IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *One Purpose Corp Limited v DMG Blockchain Solutions Inc.,* 2026 BCSC 2133

Date: 20261103
Docket: S223220
Registry: Vancouver

Between:

One Purpose Corp Limited

Plaintiff

And

DMG Blockchain Solutions Inc., Sheldon Bennett, and Adrian Glover

Defendants

Before: The Honourable Justice Hoffman

Reasons for Judgment

Counsel for the Plaintiff:	J. Payne D.C. Wierenga L. Kodato, Articled Student
Counsel for the Defendants:	D. Wotherspoon M. Charles
Place and Date of Trial/Hearing:	Vancouver, B.C. June 8-12,15-19, and 22-26, 2026
Place and Date of Judgment:	Vancouver, B.C. November 3, 2026

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Overview

[1] This is a commercial dispute arising from an agreement between the parties for the hosting of cryptocurrency mining equipment (the "Hosting Agreement"). The plaintiff corporation, One Purpose Corp Limited ("One Purpose"), as its name suggests, has a singular focus: the generation of cryptocurrencies through cryptocurrency mining to earn a profit. This process requires vast amounts of computing capacity that, in turn, requires sufficient space, electricity, internet connectivity, and technological support to host, service, and maintain that capacity.

[2] The defendant corporation, DMG Blockchain Solutions Inc. ("DMG"), is a service provider to the cryptocurrency industry offering data centre capacity to host computer servers dedicated to mining. The defendants Mr. Sheldon Bennett and Mr. Adrian Glover, at various times, held the titles of Chief Executive Officer and Chief Technology Officer of DMG, respectively.

[3] One Purpose alleges that it was induced to enter into the Hosting Agreement with DMG because the defendants fraudulently misrepresented that they would be able to immediately host all 1,212 of its mining computers or, miners, as they are often referred to. One Purpose says that it relied on these representations to enter into the Hosting Agreement. It also alleges that DMG made a similar fraudulent misrepresentation after the Hosting Agreement was entered into to keep One Purpose from terminating their agreement.

[4] Contrary to these representations, One Purpose alleges that DMG was only ever able to host approximately 500 to 600 servers which reduced One Purpose's cryptocurrency mining capacity by half. One Purpose seeks to recover damages for the losses associated with this reduced capacity and other losses caused by the defendants' conduct in carrying out the Hosting Agreement.

[5] In its notice of civil claim, One Purpose grounded its claim in breach of contract, negligence, negligent misrepresentation, fraudulent misrepresentation, and unjust enrichment. At trial, its claim was narrowed to fraudulent misrepresentation

and breach of honest and good faith performance of the Hosting Agreement and, in the alternative, breach of contract.

[6] The defendants say that this winnowing was necessary because the terms of Hosting Agreement contractually preclude most of the claims originally advanced. On the evidence, the defendants submit that One Purpose has failed to prove that any representations were made, fraudulently or otherwise, that the miners would be deployed within a specified time frame. The defendants maintain that they were candid with One Purpose regarding the need to build capacity at its data centre to accommodate their miners. The defendants submit that the evidence establishes that most of the mining fleet was deployed within a reasonable time and, thereafter, many of the miners were beset with software and hardware issues that took them offline and negatively impacted the profitability of One Purpose's mining.

[7] One Purpose's main factual witness, Amir Khazaieli, was tragically killed in a car accident prior to trial. In a mid-trial *voir dire* ruling, I ruled admissible certain statements made by Mr. Khazaieli in emails and text messages for the truth of their contents. I also ruled that One Purpose could rely on excerpts from Mr. Khazaieli's examination for discovery transcript as evidence in the trial pursuant to Rule 12-5(54) of the *Supreme Court Civil Rules,* BC Reg 168/2009.

[8] For the reasons that follow, I find that One Purpose has failed to establish that DMG made any fraudulent misrepresentations. I further find that One Purpose has failed to show that DMG breached its duty of good faith and honest performance of the Hosting Agreement, or that any damages flow from DMG's breach of the terms of the Hosting Agreement.

Factual Background

[9] To the credit of their counsel, the parties have agreed to many of the background facts relevant to the context of this dispute. The facts that follow are drawn from the agreed statement of facts and portions of the evidence that were not significantly contested.

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The Parties

[10] One Purpose is a company incorporated under the laws of Hong Kong. Prior to his death, Mr. Khazaieli contracted to One Purpose and acted as its chief engineer.

[11] Aside from the discovery evidence of Mr. Khazaieli relied upon by One Purpose, Mr. Brad Yasar was the only other factual witness called by One Purpose at trial. Adam Melton is the owner of One Purpose. Despite his role as owner and his involvement in some of the discussions leading to the Hosting Agreement, he was not called to testify at trial. Mr. Melton and Mr. Yasar were friends. Mr. Yasar was never given a formal role or title with One Purpose. However, Mr. Melton asked him to become involved with the company. It is not disputed that Mr. Yasar was given full authority by Mr. Melton to act on One Purpose's behalf.

[12] DMG is a publicly traded and vertically integrated blockchain and cryptocurrency company that manages, operates, and develops end-to-end digital solutions for clients looking to earn profits from the blockchain. DMG owns and operates a 2,500-square-metre facility at Christina Lake, British Columbia, which it used to offer hosting services to clients like One Purpose.

[13] Mr. Dan Reitzik was the Chief Executive Officer ("CEO") of DMG from its inception until March 2021.

[14] Mr. Bennett was appointed a director of DMG on or around February 2018. In March 2021, he replaced Mr. Reitzik as CEO. Mr. Bennett was also the Chief Operations Officer ("COO") of DMG from in or around February 2018 to in or around May 2022.

[15] Mr. Glover was a director of DMG from January 2018 to April 2020 when he was appointed DMG's Chief Technology Officer.

[16] Tom Silva, a former employee of DMG who worked with the miners at issue at DMG's hosting facility, testified at trial.

[17] At the time that the Hosting Agreement was entered into, an individual by the name of James McDowall was working with DMG as a software sales representative. Mr. McDowall had initial discussions with Mr. Yasar about whether DMG could host its miners. Mr. McDowall was not called as a witness.

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The Process of Cryptocurrency Mining

[18] This is a relatively straightforward business dispute which does not require an in-depth technical understanding of how cryptocurrencies are mined. Nevertheless, given the context, it is necessary to have a high-level understanding of the basic concepts. Cryptocurrency mining is the process of using a mining server, or a miner, to compete with other miners connected to a blockchain network to solve complex mathematical, also referred to as cryptographic, problems to validate and record transactions. The first miner to successfully solve the cryptographic problem adds a new validated block to the blockchain and receives a reward of newly minted cryptocurrency.

[19] One calculation performed by a miner in an attempt to solve a particular problem is called a hash. As a result, the act of mining is often referred to as hashing. The rate at which a miner hashes is an important metric to determine mining efficiency.

[20] There are many different cryptocurrencies, but two of the most well-known are Bitcoin (“BTC”) and Ether or Eth (“ETH”). BTC and ETH operate on separate blockchain networks. One Purpose was primarily in the business of mining ETH.

[21] Because miners compete to validate blocks and generate cryptocurrency rewards, many cryptocurrency mining businesses use mining pools. A mining pool is a group of cryptocurrency miners that are orchestrated as a group to increase the pool’s mining power and chances of successfully validating new blocks and earning rewards.

[22] There are two kinds of electronic circuits that miners can contain: application-specific integrated circuits (ASICs) or circuits found in graphics processing units

(GPUs). Miners that use ASICs are called ASIC miners and are built specifically for cryptocurrency mining. They are designed to be fast and energy efficient when solving cryptographic problems.

[23] In contrast, GPU circuits are originally developed for processing graphics in computer games or video processing applications. GPU miners use general computer equipment fitted with GPUs and contain some components that are typically found in a home or gaming computer, such as a motherboard and a power supply unit.

[24] Both types of miners must be loaded with specialized operating systems, firmware, and software to allow them to carry out mining once they are powered on and connected to the internet. The process of loading this software is often referred to as flashing.

[25] Although DMG hosted both ASIC and GPU miners owned by One Purpose during the term of the Hosting Agreement, the connection and performance of the GPU miners are the most at issue in this proceeding.

[26] If it becomes necessary to repair or maintain a GPU miner, it must be connected to a monitor, keyboard, mouse, and other diagnostic equipment, or an external computer must be connected through a network connection.

The Christina Lake Facility

[27] As mentioned above, DMG owned and operated a 2,500-square-metre facility in Christina Lake at which they hosted cryptocurrency miners.

