

 [R. v. Kazman](#)

Ontario Judgments

Ontario Superior Court of Justice

N.J. Spies J.

Heard: September 12-16, 19-23, 26-30,
October 5, 11, 13, 14, 19-21, 26-28,
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[2017] O.J. No. 5193 | 2017 ONSC 5300

Between Her Majesty the Queen, and Marshall Kazman and Gad Levy and Armand Levy and Ali Vaez Tehrani and Madjid Vaez Tehrani and Alireza Salehi and Ekaterina Chapkina and Kamyar Ghatan, Defendants

(1818 paras.)

Counsel

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Marshall Kazman, Self-Represented.

Gad Levy, Self-Represented.

Armand Levy, Self-Represented.

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Alice Barton, for Madjid Vaez Tehrani.

Aaron Harnett and Christine Cole, for Alireza Salehi.

Jeff Chapnick, for Ekaterina Chapkina.

Walter Fox, Sayeh Hassan, and Nicholas Pham, for Kamyar Ghatan.

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REASONS FOR JUDGMENT

N.J. SPIES J.

Introduction

1 The Government of Canada established the Canada Small Business Financing Program ("CSBFP") in January 1961. The CSBFP is administered by Industry Canada and its main objective is to encourage lenders to make loans to small businesses that they might not otherwise make, due to the borrower's lack of experience, insufficient security and/or the fact that the business is just starting up. The goal is to promote the expansion, modernization and improvement of small businesses throughout the country and thus spur on the economy and increase jobs.

2 Applicants apply for a small business loan ("SBL" or "loan") directly with participating banks. The loans can finance, among other things, up to 90% of the costs of purchasing leasehold improvements and fixtures and purchasing new equipment and furniture for the business. SBL proceeds cannot be used to finance inventory.

3 Industry Canada is not involved in the application process or in a bank's decision of whether to grant a SBL and does not deal directly with the borrowers. The lenders make all the decisions in approving a SBL and in advancing the loan funds. Industry Canada acts, in effect, as an insurer for the SBL if a lender complies with all of the requirements of the CSBFP. In that event, if a SBL goes into default, Industry Canada will reimburse the lender up to 85% of the monies advanced.

4 In early 2009, the RCMP received a complaint from the Royal Bank of Canada (RBC) in relation to a suspected fraudulent SBL. The RCMP commenced an investigation that was ultimately expanded to more than 16 different SBLs across the five major banks: RBC, Bank of Montreal (BOM), Bank of Nova Scotia (BNS), Canadian Imperial Bank of Commerce (CIBC) and

the Toronto Dominion Bank/Canada Trust (TD). The focus of this trial is on 16 SBLs that were approved during the period of June 2007 to March 2010. Although there is no agreement on specific dates, the evidence is clear that all of these loans went into default within 12 to 18 months of the intended 60-month term.

5 All of the defendants are charged with committing the offence of fraud exceeding \$5,000 for the benefit of, or at the direction of, or in association with a criminal organization contrary to s. 467.12 of the *Criminal Code* (count 7). The defendants Marshall Kazman and Gad Levy¹ are also charged with laundering the proceeds of the fraud contrary to s. 462.31(1) of the *Code* (count 6).

6 Mr. Kazman and Mr. Levy are also each charged with five counts of fraud over \$5,000 of the banks; BNS, TD, BOM, RBC, and CIBC, and Industry Canada, contrary to s. 380(1)(a) of the *Criminal Code* (counts 1-5).

7 The defendant Ali Vaez Tehrani is charged with three counts of fraud over \$5,000 of the BNS, RBC, and CIBC (counts 1, 4 and 5). His brother, the defendant Madjid Vaez Tehrani² ("Mr. Tehrani") is charged with two counts of fraud over \$5,000 of the BNS and CIBC (counts 1 and 5). The defendant Ekaterina Chapkina is charged with two counts of fraud over \$5,000 of the BNS and CIBC (counts 1 and 4), and the defendant Kamyar Ghatan is charged with one count of fraud over \$5,000 of the BNS (count 1).

8 This is a complex case, both factually and legally. It took five months for the introduction of the evidence that featured many thousands of documents submitted on disc, more than 40 witnesses and substantial written closing submissions as well as oral submissions to bring this Court to the point where the difficult task of determining whether or not the Crown has proven any of the charges beyond a reasonable doubt could begin.

9 The theory of the Crown is that the defendants, Mr. Kazman, Mr. Levy and former co-accused Miriam Cohen, commandeered a criminal organization of three or more persons whose primary function was to fraudulently obtain SBLs through the CSBFP from all of the major banks and use most or all of the funds for the benefit of the organization and themselves. Specifically, the Crown alleges that fraudulent documentation was provided to the banks, which caused the SBLs to be approved, that the leasehold improvements and purchase of equipment that the defendants represented to the banks were either not done or purchased and that the SBL proceeds that were not used for the new businesses were laundered among the defendants.

10 The Crown asserts that the success of the criminal organization depended on a keen familiarity with both the CSBFP and the inner-workings of the banks - something the Crown asserts Mr. Kazman and Mr. Levy had long-since acquired through their various business dealings and a partnership that began in the late 1990s. The position of the Crown is that this was a sophisticated scheme that required planning, co-ordination, organization, operating capital, and co-operation. To that end, the Crown asserts that Mr. Kazman, Mr. Levy, and Ms. Cohen relied heavily on co-accused Mr. Tehrani, Mr. A. Tehrani, Ms. Chapkina, Mr. Ghatan, and former co-accused Mr. Salehi,³ as well as several unindicted co-conspirators who, through various corporations, all obtained one or more SBLs for the benefit of the organization. Armand

Levy, the brother of Mr. Levy, was not a SBL borrower but the theory of the Crown is that he assisted in the criminal organization by laundering the proceeds of the fraud.

11 During the period from June 2007 to March 2010, it is the position of the Crown that this organization fraudulently obtained at least 16 SBLs totaling approximately \$2.8 million. Ms. Cohen obtained four of these loans through companies that she owned, namely Energy Lighting and Furnishings Inc. (ELFI), Energy Lighting Inc. (ELI), Light House Contracting Inc. (LHC) and Light Source Contracting Inc. (LSC), collectively referred to as the "Cohen SBLs". Corporations owned by one of the defendants obtained the remaining 12 SBLs. Former co-accused Alireza Salehi obtained three SBLs: Roxy Design Inc. (Roxy), Contemporary Design Inc. (CDI) and Modernito Design Inc. (Modernito); Mr. A. Tehrani also obtained three: Qua Design Inc. (Qua), Contempo Design Inc. (Contempo) and Alta Design Corp. (Alta); and Mr. Tehrani obtained four, two of which are covered by the indictment: Meez Ltd. and Kube Home Décor Corp. (Kube). Mr. Tehrani also obtained SBLs for Meez Corp. and Comod Corp. (Comod) that are outside the scope of the Crown's case but have some relevance to the matters in issue. Ms. Chapkina obtained two SBLs: World of Accessories Ltd. (World) and Exclusive Accessories Inc. (Exclusive); and Mr. Ghatan obtained one for Homelife Forest Hill Realty Inc. (Homelife). Mr. Levy obtained the last SBL in issue for his company Bluerock Construction Inc. (Bluerock).

12 Mr. Kazman and Mr. Levy were first charged in June 2011 along with Ms. Cohen. Those charges related to what I have described as the Cohen SBLs. The charges were expanded in October 2012 when the other defendants were charged and 13 more SBLs were added to the indictment. This was later reduced to the 16 SBLs involving the five major banks, which are before me.

13 On April 10, 2015, after a lengthy Preliminary Inquiry that had not been completed, the Attorney General of Ontario preferred an indictment against the defendants.

The Defendants

14 Marshall Stephen Kazman was called to the bar in the early 1980's and practiced law for 22 years, first with his father, and then as a sole practitioner. He described himself as a "jack of all trades," doing a lot of civil litigation, real estate, corporate/commercial and some criminal law at the provincial court level.

15 In September 2006, the Law Society of Upper Canada ("LSUC") revoked Mr. Kazman's licence to practice law. The Appeal Panel of the LSUC and the Divisional Court upheld this decision. Mr. Kazman was able to continue practicing while the case was under appeal but he could not issue cheques without permission from the LSUC. In Appendix "A", I set out my ruling on how the reasons for this revocation can be used in my determination of the charges against Mr. Kazman.

16 After Mr. Kazman lost his licence he continued as a paralegal under the business name Dufferin Paralegal Ltd. (Dufferin Paralegal). Paralegals were not licenced at the time by the LSUC.

17 While Mr. Kazman was practicing law he started a business called Spiritual Awakenings, which took small groups of people on adventure tours. One of the trips he described was to Peru. Mr. Kazman also described a family property in Caledon that he owned at the material time that had a nice spring. He used different companies over a number of years including Blue Glass Water Company (Blue Glass) to sell carbonated spring water in blue bottles to high-end restaurants using the water from that spring. Mr. Kazman admitted owning one construction company and was also a signing officer at the bank for a number of other corporations that were purported to be legitimate construction companies and involved in several of the SBLs in issue. It was also Mr. Kazman's evidence that Mr. Levy was actually the controlling mind and beneficial owner of these corporations, which Mr. Levy disputes. It is the Crown's position that these were Mr. Kazman's companies and that they were sham corporations. I refer to these corporations as the "Disputed Construction Companies" and the particulars of these companies, from the documents entered as exhibits, are set out in Appendix "E". Their ownership and control is one of the central factual issues that I must determine.

18 Mr. Kazman met Mr. Levy around the late 1990's through Mr. Levy's then accountant Victor Almalah. After Mr. Kazman acted for Mr. Levy on a civil litigation matter, they and their spouses became good friends. Mr. Kazman also met Mr. Levy's brothers Armand and Dov Levy. Mr. Levy has a large family and had many clients and he referred a lot of legal work to Mr. Kazman. A lot of Mr. Almalah's and Mr. Levy's clients had obtained SBLs and Mr. Kazman defended them on their guarantees. Mr. Kazman denied knowing much about how SBLs worked and he was not an applicant for any of the 16 SBLs before me although I did hear evidence about a SBL he obtained for his paralegal business, Dufferin Paralegal. The companies that Mr. Kazman admitted to owning in whole or in part are set out in Appendix "B". I have also set out the companies associated to Ms. Cohen in that Appendix. With respect to the companies in Appendix "B", in cases where Mr. Kazman testified that he had other partners, I will refer to the corporation as "owned" by him for ease of reference, recognizing that he was only a part owner.

19 Mr. Kazman was married to Maxine Henry. He reported to the Canada Revenue Agency (CRA) that he was married for the 2005 tax year and then that he was separated for the years 2006 to 2010 inclusive.

20 Mr. Levy was born in Morocco and came to Canada around 1982 and finished high school here. He then started working for a cousin in a clothing business and then for his brother-in-law in a furniture business. Mr. Levy quickly became successful with his own clothing store, Jigolos, and he bought his first property; 617 College Street in Toronto, where he continued to operate that store. Mr. Levy incorporated a number of other companies and had two clothing stores on Bloor Street in rented premises.

21 Although Mr. Levy denied he was a specialist for obtaining SBLs, signs for one of his companies, Fairbank Financial & Accounting Ltd. (Fairbank), suggest otherwise. His sign for that company described this business, in part, as "Consulting, Investments, Mortgages, Business Finance Specialists, Business Plan Specialists". Mr. Levy also testified that he had a number of construction companies. His first company was MDC Modern Design Concept Inc. (MDC Modern), which was incorporated in April 2001. He incorporated a number of different

construction companies after this as well as other types of corporations. Appendix "B" sets out all of the corporations Mr. Levy admits to owning, in whole or in part, that were referred to in this proceeding.

22 Mr. Levy also introduced Mr. Kazman to Avi Luska, who later became a partner of Mr. Kazman's in certain properties that they purchased together. Their first big project was 493-495 Queen Street West, which they renovated with loft apartments on the second floor. According to Mr. Kazman, they sold the building for a nice profit and then bought 677 Queen Street West (677 Queen) and then 2897 Dundas Street (2897 Dundas) with a third partner, Ari Yakobson.

23 In the late 1990's or early 2000's, while he was still in practice, Mr. Kazman met Ms. Cohen and her father, Jack Sade. They were carrying on a lighting business called Save Energy Lighting (Save Energy) in the same plaza on Cocksfield Avenue, Toronto, where Mr. Kazman had his law office. They came to him and asked him to prepare some will and power of attorney documents. Mr. Kazman developed a business relationship with Ms. Cohen and her father and did other legal work for them including corporate litigation. Eventually Ms. Cohen became his business partner in certain property purchases. As well, Mr. Kazman testified that Ms. Cohen and her father loaned him money from time to time. They became good friends and Mr. Kazman admitted that he developed an intimate relationship with Ms. Cohen that probably began prior to the SBLs in issue, although Mr. Kazman then changed his evidence to say only that it could have begun prior to the SBLs. No further details of this relationship are in evidence.

24 Mr. Kazman also introduced Ms. Cohen to Mr. Levy. Mr. Levy admitted this and said that it was perhaps two to three years before he prepared a Business Plan for Ms. Cohen for her first SBL in June 2007. Mr. Levy testified that he used to see her all the time after that and that Mr. Kazman told him that they were partners in properties. Mr. Levy, however, downplayed his relationship with Ms. Cohen.

25 Mr. Kazman and Mr. Levy became partners in certain properties that were purchased, starting in 2007 with the purchase of 1040 Eglinton Avenue West, Toronto (1040 Eglinton), although they do not agree on which properties and over what time period they were partners. I have also set out in Appendix "B" the particulars of properties that were referred to in evidence where the ownership is not in dispute. In that Appendix, I also include particulars of the properties where ownership is disputed between Mr. Kazman and Mr. Levy as it may be relevant to their knowledge of the purported renovations done at these properties using SBL proceeds. However, who in fact owned each property and when is not otherwise important. As I explained to Messrs. Kazman and Levy multiple times, the reasons for their falling out and whether or not one of them had been taken advantage of by the other, and issues of that sort, were collateral to the issues in this proceeding.

26 Mr. Kazman and Mr. Levy had a falling out sometime in 2010, likely around the time of the Uzeem SBL in early 2010. With respect to the SBL Mr. Levy obtained for Bluerock in March 2010, Mr. Kazman alleges that the two leases Mr. Levy provided to the CIBC for this SBL were frauds, that no renovations were done or equipment supplied and that this entire SBL was a fraud. There is no doubt that their relationship had broken down by this point.

27 Mr. A. Levy did not obtain a SBL and the bulk of the evidence that I heard about his involvement in the alleged criminal organization was about some SBL proceeds that he received from companies associated with Mr. Levy, which Mr. Levy testified were personal loans to his brother or his companies. There was also evidence of certain payments Mr. A. Levy or his companies made to Mr. Levy and his companies and in some cases other companies that Mr. Levy testified were loans from his brother.

28 At the end of the Crown's case, Mr. A. Levy brought motion for a directed verdict which I dismissed; see *R. v. Kazman*, 2016 ONSC 8194.

29 Mr. A. Levy elected not to testify. At the end of the trial the Crown simply relied only on their earlier submissions in defence of the motion for a directed verdict in support of their case against Mr. A. Levy. I determined at the end of the oral submissions that the Crown had not proven the allegations against Mr. A. Levy beyond a reasonable doubt and directed his acquittal on counts 1 and 7, with reasons to follow, which are set out in Appendix "C".

30 Mr. Tehrani and his brother, Mr. A. Tehrani, were born in Iran. Mr. A. Tehrani is the older of the two and they have four brothers. While in their teens, Mr. Tehrani and Mr. A. Tehrani were sent by their parents to Italy to study jewellery; the family business. They decided not to go back home and came to Canada with an older brother in 1984 as immigrants in the investor category. As required, they opened a jewellery manufacturing facility immediately upon arrival. Both Mr. A. Tehrani and Mr. Tehrani worked in the business for five to six years.

