴³ Exhibit P-9, p. 2.

[81] David Murray did not however inform his father that he had ultimately received amounts more than those he had remitted to Ltée. He did not inform him either of the additional amounts he collected after January 2018.

[82] He also testified at trial that he does not believe he realized at the time that he had collected significantly more money than he had remitted to Ltée.

[83] He further maintains that his father also owes him money. He alleges that his father deposited by mistake cheques intended for Inc.⁴⁴, used equipment purchased by Inc., or benefited from the services of employees paid by Inc. without reimbursing Inc. for those costs. He states that he preferred, at that time, not to raise the issue with his father. In any event, he indicates that his objective was ultimately eventually to consolidate the two companies.

[84] Instead, he informed his father that 603 had undertaken to continue making payments notwithstanding the sale of the property associated with the Regency project. James Murray (father) answered that he was confident 603 would pay. He considered that 603 had been a long-standing client and he therefore remained convinced that it would meet its obligations.

[85] Based on the evidence, the Court finds that, between 2018 and 2022, James Murray (father) questioned David Murray on several occasions about the progress of the collection efforts. David Murray consistently maintained that he was taking the necessary steps. This is not, in fact, seriously disputed by David Murray. He merely states that, at some point after 2018, Mr. Mae unexpectedly asserted that everything had been paid, and that he immediately informed his father of this development.

[86] However, all evidence suggests that this occurred in 2022, although David Murray does not specify the exact date.

[87] Indeed, during the course of 2022, Gilles Delarosebil, the professional accountant retained by Ltée, once again pressed James Murray (father) regarding the company's accounts receivable, including those owed by 603. Given the time that had elapsed since the invoices had been issued and the absence of payment, it had become necessary to determine whether the outstanding amounts should be written off and reported to the tax authorities as bad debts or otherwise dealt with.

[88] On November 13, 2022, James Murray (father) sent David Murray an email drafted by his son, James, and approved by him. The email advised that, in light of 603's continued non-payment, and unless David Murray was able to intervene, a bad-debt credit would have to be claimed from the government.⁴⁵

⁴⁴ Exhibit D-10.

⁴⁵ Exhibit P-13.

[89] On November 16, 2022, David Murray wrote to Mr. Mae requesting a meeting because "...my father and I need to try to straighten your account out. There is still balances that need to be cleared up on many of the buildings especially cote de neige."⁴⁶ In doing so, David Murray adopted, in his communications with Mr. Mae, a position consistent with what he had been maintaining for years with his father, namely that 603 still owed them money.

[90] Shortly before November 25, 2022, James Murray (father) telephoned Mr. Mae. Mr. Mae stated that everything had been paid and referred him to his son. This came as a considerable surprise to James Murray (father).

[91] Between November 2022 and January 2023, numerous verbal and email communications took place among Ms. Parisien, James Murray (father), James Murray (son), Mr. Mae, and David Murray.⁴⁷

[92] In essence, following Mr. Mae's assertion that 603 had paid everything, and in response to Ltée's inquiries, Ms. Parisien conducted the necessary verifications and communicated her findings to Ltée. Based on the invoices and supporting cheques, she advised that Inc. had invoiced 603 a total of \$413,655.70 in 2017 for the Regency project. In 2017 and 2018, 603 paid Inc., by cheque, \$154,038.83 and \$162,339.97, respectively, for a total of \$316,378.80.⁴⁸

[93] According to Ms. Parisien's email, because invoices totalling \$413,655.70 had been issued while 603 had paid only \$316,378.80 to Inc., 603 still owed \$92,276.90 - or, more accurately, \$97,276.37.

[94] Put differently, between December 2022 and January 2023, Ltée learned that, in addition to the \$81,392.20 remitted to it in 2017-2018, Inc. had collected additional amounts from 603 and had deliberately failed to inform Ltée of those collections or remit those amounts to it. Until then, Ltée had been unaware of those facts, and Inc. does not dispute that.

[95] In the meantime, in light of the heated discussions between himself, his father, and his brother - who were essentially accusing him of having defrauded Ltée - David Murray decided to remit \$162,339.97⁴⁹ to Ltée through Inc. The cheque is dated December 22, 2022.

[96] An amount of \$72,646.63 had been retained by Inc., and, according to the information provided by Ms. Parisien, an amount of \$92,276.90 - or, more accurately, \$97,276.37, as a calculation error had been made - remained unpaid by 603.

⁴⁶ Exhibit P-17, p. 1.

⁴⁷ Exhibits P-14 to P-17.

⁴⁸ Exhibits P-14 and P-17.

⁴⁹ Exhibit P-3.

[97] In the Court's view, although James Murray (father)'s testimony on this point may appear somewhat confused, when he stated that David Murray "only paid when he got caught," he was referring to the payment made in December 2022, not to the payments made in 2017 and 2018.