[28] There are various categories of hosting facilities. Some facilities, known as tiered hosting facilities, charge higher rates because they provide more services, such as climate control and guaranteed up time, meaning that miners are guaranteed to hashing for a minimum amount of time. The Christina Lake facility was not a tiered facility.

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Events Prior to the Hosting Agreement

[29] Prior to entering into the Hosting Agreement with DMG, One Purpose had engaged in cryptocurrency mining in China. Sometime towards the end of 2017, One Purpose ceased mining in China because it learned that the Chinese government was going to make mining illegal and would no longer provide power to cryptocurrency mining operations.

[30] In its search for a new mining location, One Purpose entered into an arrangement with an entity by the name of Chet Mining which purported to have a hosting facility in Goose Bay, Newfoundland. Further to this arrangement, One Purpose shipped its miners to Goose Bay. One Purpose did not physically inspect the facility in Goose Bay prior to arranging to have its miners shipped.

[31] About a week after the miners were received in Goose Bay, One Purpose learned that the individual with whom they had negotiated was just a tenant in the facility where they thought the miners would be hosted and did not have the authority to contract to host the miners. It learned that its miners were being held in storage in a location down the road from the facility.

First Round of Negotiations

[32] Mr. Yasar met Mr. McDowall, the software sales representative for DMG, at a conference in Malta. They discussed the services that DMG offered. What the two discussed is in dispute, but this is how Mr. Yasar came to learn of DMG's services.

[33] On May 16, 2019, Mr. McDowall created a WhatsApp chat to introduce Mr. Yasar to Mr. Reitzik and to set up a call to discuss the possibility of hosting One Purpose's miners. On May 28, 2019, Mr. Yasar related that he needed a new home to ship his miners to.

[34] In the WhatsApp chat, initial discussions took place between Mr. McDowall, Mr. Yasar, and Mr. Reitzik to confirm the number and power needs of One Purpose's miners. Mr. Yasar referred to the fact that Mr. McDowall had quoted him a price. DMG confirmed that One Purpose could ship its miners to the Christina Lake

facility. Mr. Glover said on May 30, 2019, that "we will work out our plan to rack the machines and provide a rough turn up schedule as soon as possible."

[35] A side WeChat was also set up in which Mr. Glover and a person involved with the manufacturing of the miners discussed the technical specifications of the miners and whether there were any limitations on how they could be racked in the facility. All the discussions in this chat took place on May 30, 2019.

[36] On June 3, 2019, Mr. Reitzik sent a draft hosting agreement for One Purpose to review. After receipt, Mr. Yasar sent a message that there was a miscommunication because Mr. McDowall had previously quoted him a price for power of less than 1 cent/kw, significantly less than the 7 cents/kw in the draft agreement. Mr. Yasar said that he and Mr. McDowall had discussed the fact that One Purpose had been paying 2.7 cents/kw in China and that One Purpose was looking to pay less. Mr. McDowall denied that Mr. Yasar and he had discussed this pricing, to which Mr. Yasar responded, "ok my bad."

[37] The negotiations then came to an end, and the chat went silent until July 2, 2019, when Mr. Khazaieli requested a call.

The Hosting Agreement and the Miners

[38] The Hosting Agreement was entered into between the parties on July 9, 2019. Under the Hosting Agreement, DMG agreed to host 1,212 of One Purpose's miners at its Christina Lake facility.

[39] The Hosting Agreement describes One Purpose's miners as falling into four different device specifications: two types of GPU miners (1,150 total) and two types of ASIC miners (62 total). As One Purpose makes no claim in this proceeding based on the ASIC miners, it is not necessary to describe these further.

[40] The two types of GPU miners were both assembled by an entity known as DB Tech. Of these, 870 were described as "DBC-328 8 GPUs". I will refer to these miners as the DBC GPUs. During trial, these were often referred to as the "blue

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boxes" because they were wrapped in blue protective film when they arrived at the Christina Lake facility. These miners were new and were shipped first to Goose Bay and then One Purpose subsequently had them shipped to the Christina Lake facility

[41] The remaining 280 GPU miners are described in the Hosting Agreement as "AMD miner + PSU 9 GPUs". I will refer to these miners as the AMD GPUs. At trial, they were also referred to as the "black boxes." The AMD GPUs were previously used by One Purpose to mine cryptocurrency in China before they were shipped to Goose Bay and then later shipped to Christina Lake. Mr. Yasar testified that the AMD GPUs were in use for a period of approximately six months before being refurbished, tested, and sent to the Christina Lake Facility.

[42] One Purpose's mining equipment was delivered to the Christina Lake facility in batches, with everything arriving by the end of July 2019.

[43] Once the miners arrived, DMG discovered that none of One Purpose's mining fleet had been approved by the Canadian Standards Association ("CSA") for use in Canada as required by Canadian law and the terms of the Hosting Agreement. Notwithstanding the terms of the Hosting Agreement, DMG sought, and ultimately obtained, CSA certification on One Purpose's behalf.

[44] Based on the invoices that were entered into evidence by consent, One Purpose fell into arrears on just over $200,000 of invoices for the power draw of its miners. Various options were discussed to cover the arrears, including a proposal by One Purpose to sell its miners to DMG. It was not contested that in or about January 2020, the parties came to an arrangement to have One Purpose's miners mine ETH directly to DMG's wallet to pay off the arrears.

[45] DMG gave notice to terminate the Hosting Agreement on June 28, 2021. One Purpose vacated the facility on August 16, 2021.

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Credibility

[46] Before turning to the issues and my assessment of the evidence, I begin my analysis with an assessment of the credibility of the witnesses called for each party.

[47] The legal principles that relate to the assessment of reliability and credibility are well established in the oft-cited decisions of *Faryna v Chorny*, 1951 CanLII 252, [1952] 2 DLR 354 at p 356-357 (BCCA) [*Faryna*]; and *Bradshaw v Stenner*, 2010 BCSC 1398 at paras 185-188, aff'd 2012 BCCA 296. I am mindful of the difference between the reliability and the credibility of a witness's evidence. With respect to the assessment of credibility, I have assessed each witness's evidence with reference to the usual list of factors: see, for example, *Youyi Group Holdings (Canada) Ltd. v Brentwood Lanes Canada Ltd.,* 2019 BCSC 739 at para 92.

[48] As discussed in *Faryna,* where the recollections of the witnesses with respect to key conversations and interactions have been lost due to the passage of time, a key guiding principle is to assess the extent to which the evidence of a witness is consistent with the preponderance of the probabilities which a practical and informed person would reasonably see as arising in the relevant context.

[49] Where recollections have faded, serious conflicts in the evidence can arise due to the tendency of interested witnesses to reconstruct events, unconsciously or not, to accord with the position they advance in the litigation. Where this occurs, evidence that is less susceptible to reconstruction, such as contemporaneous documents and testimony from independent witnesses, often assumes greater importance and provides a helpful yardstick against which to measure the reliability and credibility of witnesses more prone to the temptation to reconstruct: *Wu v Sun-Gifford,* 2001 BCSC 191 at paras 28-29.

[50] I have applied these principles to my assessment of the evidence.

The Plaintiff's Witnesses

[51] One Purpose submits that Mr. Yasar gave his evidence in a straightforward fashion and readily admitted the limitations of his knowledge and recollection. For

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these reasons, it submits that no significant concerns arise with respect to his credibility or reliability. The defendants disagree and submit that Mr. Yasar had a concerning tendency to initially overstate his evidence only to pull back when challenged on cross-examination or when confronted with the lack of documentation to support his claims.

[52] I find there are both reliability and credibility concerns that arise from Mr. Yasar's evidence for the following reasons.

[53] While giving his evidence, Mr. Yasar often stated that he was unable to recall the details of various matters and discussions and frequently indicated that Mr. Khazaieli was the person who would know the details. In addition, he gave evidence on matters for which he acknowledged documents would have been created, but the documents are no longer available.

[54] For example, in his direct evidence, Mr. Yasar described the steps that were taken after the Goose Bay hosting option fell through. In doing so, he described an internal document used to record discussions about other available facilities so that he, Mr. Khazaieli, and the rest of the team would have visibility into what options were being considered. However, as I will explain further, in examination for discovery, Mr. Yasar acknowledged that One Purpose retained no documents with respect to its search for other hosting options.

[55] Standing alone, this is not a reason to discount his reliability. However, the lack of documentation to corroborate Mr. Yasar's evidence was a recurring theme. This, together with his tendency to testify to one state of facts and then backtrack to materially qualify or change his evidence when challenged, leaves me with concerns regarding the reliability of his evidence as a whole.