31 After leaving this family business, Mr. A. Tehrani opened a jewellery design office for himself. Although Mr. A. Tehrani did not mention this, he and Mr. Tehrani operated a fine food business together for about four years until the business was sold. After Mr. A. Tehrani got married and had children, he decided to spend more time with his family and so he started working for The Brick and then for Leon's, where he worked for almost ten years while he learned the furniture business.

32 After leaving Iran, Mr. Tehrani also worked in the family jewellery manufacturing business for a few years and, after he got married, he began to work as an employee for a jewellery store. After the fine food business he operated with his brother, he and his wife and her sister opened a home décor, furniture and accessories store called Bizarre Shoppe Ltd. (Bizarre) in 1989, which they operated in premises Mr. Tehrani leased on the first floor and basement of 654 College Street, Toronto (654 College). Mr. A. Tehrani testified that he spent a lot of his free time at Bizarre learning the ins and outs of operating a store from his brother.

33 In 2002 or so Mr. Tehrani started importing vintage Vespa scooters. Jigolos was operating nearby and Mr. Tehrani met Mr. Levy at Bizarre as Mr. Levy was passionate about motorcycles. This is how Mr. A. Tehrani and Mr. Salehi also met Mr. Levy. Mr. Tehrani operated Bizarre until 2005 or 2006. In the meantime, his wife's sister had become a dental hygienist and he had two young children so his wife was staying at home more. As a result Mr. Tehrani decided to open a new business.

34 Mr. Tehrani and his partner, Reza Moghaddam, incorporated Meez Ltd. in November 2005. By agreement dated December 1, 2005, the Bizarre lease was formally assigned to Meez Ltd. Although Mr. Tehrani did not give details, apparently Mr. Moghaddam decided to go back to Iran at some point and Mr. Tehrani then brought Mr. Salehi in as a partner. He did not know Mr. Salehi, who at the time was selling a Subway restaurant, which he had been operating on College Street. An employee who was working for both of them introduced them to each other.

35 Mr. Tehrani testified that he entered into an agreement with Mr. Salehi dated May 18, 2006 and executed May 26, 2006, which confirmed that Mr. Salehi had agreed on an "initial investment fee of \$35,000". Mr. Salehi was to work full-time for the business for a period of three months and make a decision by August 31, 2006 whether to enter into a business partnership agreement with Meez Ltd. If an agreement was not reached by then the money invested by Mr. Salehi in the amount of \$35,000 was to be considered an unsecured loan that Mr. Tehrani took full responsibility to repay. Notes at the bottom of the agreement set out the payments by Mr. Salehi of \$10,000 from TD and \$25,000 from CIBC reflecting his investment.⁴

36 Mr. A. Tehrani testified that he wanted to be a partner with Mr. Tehrani in Meez Ltd. as well but, according to Mr. Tehrani, Mr. Salehi did not agree. He did not want two brothers against him.

37 At the end of the Crown's case Mr. A. Tehrani brought a motion for a directed verdict which I dismissed with reasons to follow.

38 Although Mr. Salehi is no longer a defendant, the SBLs he obtained are relevant to the Crown's case in at least two respects. First of all, the evidence of how Mr. Kazman and/or Mr. Levy may have participated in Mr. Salehi's SBLs is relevant to the charges against them. Secondly, the evidence related to Mr. Salehi's SBLs may shed light on other renovations purported to have been made to the same premises.

39 Ms. Chapkina immigrated to Canada at the age of 24 in November of 1999 from what was then the U.S.S.R., now known as the Russian Federation. She has a university degree in humanities, which is considered above a Canadian Bachelor's degree but somewhat below a Canadian Master's degree. Ms. Chapkina worked part-time in a paralegal office and for an immigration lawyer. In September of 2006, Mr. Kazman, who was then working as a paralegal through Dufferin Paralegal, hired Ms. Chapkina. She worked initially as a legal assistant/receptionist but, over time, Ms. Chapkina became more involved in operating Blue Glass for Mr. Kazman. Ms. Chapkina testified that when she was arrested she immediately resigned and mailed the keys to Mr. Kazman's office back to him and that she had no further contact with him or Mr. Levy until trial.

40 At the time that Mr. Ghatan obtained a SBL for Homelife Realty, he was a successful real estate agent. He had received several merit awards from Homelife Realty for his sales and was also a member of their Diamond Club based on his gross sales commissions. He wanted to open a brokerage using the SBL funds.

Overview of the Crown's Case

41 The Crown's case began with the evidence of Cpl. Thompson, a 24-year veteran with the Financial Crimes Division of the RCMP who explained the course of her investigation. She is the officer-in-charge of this case and was the main investigating officer. In addition to outlining the theory of the Crown's case against the defendants, Cpl. Thompson testified about her attendances at certain of the premises in issue and the pictures that she took, although these attendances were some time after the SBLs in issue.

42 Most of Cpl. Thompson's evidence was for the purpose of giving the defendants notice of the Crown's theory of the case through the use of charts summarizing information from various sources and describing the flow of funds that were then elaborated on by Paul Coort, a Forensic Accountant retained by the RCMP to assist with the investigation. Mr. Coort prepared an analysis of the records of more than 90 different bank accounts that were either provided voluntarily or in response to court production orders. Through his written report and *viva voce* evidence, facilitated by the charts first introduced through Cpl. Thompson, Mr. Coort explained, to the extent he could, the source and flow of funds with respect to the 16 SBLs and various corporations associated with Ms. Cohen, the defendants and Mr. Salehi; (the "Coort Analysis").

43 Much of the Crown's case is documentary. As part of the investigation, the RCMP obtained the SBL file from the bank in question for each of the 16 borrowing companies as well as a few other SBLs and bank records for more than 90 accounts alleged to be involved in circulating the loan proceeds. These bank records were introduced into evidence as business records through Cpl. Thompson and in reliance on affidavits sworn by bank representatives pursuant to s. 29(1) of the *Canada Evidence Act*, R.S.C. 1970, c. E-10 (*CEA*). In addition, various bank representatives were called to permit cross-examination by the defendants. The bank account statements, cheques and drafts withdrawn from a particular account at the bank were admitted into evidence as authentic and as proof, in the absence of evidence to the contrary, of the entry and the transactions therein recorded; *i.e.*, truth of the contents. Who in fact signed the cheques was not proven based only on the proof of the authenticity of the cheque but that did not become an issue once the defendants testified.

44 Cheques and drafts from other banks, which represented deposits made into a particular account, were not technically covered by s. 29(1) of the *CEA* but they were accepted by the bank that received the deposits and on that basis I considered those deposits proven.

45 I made certain rulings as to how the rest of the bank records could be used. The most important one was related to the fact that some of the SBL files contain typed notes summarizing conversations between bank employees with the borrower and other third parties, notes referring to site visits conducted by a representative of the bank, observations made and, in some cases, the details of conversations between the bank representative and a particular defendant. I ruled that since the contents of the notes as to what various representatives of the bank observed and/or said or were purportedly told by a particular defendant is hearsay, that if any party wanted to rely on this information the bank employee in question would have to be called as a witness, subject to there being an applicable hearsay exception. The only exception

agreed to was that I would consider a note that stated that a site visit had occurred as fact. To the extent the bank files contain statements that bank employees suspected fraud on the part of any defendant or were investigating fraud, or comments of that nature, they have been ignored.

46 Other documents in the SBL files such as Business Plans, copies of Guaranteed Investment Certificates (GICs), Notices of Assessment (NOAs) from the CRA and leases that purport to be between the borrower and third parties were proven to be true copies of the originals in the banks' loan file and were also proven to be authentic pursuant to s. 29(1) of the *CEA*. However, who filled in or prepared the document, where applicable who signed the document and who provided the document to the bank was not proven by admission of the bank records.

47 The RCMP also obtained certified copies of various government records including the photos and signatures of the defendants, Ms. Cohen and Mr. Salehi from the Ministry of Transportation (Driver's Licence File), Corporate Profiles of the various corporations from the Ontario Ministry of Government Services records from the CRA, and Parcel Register Abstracts (Abstract) from the Land Registry Office for the various properties in issue. These were admitted pursuant to s. 24 of the *CEA*.

48 From the Driver's Licence Files I have a known signature from each of the defendants, Ms. Cohen and Mr. Salehi; the Known Signatures. Although in most cases the signing of documents was admitted, where necessary I have been able to make findings as to who signed particular documents or cheques by comparing the signature on the document in question with the Known Signature. There was no dispute that as a matter of law, as the trier of fact, I am able to make such comparisons and draw factual conclusions. I have set out in Appendix "D" a brief summary of the law on this issue that I applied.

49 With respect to the CRA files, I also made a number of rulings. Some of the CRA files contain information about audits conducted by CRA employees and in some cases this includes observations made by that employee of a particular business and/or discussions with a particular defendant. As this information is hearsay I did not rely upon it. No one from the CRA was called as a witness.

50 The Crown also called Lorenzo De Franco, a long-time employee with Industry Canada, working exclusively with the CSBFP, who explained the process of obtaining a SBL from the perspective of Industry Canada, including the completion by the borrower of the Loan Registration Form. He also identified the documents sent out or received by Industry Canada and in particular the Loan Registration Acknowledgment and the Claim for Loss Calculation forms that related to those of the 16 SBLs where the bank made a claim to Industry Canada. An issue arose as to the accuracy of the loss calculation set out in those forms but it is not necessary for me to determine those issues at this time. It is clear, however, that to the extent that assets purportedly purchased by SBL proceeds were appraised, the appraisers called by the Crown gave the assets they did see nominal values which resulted in the banks, in all cases, deciding to abandon those assets.

51 The Crown, Mr. Kazman and Mr. Levy called a number of bank representatives who, in some cases, provided further evidence identifying bank records but also spoke to the SBL

process at their bank and provided what I will describe as the "Bank Reliance Evidence" as it relates to the evidence from the banks as to what information provided by a defendant was relied upon in approving the SBL.

52 In addition, the Crown called various witnesses who testified to the issue of whether or not certain leasehold improvements were made to some of the properties in issue and/or whether or not furniture, fixtures and equipment was supplied. These witnesses included third party landlords and other tenants who are not involved in these allegations and others who had firsthand knowledge of the properties before the SBL in issue was obtained.

53 The Crown asserts that Mr. Kazman, Mr. Levy and Ms. Cohen used the vast majority of the SBL proceeds to purchase properties and renovate those properties, as well as make payments for mortgages, outstanding loans, legal bills, luxury vehicles, and various other personal expenses. It is the position of the Crown that the Coort Analysis reveals millions of dollars being circulated among various companies associated with the defendants with very little in the way of operating businesses. It is the position of the Crown that the sheer volume of funds being randomly circulated back and forth between many of Mr. Kazman's, Mr. Levy's, and Ms. Cohen's sham corporations proves to be the most incriminating evidence in an overwhelming case for them.

Overview of the Defences

54 This is a case colloquially known as one of "cut throat" defences. Each of the defendants, save for Mr. A. Levy, testified on their own behalf and all of the defendants blamed Mr. Levy for any fraud perpetrated on the banks. Mr. Levy on the other hand, testified that he was the victim.

55 Mr. Kazman's position is that he knew nothing of the alleged fraud. His overarching defence is that he trusted Mr. Levy and was victimized by him just as the other defendants and others were. Mr. Kazman's position is that there was no criminal organization. He asserts that Mr. Levy is a "control freak", something even Mr. Levy admitted, and that Mr. Levy was a "master manipulator"; a business loan specialist, who facilitated and obtained business loans for people which included, preparing business plans, leasing out his premises when it was advantageous for him to do so, drafting the leases, and altering documents before they were provided to the banks. Mr. Kazman also relies in part on the fact that based on the Coort Analysis, Mr. Levy and his corporations received significantly more of the money from the various SBLs than any other defendant.

56 Mr. Kazman acknowledged being the signing officer at the bank for all but one of the Disputed Construction Companies, and the one who signed many of the cheques analyzed by Mr. Coort. He testified that Mr. Levy controlled all of the Disputed Construction Companies and directed him to receive all payments and how to make cheques payable and controlled all of the money that flowed through these accounts. Mr. Kazman maintains that he did so only to make a fee (2 to 10% or a flat fee) based on the total amount of money going through the accounts and that he had no knowledge of any fraud or any reason to suspect a fraud. Mr. Kazman emphasized that at that time he trusted Mr. Levy, who had assured him that everything was aboveboard. Mr. Kazman maintains that given how he was paid, he only paid attention to the

total deposits and that he had no way of knowing the source of the funds or any reason to suspect there was any fraud in the use of the SBL proceeds.

57 In summary, it is Mr. Kazman's position about cheques payable to him and his companies that they were either loans or payment of the percentage or flat fee that Mr. Levy paid him for administering the various bank accounts. In terms of cheques he signed in favour of Mr. Levy and his companies, from one of his companies, he typically said this was in repayment of a loan given to him by Mr. Levy. As for all of the other cheques he signed on behalf of the Disputed Construction Companies, Mr. Kazman testified that he did so at the direction of Mr. Levy and had no reason to suspect any fraud. On its face it is not possible to determine the veracity of this evidence but I will consider the issue again after I have reviewed the evidence for the 16 SBLs.

58 Mr. Kazman also submits that there is no evidence that he had any "...keen familiarity with CSBFPs and the inner workings of banks..." as alleged, or ever represented himself as a SBL specialist. The only evidence is that in his capacity as a lawyer/paralegal he assisted a number of clients who were sued as a result of SBLs. Similarly, he asserts there is no evidence that he was involved in the preparation of business plans, the completion of any of the SBL application documentation, or the creation or alteration of the GICs and NOAs submitted to the banks or that he counseled or coached or advised any of the defendants to submit false documents to the bank. In fact, in some cases he asserts that there is no evidence that he even knew that there was a SBL.

59 Mr. Kazman produced a number of notes in his handwriting, which referred to loans from Ms. Cohen to him personally or a company he owned or owned with other partners and the repayment of loans. The details are not important. These notes are material only because they show that there were real loans between Mr. Kazman and Ms. Cohen and the informality of documentation to evidence those loans. Mr. Kazman also produced some typed Promissory Notes evidencing loans made by Ms. Cohen to him personally and in some cases to a corporation and Mr. Levy as well. As one example, on October 30, 2009, Mr. Kazman, Mr. Levy and Mr. Kazman on behalf of 846 Realty Corp. (846 Realty), signed a Promissory Note securing a \$100,000 loan from Ms. Cohen. Mr. Kazman submitted that as a result there was legitimately money passing back and forth between them and that this had nothing to do with money laundering.

60 Mr. Kazman also testified that he had other sources of income in the relevant period. He received a demand loan for almost \$701,000 from Mr. and Mrs. D'Imperio on August 15, 2006. He testified that he repaid \$200,000 of that loan in April 2007.

61 Mr. Kazman argued that there was a failure on the part of the Crown to prove its case by failing to call Ms. Cohen and Mr. Salehi. I do not accept that submission. They could have been called by anyone. It was up to Crown counsel to decide whether or not to call either of these former defendants as witnesses. I must assess the evidence that I heard and not speculate about what I might have heard.

62 It is Mr. Kazman's position that the first order of business is to determine whether the evidence discloses beyond a reasonable doubt whether the work and services were provided or

not. He submits that if the Crown cannot establish that work and services and equipment were not supplied or completed beyond a reasonable doubt based on the admissible evidence then the charges in whole or in part must be dismissed. Mr. Kazman argues that in most of the cases the Crown has failed to establish beyond a reasonable doubt that the leasehold improvements and equipment were not supplied, that the businesses established were not *bona fide*, and that *bona fide* efforts were not made to operate these businesses.