[98] Indeed, the evidence instead supports the conclusion that the payments made in 2017 and 2018 formed part of the ordinary course of the collection mandate entrusted to David Murray in 2016–2017. Those payments followed discussions between David Murray and his father concerning the possible sale of the property associated with the Regency project and the importance of applying pressure to obtain payment before the sale. Moreover, James Murray (father) clearly testified that the payment of \$162,339.97 was made shortly after he confronted his son, which occurred shortly after his telephone call to Mr. Mae. The only such telephone call established by the evidence is the one that took place in November 2022.

[99] Whether the issue is accordingly analyzed from the perspective of the starting point of prescription - that is, the plaintiff's knowledge of the facts giving rise to the right of action - or from the perspective of the suspension of prescription due to an impossibility of acting, the action was not prescribed when the Application was filed in 2023.

[100] It was only between December 2022 and January 2023 that Ltée learned - after David Murray had maintained for years that 603 still owed money - that 603, on the contrary, claimed to have paid everything. It was only from that point onward that Ltée had sufficient information to investigate, to discover that Inc. had collected amounts without remitting them to Ltée, and to begin its action, which it did without delay.

[101] Did Ltée act negligently? In the circumstances of this case, the Court does not believe so. James Murray (father) had no reason to doubt his son. Moreover, his son reassured him that the necessary collection efforts were being undertaken and never informed him that he had retained any of the amounts collected.

[102] As in *Silos Roy-Larouche inc. c. Ferme Coulée Douce inc.*,⁵⁰ the present case arises in a particular relational context that must be considered. The dispute involves two companies operating in the same field, one of which was owned by both the father and the son, and which had collaborated on a relatively regular basis for many years. That context, combined with David Murray's conduct and representations to his father, created in the latter a sense of security that justified his not undertaking more extensive inquiries.

[103] A long-standing client had failed to pay, and his son had been entrusted with the collection efforts. Certain amounts had been recovered and remitted to Ltée, and his son maintained that he was continuing those efforts and that the client had undertaken to pay.

⁵⁰ *Silos Roy-Larouche inc. c. Ferme Coulée Douce inc.*, 2021 QCCA 704, par. 58-65; *Chartrand c. De Menezes*, 2020 QCCS 3118, par. 146-152.

These circumstances were all reassuring to him, and nothing could have led him to suspect that his son had collected funds without remitting them.

[104] In the present case, David Murray's conduct and representations kept Ltée unaware of the facts giving rise to its right of action or, alternatively, prevent it from acting.

3. CAN DAVID MURRAY BE ORDERED TO PAY THE AMOUNT OWING, IF ANY, SOLIDARILY WITH INC.?

[105] In the Court's view, the answer must be negative. Inc. was not used by David Murray to "dissemble fraud, abuse of right or contravention of a rule of public order."⁵¹

[106] According to the evidence, everyone understood that, by entrusting David Murray with the collection of the outstanding amounts relating to the Regency project, the work would be carried out through Inc. Indeed, during his testimony, James Murray (son) stated that the collection file had been transferred to the offices on Marcel-Laurin Boulevard, namely those of Inc.

[107] In the Court's view, David Murray did not use Inc. to conceal fraud, commit an abuse of rights, or contravene a rule of public order. Inc. failed to remit the amounts it owed to Ltée because of a certain laxity in the accounting of the amounts collected, a somewhat inconsistent understanding of the separate legal identities of Ltée and Inc., and David Murray's intention eventually to offset those amounts against sums that he believed Ltée owed to Inc.

[108] These positions and decisions were, of course, made by David Murray, as Inc.'s shareholder and principal officer. The Court does not consider them to constitute conduct justifying the lifting of the corporate veil. There was undoubtedly fault - most notably in failing to promptly remit the amounts collected and even in failing to disclose that they had been collected - but that does not warrant a finding of fraud.

[109] Even if David Murray's conduct were to be characterized as being in bad faith, that alone would not justify lifting the corporate veil.⁵² David Murray did not use Inc. to shield himself from responsibility for any of the prohibited acts contemplated by article 317 CCQ.

4. INTEREST, ADDITIONAL INDEMNITY AND COSTS

[110] As the Plaintiff sought an award of interest and the additional indemnity from the date of the demand letter, and as the Defendants have put forward no reason to oppose such a claim, it will be granted.

⁵¹ Article 317 CCQ.

⁵² *Pasargad Development Corporation c. 151951 Canada inc.*, 2023 QCCA 860, par. 40-46.

[111] Although the application is granted only in part, the Court considers that the defendant's insistence on withholding a sum that he knew he was obliged to remit justifies an award of costs against him.

FOR THESE REASONS, THE COURT:

[112] **GRANTS** in part the Originating Application;

[113] **ORDERS** the defendant, Les Entreprises E.J. Électriques inc., to pay the plaintiff, Entreprises d'électricité E.J. Ltée, the sum of \$72,546.63, together with interest at the legal rate and the additional indemnity provided for in article 1619 CCQ, from the date of the demand letter, June 5, 2023;

[114] **THE WHOLE**, with costs.

MAUDE GRENIER, J.S.C.

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Me Carmine Mercadante
Me Dora Hilario
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Lawyer for the Defendants

Hearing date: May 13 to 15, 2026