[56] One example of the evolution of Mr. Yasar's evidence comes from his initial discussions with DMG about a possible hosting arrangement. Mr. Yasar stated the following in a WhatsApp exchange:

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> Hello gentlemen, it appears that we had a miscommunication along the way. When I spoke to James [McDowall] in Malta I told him that we were at 2.7 c/all in per kw I [sic] in China and were looking for a better price in Canada. It was my understanding that he had electricity at sub 1c/kw level so we got excited and broke out of another contract that was at 4c/kw.

[57] On examination for discovery, Mr. Khazaieli had been asked make inquiries as to the other contract Mr. Yasar refers to in this exchange. Through counsel, One Purpose responded that "no such contract was executed", but that One Purpose stopped pursuing other opportunities.

[58] After this response was received and Mr. Khazaieli had passed away, Mr. Yasar was examined for discovery. When the above WhatsApp statement was put to him, he explained that he just left out the word negotiation when he was quickly typing his message. Mr. Yasar went on to explain that One Purpose was in about the same place in negotiations with two other parties, one in the U.S. and one in Russia, but that these options were ultimately not pursued because they did not have immediate availability. Mr. Yasar was unable to provide any details about the names of these companies or documents relating to these negotiations. In the course of being pressed on discovery about the lack of documentation relating to these other negotiations, Mr. Yasar's evidence changed again. He stated that One Purpose was just doing market research and that, in fact, there were no other negotiations.

[59] A further example comes from Mr. Yasar's testimony at trial. In direct, Mr. Yasar described One Purpose's business model as operating in accordance with a "mine and hold" strategy whereby One Purpose would mine cryptocurrency and hold it until it could be sold at the most favorable price. He testified that because the project was fully funded, it did not need to generate monthly revenue to run its operation. On cross-examination, when faced with the contention that One Purpose was frequently behind on its payments to DMG under the Hosting Agreement, Mr. Yasar qualified his earlier evidence on direct that the project was fully funded, stating that, at the time the miners were sent to Christina Lake, they were paid for and that One Purpose had a good supply of spare parts to service the miners. He

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also acknowledged that on two occasions, One Purpose instructed DMG to turn off its miners because the price of ETH was too low to justify the costs of mining it. Moreover, it is clear from the contemporaneous documentation that as early as December 2019, One Purpose was seeking a reduction in the contract rate for electricity so that its operation could become profitable. Contrary to Mr. Yasar's contention, the preponderance of the evidence supports the conclusion that One Purpose was not pursuing a "mine and hold" strategy as alleged in the amended notice of civil claim.

[60] As a result of these concerns, where Mr. Yasar's evidence is contradicted by the evidence of others or documents or where it is uncorroborated by other evidence, I have given Mr. Yasar's evidence considerably less weight.

[61] I turn now to the evidence of Mr. Khazaieli. One Purpose submits that the majority of Mr. Khazaieli's statements recorded in the documents entered for the truth of their contents in the *voir dire* are contemporaneous statements made before the existence of any litigation and, therefore, have inherent reliability. It also submits that because Mr. Khazaieli's evidence on examination for discovery was under oath, it should be treated in a similar manner to evidence given under oath at trial.

[62] The defendants do not raise specific concerns with respect to the reliability and credibility of Mr. Khazaieli's examination for discovery evidence. At the risk of stating the obvious, I am at a disadvantage in assessing his evidence without the benefit of observing him during testimony.

[63] From my view of his examination for discovery evidence, Mr. Khazaieli's evidence suffers from some of the same issues as Mr. Yasar's evidence. As one example, Mr. Khazaieli testified that "there definitely was a warranty" for the miners that One Purpose purchased from DB Tech. Mr. Khazaieli described it as being a two- or five-year warranty but said that One Purpose ultimately did not need to resort to it. When the warranty documentation was requested by the defendants, One Purpose was unable to produce it. Once Mr. Yasar took over from Mr. Khazaieli as the discovery representative, he maintained on discovery that the components of the

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machines had warranties from the manufacturers. He testified that he saw these warranties in writing on visits he made to the manufacturers' facilities, but that One Purpose did not have those documents. He maintained that DB Tech would have had control of that documentation and that he was unable to obtain it from DB Tech. He went on to explain that One Purpose had a verbal warranty from DB Tech that if there were any issues, the miners would be freely replaced. Mr. Yasar testified that One Purpose did not seek a warranty beyond this reassurance because it was "more valuable than any paperwork that [DB Tech] would have given us." When I consider Mr. Khazaieli's and Mr. Yasar's evidence together with the lack of documentation, it is very unclear what warranty existed for the miners, despite Mr. Khazaieli's definitive answer that the miners were under warranty.

[64] Accordingly, where Mr. Khazaieli's statements are uncorroborated by other evidence, I have approached his testimony with some caution.

The Defendants' Witnesses

[65] One Purpose submits that the evidence of Mr. Bennett and, to a lesser extent, Mr. Glover raises reliability and credibility concerns. One Purpose accepts, and I agree, that Mr. Silva gave his evidence in a straightforward and forthright manner that raises little in the way of reliability or credibility concerns. One Purpose submits that Mr. Reitzik's testimony added little of substance to the matters to be decided due to his lack of involvement in the most important events in this matter.

[66] With respect to Mr. Bennett, One Purpose submits his evidence was tailored to maximize the success of DMG's defence of this matter and that he freely gave evidence about topics on which he lacked direct knowledge. For example, it submits that he gave evidence that the miners were malfunctioning or broken on arrival despite the fact that he was not present at the facility when they arrived. A key concern raised is Mr. Bennett's evidence that One Purpose expressed a desire to have all of their miners grouped together within the facility and that accommodating this request was a factor in the timing of the deployment. One Purpose says that this

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evidence lacks any credibility and points to Mr. Glover's evidence that contradicted Mr. Bennett on this point.

[67] I accept that, at least with respect to the issue of the co-location of the miners, Mr. Bennett demonstrated a tendency towards revisionism that seemed contrary to the documentary evidence describing the progress of the miner deployment. His evidence on this point shifted in that he initially maintained that One Purpose was requesting for its miners to be co-located to explain why the delay in constructing power channels was delaying the deployment. In cross-examination, he eventually conceded that One Purpose had not made this request. This shift leads me to the conclusion that Mr. Bennett was tailoring his evidence in what he perceived to be DMG's best interests and, as a result, I give his evidence on the co-location point little weight.

[68] With respect to the status and condition of the miners on arrival, I agree that the evidence of Mr. Silva, who was on the ground dealing with the receipt and deployment of the miners, carries greater weight. However, in my view, someone in Mr. Bennett's position would have been given regular updates as to what the technicians were encountering on the ground. Accordingly, I do not accept that Mr. Bennett's evidence in this regard detracts from his credibility.

[69] From my observation, Mr. Glover gave his evidence in a forthright and careful fashion. He was not prone to over-statement and made reasonable concessions on cross-examination, many of which were contrary to the interests of DMG. As a mark of his reliability as a witness, Mr. Glover did not shy away from contradicting aspects of Mr. Bennett's evidence, particularly on the issue of co-locating One Purpose's miners.

[70] The primary credibility concern that One Purpose raises with respect to Mr. Glover's evidence relates to documents he created with the assistance of artificial intelligence during the trial. Mr. Glover utilized artificial intelligence to gather information from the document disclosure and combine it with references to the evidence given at trial to create tables and Excel spreadsheets to show the total

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capacity that DMG had for miners of all its clients as the outset of the Hosting Agreement and how One Purpose's miners were rolled out. Mr. Glover acknowledged that he did not independently verify the AI-generated document against the source information. The defendants did not tender this as evidence but rather as an aid to the Court. As an after-the-fact consolidation of information from multiple sources, this document has limited evidentiary value. I have not relied on these spreadsheets to make any factual determinations.

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Are Adverse Inferences Appropriate?

[71] The defendants submit that the Court should draw adverse inferences on two grounds: failure to call a witness and failure to produce documents. First, the defendants submit that an adverse inference should be drawn because One Purpose failed to call its owner, Adam Melton, as a witness. Mr. Melton was involved in the initial discussions regarding the Hosting Agreement, and Mr. Khazaieli was reporting to him about the progress of the mining operation at Christina Lake. Mr. Melton reviewed the initial draft of the agreement, took advice from lawyers on the draft, and discussed price. During the contract term, he was involved in discussions about shipment of spare parts and deployment of One Purpose's miners.