63 In addition to the bank witnesses, Mr. Kazman called a couple of witnesses who spoke to discreet issues.

64 Mr. Levy's position is that he knew nothing of the alleged frauds. He testified that he had nothing to do with the Cohen SBLs. As for the others, he admitted being the subcontractor to some of the Disputed Construction Companies, which he alleged were in the control of Mr. Kazman and that in that role one or more of his companies did the leasehold improvements and in other cases that one of his companies was the contractor used by the borrower for the supplier of furniture, fixtures, and equipment. He denied preparing all of the Business Plans provided to the banks and denied the suggestion that he was the person who fraudulently altered any GICs or tax documents. He also testified that if one of his companies was involved in the leasing and/or renovation of a property that the lease was legitimate and the leasehold improvements were done and all equipment required by the borrower was provided. He ended with "I am the victim of everybody".

65 With respect to all of the cheques passing between him, Mr. Kazman and Ms. Cohen, Mr. Levy gave various explanations. Like Mr. Kazman, for the most part it was his position that various cheques were loans or repayments of loans but there were other explanations that he and Mr. Kazman gave. For example, Mr. Kazman testified that some cheques to him were for legal services provided or money due from the sale of his Blue Glass water. Mr. Levy testified that some of the payments he made were for lights purchased from Ms. Cohen and that some of the money received from Mr. Kazman was for construction work he did for him. In giving their evidence, for the most part, there was no documentation with respect to the payment and they relied primarily on what was stated on the RE line of the cheque when it was filled in. Mr. Levy in particular testified that if the cheque referenced "on account" and was for an even amount; *i.e.*, no cents, that it was for money loaned or paid back. Mr. Kazman did not give that evidence. I agree that it would make sense that either one was making or receiving a loan that it would be an even dollar amount. They both testified that if the cheque referenced an invoice number, it was for subcontracting or for a purchase of lights, furniture, or home décor accessories. In Mr. Kazman's case however, he disputed the suggestion that Mr. Levy's companies did any subcontracting for the companies that he admitted owning, but of course he did not admit to owning any of the Disputed Construction Companies.

66 With respect to some of the cheques received from the Disputed Construction Companies, Mr. Levy testified that the cheque could be for work that he did for Mr. Kazman's company, *i.e.*, one of the Disputed Construction Companies, as a subcontractor or payment for supplies purchased by Mr. Kazman. However, not all of these cheques refer to an invoice number. When Mr. Levy was asked why he would be paying money to Mr. Kazman pursuant to an invoice he

very quickly came up with three properties owned by Mr. Kazman that he claimed to do subcontracting, namely two homes and one condo owned by Mr. Kazman..

67 Mr. A. Levy's position was that the Crown did not prove its case against him. He routinely asked all of the witnesses who were called whether or not they knew him or had any business dealings with him. The only contact that I heard about was that on one occasion Mr. A. Levy went to pick up some furniture for his brother from Mr. Tehrani and he introduced Mr. Ghatan to his brother. When his brother, Mr. Levy, testified, he addressed the issues that I was concerned about when I dismissed Mr. A. Levy's motion for a directed verdict. Although, as I will come to, I have significant concerns about the credibility and reliability of Mr. Levy's evidence, his evidence about payments to and from Mr. A. Levy which he testified were for legitimate purposes was not contradicted unless I were to assume that Mr. A. Levy is somehow fixed with knowledge of the source of the funds, because he and Mr. Levy are brothers, which of course cannot be the case absent some evidence to support that inference. As already stated, I have attached my reasons for acquitting Mr. A. Levy at Appendix "C".

68 As for the other defendants, who took out one or more SBLs, they all took aim at Mr. Levy and took the position that they were victims of a fraud scheme orchestrated by him. They all professed to have trusted him and that they had no experience in SBLs, no knowledge of any altered documents that were provided to the bank, which they claimed must have been altered by Mr. Levy without their knowledge, no experience in construction, which is why they relied on Mr. Levy, who agreed to do their leasehold improvements, to determine what needed to be done and to provide them with equipment for their store. They all testified that to the best of their knowledge all of the leasehold improvements were done and all of the furniture, fixtures and equipment were supplied in accordance with the invoices provided to the banks. All of the defendants, save for Ms. Chapkina, professed to have dealt with Mr. Levy only, not Mr. Kazman. Ms. Chapkina testified that both Mr. Kazman and Mr. Levy used their construction companies for her renovations. All of the defendants testified to having no knowledge of any fraud, or any reason to suspect fraud. None called any other witnesses save for Mr. Inoue who called Deborah Bendavid who obtained a SBL that is not part of the indictment before me.

69 The defendants have no obligation to provide evidence but they did provide some documentation to support their positions. Mr. Tehrani seemed to be the most organized in that regard, followed closely by Mr. Ghatan. As for Mr. Kazman, he produced some documentation and was able to get some documents from Ms. Cohen. There was a lot of evidence about Mr. Levy's documents and the Crown and the other defendants assert that he must have more documentation than what he produced and dispute his claim that the documents in storage were lost. Although his evidence on this issue changed, which is relevant to his credibility, I do not have enough evidence on this point to come to any conclusion, particularly as Mr. Levy had no onus to produce documents in support of his position.

70 To the extent that the defendants were not able to corroborate their evidence by documentation, I have not drawn an adverse inference. The Crown argues that once they were charged, common sense would dictate that one would preserve the documents that would confirm one's position but my concern is that undermines the fact that the onus is on the Crown to prove its case against the defendants.

71 Mr. A. Tehrani, Ms. Chapkina and Mr. Ghatan also argue there is no evidence of any kickbacks to them, that they lost their own money and had no motive to commit fraud. Mr. A. Tehrani adds that he had a steady job making good money at Leon's, which he gave up to open his businesses.

Duties of the Court Where an Accused is Self-Represented

72 I endeavoured to ensure trial fairness for Messrs. Kazman, Levy and A. Levy, who were self-represented. That involved providing a comprehensive memorandum explaining how the trial would proceed including the burden of proof and the information the defendants needed to know with respect to what the Crown has to prove with respect to the various charges. This memorandum was supplemented with a number of other memoranda dealing with the various evidentiary and legal issues that arose and I continued to provide memoranda right until the commencement of the closing submissions.

73 In addition, I provided guidance and information to these defendants on the record as the case progressed as needed. I am grateful for the fact that these defendants were respectful of the Court and when they strayed into areas that were not relevant, accepted my rulings without further argument. I also thank Crown and Defence counsel who, in the true tradition of the bar, pointed out times when further advice on a particular issue would be beneficial to the self-represented defendants.

74 For all of these reasons I am satisfied that these defendants received the fairest trial possible in all of the circumstances.

The Issues

75 There were no formal admissions made by any of the defendants. However, as everyone but Mr. A. Levy testified, issues of identity were admitted and, for the most part, the defendants acknowledged their signatures on various documents. Those defendants who took out one or more of the 16 SBLs in issue acknowledged that they had made those applications and that their corporations received the SBL funds.

76 Although again not formally admitted, no issues of accuracy were raised with respect to Mr. Coort's report, although Mr. Levy argued that it misrepresented the facts because, for the most part, Mr. Coort only looked at bank account records for a specific period of time; not from the opening to the closing of the account. Mr. Levy also testified that he had bank accounts that Mr. Coort did not see but he never put that suggestion to Mr. Coort. I deal with this issue below as part of my preliminary findings of fact.

77 To the extent the Crown's case depends on documents from the banks, government sites and Industry Canada, the authenticity of those documents was not disputed save for certain GICs, NOAs and T1 General income tax returns ("T1 General"), that were provided to the banks as part of a SBL application. The fact these documents were altered by someone before the bank in question received them is not contested but who altered the documents is in dispute.⁵

The defendants whose loans are implicated by these altered documents all point to Mr. Levy as the person who must have done the alterations in the course of preparing their business plan package. Mr. Levy vigorously disputes this. There are other factual misrepresentations in the documents in the bank files that the defendants who obtained SBL loans prepared, filled in and/or signed that they downplay.

78 The Crown must prove beyond a reasonable doubt that the banks relied to their detriment on the forged documents and misrepresentations and that their economic interests were put at risk. The Crown did not call any witnesses from the banks' underwriting departments who actually approved the 16 SBLs in issue and relies instead on bank representatives who dealt with some of the defendants. The Defence submits that the Crown has not proven that the banks relied on these forged documents to their detriment. I will deal with this issue factually as I review each of those SBLs and then consider the law before making my findings.

79 For each of the 16 SBLs, there is an issue as to whether or not there were in fact any leasehold improvements done and furniture, fixtures and equipment supplied as the invoices provided to the banks would suggest, or at least whether or not all of the leasehold improvements were done and whether or not all of the furniture, fixtures and equipment was supplied. The defendants dispute this but have varying knowledge of what was apparently actually done for various reasons.

80 Although evidence of the default of the SBLs, appraisal of the remaining assets, bank losses and claims to Industry Canada was introduced, the Crown does not rely on actual losses as part of its case although that will be an issue on sentencing should there be any convictions. The Crown's position is that it does not have to prove actual loss resulting from the fraud, which was not disputed.

81 In summary, based on the documentation, a lot of relevant facts are not in dispute. There are, however, a number of factual issues that will largely depend on an analysis of the documents and, more importantly, an assessment of the credibility and reliability of the witnesses who gave relevant evidence to those issues.

The Crown's Similar Fact Application

82 The Crown brought a "count-to-count" similar fact application that everyone agreed should be argued and decided at the end of the case. It related to all of the defendants with the exception of Mr. Ghatan. I have set out my reasons for ruling in favour of the Crown's application in Appendix "F". For reasons stated in this Appendix, I have concluded that the similar fact evidence is sufficiently similar as to render it admissible on a count-to-count basis, as evidence of *mens rea*, on identity issues and to rebut possible defences..

Evidence of Prior Discreditable Conduct and Reputation

83 None of the defendants have a criminal record. The Crown did not argue that any of the defendants put their character in issue when they testified. However, as I advised the defendants, the rule, which prevents the Crown from leading evidence of bad character of a

defendant, does not apply to any defendant leading evidence of bad character of a co-defendant. A defendant is entitled to cross-examine witnesses and lead evidence of the bad character of a co-defendant without waiting for that co-defendant to put his or her character in issue so long as such evidence is logically relevant to the defence of the defendant. This evidence can only be used to help raise a reasonable doubt on behalf of the cross-examining defendant and cannot be used to help prove the guilt of the testifying co-defendant.

84 The Crown did submit that Mr. Tehrani was underreporting his income to the CRA and relied on his tax returns and that does appear to be the case. The Crown made it clear, however, that it was not saying that because he misrepresented his taxes that this makes him less believable. It is the Crown's position that he did not declare his income because it was fraudulent. I chose not to rely on this evidence, as there could have been any number of reasons for the underreporting.

85 As already stated, I have ruled with respect to the use to be put to the revocations of Mr. Kazman's licence to practice law in Appendix "A". However, in addition to this issue which Mr. Levy pursued in cross-examination of Mr. Kazman, during their cross-examinations of each other they each made many and various allegations of discreditable conduct allegedly illustrating bad character that was denied by the other. This evidence was aimed primarily at how their relationship broke down and whether or not Mr. Kazman was carrying his weight in terms of making his financial contributions and whether or not Mr. Levy took advantage of Mr. Kazman at the end by registering mortgages on properties Mr. Kazman claimed an interest in and Mr. Kazman's assertion that Mr. Levy obtained the Bluerock SBL behind his back. Each blames the other and their animosity towards each other at trial was palpable when they were examining each other. That is relevant to how I assessed their evidence when they testified about how the other was dishonourable in various ways.

86 Although the Bluerock SBL is before me, as I explained to Messrs. Kazman and Levy, the time necessary to determine whose position was correct on the major issues between them was not something that could be undertaken in the trial. Although the timing of when their relationship broke down is relevant, who was at fault and whether or not it amounted to prior discreditable conduct is a collateral issue and not something that I can determine as it would amount to a complex trial within a complex trial. Neither of them pursued a civil action and the prejudicial effect on the trial in trying to get to a point where I could make any findings of fact far outweighed any possible probative value to this evidence, which certainly was not readily apparent in any event.

87 Mr. Kazman called Edwin Cheng and David Richards to give evidence of possible discreditable conduct by Mr. Levy. They both testified about their experience with Mr. Levy when they obtained SBLs with his assistance for their franchised businesses. Mr. Inoue called Deborah Bendavid who obtained a SBL for her company Kidshill Ltd. (Kidshill). I also heard some evidence in this regard from Armando Benlezrah, the owner of Bonded Contracting and Design Inc. (Bonded), the purported contractor and supplier to Bluerock.

88 I have summarized all of this evidence in Appendix "G".

General Assessment of Credibility and Reliability of the Witnesses

General Comment

89 In assessing the credibility and reliability of all of the witnesses, I have taken into account that the events they gave evidence about were a number of years ago, and particularly if no documents exist, that it is natural that memories fade. Furthermore, as Ms. Barton submitted, some witnesses clearly had a better memory of events than others.

WD

90 In making my decision, given that save for Mr. A. Levy, the defendants testified, the principles set out in *W.(D.) v. The Queen (1991)*, 63 C.C.C. (3d) 397 (S.C.C.) (*WD*) apply. I must acquit a defendant if I believe his/her evidence or, even if I do not believe his/her evidence, I am left in a reasonable doubt by it. If I am not left in doubt by his/her evidence, then I must ask myself whether, on the basis of the evidence, which I do accept, I am convinced beyond a reasonable doubt by that evidence, of his/her guilt. In my analysis, I am not bound by the strict formulaic structure set out in *WD*, but rather must adhere to the basic principle underlying the *WD* instruction that the burden never shifts from the Crown to prove its case beyond a reasonable doubt.

91 In considering the evidence, I am entitled to believe all, some, or none of each witness's evidence. Further, in assessing the evidence of each of the defendants who testified, I am entitled to consider it in the context of all of the other evidence. However, I must remind myself that this is not a credibility contest. *WD* prohibits me from concluding that the Crown has met its burden simply because I might decide to prefer the evidence of some or all of the Crown witnesses to that of a defendant. As I am faced with contradictory versions of what happened in this case, I would add that if, after considering all of the evidence, I am unable to decide whom to believe, I must acquit.

92 Assessment of a witness's credibility includes evaluation of his or her demeanor as testimony is provided to the trier of fact in the courtroom -- this includes "non-verbal cues" as well as "body language, eyes, tone of voice, and the manner of speaking": *R. v. N.S. (2010)*, [102 O.R. \(3d\) 161](#) (C.A.), at paras. 55, 57. However I must be mindful of the fact that a trier's subjective perception of demeanor can be a notoriously unreliable predictor of the accuracy of the evidence given by a witness: *Law Society of Upper Canada v. Neinstein (2010)*, [99 O.R. \(3d\) 1](#) (C.A.), at para. 66; *R. v. Smith*, [2010 ONCA 229](#), at para. 11. Demeanour evidence alone cannot suffice to found a finding of guilt: *R. v. K.(A.) (1999)*, [123 O.A.C. 161](#) (C.A.), at p. 172.

93 With these principles in mind I will first make some general assessments of the credibility and reliability of the various witnesses, although I recognize that assessing the evidence of a witness is not an all or nothing proposition.

The Crown Witnesses

94 I deal with my assessment of the credibility and reliability of the Crown's witnesses in Appendix "H". For the reasons set out there, I find that the evidence of Cpl. Thompson, Mr. Coort, Mr. De Franco, the various bank witnesses, the appraisers (with some exceptions), and the other Crown witnesses, to be both credible and, for the most part, reliable.

The Defendants

95 Because this is a case where some co-defendants have given evidence against another defendant, I begin with the general observation that I must consider the case for and against each defendant separately and bear in mind when I consider the evidence of each co-defendant that s/he may have an interest of his/her own to serve. Apart from that, the evidence of the defendants is assessed in the same way as any other witness, subject to the application of *WD*.