[72] One Purpose takes the position that it was not necessary to call Adam Melton because he was not part of the discussion in which the fraudulent representation that induced One Purpose to enter into the contract was made. Further, it submits that the defendants did not choose Mr. Melton as a discovery representative and that if they sought his evidence on any matter, they could have requested for his evidence to be provided through Mr. Khazaieli or Mr. Yasar. They say that it is too late for the defendants to now raise a concern about the absence of Mr. Melton's evidence.

[73] The principles to be applied in considering whether to draw an adverse inference on the basis of failing to call a witness were recently reviewed by the

British Columbia Court of Appeal in *Gondor v British Columbia (Attorney General),* 2025 BCCA 281:

> [69] In summary, the decision to draw an adverse inference, and the nature or degree of any such inference, is part of the fact-finding process, based on a case-specific inquiry into all of the circumstances. It is founded on ordinary logic and experience. Whether an adverse inference may be drawn or the nature or degree of the adverse inference, if drawn, will vary depending, amongst other things, on the availability of the witness to both parties, and the explanation offered for not calling a material witness. The adverse inference may be an implied admission of fact that the witness's evidence would be contrary or at least not support the party's case…to an inference of "unhelpfulness" … There is a spectrum depending on the circumstances in each case. If the witness is in the "exclusive control" or "peculiar power" of the party, such as in cases where privilege prevents the other side from calling the witness, that may strengthen the basis for drawing an adverse inference …
>
> [Citations omitted.]

[74] In my view, it is appropriate to exercise my discretion to draw an adverse inference from the failure of Mr. Melton to testify because it is reasonable to expect that he would have relevant evidence to provide to the Court. Although it appears from the evidence that he was less involved than Mr. Khazaieli and Mr. Yasar in day-to-day matters, Mr. Melton was part of some discussions leading to the Hosting Agreement. He also reviewed the contract before it was signed. Even if Mr. Melton was not a party to the discussions in which the misrepresentations were allegedly made, it is reasonable to infer that he would have had discussions with Mr. Yasar and Mr. Khazaieli before signing the contract as to what role, if any, the alleged representations regarding DMG's capacity to host the miners played in its decision to enter into the Hosting Agreement. It is also reasonable to conclude that he may have been privy to internal discussions around what other hosting options were available.

[75] As the founder of the company, it is also reasonable to expect that Mr. Melton could speak to its business strategy which is relevant to One Purpose's claim for damages.

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[76] The importance of Mr. Melton's evidence increased after Mr. Khazaieli became unavailable to testify at trial.

[77] One Purpose does not take the position that Mr. Melton was unavailable to be called. However, Mr. Melton lives in Washington State, outside the subpoena power of the Court, and therefore, from a practical point of view, it would have been easier for One Purpose to have him attend trial than for the defendants to compel his attendance.

[78] No adequate explanation has been provided for Mr. Melton's absence at trial. One Purpose's argument that there was an onus on the defendants to seek out Mr. Melton's evidence amounts to a reversal of One Purpose's burden to prove, on a balance of probabilities, each element of the alleged fraudulent representation.

[79] Accordingly, I infer that Mr. Melton's evidence would not have assisted One Purpose in establishing its reliance on the alleged misrepresentations or its alleged mine and hold strategy.

[80] Moving to the issue of documents, my ultimate conclusion that One Purpose has failed to make out its claim for damages renders it unnecessary for me to deal with the defendants' request that I draw an adverse inference from the failure of One Purpose to produce documents relevant to its claim for damages. These include mining pool records, financial statements, business plans, financial projections, tax records, and any contemporaneous record evidencing the alleged misrepresentations or One Purpose's claimed reliance on them.

Issues

[81] The main issues to be resolved in this claim are as follows:

a) Did DMG make a fraudulent misrepresentation about the capacity of the Christina Lake facility to host all of One Purpose's miners to induce One Purpose to enter into the Hosting Agreement?

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b) Did DMG make a fraudulent representation to induce One Purpose to keep its miners at the Christina Lake facility rather than terminating the Hosting Agreement?

c) Did DMG breach its duty of honest and good faith performance of the Hosting Agreement?

d) If the answer to any of the above questions is yes, what damages is One Purpose entitled to?

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Issues #1 and #2 – Pre- and Post- Hosting Agreement Fraudulent Misrepresentation

Legal Framework

[82] The parties are largely in agreement as to the legal principles that apply to One Purpose's claim for fraudulent misrepresentation. Based on the test articulated by the Court of Appeal in both *Catalyst Pulp and Paper Sales Inc. v Universal Paper Export Company Ltd.*, 2009 BCCA 307 at para 55; and *Wang v Shao*, 2019 BCCA 130 at para 24, One Purpose must establish the following elements:

a) The defendants made a representation of fact to One Purpose;

b) The representation was false in fact;

c) The defendants made the representation either knowing that it was false or made it recklessly without knowing whether it was true or false;

d) The representation was made with the intent that One Purpose would act upon the statement; and

e) One Purpose was induced into entering into the Hosting Agreement by their reliance on the statement.

[83] Representations may take the form of words or conduct intended to induce the representee to believe the existence of a non-existent fact. In addition, silence can amount to a fraudulent representation where the representor intentionally failed

to disclose a pertinent fact with the intent to deceive the representee. This can arise when a representor has the opportunity to correct the false information but fails to do so: *RC Hotel Ventures Ltd. v Meristar Sub 2C, L.L.C.*, 2008 BCSC 918 at para 20.

[84] However, to be actionable, representations or omissions must relate to a past or presently existing state of facts: *PD Management Ltd. v Chemposite Inc.*, 2006 BCCA 489 at para 14 [*PD Management*]. A promise to do something in the future does not relate to a past or existing fact and, therefore, cannot qualify as a representation: *PD Management* at para 12. However, if a representation as to future conduct is made, and it can be demonstrated that the party making it did not have the intent to carry out that conduct, it may be actionable: *Pan v Dong*, 2024 BCSC 869 at para 107 [*Pan*].

[85] Where a statement is made in the context of a negotiation that amounts to "puffery" and where it is not reasonable for the person receiving the statement to rely on it as a statement of fact, it cannot support a finding of fraudulent misrepresentation: *Pacific Playground v Endeavour Develop. et al.,* 2002 BCSC 126 at para 59.

[86] Like any other civil claim, the requisite elements to make out the tort of fraudulent misrepresentation must be proved on a balance of probabilities. There is no heightened standard of proof merely because the claim sounds in fraud: *F.H. v McDougall*, 2008 SCC 53 at para 40 [*F.H.*]. As in all civil cases, the evidence used to establish the elements of fraudulent misrepresentation must be sufficiently clear, convincing, and cogent to satisfy the civil standard of proof.

[87] Nevertheless, the Supreme Court of Canada in *F.H.* also emphasized the importance of context and held that the quality of evidence required to prove a matter on a balance of probabilities will vary both with the seriousness of the allegations and in consideration of the evidence capable of being produced: *F.H.* at para 40; See also *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd.*, 2023 BCCA 70 at paras 162-163.

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Assessment of the Evidence: Pre-Hosting Agreement Misrepresentation

[88] As set out in its pleadings, the fraudulent misrepresentation alleged by One Purpose is that Mr. McDowall represented that DMG would be able to host the miners by immediately providing all of the required rack space. It further alleges that at no time did the defendants say that the required rack space did not exist or was already occupied. Nor did DMG tell One Purpose that any construction would be required to host their miners.

[89] The defendants deny that the alleged representations were made. They also take the position that at no time prior to the signing of the Hosting Agreement did they make any guarantees or provide any assurances regarding timelines for getting One Purpose's miners racked and hashing.

[90] To prove the alleged representations, One Purpose relies most heavily on a statement made by Mr. Glover in an email three months after the Hosting Agreement was entered into rather than on any evidence from Mr. Yasar or Mr. Khazaieli. In that internal email dated September 9, 2019, Mr. Glover wrote to his colleagues at DMG:

> Expectations were set by James [McDowall] that we had open shelf space and that we would have miners online as soon as they arrived at our facility. This is how we won the business with a higher rate than was quoted by our competitors.

[91] This emphasis on the defence evidence arises, in part, because Mr. Yasar was unable to provide meaningful detail about his conversation with Mr. McDowall. Mr. Yasar was unable to recall the substance of those discussions beyond his recollection that Mr. McDowall represented DMG as an "available and viable option".

[92] Moreover, it was clear from Mr. Yasar's evidence that he did not rely on Mr. McDowall's statements. In his direct evidence, Mr. Yasar explained that it would have been both premature and not Mr. McDowall's place to say how long it would take to get One Purpose's miners hosted. Mr. Yasar testified that this type of information would need to come from someone who had actually done a deployment of miners as they would have a better understanding of what was required. Mr. Yasar also testified that Mr. McDowall told him that he did not know whether any

construction would be required in order to host the miners. It is also significant that in May 2019, well before the Hosting Agreement was signed, Mr. Yasar concluded that Mr. McDowall had lied because he denied their previous discussions about the price of power DMG could offer in the WhatsApp thread. It is reasonable to infer that this realization also played a role in Mr. Yasar's decision not to rely on Mr. McDowall to confirm deployment details.

[93] Mr. Yasar's evidence is that he had several conversations with representatives of DMG in which he was told that DMG had immediate capacity to host the miners but did not provide the specifics of those representations, such as who made them, the dates that they were made, or whether they were on phone or video calls. Due to the credibility concerns I have already outlined, I am unable to place any significant weight on this evidence.

[94] Mr. Khazaieli's evidence was that from the many discussions they had with the DMG team, the One Purpose team understood that DMG had more than the required rack space, which he defined as power and space, to plug in the miners immediately. However, when Mr. Khazaieli was pressed for details on discovery, he too was unable to identify who made such a representation or what words they used. Again, for the reasons I have already discussed, while I give the evidence from Mr. Khazaieli greater weight than the evidence from Mr. Yasar, it is not, standing alone, sufficiently convincing, clear, and cogent evidence to establish that DMG represented that the miners would be immediately hosted.

[95] Mr. Glover did not have a specific recollection of being on any calls with anyone from One Purpose when they came back to the negotiating table in July 2019. However, he denies that he would have made any representation that the miners would be immediately deployed because, at that point, he would not have had a sense of how long the deployment would take as he had to balance DMG's existing client deployments with the particulars of One Purpose's equipment that DMG had yet to receive. I accept Mr. Glover's evidence in this regard as credible and consistent with the preponderance of the evidence.

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[96] Mr. Bennett was able to recall one phone discussion with One Purpose in July 2019 before the Hosting Agreement was signed. Mr. Bennett recalls that One Purpose confirmed that it wished to proceed with the contract and they discussed the shipping process so that they could receive the miners to get them installed and turned on. He confirmed in cross-examination that he personally confirmed that there were sufficient pods with live power connections for all 1,212 of their miners. He also testified that the team from One Purpose did not express any concerns about DMG's ability to host the miners, nor did they identify any particular priorities. In cross-examination, Mr. Bennett was not directly confronted with the suggestion that he told One Purpose that their miners would be immediately hosted.

[97] I am not satisfied that One Purpose has established on a balance of probabilities that DMG represented that One Purpose's miners would be immediately hosted upon arrival.

[98] I also do not accept One Purpose's submission that the alleged representation can be inferred from other evidence. One Purpose relies on exchanges in the WhatsApp chat and WeChat message threads. However, there is no statement in those communications from which it can reasonably be inferred that DMG made the representation alleged. The statement that comes closest is Mr. Khazaieli's August 7, 2019, message that he "is hoping there is no big surprises so that we can begin hosting ASAP", to which Mr. Reitzik responded, "understood." In my view, it is not reasonable to infer from this brief exchange that DMG represented that the miners would be deployed immediately. Rather, the exchange is consistent with a general desire to commence hosting as soon as practicable and with the expectation that delays may result in lost revenue.

[99] Despite Mr. Yasar's insistence at trial that time was of the essence and the determining factor in One Purpose's decision to engage DMG, there is a notable absence in the documentary record of any inquiry by One Purpose's representatives regarding how quickly the miners could be deployed.

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[100] Further, the complete lack of documented discussions and follow-up questions about the timing of getting the machines online during the initial roll-out weighs against a finding that One Purpose was relying on a representation that the miners would be racked immediately. If representations about timing were a significant issue on which One Purpose relied, one would expect that it would have insisted on a schedule being included in the Hosting Agreement. This is especially so given the "entire agreement" clause by which One Purpose acknowledged that it was not relying on any representations not set out in the Hosting Agreement.

[101] I find that the more reasonable inference to draw from the whole of the evidence is that DMG was not promising immediate deployment because there were many details yet to be worked out. Although One Purpose contends that DMG was silent about the need to undertake any construction or configure shelf space to host the miners, the available evidence suggests otherwise. Representatives of DMG in both the WhatsApp and WeChat message threads refer to the need to set up shelves and power channels for the miners and to work out a "construction schedule" and a "turn up" schedule, as well as a "timeline for racking". On July 26, 2019, Mr. Glover reported to Mr. Khazaieli that 96 of the machines had been racked and that he was "getting our construction schedule sorted out as soon as possible." At no time did representatives of One Purpose make requests in these threads to clarify the timing. Further, there is no evidence that One Purpose either requested or received a deployment schedule prior to the finalization of the Hosting Agreement, and its terms do not incorporate such a schedule.

Conclusion on Pre-Hosting Agreement Misrepresentation

[102] Having failed to prove that representatives of DMG represented that One Purpose's miners would be immediately hosted upon receipt, One Purpose's claim that DMG made a fraudulent misrepresentation that induced them to enter into the Hosting Agreement fails at the first step of the test.

[103] Given my finding that the alleged representation was not, in fact, made, there is no need to consider whether it was falsely or recklessly made. However, even if

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One Purpose had been able to establish that the alleged representation was fraudulently or recklessly made, the evidence falls short of establishing reliance. In a response to a request on discovery, Mr. Khazaieli confirmed that One Purpose inquired as to the global availability of alternative hosting facilities between May and July 2019 and concluded that there were no other suitable options based on cost and jurisdiction.

[104] Mr. Yasar, on the other hand, testified at trial that they were considering other options and they had conversations with two other facilities in Canada but that they each needed four to six months of lead time to add infrastructure. Given the concerns I have already detailed about Mr. Yasar's testimony on the existence of other contract negotiations, I prefer the evidence of Mr. Khazaieli as more reliable. Not only were no documents entered into evidence to support the contention that One Purpose had other options available, One Purpose also did not produce any such documentation in response to specific requests to do so.

[105] The whole of the evidence supports the inference that One Purpose came back to DMG because it was the only hosting option available to them.

Assessment of Evidence on Post-Hosting Agreement Misrepresentation

[106] One Purpose alleges that once it became aware in August 2019 that the Christina Lake facility did not have sufficient shelves or power infrastructure to host all of its miners, DMG fraudulently misrepresented that it could complete the rollout by September 18, 2019. One Purpose points to the schedule that Mr. Glover sent to Mr. Khazaieli on August 29, 2019. One Purpose alleges that this schedule was provided recklessly with the intention of resolving One Purpose's concerns and to induce them not to take steps to terminate the Hosting Agreement and move their miners to another facility which One Purpose submits would have been a realistic option.

[107] DMG submits that the schedule Mr. Glover sent was a proposed forward-looking schedule contingent on numerous factors. As such, it submits that the schedule cannot qualify as a statement of past or present fact which is required to

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ground a claim in fraudulent misrepresentation: *PD Management* at para 12. Further, it submits that One Purpose has not led any evidence to establish that Mr. Glover did not have an intention to pursue the proposed deployment schedule when he sent it. Therefore, relying on *Pan* at para 107, DMG takes the position that the statement cannot be actionable.

[108] One Purpose does not identify in its submissions the evidence upon which it relies to demonstrate that Mr. Glover did not have the intention to deliver on this schedule when the representation was made.

[109] As an initial point, as I have already found, there is insufficient evidence to conclude that One Purpose had any other hosting option available to them.

[110] Nor is there sufficient evidence to establish that, at the time the alleged representation was made, One Purpose was threatening to terminate the Hosting Agreement and pull its miners from Christina Lake.

[111] From my assessment of the evidence, it appears that DMG had hoped to meet the schedule sent on August 29 but that there were multiple issues which interfered with DMG's ability to do so. This included the fact that despite DMG's request for assistance, they got no assistance from One Purpose or DB Tech to assist with the certification of the miners. One Purpose was obligated under the Hosting Agreement to provide equipment that was CSA safety certified. None of their miners were certified. Despite it not being their obligation to do so, DMG undertook to complete the certification process on One Purpose's behalf. DMG also told One Purpose that they required more power supply units for some of their miners. Further, Mr. Silva described that all of the miners had to be flashed with new software which was a time-consuming task that took several weeks to complete.

[112] In addition, as of August 29, there were at least 50 miners that were non-functioning and required further work. By September 13, 2019, an additional 13 non-operable miners had been relegated to the "shelf of death".