(a) Mr. Kazman

96 I found serious problems with Mr. Kazman's evidence and in many respects I have concluded that it was self-serving and not reliable. He was evasive at times and on occasion, as I will point out, his evidence was internally inconsistent. It seemed that his evidence would shift if he thought he could say something helpful to his position, not realizing that it was inconsistent to evidence he had already given. For example, Mr. Kazman would on the one hand claim to have no knowledge of Ms. Cohen's business dealings and, on the other hand, he would offer an explanation on a particular issue, suggesting he did know. In the same way he would profess having no knowledge of a particular SBL and yet he would testify that it was legitimate and the leasehold improvements were made. Both cannot be true. On other occasions, as I will come to, his evidence was simply incredible and nonsensical. The only positive aspect of Mr. Kazman's evidence was that on occasion he would agree with a seemingly obvious proposition in cross-examination - something Mr. Levy was not capable of doing.

97 Mr. Kazman's demeanour as a witness did not assist me in the assessment of his credibility. However, he was on the stand for a number of days and I would not conclude that he is so easily duped as he suggested to me he was in his dealings with Mr. Levy.

98 As I will come to, in the case of the SBL obtained by Mr. A. Tehrani from the RBC for Contempo, litigation ensued and Mr. Kazman and Mr. Levy swore affidavits, which were filed with the court. I have dealt with the admissibility and use of these affidavits in Appendix "O". Although I concluded that these affidavits are not admissible as evidence in this trial, they can be used for the purpose of impeachment and, in particular, I may consider any inconsistencies in these prior sworn statements to these defendants' sworn evidence when assessing their credibility as witnesses. This gives rise to one of the biggest issues I have with the veracity of Mr. Kazman's evidence.

99 Mr. Kazman swore that he was the President and General Manager of Northwood Contracting (Northwood), which is one of the Disputed Construction Companies. His affidavit suggests that he had personal knowledge of the leasehold improvements done for Contempo,

which he completely resiled from at trial when he claimed that he knew nothing of the operation of this company, which he said was totally controlled by Mr. Levy.

100 Mr. Kazman's explanation was that he drafted the affidavit at Mr. Levy's direction. I do not believe that. If Mr. Kazman was relying on information from Mr. Levy, given his civil litigation experience, he was well versed in the boilerplate language that he should have added to his affidavit to reflect this. His submission that this was not necessary given Mr. Levy was also filing an affidavit is clearly not an answer to this - something any lawyer would know. Further, his position further undermines his credibility as it means he was prepared to swear an affidavit that contained information from another that he did not swear he believed to be true; in an affidavit he knew was being presented to the court. Mr. Kazman submits that the affidavit was true for what it actually attests to but, as I will come to, I have found to the contrary.

101 For these reasons and for reasons set out elsewhere in this judgment, I have concluded that on the disputed parts of his evidence, I do not believe Mr. Kazman, nor does his evidence raise a reasonable doubt in my mind.

(b) Mr. Levy

102 Before I get into an assessment of Mr. Levy as a witness, I will consider the evidence before me that he attempted to interfere with the evidence of Mr. Tehrani. Mr. Tehrani testified that on one occasion during the course of the trial Mr. Levy whispered to him in court that he should make sure he told the Court that Mr. Levy just prepared his first Business Plan and that he, Mr. Tehrani, copied the others. Mr. Tehrani could not remember the date but he immediately told Ms. Barton about this. In answer to questions from Mr. Levy, Mr. Tehrani repeated this evidence. Although, as I will come to, I have concerns with some of Mr. Tehrani's evidence, I accept this evidence as true. The fact Mr. Levy would attempt to interfere with the evidence is of concern but it is only one relatively small factor in how I have assessed his evidence.

103 Much of Mr. Levy's evidence was very general in many respects. As Mr. Chapnick submitted, most questions were answered in one of the following four ways: 1) I did the work; 2) this cheque/draft was for a loan; 3) this cheque/draft was repayment of a loan; or 4) I deny that and/or there is no formal proof - referring to the fact there was no document that would prove the point one way or the other.

104 When confronted with the allegation that his co-accused attributed alteration of GICs and the creation of fabricated NOAs to him, Mr. Levy denied the allegation. When confronted by the Crown with the fact that co-accused, who did not know each other, had similarly altered documents presented to the banks, Mr. Levy responded "not me".

105 It was clear that Mr. Levy did not have specific recall about specific cheques or drafts. If there was a reference to an invoice number he testified that the payment was for that invoice but he could only say it was for lights if the payment was to Save Energy or for furniture if the payment was to one of Mr. Tehrani's companies. As I will come to, where there was a payment to Mr. Kazman with an invoice number, his evidence became incredible given other evidence he gave.

106 Mr. Levy was also quick to say that if a cheque Re: line said "on account" it was for a loan or repayment of a loan but his evidence that he would only loan or be paid back even amounts, by which he meant no cents, did not hold up when compared with all of the cheques and drafts that he testified were for loans.

107 Mr. Levy often answered questions with a request to see an invoice or document, knowing there was none. What I also found very troubling was that in cross-examination Mr. Levy would very often not admit evidence that he said in chief. I appreciate this is not a memory contest but if what he said in chief was the truth I would have expected him to at least admit that the suggestion being put to him was true. This was not a case where the cross-examiner was misquoting him.

108 There were also internal inconsistencies in Mr. Levy's evidence. As Mr. Inoue submitted, when Mr. Levy testified about business plans and was shown the Contempo Business Plan he identified it as the one that he prepared. This was in fact, however, Mr. A. Tehrani's second SBL. Mr. Inoue's position is that an honest answer would have been that he didn't know or could not tell. I agree. Similarly, in his testimony, Mr. Levy admitted providing two Business Plans to Ms. Chapkina but he later retracted this and said he only provided one. Although Mr. Levy testified in chief that he knew nothing about what I will call the Bochner Condo, upon cross-examination he testified that he was aware of the Bochner refinancing matter when it happened in 2008.

109 Mr. Levy came across as a confident witness and he seemed impressed with himself in terms of how he was able to answer questions in cross-examination that he appeared to believe rebutted the suggestion being put to him. His demeanour did not assist me but I have found one aspect of his personality to be relevant. According to Ms. Chapkina, in Mr. Kazman's office they called Mr. Levy "the king" or "the emperor" because of his attitude and the way he presented himself. There was evidence from Mr. Kazman and some of the other defendants that Mr. Levy was a "control freak" and with respect to the 3042 Keele Street property, in cross-examination by the Crown, Mr. Levy admitted "I am a control freak", "I watch over everything". I found this evidence relevant to some extent in dealing with the Disputed Construction Companies, as I will come to.

110 For these reasons and for reasons set out elsewhere in this judgment, I have concluded that on the disputed parts of his evidence, I do not believe Mr. Levy, nor does his evidence raise a reasonable doubt in my mind.

(c) Mr. Ali Vaez Tehrani

111 Mr. A. Tehrani testified that he has been taking medication for pain and depression for five years, which he said has affected his memory. He testified that he takes Tylenol 3 for pain in his back, neck and shoulders and Nabilone and some Cymbalta for depression and to calm him down but I believe Nabilone is for chronic pain as well. He is also a diabetic. In answer to questions from Mr. Levy, Mr. A. Tehrani admitted that his memory was better when he had his businesses. At one point in answering questions for Mr. Kazman, Mr. A. Tehrani said that he had "so much problem with my memory" because of the medication that he could not remember

what he did last week. Towards the end of Mr. Kazman's cross-examination, Mr. A. Tehrani said that he was doing his best and queried why should he go into details "who, what, what they are doing. I don't know anything about that". He testified that he was relying only on his memory and that his memory was failing. Mr. A. Tehrani denied that he was claiming memory loss to get out of answering questions.

112 Mr. Inoue submitted that there is no evidence that Mr. A. Tehrani remembers more than he admitted. However, no evidence was called to support Mr. A. Tehrani's claim that any of the medication he is taking would have an adverse impact on his memory and in my view, having raised this, it was up to Mr. A. Tehrani to call some evidence in support of his position.

113 I appreciate that some people have better memory than others but in the case of Mr. A. Tehrani his alleged loss of memory was extreme. Although he did give the impression he was trying to be responsive to questions asked in cross-examination, he answered many, many questions with "I can't remember". In addition, when he did have an answer he prefaced the answer to almost every question with "If I'm not mistaken; I can't be 100% certain" and then he would go on to answer the question or make a statement. It was clear he was trying to protect himself from being contradicted.

114 Having considered all of his evidence, I find that Mr. A. Tehrani was using his medication and alleged memory issues as an excuse not to answer many questions. I accept that there would be things he would not be sure of but the extent of his alleged memory loss was extreme and very selective. There were only a few things that he seemed certain of and what he did remember was surprising and self-serving. The most obvious example is that he supposedly remembered getting an envelope from Mr. Levy to take to the bank that was of a certain colour and size and was sealed when he could not remember things that would have been much more important at the time. The envelope has only become important now because the banks were given fraudulent documents. For example, he could not remember much about the TD GIC he brought to the bank or any detail about discussions with Mr. Levy about how he wanted the premises renovated. As I will come to, I do not accept Mr. A. Tehrani's evidence about the envelope and the only explanation for this evidence is that Mr. A. Tehrani was adopting what he knew his brother was going to say about this same topic.

115 As I will explain, there were many times that I found Mr. A. Tehrani's evidence to be incredible. It simply did not make sense given his background, experience and what, on his own admission he had at stake when he attempted to start these businesses. Furthermore, in certain respects I have been able to make a positive finding that Mr. A. Tehrani was not being truthful with respect to some of his evidence because of certain documents, which are reliable.

116 I also found that Mr. A. Tehrani's evidence was unreliable in the sense that when he was being cross-examined; particularly by Ms. Brun, he would change his evidence to accept a suggestion she was making because it was a "good point".

117 As for demeanour, Mr. A. Tehrani came across as a very unsophisticated witness and perhaps as someone who is not very smart. Some of this could be attributed to the fact that

English is not his first language. It was also part of his defence, however, as he repeated many times that he trusted Mr. Levy.

118 For these reasons I find that I do not believe much of Mr. A. Tehrani's evidence. Furthermore, as I will come to, for certain SBLs, it does not raise a reasonable doubt.

(d) Mr. Tehrani

119 Mr. Tehrani came across as a much smarter, sophisticated witness as compared to his brother. Ms. Barton was well prepared with documentation that she took him through to address the various allegations by the Crown of money laundering. There is also the fact that he repaid, in full, the first SBL that he obtained for his company Meez Corp. There is no question that that was a legitimate SBL and business.

120 As I will come to however, there were aspects of Mr. Tehrani's evidence that I have found to be untrue. As I will explain I do not believe his evidence about a sealed yellow envelope. There is, as well, the fact that he did his best to distance himself from his brother's SBLs and yet was willing to borrow large sums of money for his brother at prohibitively high interest rates. It simply made no sense to me. As well, as I will come to, I do not accept his evidence that all of the money paid to him by Mr. Levy's companies was for furniture he sold to Mr. Levy. There are other aspects of his evidence that I have not accepted as well, that I will come to. On occasion Mr. Tehrani gave evidence that was simply nonsensical. For example, he gave an incredible story about how his accountant "saw he was successful" and recommended an overseas investor. Subsequently, the accountant kept Mr. Tehrani's tax and business records because of a business dispute. Given Mr. Tehrani was underreporting his income his accountant would not have known that he was successful and when this was pointed out to Mr. Tehrani he had no answer to this.

121 For these reasons I found Mr. Tehrani was not a credible witness. In some cases however, his evidence still raised a reasonable doubt. In other cases it did not. I will deal with these issues as I review the evidence.

(e) Ms. Chapkina

122 Ms. Chapkina appeared to have good recall of the events in issue and for the most part I found she was doing her best to recount those events accurately. Her evidence was internally consistent and for the most part unshaken in cross-examination. Her demeanour did not change when she was cross-examined.

123 I accept that Ms. Chapkina was not a sophisticated businessperson and apart from her experience with Blue Glass, she had no business experience. Ms. Chapkina was clearly very much influenced by Mr. Levy and more so by Mr. Kazman, who she clearly trusted to act in her best interests. The evidence concerning what I call the Bochner Condo makes that very, very clear. As Mr. Chapnick submits, this evidence demonstrates Ms. Chapkina's naiveté if not blind trust in Mr. Kazman. Mr. Chapnick argues that Ms. Chapkina had no reason to suspect any *mala fides* and was not willfully blind to anything. However, there is no doubt that Ms. Chapkina is also an intelligent woman and I believe she had to know more than what she sometimes

admitted. As I will come to however, there were times when I found her evidence to be incredible.

124 Unlike some of the other defendants, I did not get a sense that Ms. Chapkina's evidence was impacted by any malice towards Mr. Kazman or even Mr. Levy. To the extent that she was able to shed some light on Mr. Kazman's role in certain matters that I must determine, I found her evidence very compelling.

125 As I will come to, I have come to the conclusion that some of the evidence Ms. Chapkina gave is not true and in each case, to the extent it goes to an essential element of an offence that the Crown must prove, I have considered whether or not it raises a reasonable doubt in my mind.

(f) Mr. Ghatan

126 Mr. Ghatan gave evidence and was cross-examined by both Mr. Levy and the Crown.

127 Mr. Fox submits that Mr. Ghatan was not shaken in cross-examination but as I will come to, he did change his evidence on occasion and I have difficulty with some of it.

128 I noted that when Mr. Ghatan was questioned about the loan he arranged with Mr. Levy that he now knows came from the Bankays, he became very agitated with Mr. Levy and he testified that Mr. Levy had destroyed his life to which Mr. Levy responded that he was the victim. At another point in his evidence Mr. Ghatan testified emotionally and said that he was upset because of what Mr. Levy did to his life - he lost a great deal including his licence and ability to work as a real estate agent, something he appears to have been good at. He also expressed upset because of what Mr. Levy had done to all of the other defendants. I accept that Mr. Ghatan is very upset about what has happened to him but that does not assist me in assessing his credibility as a witness one way or another save to consider this in terms of any adverse evidence he gave about Mr. Levy.

129 There was otherwise nothing in Mr. Ghatan's demeanour to assist me in assessing his evidence. As I review his evidence I will make my findings of fact relevant to him and Homelife largely based on the documents in evidence and the Coort Analysis, bearing in mind that I do not have to believe his denials of participation in any fraud that I may find and that the Crown bears the onus throughout to prove its case against Mr. Ghatan beyond a reasonable doubt.

The Defence Witnesses

130 I deal with my assessment of the credibility and reliability of the witnesses called by Mr. Kazman, Mr. Levy and Mr. Inoue in Appendix "I". For the reasons set out there I find those witnesses to be credible and their evidence to be reliable with the exception of Armando Benlezrah, the principal of Bonded, who was called by Mr. Levy. I found Mr. Benlezrah to be a wholly untruthful witness and find that none of his testimony can be relied upon for the reasons set out in Appendix "I". I also have issues with the evidence of Deborah Bendavid given her flip-flop from her statement to Cpl. Thompson.

Preliminary Findings of Fact

131 In order to decide this case there are many, many factual findings to be made. I will deal first, to the extent I can, with those preliminary findings of fact that relate to evidence that applies to the whole case or to an aspect of it that is broader than the evidence and issues that pertain only to an individual SBL in issue. At this stage I have only made findings of fact that do not rely on the similar fact evidence. My preliminary findings are as follows.

Findings with Respect to the Canada Small Business Financing Program (CSBFP)

132 Mr. De Franco explained the CSBFP based on his 20 years of experience with Industry Canada. He reviewed the relevant legislation and in particular the *Canada Small Business Financing Act*, S.C. 1998, c. 36 (the Act) and the *Canada Small Business Financing Regulations*, [SOR/99-141](#) (the Regulations). Appendix "J" sets out the relevant provisions.

133 Anyone can apply for a SBL, be they an individual, a partnership or a corporation, provided it is a Canadian controlled corporation. There are some exceptions such as, for example, charitable or non-profit organizations. In this case for all of the 16 SBLs in issue, a corporation that was 100% owned by one of the defendants obtained the SBL.