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[113] I find on the evidence that DMG's plan to build permanent power channels and shelves to host One Purpose's miners ran into delays in September 2019 which slowed down the rollout. I accept Mr. Glover's evidence that it made good operational sense for DMG to co-locate One Purpose's miners to facilitate both billing and remote network communication with the miners. I infer that the delay in building permanent power channels put the brakes on co-location. However, contemporaneous evidence at the time, notably an internal reporting email dated September 24, 2019, supports the conclusion that DMG was able to pivot and place One Purpose's miners into temporary stacks in order to complete the rollout. The initial roll-out schedule was delayed by just under two weeks. The roll-out schedule in evidence shows that 985 miners were racked by September 30, 2019.

[114] While this number of miners is less than the 1,150 covered by the Hosting Agreement, there is considerable evidence that, in addition to the 50 that were set aside as not operating, many of the other miners were not functioning for a variety of software and hardware related reasons.

[115] Mr. Silva testified that the DBC GPUs, which appeared to be new when they were unpacked, suffered hardware failures once in operation. These included fan and power button failures as well as exploding power supply units. Mr. Silva also testified that the miners would go offline while hashing and would lock up. Mr. Silva described filling out 110-140 repair sheets for these issues. Only one of these repair sheets was entered into evidence. When these were forwarded to One Purpose, Mr. Khazaieli contacted Mr. Silva and said that he should be spending his time fixing problems rather than filling out paperwork. Shortly thereafter, Mr. Khazaieli set up an "AirTable" and asked Mr. Silva to document the repair issues in this shared electronic document. Mr. Silva testified that eventually, One Purpose supplied some spare parts, but this occurred well after the initial deployment. He also "cannibalized" some miners to get enough working parts to repair other miners.

[116] One Purpose shared freely with DMG stability issues with the AMD GPUs. Adam Melton, in an email dated August 13, 2019, stated the following:

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> My hope is that the machines that are coming from China, which is part of the last batch, we can change a few cards or power supplies and they will work fine. They are a year old and been in use, but we have never been able to get them over 65% in use. Always something with those, stability was very poor.

[117] One Purpose took issue with the fact that DMG did not produce the repair sheets to document the issues with the miners. However, One Purpose also did not produce the AirTable that was set up by Mr. Khazaieli. I accept as credible and reliable evidence of Mr. Silva that One Purpose's miners had frequent operational issues. I draw the inference that these issues likely account for the initial rollout being capped at 985 miners.

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Conclusion on Post-Hosting Agreement Misrepresentation

[118] Taking all this evidence into account, I am unable to conclude that, when the schedule was provided, DMG had no intention of attempting to meet it. Based on the law as expressed in *Pan* and *PD Management,* that statement cannot qualify as a fraudulent misrepresentation.

[119] Accordingly, the claim for fraudulent misrepresentation is dismissed.

Issue #3 – Duty of Honest and Good Faith Performance

[120] As an alternative to its claim for fraudulent misrepresentation, One Purpose alleges that DMG breached its duty of honest and good faith performance of the Hosting Agreement. One Purpose alleges the following four categories of breaches:

a) DMG's omissions and silence in response to One Purpose's requests for assistance with diagnosing and repairing its miners, for more rack space, and for DMG to live up to its commitments under the Hosting Agreement;

b) DMG's continuous attempts to convince One Purpose that it would be able to get enough racks up to host all of One Purpose's miners;

c) DMG's strategic behaviours to deliberately avoid its obligations under the Hosting Agreement when it became apparent that more electrical work was required to host the miners; and

d) DMG's termination of the Hosting Agreement in bad faith and without proper notice.

Legal Framework

[121] In *Bhasin v Hrynew,* 2014 SCC 71 [*Bhasin*], the Supreme Court of Canada brought clarity to the law of good faith contractual performance. In doing so, it recognized both an organizing principle of good faith contractual performance and a common law duty of honest performance that applies to all contracts.

[122] The organizing principle of good faith is that parties must generally perform their contractual duties "honestly and reasonably and not capriciously or arbitrarily": *Bhasin* at para 63. This principle, however, is not a free-standing legal rule. Rather, it underpins and operates through existing specific legal doctrines whose application depends on the factual context: *Bhasin* at para 64.

[123] The new common law duty of honesty in contractual performance requires that parties refrain from lying or knowingly misleading each other about matters directly linked to the performance of the contract: *Bhasin* at para 73. In its subsequent decision in *C.M. Callow Inc. v Zollinger*, 2020 SCC 45 [*Callow*], the Supreme Court of Canada clarified that, depending on the factual context, the duty may extend beyond prohibiting outright lies to encompass forms of silence or omissions. For example, a party may breach the duty by failing to correct a misapprehension created through its own misleading conduct: *Callow* at paras 90-91.

[124] There are also limits on the scope of the duty. It does not impose either a duty of disclosure or the loyalty required of a fiduciary. Nor is a party required to subordinate his or her own interests to those of the other party: *Bhasin* at para 86.

[125] In *Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District,* 2021 SCC 7 [*Wastech*], the Court reinforced the importance of identifying the specific legal doctrine that is being relied upon to seek relief in order to avoid casting the scope of the duty of good faith too widely. In doing so, it clarified its

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earlier statement in *Bhasin* that a contracting party must have "appropriate regard" for the legitimate interests of the other contracting party:

> [52] … Careful reference to the specific doctrine at issue in each case is critical because, as Metro rightly notes, “it is no test for the content of the duty of good faith to say that one has to have appropriate regard for the legitimate contractual interests of the counterparty — because appropriate regard is a broad phrase that covers a variety of different levels of conduct depending on the circumstances”… Importantly, whatever variation may come with context, a contracting party — unlike a fiduciary — typically is not required to serve the contractual interests of the other party by duties of good faith performance.
>
> [Citations omitted.]

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[126] With respect to the exercise of contractual discretion, good faith constrains the discretion in that its exercise must be consistent with the purposes for which the discretion was granted in the contract: *Wastech* at para 65.

DMG’s Alleged Omissions and Silence in the Face of One Purpose’s Requests

[127] In its final submissions, One Purpose points to 13 email communications from which it submits bad faith on the part of DMG can be inferred. It alleges that these communications are examples of instances where DMG did not directly or completely answer One Purpose’s questions and concerns. It contends that they also show that while One Purpose was busy trying to get all of its miners hosted, DMG ignored One Purpose until it decided to terminate the contract on short notice, rather than answer One Purpose’s questions or address its concerns. One Purpose does not attempt in its submissions to explain how these non-responses amounted to DMG either lying about a state of affairs or actively cultivating a misunderstanding on the part of One Purpose.

[128] DMG submits that these allegations, on their face, do not meet the standard of a breach of the duty of honesty in contractual performance as they cannot be seen as instances in which DMG lied or knowingly misled One Purpose. DMG also submits that the failure of DMG to respond or challenge the emails does not prove that the matters set out in the email are true.

[129] With one exception, the communications relied upon post-date the initial deployment of the miners in 2019 and were exchanged in 2020 and 2021, after One Purpose had initiated the miner shutdowns. In addition, the communications appear to present only a partial record, as the evidentiary record contains other instances in which DMG responded to similar concerns raised by One Purpose.

[130] For the reasons that follow, I am not persuaded that these communications establish a breach of the duty of honest performance.

[131] To the extent that the communications are requesting assistance to diagnose problems or repair the miners, it is important to return to the obligations of the parties as set out in the Hosting Agreement.

[132] Under Clause 2.1, DMG agreed to host the miners at its facility and to use "its reasonable endeavours" to keep the miners supplied with electricity and internet connectivity to operate in accordance with the miners' specifications. In addition to maintaining adequate security for the miners, DMG also agreed to monitor the performance of the miners for the purposes of reporting back to One Purpose.

[133] With respect to maintenance, the Hosting Agreement defines maintenance services as those set out in the schedule to the agreement. Under Clause 6 of the Hosting Agreement, hosting fees do not include fees for maintenance services or spare parts. The schedule further defines the maintenance services and indicated that such services are billed separately if requested.

[134] Clause 3.2 addresses how maintenance and repairs will be carried out and makes it clear that DMG is not responsible for defects in miners. It is important to consider the wording of this clause in its entirety:

> DMG shall determine (in its absolute discretion) the nature, extent and frequency of the Maintenance Services necessary to ensure that the Equipment is operating in accordance with the Specification. DMG will repair Equipment and, if replacement parts are required in order to restore the Equipment to operation in accordance with the Specification, the Customer must pay for such replacement parts in addition to Hosting Services. DMG will install such replacement parts as part of the Maintenance Services. DMG shall not be responsible or liable for any defects with the Equipment. The

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> Customer acknowledges and understands that the Equipment may not be profitable based on several factors, including the price of crypto, the relevant hash rate for that blockchain and faulty or broken Equipment.