134 The loan limit for most of the time in issue in this case was \$250,000. It was increased on April 1, 2009 to \$500,000 for two loans maximum but the limit for equipment and leaseholds was \$350,000 and the balance could be used to purchase real property. The attraction for the borrower is that the borrower only has to give a personal guarantee in favour of the lender for 25% of the loan amount.

135 According to Mr. De Franco, decisions related to granting loans rest entirely with the lenders, in this case banks, and their own established criteria. Lending rules are not necessarily consistent from bank to bank. Industry Canada is not involved in the process or in the decision of granting the loan. They do not deal with the borrowers whatsoever. There are certain parameters for the loan, however, to qualify for the program. The bulk of the requirements for the lender are set out in section 5(1) of the Regulations. For example, inventory cannot be financed. Furthermore, if the loan is for too much money or there is a disclosure of revenue of the small business exceeding \$5 million, then Industry Canada will not register the loan. I note as well that s. 8 sets out the Due Diligence Requirements that the banks must follow.

136 After the loan is approved, the next step is for the borrower to inform the bank when the leasehold improvements and delivery of furniture, fixtures and equipment, has been completed. The borrower then provides the bank with invoices from its contractor(s) and the bank starts to advance funds. Once the funds have been released, either partially or in full, a Loan Registration Form must be completed and submitted to Industry Canada for registration along with a fee, which is 2% of the loan amount. Industry Canada then issues a Loan Acknowledgement form, which is provided to the lender.

137 Mr. De Franco gave evidence about what happens if a SBL goes into default. I have not

considered this evidence, as it is not relevant to the issues that I must determine. As already stated, this evidence may become relevant at sentencing if there are convictions.

138 Mr. De Franco stressed in his evidence that the CSBFP is not a guarantee. It is more akin to an insurance policy for the lenders. The lender has to satisfy compliance with the Regulations otherwise a claim for loss could be rejected. If, for example, a lender does not provide a copy of an invoice as proof of purchase of an asset or proof of payment for the asset, that asset is deducted and not eligible for a claim. Where a claim is accepted, the bank only pays 90% of the loss. As Mr. Kazman submitted, provided the banks grant the SBL in accordance with the Regulations, given their ability to claim most of their loss from Industry Canada, the banks are well secured.

139 Back in 2007 there was a provision in the Regulations that if the landlord and tenant were not at "arm's length" then the loan for the leasehold improvements would have to be secured by a mortgage on the landlord's property. This was to discourage situations where the owner of the property improved the property by having a family member open a business to do improvements like air conditioning, electrical, that would have no benefit to the small business. I will come to the definition of "arm's length".

140 Finally, the documents from Industry Canada were proven authentic and introduced through the evidence of Mr. De Franco.

Findings with Respect to the SBL Loan Process

141 Although the precise application process for each of the SBLs in issue varied to some extent depending on the bank applied to, there were a number of steps that were uniform and a number of documents provided to and from Industry Canada that existed in each case. To understand my analysis of the 16 SBLs, some attention to the loan process generally will assist.

(a) Business Plan

142 Most of the loan files contain a copy of a Business Plan for the SBL in question. Given the evidence of Mr. Levy and the defendants, Business Plans were provided to the bank in all cases and so I have assumed that some have been lost. All of the Business Plans in evidence, including the ones Mr. Levy admitted to preparing, were designed and formatted in the same way and the content is very similar. There is a cover page, sometimes with a graphic and, according to Mr. Levy, this is always followed by a Table of Contents in the Plans he prepared,⁶ which is followed by typed information under the headings: Executive Summary, which as the heading suggests, explains what the new business intends to do and who will operate it; Introduction, which explains where the business will operate and how it will thrive; Mission Statement, which is typically a short statement saying that the business will operate with integrity and maintain a high standard of "Value, Design, Quality Products and Services"; and a section headed Management, which describes the owner of the borrower and their experience suitable for the new business in question. There is also a section on Financing, which sets out what the estimated start-up costs for the business will be, how much the borrower is prepared to invest of their "own equity" and the amount of the SBL sought, including the amortization period

and that it will be "collaterized [sic] by all the Equipment, Furnishings, Fixtures and Leasehold Improvements". Each of the Financing sections also includes an itemized list of Estimated Start-Up Cost which totals the amount of the SBL sought.

143 Through his company Fairbank, Mr. Levy admitted preparing the first Business Plan for Ms. Cohen, Mr. Tehrani, Mr. A. Tehrani, Ms. Chapkina and Mr. Ghatan. He denied preparing more than one Business Plan in the case of Ms. Cohen and those defendants who obtained more than one SBL.

144 Mr. Levy testified that the banks required a business plan before approving a SBL. There is no evidence from any of the bank representatives that confirms this save for the BNS representative who testified that they were required in some cases. It is clear from the evidence however, that if a business plan was provided it was read by the bank representative and in fact, some of the defendants also testified that the account manager they met with was very interested in the business plan and in a couple of cases required changes to the financial projections.

145 In a few instances the Crown relies on what is alleged to be misrepresentations in the Business Plan but the relevance of the Plans in this case is primarily the question of who prepared the Plan, given the evidence that a package, including a Business Plan, was provided by the defendants to the bank and in most cases the package included fraudulent documents.

146 There is no evidence that Mr. Kazman assisted in any way in the preparation of Business Plans, loan applications, or any other loan documents, real or altered.

(b) Loan Application Documents

147 The loan application process varied depending on the bank. In each case however, there were certain documents provided as part of the loan application and this included a financial statement of some sort completed by the borrower, by hand, setting out personal information as to income, assets and liabilities. I will review these forms in the context of each of the 16 SBLs. However, it is important to note that many of the documents were signed by the borrower and in doing so they were certifying the accuracy of the contents of the document, which is important to some of aspects of the Crown's case.

148 In most but not all cases, the SBL loan files contain copies of GICs, NOAs, and T1 Generals, which I have found were fraudulent either because they were entirely forged or altered to change the information from the original document. In all cases the fraudulent documents enhanced the financial resources of the borrower. Mr. Chapnick argued that there is no evidence the bank asked for GICs and NOAs and that the only evidence is that Mr. Levy asked for these documents. It is his position that as a result, the Crown has not proven that the banks relied on this information, to the extent they were presented with fraudulent documents, in deciding whether or not to grant the SBL. That is an issue I will have to consider on all of the evidence as it varies; for example, the representative from the BNS said it was customary to get them. I will also have to consider to what extent any of the defendants in question were aware of these alterations and if possible who created what I will call the fraudulent documents. The

evidence is clear that they were altered or prepared in a professional manner and that the differences from the original authentic document would not be obvious.

149 In addition, the SBL loan files all contain a copy of either an Offer to Lease or an Agreement to Lease which was clearly to provide evidence that a location for the proposed business had already been found. In some cases, as I will come to, those leases were fabricated.

150 Once the SBL was approved, the borrower applied to open at least one bank account with the bank in question and executed a banking agreement, a personal guarantee for approximately 25% of the SBL amount and certain security documents such as a promissory note and documents permitting registrations of the equipment financed by the bank under the *Personal Property Security Act*, [R.S.O. 1990, c. P.10](#).

151 Invoices from purported contractors for leasehold improvements, furniture, fixtures and equipment are found in the SBL loan files and save for a couple of exceptions I will come to, they were paid from the SBL proceeds. In some cases these invoices were paid directly by the bank to the contractor pursuant to a direction signed by the borrower. In other cases the bank paid the SBL proceeds to the borrower who then paid the invoice.

(c) Start-up Capital

152 Under the CSBFP, banks require an "injection" of start-up capital in order to release loan proceeds. Every business plan clearly states how much money the borrower is prepared to invest "his/her own equity". The whole purpose of showing "start-up capital" to the bank is to represent that the borrower has money to help run the business. This makes sense since the SBL proceeds cannot be used to pay for inventory or the operating costs of the business. If the supposed start-up capital never existed or is quickly paid back to the original lender, it begs the question of how the borrower ever intended to actually run the business.

153 During the trial the Crown repeatedly took the position that the start-up capital in the CSBFP had to be non-borrowed funds. The Crown's position is that the phrase "his/her own equity" which is found in the Business Plans means the funds are not borrowed. I agree that the Business Plans represented that the borrower would invest their own equity but it was silent on how that equity could be acquired. Mr. Fox argued the opposite and developed an elaborate argument that in reality, the start-up capital for a new small business in Canada will often come from borrowed sources and gave detailed reasons for this but there was no evidence to support this argument. However, there was no evidence presented that the Act required that the start-up capital not be borrowed funds.. There was no evidence that any of the defendants had been advised that the start-up capital could not be borrowed. Furthermore, in most cases start-up capital was in fact injected into the business from various sources. When asked about this Ms. Coutts from the RBC, who is well versed in the SBL process, could not say although she did know that the bank wants the clients to have assets in case they get into a cash flow problem.

154 For these reasons I have not considered the fact that the start-up capital was borrowed,

even if that is the case, to be relevant save to the extent it may shed light on the relationship between the defendants.

(d) Loan Registration Form

155 The Loan Registration Form is a Government of Canada form that is filled in for each of the SBLs by hand. The form is identical for each of the 16 SBLs. As I will come to, in some cases it was completed by the bank representative and in other cases by the borrower.

156 The main significance of this form from the Crown's perspective is that it contains a section headed "Borrower's Acknowledgement and Consent" where the borrower (or responsible officer of the company) certifies certain facts, including para. 1 (b) that:

... the total amount of the proposed loan and the principal amount outstanding, in respect of the borrower and all borrowers related to the borrower within the meaning of the Regulations, does not exceed \$250,000 (including outstanding SBLA loans. [Emphasis added, hereinafter referred to as the Loan Limit Clause]

157 Para. 1 (e) of the Loan Registration Form has a box next to it that provides for a checkmark indicating "yes", "no" or "not applicable" and an initial by the borrower and asks:

... if the loan or part of the loan is to finance leasehold improvements, the borrower and the landlord are at arm's length. [Emphasis added, hereinafter referred to as the Arm's Length Clause]

158 At the bottom of the Loan Registration Form, just above the signature of the borrower, it states in bold that "it is an offence to make any false statement or misrepresentations on this registration form and is subject to punishment as stated in section 15" of the Act. I have summarized the evidence and the law as to the meaning of the terms "related" and "arm's length" in Appendix "K". Save for the SBL Mr. Levy obtained for Bluerock, each of the defendants certified that they were not in breach of the Loan Limit Clause or the Arm's Length Clause. Where the Crown asserts that there was a misrepresentation or omission by the borrower in the Loan Registration form, that will be dealt with when the SBL in question is reviewed. For the purposes of this case, borrowers are related when one borrower controls, directly or indirectly in any manner, the other borrower. There is no doubt that in the case of those defendants who obtained more than one SBL in quick succession, that all of their borrower companies were "related" and so the only question is did the amount of their loans add up to more than \$250,000.

159 There are other more difficult questions with respect to the Arm's Length Clause. I have found that in many cases the Crown's position is inconsistent with the legal definition at the time in question. Furthermore, every bank witness that was called had no idea about the legal definition of the term and appeared to give evidence about it based on what one might consider the layperson's meaning of the term to be. There was also no evidence called to contradict the evidence of the defendants that the term was not explained to them. Furthermore, there was no evidence that Bluerock SBL was treated any differently even though Mr. Levy represented that the borrower and the landlord were not arm's length.

(e) Loan Registration Acknowledgment

160 The Loan Registration Acknowledgment is also a Government of Canada form that is identical in format for each of the 16 SBLs. It is a form Industry Canada provides to the bank in question and includes the name of the borrower, the date of loan approval and when the loan was disbursed. According to Mr. De Franco, this is the date of the first advance only, not all of the advances. This form also included the total amount of the loan and the registration fee.

(f) Payment of Invoices for Leasehold Improvements and the Supply of Equipment, Furniture and Fixtures

161 In the case of each SBL the bank in question was provided with invoices purporting to show leasehold improvements that had been done to the rental property and the purchase of equipment, furniture and fixtures for the business. The SBL funds were used to pay these invoices although up to 25% of the invoices were the responsibility of the borrower, to pay from his/her own funds towards the invoice.

(g) Default/Appraisals

162 Most of the SBL loan files contain documents related to the default of the SBL loan in question and appraisals of the borrower's assets. This evidence will be referred to below for each of the SBLs.

(h) Internal Bank Notes

163 Most of the SBL files contain copies of internal notes made by bank employees. When these records were admitted into evidence through the SBL files I made a number of evidentiary rulings that I have already referred to, that no party objected to.

Findings with Respect to the Accuracy of the Coort Analysis

164 Mr. Coort was tendered as an expert in forensic accounting and for the reasons set out in Appendix "H", I found him to be a credible and reliable witness. There was some debate about whether it was necessary to qualify him as an expert as his report was essentially factual, but I decided to err on the side of caution

165 As I have said, no issues of accuracy were raised with respect to any of the factual information that is set out in the Coort Analysis. I find that it is entirely reliable to the extent that he analyzed banking records that were provided to him. Issues, however, were raised as to whether or not the Coort Analysis presents an incomplete picture.

166 Mr. Levy testified that the Coort Analysis misrepresents the facts for two reasons. First of all, because for the most part with respect to his companies, Mr. Coort only looked at bank account records for a specific period of time; not from the opening to the closing of the account. Mr. Levy testified that tracing does not work this way and that you have to go back to the opening of the account. He disputes the proposition that if an account has no money and then gets \$100,000 from a SBL, which is spent on the purchase of a property, that this is using SBL proceeds to buy the property. That argument I do not accept. If the only source or major source

of funds is the receipt of funds from a SBL then obviously the defendant has used SBL proceeds to purchase the property if Mr. Coort was able to trace the funds from the SBL to the purchase of the property.

167 Mr. Levy also testified that he pre-bought all of the lumber, tiles, drywall and other supplies years earlier and that he stored all of those supplies in the basements of 1040 and 1048 Eglinton Avenue West. Mr. Levy said earlier bank statements would have shown all of those purchases. He testified that later he used trailers to hold the materials behind the stores. I do not accept this evidence. Given the Eglinton properties were usually leased and had parking for tenants behind them, this evidence did not make sense. Furthermore, many invoices refer to renovations on the lower level at those locations for the benefit of the tenant. Mr. Levy did not own a warehouse devoted to the storage of construction material during the material time. In addition, Mr. Levy was not consistent on this point. When Mr. Coristine cross-examined Mr. Levy about how he was paying for work for Alta, Mr. Levy said that he saw some payments to Home Depot but that Mr. Coort did not see his credit card statements.

168 Mr. Levy's second reason for challenging the Coort Analysis is his evidence that he had bank accounts that Mr. Coort did not see. It is significant that although Mr. Levy put to Mr. Coort that he did not always have the entire bank records from the opening to closing of an account, he never put to him that he missed other accounts that Mr. Levy had. As a result, I don't know what Mr. Coort would have said as to how likely this is.

169 If I consider Mr. Coort's evidence about how he prepared his Analysis, I am able to come to a conclusion. For every SBL where one or more of Mr. Levy's companies received money, Mr. Coort had the account where the funds were deposited to analyze. He traced the source and destination of all payments in and out of the accounts for Mr. Levy's corporations and others that he did have and I would have thought that process would have provided some evidence of the existence of other bank accounts, if they existed. The evidence of Mr. Coort was that he would flag certain accounts and request them if needed. Mr. Coort certainly would have seen any cheques or drafts to and from these other accounts when he reviewed the bank records for the accounts he had and to the extent those were identified they were either from corporations that I am now aware of or from unknown sources. There are only a relatively few payments where the source or destination is unknown. Mr. Levy did not testify that any of the unknown sources were from other accounts of any of his corporations.

170 I also would have expected that the account that received funds from a borrower would be the account used to buy construction materials and pay employees and suppliers. There is some evidence of that with payments to various people Mr. Levy hired. Even if that were not the case, as the Crown submitted, the accounts Mr. Coort analyzed would have had to send the money received in payment of invoices to another account since it was Mr. Levy's position that this other account Mr. Coort did not see was used for supplies and payroll. Mr. Levy denied this suggestion and said that he had money in his other accounts that we do not have that he used but that does not explain why Mr. Coort would not have realized there were other accounts in the analysis he did do. In my view if there were in fact other accounts as Mr. Levy alleges, Mr. Coort would have seen that and based on his evidence, I am satisfied that he would have asked Cpl. Thompson to obtain the records of those other accounts.

171 The significance of this issue is that although Mr. Levy was adamant that he spent a lot of money at suppliers for all his various construction jobs, and certainly the various invoices suggest extensive and expensive leasehold improvements, the bank records show very little money going out to suppliers such as Home Depot, Rona, Lowes, etc. The amount of money spent at suppliers especially pales in comparison to the money Mr. Levy was bringing in through the same construction companies. Mr. Levy's answer to this discrepancy was that "the Crown didn't do its job by getting all of his bank accounts", or "the bank accounts obtained did not go back far enough," but for the reasons stated I do not accept that evidence. As I will come to, for the Cohen Loans I have concluded that no leasehold improvements were done and no furniture, fixtures or equipment was supplied - the SBLs were entire shams. In the case of some of the others, I have concluded that at least some leasehold improvements were done and some furniture, fixtures and equipment was supplied but given the absence of money being spent by Mr. Levy on payroll and supplies, and other evidence I have determined that not all that was represented to the bank was done. Whether or not the defendant in question was aware of this is something I have considered for each of those SBLs based on the evidence I have.

172 For these reasons, even if there is some truth to Mr. Levy's position, I find that it would not materially impact on the Coort Analysis. The likelihood of Mr. Coort missing any significant account belonging to Mr. Levy or one of his corporations is in my view virtually non-existent.

173 With respect to Mr. Tehrani, however, the Crown acknowledged that not having the Meez Ltd. account(s) was an unfortunate oversight. Mr. Tehrani testified that he had a regular and US dollar account at TD for Meez Ltd. He had the same for As Is as well as HSBC accounts, both Canadian and US dollar. He had personal accounts including a home equity line of credit that the RCMP was not aware of (the source of the 'mystery' start-up capital for Uzeem), and he also gave evidence (confirmed by his brother) that they had a joint account at TD, opened when they owned a condo together.

174 I also have to be mindful as to whether I have all of the records of a particular account. For example, Mr. Chapnick pointed out that the RCMP's records for Exclusive stopped just as the business started running, so could say nothing about the business conducted by that company once it started. Furthermore, repayments by Mr. Tehrani for the Blue Deer and Oakwood loans that I will come to, were both after the period studied by the RCMP. Mr. Coort agreed that these repayments would result in the numbers changing accordingly for Mr. Kazman and Mr. Tehrani.

Findings with Respect to the Lack of Evidence of Payments by the Various Construction Companies for Leasehold Improvements, Equipment, Fixtures and Furniture

175 The Crown submitted that given the general lack of evidence of money being spent by the construction companies in question for leasehold improvements, equipment, fixtures and furniture, that an inference should be drawn in all cases that at the very least any work that was done was done cheaply and that all or some leasehold improvements that were billed were not done, that all or some furniture, fixtures and equipment was not supplied as invoiced and that the invoices were therefore fraudulently inflated. Having found there are unlikely any missing bank accounts I considered whether or not I could draw such an inference.

176 I found that the difficulty with drawing such an inference in general is that, as I will come to, the evidence is clear that at least from the drywall in, in some cases a lot of work was done to renovate the premises. For example clearly a lot of work at least from the drywall in was done to renovate the Homelife offices, which begs the question where did the money come from to pay for those leasehold improvements?

177 Considering the totality of the evidence, it is clear that sometimes Mr. Levy would do the work by paying cash or hiring his contractors Danil or Morningstar and other suppliers, for example of HVAC systems. Those payments however do not necessarily explain all of the work I have found was done based on the evidence.

178 Given the volume of transactions in the banking records of the various construction companies and the money that is circling after each of the SBLs between Mr. Levy, Mr. Kazman, Ms. Cohen and their related companies, and the fact that payments could have been made by cash, in cases where it appears that leasehold improvements were done and equipment, furniture and fixtures was supplied, it must be that this was paid for in some manner, I presume cash. For that reason I determined that I cannot draw the inference in all cases that simply because there is no evidence that the contractor company paid for certain leasehold improvements and/or equipment, furniture and supplies that it was not in fact done or supplied. Instead that is one factor I have considered with all of the other evidence.

179 For that reason I have not accepted the Crown's submission that the absence of a record of these payments means that the work was not done or the equipment was not supplied.

Findings with Respect to the Relationship between the Defendants

180 The nature of the relationships between the defendants, if any, at the material time, is of course relevant, particularly to the criminal organization charge. However, to the extent that the Crown has proven that there was a relationship between one or more of the defendants, that does not necessarily imply that one defendant had knowledge of any wrongdoing by the other.

181 There is no dispute that Mr. Kazman provided legal services to Ms. Cohen and they were partners in certain properties. He also testified that she loaned money to him. There is no evidence that they were partners in any businesses although they were partners in certain properties. Mr. Kazman did admit that he and Ms. Cohen were intimate and when he was asked when, he said it was probably before the SBLs in issue, but that he was not sure. He was not asked how long this intimate relationship was. In his written submissions he stated it was only one occasion but that was not his evidence at trial.

182 An issue at trial was to what extent Ms. Cohen told Mr. Kazman about her businesses. He testified that she did not confide in him about the day-to-day operations of her businesses. However, as I will come to, despite this evidence, on many occasions it seemed that Mr. Kazman did know about her business plans.

183 Mr. Kazman also provided legal services to Mr. Levy and they were partners in certain

properties as well. The evidence is clear that despite any issues in their relationship they were very close for most of the time period in issue. In fact Mr. Levy chose Mr. Kazman as his best man when he got married instead of one of his brothers. Nevertheless, Mr. Kazman submits that he did not know about Mr. Levy's businesses and that Mr. Levy was a very secretive individual.

184 Mr. Levy said that by 2010-2011 Mr. Kazman owed him almost \$2 million. He admitted it would have been less in 2008. He said he started lending Mr. Kazman money in 2006 and that by 2008 Mr. Kazman could have owed him between \$1.3 and \$1.4 million. He said he had everything in writing with promissory notes. At the end he didn't care about keeping the promissory notes because he knew he wouldn't get the money although he also said that Mr. Kazman was giving him partial payment on these loans.

185 As already stated, by 2010 Mr. Kazman and Mr. Levy had a falling out and parted company. Part of the dispute between them was Mr. Kazman said that he was a partner with Mr. Levy in four properties, whereas Mr. Levy said it was only two. Mr. Kazman filed cautions as a result against the properties in 2010 but there has been no judicial determination as to ownership. The hostility between them was palpable at the trial.

186 Mr. Kazman and Ms. Chapkina worked together during the relevant period and it was not until Ms. Chapkina was charged that she left his employment. Although Ms. Chapkina did not agree with Mr. Kazman that they had a father/daughter relationship, they were clearly very close and there is no doubt that she trusted him.

187 Mr. Kazman recalls buying a stool from Mr. A. Tehrani when he was operating Contempo and he testified that this is when he met him for the first time. Mr. A. Tehrani agreed with this and explained that Mr. Kazman told him at the time that he knew Mr. Levy. Mr. A. Tehrani was adamant that he did not deal with Mr. Kazman for the leasing or leasehold improvements for any of his SBLs. Although the Crown argues that Mr. Kazman must have met Mr. A. Tehrani at the time loans were made to him from him and/or Ms. Cohen, I do not agree as it is just as likely that those loans were entirely arranged by Mr. Levy. I accept, on the evidence, that Mr. Kazman and Mr. A. Tehrani had no direct dealing for any of Mr. A. Tehrani's SBLs but there is still the issue of who controlled the Disputed Construction Companies that purportedly did the leasehold improvements and purchased furniture, fixtures and equipment and as a result received SBL proceeds.

188 Both Mr. Kazman and Mr. Tehrani testified that despite the fact that Mr. Tehrani was borrowing significant sums of money from Mr. Kazman's companies that they did not meet each other at the time as the loans were arranged by Mr. Levy. The Crown takes the position that this evidence is incredible but given the relationship between Mr. Levy and Mr. Kazman, I disagree. There is no evidence of any relationship between Mr. Kazman and either of the Tehranis at the material time.

189 Mr. Kazman and Mr. Ghatan met for the first time when Mr. Ghatan moved into the first floor of 1048 Eglinton Avenue West (1048 Eglinton) where Mr. Kazman had his Dufferin Paralegal office on the second floor. He did not know that Mr. Ghatan had applied for a SBL. They both agree they had no dealings with each other save for one letter Mr. Kazman was

asked to prepare for Mr. Ghatan to the Real Estate Board. I accept that this was the only contact between Mr. Kazman and Mr. Ghatan prior to the charges.

190 Mr. Levy knew everyone at the material time although he downplayed his relationship with Ms. Cohen and Ms. Chapkina. According to Mr. Levy, Mr. Kazman introduced him to Ms. Cohen. He had seen her in Mr. Kazman's office but he never had any discussions with her until she came to see him about the preparation of a Business Plan. In this regard, as I will come to, his evidence was internally inconsistent. Mr. Levy's relationship with the Tehranis went back to when Mr. Tehrani was operating Bizarre. Mr. Levy testified that he had had no prior dealing with Mr. Ghatan before he applied for his SBL and this was confirmed by Mr. Ghatan. I accept that evidence.

191 Mr. Levy and his brother, Mr. A. Levy, appear to have had a close relationship at the material time. Mr. Kazman and Mr. A. Levy knew each other as a result of Mr. Kazman's friendship with Mr. Levy and there is evidence of loans between them. For example, Mr. Kazman's company, Blue Deer Holdings Inc. (Blue Deer), advanced \$100,000 to Mr. A. Levy's company, Blue Beach Avenue Corporation. There was no evidence to contradict the evidence of Mr. Kazman that this was a loan.

192 The other defendants had little or no dealings with Mr. A. Levy. The only evidence of any contact with the other defendants is that Mr. A. Levy picked up some furniture that Mr. Tehrani had sold to Trust Inc. in May 2010.

193 It is the position of the Tehranis that they never met Ms. Cohen, Ms. Chapkina or Mr. Ghatan until these criminal proceedings. Ms. Chapkina and Mr. Ghatan confirm this. I accept this evidence. The evidence, however, is clear that Mr. A. Tehrani, Mr. Tehrani and Mr. Salehi were close and as I have stated at one point Mr. Salehi and Mr. Tehrani were partners in Meez Ltd.. The evidence of Mr. A. Tehrani and Mr. Tehrani is that Mr. Tehrani supplied furniture for inventory to Mr. A. Tehrani's and Mr. Salehi's stores.

Findings with Respect to M&M 155 Holdings Inc.

194 The Crown alleges that M&M 155 Holdings Inc. (M&M) was Mr. Levy's company, no doubt because he incorporated this company as first director on September 7, 2007, was President and Secretary and a signatory on the CIBC bank account along with Mr. Kazman. Mr. Levy disputes the Crown's position. Although Mr. Levy was clearly associated with this company, for the reasons that follow, I find that it was Mr. Kazman who was actually the beneficial owner and the directing mind of this company.

195 Mr. Kazman admitted that M&M stood for "Maxine and Marshall;" his and his wife's first names. I presume, given that this company purchased what Mr. Kazman described as his wife's dream home at 155 Sandringham Drive, Toronto (Sandringham), that the "155" in the corporate name is a reference to that property.

196 Mr. Kazman testified that Mr. Levy agreed to help him buy Sandringham and that M&M held title to this property for the benefit of Mr. Kazman. As I understand the evidence, Mr.

Kazman would not have been able to get financing to purchase the property on his own and he might have lost his deposit had Mr. Levy not assisted him in getting mortgage financing. There was some evidence as to why a corporation was used, rather than Mr. Levy personally, but clearly Mr. Levy had the ability to obtain a mortgage that Mr. Kazman could not.

197 Mr. Levy introduced a document entitled "Declaration of Trust" with the words "and Partnership Agreement" stroked out, dated October 30, 2007 ("M&M Declaration of Trust"). Mr. Kazman testified that he did not recall the details of this document but he admitted that he or Mr. Levy prepared it, that the initials looked like his and that he and Mr. Levy both signed the document. Although it does not matter, in my view as the lawyer, Mr. Kazman likely prepared the M&M Declaration of Trust. It is formatted and has similar language to the Whitehorse Contracting Inc. (Whitehorse) Declaration of Trust that I will come to, that Mr. Kazman admitted he probably prepared.

198 The recitals of the M&M Declaration of Trust confirm that the company was to become the registered owner of Sandringham. Para. 2 states that Mr. Levy is the sole shareholder, officer and director of the company and Mr. Kazman testified to this before he was shown this document. Para. 3 states that Mr. Levy holds 100% of the shares of the company as a bare trustee for Marshall; Mr. Kazman. Para. 4 states that the company holds title to the said property solely as bare trustee and para. 5 states that the property is to be 100% beneficially owned by Mr. Kazman. Para. 6 provides that Mr. Levy does not have any interest in the property or in the bank account of the company and that this was correct at the time the document was signed. [Emphasis added] Para. 8 provides that all expenses for utilities, taxes, etc., are to be paid by Mr. Kazman alone and that Mr. Levy is not to be responsible for the same.

199 Mr. Kazman testified that since Mr. Levy was the owner of M&M that he had to open the bank account and that Mr. Levy was a signatory on the bank account. They needed an account to pay the mortgage that M&M obtained for the purchase of the property, as the banks usually like pre-authorized cheques for that purpose. All of this makes sense and I accept this evidence.

200 Mr. Levy put to Mr. Kazman that he was only authorized to sign cheques to pay insurance and taxes for Sandringham, but Mr. Kazman testified that Mr. Levy used the M&M bank account for whatever purposes he wanted. Mr. Kazman's evidence, however, is at odds with the clear terms of his agreement with Mr. Levy.

201 Mr. Coort analyzed M&M's CIBC account from September 11, 2007, when it was opened, until December 31, 2010. There are significant deposits into the account from Mr. Kazman or his companies including \$118,000 noted "3rd Mortgage advance -- 155 Sandringham". Payments out of the account include monthly mortgage payments related to Sandringham, to three different mortgagors and other payments clearly personal to Mr. Kazman.

202 As to who controlled M&M's account, I find it was Mr. Kazman and that, contrary to his evidence, Mr. Levy was not and did not use it for whatever purposes he wanted. Based on the Coort Analysis, the account was used to pay the three mortgages on Sandringham and what appear to be other expenses associated to the maintenance of the property, payments for the most part to Mr. Kazman and his wife and his companies. There are also payments to Mr. Levy

and some of his companies but those do not alter my view overall that M&M was really Mr. Kazman's company. I believe those would have been to reimburse Mr. Levy for payments he made for Sandringham such as insurance. This is what the M&M Declaration of Trust provides for and this conclusion is the only one in my view that makes any sense given the reason the company was incorporated.

203 The Coort Analysis assumed M&M was Mr. Levy's company and so my conclusion does alter some of his mathematical conclusions but nothing more.

204 There are clearly disputes between Mr. Kazman and Mr. Levy concerning M&M now. Mr. Levy alleged in questions to Mr. Kazman that he did not know that Mr. Kazman put a second mortgage on Sandringham and that Mr. Kazman paid it out of the M&M account. Mr. Levy also complained that Mr. Kazman sold Sandringham, without telling him, when Mr. Kazman owed a lot of money to Mr. Levy. Mr. Levy also complained that Mr. Kazman bounced cheques, presumably by not putting enough money into the M&M account and that this hurt his; Mr. Levy's, credit rating. These are other collateral issues that do not need to be resolved in this proceeding.