[135] DMG takes the position that One Purpose never requested the optional maintenance services offered by the contract. None of the "example" communications relied upon by One Purpose contain an offer by One Purpose to pay for maintenance services.

[136] On cross-examination, it was put to Mr. Yasar that One Purpose was never billed for maintenance services and he acknowledged that he had no knowledge of Mr. Khazaieli ever requesting maintenance services. Mr. Bennett testified that One Purpose never contracted for these services although he acknowledged that there was no special form or procedure for requesting maintenance services.

[137] DMG does not contest that it offered to do unpaid work on One Purpose's miners as a good will gesture. Mr. Silva's evidence establishes that he was diagnosing and repairing many issues with the miners during the initial rollout that DMG did not bill separately even though the Hosting Agreement contemplated otherwise. Mr. Silva's evidence also establishes that problems with the miners continued after the initial rollout.

[138] On July 20, 2020, Mr. Yasar wrote to Mr. Glover saying that several hundred of One Purpose's miners had been unplugged and offline for months in addition to raising issues that it had been overcharged in its invoices. Mr. Glover responded noting that One Purpose's account was still in arrears and that DMG had not found a discrepancy in the invoicing. Further, Mr. Glover stated that the offline miners were not online because they were broken and required repair. Mr. Glover confirmed that DMG would repair those on a best-efforts basis, but DMG's technicians were already occupied with paying work. Mr. Glover offered to have a conversation about how these repairs could be fast tracked if One Purpose paid its outstanding account and covered the cost of labour. Subsequent demands by Mr. Yasar, for example, on August 19, 2020, seem to fundamentally misapprehend both Mr. Glover's position

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that immediate repair work needed to be paid for and that, under the terms of the Hosting Agreement, defects in the miners were not DMG's responsibility.

[139] Several of the issues with the miners are detailed in an email from DMG staff to Mr. Glover dated July 24, 2020, in which staff identified miners as not powered up either because of blown fuses or because of faulty power supplies. Mr. Glover instructed staff to investigate whether fuses were part of the issue.

[140] By September 2020, there were so many issues that a "repair-sprint" became necessary, and One Purpose contracted directly with Mr. Silva and Dustin LaCroix, another DMG employee, to get the exclusive benefit of their efforts to work on the GPU miners. Based on email correspondence from Mr. Khazaieli, this work included, among other things, putting new power supply units into 130 DBC GPUs whose power supply units were no longer operable. A Slack log between Mr. Khazaieli and Mr. Silva refers to the need to replace the power supply units in 300 miners.

[141] It is reasonable to infer that there were discussions that led to DMG agreeing to give up two of its employees to the detriment of servicing its other clients to exclusively address issues with One Purposes' miners. Rather than demonstrating indifference to One Purpose's concerns, the evidence establishes that DMG devoted substantial personnel resources to addressing defects in the miners notwithstanding that the Hosting Agreement did not require it to do so.

[142] To the extent that the communications take issue with DMG's billing on the basis that One Purpose was disputing the number of miners that were racked and hashing, it is not possible for me to determine on the basis of One Purpose's communications alone that DMG breached its duty of honest and good faith performance in this regard for three main reasons.

[143] First, I cannot take the allegations in the emails as necessarily true given my concerns about the credibility and reliability of Mr. Khazaieli's and Mr. Yasar's evidence. The evidence of both displays a tendency to overstate and exaggerate when it is in their interests to do so.

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[144] Second, One Purpose has not met the burden of proving how many of its miners were operable but not racked after One Purpose resumed mining in 2020 and 2021 after the shutdown. One Purpose acknowledges that the evidence on this issue is not as well-documented or comprehensive as would be ideal because One Purpose did not have direct access to the miners at Christina Lake. Given the discrepancies between One Purpose's assertions that hundreds of miners that could be hashing were offline and the very significant number of miners that were having issues, I am unable to accept its submission that Mr. Khazaieli's emails are the best evidence of what rack space was available to One Purpose.

[145] One Purpose downplays in its submissions the extent of ongoing problems with its miners. As already discussed, the documentary evidence before me refers to numerous ongoing issues. In addition, I also heard evidence from Mr. Glover and Mr. Silva about an issue with the GPU miners arising from the use of a DAG file on the Ethereum blockchain which grows in size over time. Each miner hashing for ETH is required to access the DAG file, and as it grows, the miner requires more memory to access it. Mr. Glover testified that in December 2020, the DAG file reached 4 GB in size. Mr. Silva testified that when the DAG file reached this size, he observed a large number of One Purpose's miners go offline which he attributed to this issue.

[146] One Purpose indicated in its trial brief an intention to call three witnesses who were employed by DMG at the Christina Lake facility who could have shed light on how many miners were operable but not racked; however, One Purpose decided not to call these witnesses at trial.

[147] Third, and most fundamentally, I am unable to conclude that DMG knowingly misled One Purpose through the alleged silence solely because there is no evidence before me of a direct response by DMG to the email communications singled out by One Purpose. These communications, standing alone, do not allow me to conclude that DMG breached its duty of good faith and honest performance. They are insufficient to establish that DMG used this silence to knowingly mislead One Purpose as required by *Callow.*

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Dishonest Representations Regarding Rack Space

[148] I am unable to conclude that DMG made any dishonest statements or knowingly misled One Purpose regarding the status of rack space for some of the reasons I have already outlined.

[149] First, with respect to the initial roll-out schedule, I have already concluded that no misrepresentations were made because there is no evidence that DMG did not intend to meet that schedule when it was sent to One Purpose. In addition, rolling out the miners by a certain date was not a term of the Hosting Agreement.

[150] Secondly, it is not clear on the evidence how many miners were operable but unracked throughout the life of the Hosting Agreement. One Purpose bears the onus of proof on this issue.

[151] Thirdly, One Purpose is unable to point to specific statements that it says were dishonest attempts to convince One Purpose to keep its miners at the facility. To establish these allegedly dishonest representations, One Purpose relies on Mr. Khazaieli ’s discovery evidence in which he does not point to a specific misrepresentation but rather “little statements” over time about what was going to be done that were not lived up to. He described these statements as “showboating”. The greatest specificity Mr. Khazaieli offers is that Mr. Glover lied when he said that they were going to get racks put up. Mr. Khazaieli does not state when this statement was made. As I have previously found, the construction of racks did slow the initial rollout, but this was overcome by putting the rest of the miners into temporary stacks.

DMG Acted Strategically to Avoid Its Obligations under the Hosting Agreement

[152] One Purpose alleges that in the early days of the Hosting Agreement, DMG breached its duty of good faith performance because just months after signing the agreement, it became apparent that it did not have the electrical infrastructure ready and available to host all of One Purpose’s miners.

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[153] One Purpose points to a September 5, 2019, email about “Electrical at Christina Lake” that Mr. Glover sent to Mr. Bennett and Mr. Reitzik about a proposal to use a new electrical contractor to complete power channel work in order to realize savings over using their usual contractor. Mr. Glover refers in the email to conducting a cost benefit analysis to “see if there is enough upside in getting One Purpose up and running to save $64,000”, which he estimated would be the savings of going with a new contractor. Mr. Glover also noted in this email that he did not “think we can go into the weekend without an update to One Purpose on the plan for energizing.” Mr. Bennett testified that he immediately shot down this idea.

[154] One Purpose submits that it is reasonable to infer from this email that the electrical work discussed was not done and, therefore, the rollout was never completed because there are no invoices from DMG’s usual contractor for this work.

[155] DMG submits that One Purpose’s submission is premised on a fundamental misunderstanding of the scope of the duty of good faith and its limitations. In particular, DMG emphasizes that it is not bad faith for a contracting party to consider its own commercial interests as illustrated in *Wastech* and *RS Distribution Services Ltd v MTS Inc et al,* 2023 MBCA 34. The question to be answered is whether contractual discretion is exercised in bad faith. DMG submits that it was required to be loyal to the bargain, not to One Purpose’s commercial expectations.

[156] My findings of fact based on the record as a whole that the rollout was completed using temporary stacks and that the failure to connect all 1,150 GPU miners was due to problems with the miners disposes of One Purpose’s submission that the September 5, 2019, email supports the opposite inference, *i.e*., that the rollout was not completed due to lack of available power-channels. More fundamentally, many of One Purpose’s complaints amount to assertions that DMG failed to provide One Purpose with a level of service that One Purpose neither bargained nor paid for under the terms of the Hosting Agreement. As Mr. Yasar acknowledged in his cross-examination, there are tiered hosting facilities available

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which guarantee a certain level of up time. As is clear from the Hosting Agreement, the Christina Lake facility was not such a facility.

Was the Contract Terminated in Bad Faith?

[157] One Purpose alleges that DMG planned to push One Purpose out of the Christina Lake facility so that it could host its own miners when the price of cryptocurrency began to rise dramatically in late 2020 and 2021. One Purpose further alleges that DMG was hoping that its failure to get all of One Purpose's miners online and its poor service would frustrate One Purpose to the point where it decided to terminate the agreement and leave the facility.

[158] DMG gave notice to terminate the Hosting Agreement on June 28, 2021. Clause 10.1 of the Hosting Agreement required the parties to give 60 days' notice of termination. There is no dispute that DMG provided only 15 days' notice although it did not require that One Purpose remove its miners within 15 days.

[159] In alleging the termination breach, One Purpose relies on an internal email from Mr. Reitzik on August 13, 2020, where he sought a discussion about purchasing more miners so that DMG could show increased growth to the public. He stated that:

> We should order [the miners] and plan to install at Ocean Falls if we can get that over the line, or boot Brad [Yasar] (or increase his hosting cost) as he must be making a ton of money right now, to make more room at CL. Either way we need to expand self mining.

[160] One Purpose also points to Mr. Glover's admission that at some point after the "cryptowinter" of late 2019, early 2020 (a period where the price of cryptocurrencies generally bottomed out), DMG began to shift its strategy to do more self-hosting. Mr. Glover also admitted that as far as he was aware, around the time of Mr. Reitzik's email, no one at DMG advised One Purpose that they were considering terminating the Hosting Agreement. The evidence before me is that DMG never proceeded with installing miners at Ocean Falls and, in 2020, took no steps to terminate the contract. In May 2020, Mr. Glover sought a meeting with Mr. Khazaieli and Mr. Yasar to discuss their long-term plans for hosting at DMG.

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Mr. Glover testified that he called the meeting because there had been numerous challenges up to that point and DMG wanted to get a sense of their long-term plans. Mr. Glover testified that he walked away from that meeting with the sense that One Purpose wished to move forward with the Hosting Agreement.

[161] One Purpose also relies on Mr. Reitzik's testimony that One Purpose was a "difficult customer" who demanded a lot for the comparatively low price they were paying for hosting services. It submits that this shows animus and contempt for One Purpose. Mr. Reitzik left DMG at the end of March 2021, and he played no part in DMG's decision to terminate the Hosting Agreement.

[162] As mentioned above, DMG did not provide the requisite 60 days' notice. The termination email referred to 15 days' notice but noted that it would not require One Purpose to be out of the facility in that time frame. However, the evidence shows that Mr. Khazaieli asked for more time to find a new home for the miners which DMG granted and that DMG offered its own personnel and resources to help One Purpose pack its machines.

[163] Under the terms of the Hosting Agreement, DMG was entitled to terminate the agreement for any reason, provided it gave the required notice. In my view, the evidence before me does not establish that the termination was carried out in bad faith. I will address the implications of the short notice in my discussion of Issue #4. DMG had no duty to disclose its internal deliberations to One Purpose or its views of One Purpose as a client. There are no facts before me analogous to those that led to the finding in *Callow* that the duty of honest performance was breached. There, the defendants were found to have breached the duty of honest performance because after deciding to terminate a maintenance contract, they engaged in conduct that led Callow to believe the contract was not in jeopardy and would likely be renewed. One Purpose points to no such conduct.

[164] Mr. Reitzik's statement in his August 13, 2020, email and his evidence at trial that One Purpose was a difficult client do not support a conclusion that DMG terminated the contract in bad faith. That One Purpose was a difficult client is

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apparent from the fact that its invoices went unpaid for lengthy periods of time and from its demands to shut down its miners twice, leaving DMG with no source of revenue from the Hosting Agreement.

[165] Given my finding that DMG did not breach its duty of good faith performance of the contract, it is not necessary for me to address the issue of whether the limitation of liability clause in the Hosting Agreement operates to limit the damages arising in this cause of action. However, the recent decision of the Ontario Court of Appeal in *1401380 Ontario Limited (Wilderness North Air) v Hydro One Remote Communities Inc.*, 2025 ONCA 827 at para 47 held that while parties are not permitted to exclude the duty of good faith through contractual terms, they remain free to construct contracts to limit the scope of their liability for breach of the duty.

Conclusion

[166] In light of the findings above, the claim for breach of the duty of honest and good faith performance is dismissed.

Issue #4 – Breach of Contract

[167] Although One Purpose abandoned its claims for negligence or unjust enrichment, it does maintain its claim for breach of contract in the event that a breach of the duty of honest and good faith performance is not made out. However, rather than providing a separate analysis of how the evidence supports a conclusion that the Hosting Agreement was breached, One Purpose merely submits that it relies on the same conduct alleged to be a breach of DMG's duty of honest and good faith performance of the Hosting Agreement.

[168] In the amended notice of civil claim, One Purpose singles out the following terms of the Hosting Agreement: Clause 2.1(a) (host the Mining Servers); Clause 2.1(b)(1) (use reasonable endeavours to keep Mining Servers supplied with electricity and internet connectivity); Clause 2.1(b)(2) (use reasonable endeavours to maintain adequate security protection of the Facility and the Mining Servers); Clause 3 (use reasonable endeavours to supply Customer with Maintenance Services); and

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Clause 10.1 (provide 60 days' notice of termination prior to expiration of Renewal Term).

[169] One Purpose concedes that any liability for breach of contract is covered by the limitation of liability provisions in Clause 9 of Hosting Agreement, which limits damages to the equivalent of three months of hosting fees.

[170] DMG takes the position that One Purpose has failed to meet its onus to demonstrate both a breach of a specific term of the Hosting Agreement and a loss arising from the breach. DMG submits that by operation of the variation and entire agreement clauses (Clauses 19 and 20) of the Hosting Agreement, the contractual obligations of the parties are limited to those found within the Hosting Agreement.

[171] DMG also submits that with respect to the terms that refer to “reasonable endeavours”, these are efforts-based obligations whereby DMG promised to engage in a reasonable amount of effort but did not guarantee a particular result or outcome. In support of this submission, DMG points to the decision of *Atmospheric Diving Systems Inc. v International Hard Suits Inc.*,1994 CanLII 16658 at para 71, [1994] 5 WWR 719 (BCSC), in which Justice Dorgan held that “reasonable efforts” imposes a lesser obligation than “best efforts.” In *1092369 Alberta Ltd. v Joben Investments Ltd.,* 2013 ABQB 310 at para 75, Justice Russell Brown (as he then was) described reasonable efforts as a “prudent and moderate measure of sustained diligence” or “the effort that a reasonable person, committed to achieving the objective, would have undertaken.”

[172] DMG also relies upon *Banque Indosuez v Canadian Overseas Airlines*, [1990] BCJ No 21 (BCSC), for the proposition that to establish a breach of a reasonable endeavours obligation under a contract, the onus lies on the party alleging the breach to lead evidence to establish the industry practice against which the conduct in question can be judged.

[173] Leaving aside the termination clause, which I will address separately, having reviewed the record and in light of the findings of fact that I have already made, I am

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not satisfied that One Purpose has met is onus to establish a breach of any of the other four terms of the contract it relies upon. Furthermore, One Purpose did not call any evidence to establish industry practice for non-tiered hosting facilities such as DMG's Christina Lake facility.

[174] DMG failed to comply with the contractual requirement to provide 60 days' notice of termination. Mr. Bennett acknowledged that the reference to 15 days in the notice was an error. Mr. Khazaieli asked for sufficient time to find a new place to move which DMG provided. Further, DMG assisted One Purpose by providing its own personnel to help pack the equipment when One Purpose's own plans to hire labour for this task fell through. This packaging was still taking place in mid August 2021, and the miners were shipped out thereafter. In these circumstances, I am not satisfied that any loss has been proven to flow from the deficiency in the notice provided.

[175] As such, I find that One Purpose has failed to establish a loss arising from the mistaken reference in the termination letter to 15 days' notice.

Disposition

[176] In light of my factual findings, it is not necessary for me to address the parties' evidence and arguments with respect to the causation and quantum of damages.

[177] The action is dismissed.

[178] As the successful party and in the absence of further submissions, the defendants are entitled to recover their costs from the plaintiff. If there is some basis why this is not an appropriate outcome as to costs, the parties have leave to seek to make further submissions before me.

"Hoffman J."

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