205 The incorporation of M&M illustrates the closeness of the relationship between Mr. Kazman and Mr. Levy at the time Sandringham was purchased; October 2007. It also illustrates that despite that closeness, as a lawyer, Mr. Kazman prepared an agreement to protect his and his wife's interests in Sandringham. The fact Mr. Kazman needed Mr. Levy's help to purchase his wife's dream home also suggests that he had financial issues at the time and certainly carrying this home was expensive. The mortgage payments alone were over \$5,000 per month.

206 Although of no relevance to these proceedings, two payments to Sheila L. Montero in trust that total \$216,262.12 made on September 26 and October 29, 2007 demonstrate my concerns about Mr. Kazman's credibility as a witness. In cross-examination, Mr. Coristine put to Mr. Kazman that this was to purchase Sandringham on October 30, 2007. Mr. Kazman refused to "guess" and said that Ms. Montero acted on numerous real estate transactions. He professed not to know who acted on the purchase of Sandringham. I find this evidence incredible. Mr. Kazman testified that Ms. Montero worked out of his office after he lost his licence and she was clearly doing his real estate deals. Clearly, given the timing, funds were being deposited to M&M for the purchase of Sandringham. There is no doubt that Ms. Montero was acting on that purchase. On September 12, 2007 Mr. Kazman received \$150,000 into his personal CIBC account from Ms. Montero Re: 155 Sandringham purchase from Kazman. As Mr. Kazman never owned this property personally, but apparently had entered into an Agreement of Purchase and Sale, the only logical conclusion is that this related to the purchase of the property by M&M. On the day of the purchase; October 30, 2007, \$150,000 was transferred out of Mr. Kazman's account to an unknown source; I presume the vendor's solicitor.

207 The other relevance of M&M is that, as I will come to, the Coort Analysis establishes that its account received various payments that the Crown alleges were part of the money laundering. For example, Mr. Kazman was asked by Mr. Coristine about money from Icon Contracting (Icon) going first to Mr. Kazman's company, Cramarossa Design & Renovations Inc. (Cramarossa), and then to M&M to pay the mortgage. He put to Mr. Kazman that he put it through two

companies before it reached its ultimate goal. Mr. Kazman responded that he did not direct where the funds would go but this does not make sense since he was the one writing the cheques and there is no issue that he was in control of Cramarossa.

Findings with Respect to Property Ownership

208 As already stated, there is a dispute between Mr. Kazman and Mr. Levy as to who had an interest in various properties at various times. As I stated during the trial, I am not able to make factual findings about the disputed properties. However, to the extent that Mr. Kazman claims that he had an ownership interest in a property, that evidence may be relevant to his knowledge of any SBL involving that property. I have included evidence relevant to the properties owned by Messrs. Kazman and Levy and Ms. Cohen in Appendix B.

Findings with Respect to the Invoices from the Disputed Construction Companies for Leasehold Improvements, Furniture, Fixtures and Equipment

209 For each of the 16 SBLs, with the exception of Mr. Ghatan's, invoices from one of the Disputed Construction Companies or construction companies owned by Mr. Levy and/or Mr. Kazman were provided to the borrower and the bank. As Mr. Kazman argued, all of the invoices from the Disputed Construction Companies look like invoices from Mr. Levy's companies. There is some difference in the formatting but what is most significant is that their general content is the same for all of the SBLs. I will come back to the significance of this.

210 Typically the first invoice provided to the borrower has a heading "Leasehold Improvements. First Part [sometimes referred to as Phase I]: Demolition & Disposal". This invoice typically lists, without any further detail or price breakdown, the following (what I will hereinafter refer to as a "Total Gut Job"):

- Removal & Dispose of all Partitions and Existing walls.
- Removal & Dispose of all Existing plumbing and Fixtures.
- Removal & Dispose of all Electrical wiring and Fixtures.
- Removal & Dispose of existing carpets, tiles and borders.
- Removal & Dispose of Existing Heating & Air Conditioning System (HVAC).

211 In some cases this phase included demolition and removal of this existing storefront. This invoice then goes on with the heading: "Second Part [sometimes referred to as Phase II]; Completion of Work" (hereinafter called "Total Rebuild"). Here, there is more variation but this part of the invoice typically includes the following:

- Supply and Install new partitions and replace new walls complete with bulkhead as needed.
- Supply and Install new Electrical panel, new wiring and new light fixtures.
- Supply and Install new doors, Hardware, and Custom drop ceiling light fixture.
- Supply and Install new Plumbing and Plumbing Fixtures (usually for a washroom).

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- Supply and Install new HVAC by York System Model High Efficiency 100.0 afue with high force air duct (or some other similar product).

212 Again in some cases this invoice would include installation of a new storefront.

213 Typically there would be a second invoice for "Furniture, Fixtures and Equipment" provided to the borrower. Under each heading there is a list setting out, generally, what the item is, the number of items and in some cases serial numbers. In some cases these typical two invoices were broken down into three or more invoices and there may have been more than one purported contractor shown as the supplier on the invoices.

214 The similarity of the invoices, particularly the first invoice for a "Total Gut Job" in each case does suggest that they were all prepared by or on behalf of the same person or persons. Given that Mr. Levy admitted that he and his staff prepared the invoices from his construction companies, the striking similarity of the invoices suggests that he prepared all of them, including the ones that came from one of the Disputed Construction Companies. This conclusion is reinforced by the fact that he admitted that one or more of his companies were in fact the contractor for each of the SBLs (save for the Cohen SBLs) although he maintained that he did so as a subcontractor to Mr. Kazman. This demonstrates his interest in the Disputed Construction Companies. That said, Mr. Kazman at one point admitted that he might have typed up an invoice for Mr. Levy and although he later submitted that he corrected this, there is no reason to believe that he could not have done so.

215 The similarity in the invoices does assist me to some extent, when I look at them as a whole, as to what renovation work was needed and in fact done. In some cases the assistance is very direct in that the same property is subjected to a Total Gut Job and Total Rebuild more than once in a short period of time. Looking at the invoices overall, it also seems unlikely that all of the properties leased for this group of 16 SBLs would need a Total Gut Job and a Total Rebuild. There is no dispute that legitimate tenants would want to keep the cost of leasehold improvements as low as possible as they can only benefit the landlord at the end of the lease. This seems to be more than a coincidence.

Findings with Respect to the Faxes with the Heading "HP LASERJET FAX 123456789"

216 There are a number of documents in the bank loan files that have a fax header with a date and time, then "HP LASERTJET FAX 123456789" and a page number. I have referred to this as the HP Fax Number. Although 123456789 is not a phone number as it is only nine digits and not ten, the uniqueness of this number and how it appears on these documents along with the reference to HP LaserJet Fax makes it clear that the documents with this unique fax header were faxed to the bank in question from the same fax machine.

217 I have found documents with this HP Fax Number in the following loan files:

- a) ELFI - the first Northwood invoice re: leasehold improvements;
- b) ELI - the fraudulent NOA for Ms. Cohen for 2006;

- c) LHC - the second Northwood invoice re: furniture, fixtures and equipment;
- d) LSC - the fraudulent HSBC GIC statement;
- e) Contempo - the documents faxed to the bank included, a fax coversheet faxed May 20, 2008 which enclosed Mr. A. Tehrani's 2007 property tax assessment, and the two Northwood quotes dated May 1, 2008, and the first Northwood invoice, the Opening Balance Sheet for Contempo as at June 1, 2009 faxed on June 6, 2008, a fax coversheet faxed on July 2, 2008 which stated the GST number, a fax coversheet faxed on July 14, 2008 which stated it attached the final invoice #9221 for furniture, fixtures and equipment, and an Invoice Direction Payment form and the second Northwood invoice faxed on July 14, 2008;
- f) Modernito - letter on the letterhead of Trust Inc. Realty Corp. signed by Mr. Levy dated March 3, 2009 to Lipman Zener Waxman, Lipman firm in the loan file which attached an Amendment to Lease and a fax coversheet on the letterhead of Trust Inc. Realty Corp. to Michelle Panagiotakos (law clerk) at Torkin Manes from Mr. Levy/Trust Inc. Realty Corp. dated March 5, 2009;
- g) Meez Corp. - pages from the Business Plan, the NOA for Mr. Tehrani for 2005, fax cover page for a fax sent purportedly from Mr. Tehrani on behalf of Meez Corp. (but does not have his signature) to Mr. Copeland attaching two Northwood invoices dated November 9 and 14, 2006, and Creative Contracting invoice dated September 11, 2006;
- h) Homelife - a letter from Mr. Levy on behalf of MGM Inc. to the Lipman firm dated March 4, 2010 dealing with what happened to the Homelife assets;
- i) Mosaic - the BOM loan file contains a fax coversheet from Mosaic dated November 29, 2006 to the Lipman firm and the fax header is cut off a bit but clearly shows that it is from the HP Fax Number. The same is true for the Northwood invoice in the loan file dated November 28, 2006 for furniture, fixtures and equipment.

218 Given that this fax header appeared on items (f), (h) and the fax coversheet referred to in (i), I conclude that it must have been Mr. Levy or someone on his behalf that was using this particular fax machine. On this basis I find that all of these faxes with the HP Fax Number were faxed by Mr. Levy or someone on his instructions.

219 I will deal with the significance of this finding as I review the individual SBLs.

Findings with Respect to the Bank Reliance Evidence

220 I will set out the relevant evidence of the bank representatives that were called when I review the evidence of the 16 SBLs. Various issues arise with this evidence that I may have to deal with, depending on my findings of fact. The defendants point out that the Crown did not call any of the bank underwriters who, on the evidence, are the people who actually decided whether or not a particular SBL should have been approved. In short, they submit that the

Crown has not proven beyond a reasonable doubt that any deceit caused a detriment to the banks.

221 The Crown relies on the witnesses that it did call from the various banks who all testified that if they had known that the applicant had lied in any of the documents provided to the bank or filled out at the bank that they would have terminated the application process and not even submitted the SBL application to the underwriters. The Crown also relies on the plain language of the forms, which require the borrower to certify the accuracy of the information and, in the case of the Loan Registration Form, provides that it is an offence to give false information.

222 In my view, generally speaking, the Crown may be able to prove reliance without calling each of the underwriters if the evidence establishes that the bank representative in question would not even have forwarded the application to the underwriting department. There is a legal issue that arises, however, which I deal with at Appendix "Q" and when I consider the various counts of fraud.

Common Findings of Fact with Respect to the 16 SBLs in Issue

223 There are many facts that are common for each of the 16 SBLs in issue. I set them out here to avoid the need to repeat this evidence for each loan. To the extent these facts represent a pattern; I have considered them in coming to my decision on the Crown's count-to-count similar fact application. These facts are as follows:

- a) There is a temporal connection between all 16 loans, spanning the 32-month period of June 2007 - March 2010;
- b) The corporation that obtained the SBL (borrowing company) was 100% owned by the defendant who incorporated the company. This was typically admitted and was also reflected in representations made to the bank and CRA;
- c) All borrowing companies were newly incorporated within a short period before or after applying for a SBL;
- d) For every SBL, the principal of the company gave a personal guarantee to the bank for 25% of the SBL;
- e) All bank accounts for the borrowing companies were opened after the SBL was approved and each defendant was the sole signing officer on the business account of the company;
- f) Except for the SBLs for Meez Corp. and Uzeem, the defendant went to a bank that was not their usual bank for the purpose of applying for the SBL;
- g) Each defendant alleges that this was because Mr. Levy told them to go to this particular bank;
- h) Of the 16 SBLs, five borrowers obtained multiple loans;
- i) Where a defendant obtained multiple loans, they did so in quick succession;
- j) None of the borrowers who obtained multiple SBLs returned to the same bank for his or her subsequent loans save for the Uzeem SBL;

- k) None of the borrowers who obtained multiple SBLs advised the bank they went to after the first one of their prior SBL(s);
- l) A company associated to Mr. Kazman acted as the landlord for five of the 16 borrowing companies, if I include ELI. In some cases no rent payments or insufficient rent payments were made to the landlord company in accordance with the lease provided to the bank;
- m) Companies associated with Mr. Levy acted as landlords for six of the 16 loans;
- n) Business Plans were located in 13 of 16 loan files, having been provided by each borrower to the bank;
- o) Mr. Levy admits that he prepared the Business Plan for the first SBL obtained by each of the defendants;
- p) Most of the SBLs involved the bank receiving fraudulent documents, namely fraudulent GICs and/or NOAs and/or T1 Generals;
- q) All of the defendants testified that they did not know that fraudulent documents were being provided to the bank;
- r) For many of the SBLs, the start-up capital could be traced back to prior loan proceeds and/or related parties;
- s) No one (except Mr. Tehrani) questioned whether they could get a better deal from someone else in terms of the renovations;
- t) Each defendant, save for Ms. Chapkina, claimed to have dealt exclusively with Mr. Levy in terms of the leasehold improvement, fixtures, furniture and equipment. They did not concern themselves with the name of the construction/ supplier company that invoiced them;
- u) A construction/supply company that was either associated to Mr. Kazman and/or Mr. Levy was involved in each SBL save for the Bluerock SBL⁷;
- v) Each defendant claimed to have no construction experience and left decisions as to what needed to be done, at least behind the drywall, to Mr. Levy;
- w) The invoices provided by each contractor/supplier were remarkably similar in format, description of leasehold improvements, description of furniture, fixtures and equipment, and pricing;
- x) In many cases, the equipment purportedly sold to the borrowing corporation was identical to equipment sold to one or more other borrowing corporations and in some cases with identical serial numbers;
- y) For every SBL, the invoices provided to the bank for the leasehold improvements represent that there was a Total Gut Job and Total Rebuild, very often including the existing HVAC and storefront;
- z) For all the SBLs, payment of the contractor/supplier invoices from the SBL proceeds and start-up capital left relatively little behind in the company to purchase inventory and operate the business;

- aa) Except for Homelife, each new business reported very little in the way of sales -- significantly less than what was projected in the Business Plan provided to the bank;
- bb) Each new business defaulted on its SBL and closed within a short period of time; typically within 16 months of its intended 60-month term;
- cc) In those cases where asset appraisals were conducted, the value of remaining assets was consistently a small fraction of the amount paid; the resulting value was less than \$2,000 and of insufficient value to even warrant a sale of the assets by auction;
- dd) In several cases, appraisers were redirected by the borrowers to third party locations such as storage facilities where assets did not resemble most of those assets listed on the invoices;
- ee) All loans involved the contractors circulating significant portions of the loan proceeds to companies associated to Mr. Kazman, Mr. Levy and/or Ms. Cohen, as well as other related entities. Those companies then further circulated the SBL proceeds to other companies also associated to Mr. Kazman, Mr. Levy and/or Ms. Cohen;
- ff) A significant number of cheques between related parties generically reference "on account" in some form; and
- gg) Despite significant activity regarding circulation of funds, bank records for all contracting companies contain little if any evidence of "routine" operating expenses such as rent, payroll, and/or purchases relating to the invoices. Many of these same bank records all contain substantial periods of inactivity.

The 16 SBLs

224 I heard evidence about other SBLs involving the defendants including Mosaic for Mr. Levy, Dufferin Paralegal for Mr. Kazman, Meez Corp. and Comod Corp. for Mr. Tehrani, as well as the SBLs obtained by Mr. Cheng, Mr. Richards and Ms. Bendavid. I have already dealt with the relevance of the latter three SBLs. As for the others involving the defendants, only Dufferin Paralegal is caught by the Indictment. The other SBLs are relevant for other reasons, which I will come to.

Energy Lighting and Furnishings Inc. (ELFI) -- BNS -- Count #1

(a) The ELFI SBL

ELFI (Cohen) was approved for a \$169,830 SBL⁸ from the BNS on July 11, 2007

225 ELFI was incorporated by Ms. Cohen on June 21, 2007 and was registered to her home address of 49 Henry Welsh Drive (49 Henry Welsh). Mr. Kazman admitted that he may have incorporated this company for her and I find that likely given he was doing legal work for Ms. Cohen and was at least in a business relationship with her as well at this time.

226 The ELFI loan file from the BNS contains an Agreement to Lease dated July 3, 2007 between ELFI as the tenant and TCM Property Management Inc. ("TCM Property") as the landlord, for a lighting and furnishings store of 2,500 square feet (SF) on the main floor of 489

Champagne Drive, Toronto (489 Champagne), for five years to commence June 15, 2007, with rent at \$1,900 per month plus HST and utilities. Based on the Known Signature of Ms. Cohen, I find that she signed the Agreement to Lease purportedly on July 9, 2007. The loan file also contains a photocopy of Ms. Cohen's Social Insurance Number (SIN) and Driver's Licence with her date of birth (DOB), which corroborates my conclusion.

227 The lease is also purported to have been signed on July 3, 2007 on behalf of the landlord by Mark Vandross as President with a signature that is simply a capital "M" and capital "V". Mr. Kazman admitted that the handwriting on the lease looks similar to his handwriting, but testified that the signature is not his. Both Mr. Kazman and Mr. Levy denied knowing anything about this lease. No evidence was given about who Mark Vandross is or whether such a person even existed.

228 Cpl. Thompson testified that when she arranged for corporate searches to be done, no company by the name of TCM Property Management was found. There may be some issue about that search. Cpl. Thompson's evidence was that any company which included the name TCM Property Management would have come up in the search. However, this is at odds with a statement on the face of the Statement of No Match Found document issued by the Ministry of Government Services that states that after entering the information "exactly as it is printed above" *i.e.*, TCM Property Management, a record for TCM Property Management could not be found. The name on this statement does not include "Inc." Although Cpl. Thompson's evidence makes sense given how many search engines work, this issue was never resolved by someone with personal knowledge of the corporate search process.

229 Mr. Kazman denied the Crown's suggestion that TCM Property was his company. He admits that he had a company called TCM Management Inc., which was incorporated in August 1998. He also testified that Ms. Cohen and Mr. Levy knew that he had this company and submitted that Mr. Levy used this company without his knowledge and just made a small change to the name. Mr. Kazman also queried that if he was involved in this loan, why would he use a company that could be associated with him since any one of thousands of names could have been used?

230 The Crown called Ian Pianosi, one of the principal owners of Pianosi Bros. Construction Limited (Pianosi Bros.), which is a development and building corporation that has been in operation since 1958. He confirmed that Pianosi Bros. has owned 489 Champagne since December 7, 1966 and this is what is recorded in the Abstract. Based on photographs entered into evidence, I would describe 489 Champagne as a commercial unit in a commercial strip mall.

231 Mr. Pianosi testified that from 1990 until at least 2007-2009, the tenant at 489 Champagne was Save Energy, which was owned by Jack Sade. He saw a woman named Miriam working there a couple of times whom he understood to be Mr. Sade's daughter. Mr. Pianosi produced a copy of his lease with Save Energy, which states that the square footage of the unit is 2,000, 500 SF less than the ELFI lease. Mr. Pianosi was cross-examined by Mr. Kazman on various articles of that lease with respect to Mr. Pianosi's position that his tenants could not make any alterations, even painting the premises, without the written consent of the landlord. This issue is

not relevant as I accept that Save Energy could have done some work to the unit contrary to the terms of the lease provided it did not come to the attention of the landlord.

232 Mr. Pianosi testified that he had never heard of ELFI and was not familiar with TCM Property. He was shown a copy of the ELFI/TCM Property Agreement to Lease and testified that it is false and had nothing to do with his property. He did not recognize the name Mark Vandross or the signature for the landlord and testified that it was not his or the signature of any of his family or any employee of Pianosi Bros. Mr. Pianosi testified that he was never approached by either Mr. Sade or Ms. Cohen about subletting their unit to another company. In any event, I note that even if Save Energy illegally sublet the unit to ELFI that would have made Save Energy the sub-landlord. I find that there is, therefore, no doubt that this lease is a fraud. TCM Property had no interest in this property.

233 Ms. Cohen applied for a SBL by an application signed on July 10, 2007. The application stated that a business plan was provided. Mr. Levy testified that he prepared one Business Plan for Ms. Cohen and that it was for her first SBL and so it must have been the one in the BNS loan file for ELFI dated August 1, 2007. The Business Plan states that ELFI will feature floor to ceiling lighting fixtures offered to builders, designers and retail and wholesale trades. This is significant as here and elsewhere in the Business Plan it is clear that there would be a showroom open to the public. The Business Plan also represented that Ms. Cohen would invest \$100,000 of her "own equity".

234 According to Mr. Levy, Ms. Cohen had all the information ready to go as Mr. Kazman had already spoken to her. When he met with her, Mr. Kazman was present; Mr. Levy denied meeting Ms. Cohen privately. Mr. Levy admitted that he prepared the various financial projections and said that he then gave the Business Plan to Mr. Kazman to give to Ms. Cohen. Ms. Cohen paid \$2,500 to Fairbank for it. He testified that apart from this, he had nothing to do with the location, the leasehold improvements and did not do any subcontracting. He denied suggesting the names for any of Ms. Cohen's SBL companies or advising Ms. Cohen how to prepare the loan application form or preparing the lease and queried why he would since she had Mr. Kazman.

235 Mr. Kazman admitted that he knew that at some point in mid-2007, Ms. Cohen was in search of new business opportunities. He also admitted that he introduced Ms. Cohen to Mr. Levy but he denied having any involvement in this SBL. He testified that he recalled that Mr. Levy and Ms. Cohen met and that he understood that she was going to try various aspects of business different from Save Energy. In cross-examination, Mr. Coristine put to Mr. Kazman that he must have had a conversation with Ms. Cohen about ELFI. Mr. Kazman said that he didn't know that it was such a big deal, but he agreed she might have "mentioned it" to him and that she might have mentioned she was working on a business proposal with Mr. Levy. He denied asking any questions, although admitted that he may have asked her if she needed help.

236 Mr. Coristine also put to Mr. Kazman he would have at least asked Ms. Cohen where she was going to open her new business. There was a long pause and before he answered I observed that Mr. Kazman was looking at the lease from the binder he had on the witness stand. I believe I noted this on the record when I asked that he put his papers away. Mr.

Kazman then testified that he did not ask where her new business would operate. Given Mr. Kazman's admitted relationship with Ms. Cohen, and his hesitation before answering this question, I do not accept that he did not know very much if anything about ELFI.

237 The loan file contains a form entitled Summary of Personal Finances that is completed in handwriting. There is no evidence about who completed this form but it was signed by Ms. Cohen on July 9, 2007 under a note that her signature certified that the information is "accurate and complete". This form states Ms. Cohen has been the Treasurer of Save Energy for 12 years, has an HSBC GIC in the amount of \$129,750 and that her gross employment income is \$47,653. The loan file also contains a form entitled "Statement -- About You" signed by Ms. Cohen on July 13, 2007 as the President of ELFI below a statement that states that her signature "certifies the information about you as an individual in this application and any other information provided in the future is accurate and complete". In this form her gross annual income is typed in as \$21,084.

238 The NOA in the loan file states Ms. Cohen's line 150 total income for 2006 was \$47,653. This document is fraudulent as the NOA provided by the CRA shows her line 150 total income to be only \$7,660. I have no evidence as to who prepared the altered NOA; both Mr. Kazman and Mr. Levy denied doing so, but it is clear that Ms. Cohen's income was grossly inflated for the SBL application. Considering the evidence with respect to this SBL alone, I am not able to determine who altered the document.

239 The loan file contains a HSBC Term Deposit statement, which purports to establish that Ms. Cohen had an investment with a starting principal of \$129,750, issued June 4, 2006 to mature a year later. Lisa Pantaleo, a long-term employee of HSBC and now Senior Manager in the Government Financial Crime and Investigation Unit of the bank, testified that she was asked to verify this investment. She said that this statement had been altered in that it was not a one-year but rather a 30-day term deposit that was to run from June 4, 2006 for 30 days to expire July 3, 2007. Her evidence was reliable and was not challenged and I find that the statement for this Term Deposit in the ELFI SBL file was altered or entirely forged by someone, which included alteration of the Maturity Date as well as the Maturity Value. If one looks at the copy of this statement that the BNS had, the alteration would not be noticeable to someone who was not familiar with the information available to Ms. Pantaleo. Both Mr. Kazman and Mr. Levy denied any knowledge of this altered statement. Based on the evidence for this SBL alone, I presume Ms. Cohen was the one who provided this GIC to the bank, but I am not able to determine that she did so knowing that it had been altered.

240 Ms. Cohen signed a personal guarantee on July 13, 2007. The middle paragraph of that document states that by signing the document she certified that the information "about you as an individual in this Service Request and any other information provided now and in the future is accurate and complete."

241 Finally the loan file contains a Loan Registration Form signed by Ms. Cohen on August 1, 2007 and witnessed by Josie Alulio. On that form, the box certifying that the landlord and borrower are at arm's length is checked off. I have found that Ms. Cohen had provided a lease that was a fraudulent document and so she at least misrepresented who her landlord was. She

was in fact purporting to start her business in a unit rented by a company she owned with her father, which clearly would not be at "arm's length".

(b) BNS Reliance Evidence

242 I have already set out the information on the various forms that Ms. Cohen signed where she certified that the information that she had provided to the banks was accurate.

243 Mr. Kazman called Giusieppe (Josie) Alulio, who was the Account Manager for small business at the BNS branch at Dufferin and Finch in 2007, as a witness. She testified that she remembers Ms. Cohen and that she dealt with her with respect to her ELFI loan. Ms. Cohen was a customer at a different BNS branch and had been referred to her. Ms. Alulio could remember parts of the SBL process but it was five years ago and she testified without any notes so there were understandable gaps in her memory.

244 Ms. Alulio recalled meeting Ms. Cohen at the branch but she was not sure when. Mr. Kazman showed her the Credit Agreement for the business from the ELFI BNS loan file dated July 13, 2007. She identified her signature on this document and testified that she met with Ms. Cohen on that date to sign the documents. There were other documents completed at that time. Ms. Alulio would have met with Ms. Cohen before then as well to collect information to process the loan application including identification and other documentation with respect to the loan although she could not recall specifics or the number of meetings she had with Ms. Cohen.

245 Ms. Alulio had no recollection of whether or not she was given the Business Plan that is in the SBL file. She testified that business plans were required in certain circumstances and if they were provided they would be accepted at face value and the bank would depend on the document being accurate and truthful. She said that it was also customary for the borrower to provide a T1 General or NOA. Ms. Alulio had no recollection of other documents.

246 Ms. Alulio testified that she relied on the client being honest and the bank relied on all of the documents received as being truthful and accurate. If she discovered that the client had lied about assets then she would not lend the money. I presume by that evidence that she meant that she would not further process the application and send it to the underwriters.

247 Ms. Alulio could not recall if the lease was part of the loan requirements but if she got one she would depend on it being truthful. If she found out that the borrower had no right to be at the premises or that there was another business there that was related she would have been concerned.

248 Ms. Alulio agreed with the suggestion that part of the normal practice, and what she was trained to do, was to go through the bank documentation with the client before the client initialed the documents. She would draw the client's attention to the terms and conditions and make sure that the client understood them.

249 With respect to Ms. Cohen's representation on the Loan Registration Form that the landlord and borrower were at arm's length, Ms. Alulio testified that if the client asked her a question

about "arm's length" she would either answer the question or direct the client to someone who could answer the question. She did not recall if she explained what arm's length means to Ms. Cohen. However, she testified that if she were told that the landlord and the contractor were one and the same she would refer the issue to the adjudication department and her manager. They would at least ask for more information and possibly an asset appraisal to ensure fair market value. The decision would not be up to her. The concern would be that if they were all in "cahoots" they might not be charging fair market value for the work done.

(c) The Purported Renovations to 489 Champagne and Purchase of Equipment, Furniture and Fixtures

250 The BNS was provided with two invoices from Northwood. The first dated August 1, 2007, in the amount of \$91,690, was for the usual Total Gut Job. It is significant that this invoice has a fax header showing a date of August 1, 2007 and a reference to HP LASERJET FAX 123456789 p. 1. For reasons already stated, I find that Mr. Levy or someone on his behalf faxed this invoice from Northwood to the BNS. This makes it clear that contrary to his evidence Mr. Levy had some involvement in the ELFI SBL.

251 I note that the ELFI lease supposedly began July 15, 2007, which is only two weeks before the first Northwood invoice. As the Crown submits, this means that Ms. Cohen found a contractor, had the unit gutted and rebuilt, as well as invoiced the bank, all within two weeks of taking possession of the unit. I heard some evidence that a tenant might be given possession earlier than the commencement date set out in the lease but if that happened here it would not have been before the lease was signed on July 3rd, which could have added a couple more weeks. Either way a lot of work was purportedly done in a very short period of time.

252 The second Northwood invoice dated August 15, 2007 was for "Furniture & Fixtures and Equipment" and totaled \$112,917.

253 Ms. Alulio remembered receiving invoices in this case but could not recall from who or the name of the contractor. She testified that when an invoice comes in from a borrower there has to be confirmation from the borrower before funds are released to pay the invoice. If someone else came in to drop off the invoice and asked for payment she would not advance any money without the borrower's consent from their account. That would always be needed from the borrower, as it is their money. I accept this evidence; it makes sense.

254 In fact Ms. Cohen signed a supplementary receipt schedule that is in the loan file that referred to the Northwood invoices for the purpose of confirming that the loan proceeds were used for the original purpose of the loan. The BNS advanced funds to ELFI's business accounts and ELFI paid the invoices by drafts on August 7th and 22nd, 2007.

255 Ms. Alulio did recall visiting 489 Champagne on one occasion but she did not remember any specifics. She did not remember if she noticed any signs at the premises although she did testify that she believes the company was Save Energy Lighting but she had no recollection of asking Ms. Cohen about this sign. She had no recall of ELFI and no recall if she took pictures. Ms. Alulio did not recall if the ELFI SBL was funded before or after her visit. It is significant that

she recalled the name Save Energy at the premises because of course there is no dispute that this company had leased and was operating from the unit. The fact Save Energy was also a lighting store would mean that Ms. Alulio would not become aware of the fraud if an explanation were given for why there was no signage for ELFI.

256 Mr. Pianosi testified that he was not familiar with a company called Northwood Construction. He denied ever hearing of Northwood or seeing evidence of such a company at his property. He also said that in August 2007 there was no large influx of items being delivered to 489 Champagne and that, to the best of his knowledge, Mr. Sade was not planning to do any work on the property. Any work would have had to be done by the Pianosi Bros. contractors according to the terms of the lease.

257 Mr. Pianosi testified that he regularly went to 489 Champagne, both driving by the property and going into the physical premises. He did not have a log of this but testified that they would go in twice per year to check the roof, the heating, fire extinguishers and joists, and do structural inspections. Maintenance visits were done more frequently. He testified that if another business had vehicles, a sign or mail, he would have known about it. Mr. Pianosi denied the possibility that someone could renovate their unit without him knowing given the frequency with which he and others including his brother and property managers attended at the property. In 2007 Mr. Pianosi said he would have gone to the unit at 489 Champagne at least once per month. He was adamant that he would have known if someone was hiding something to do with that unit. Mr. Pianosi was shown both Northwood invoices #4405 and #4595. He vehemently denied that any of the \$210,000 worth of work was done or the equipment supplied.

258 For reasons stated in Appendix "H", I found Mr. Pianosi to be a credible and reliable witness notwithstanding the fact that I accept that he may have exaggerated the frequency of his attendances at the unit somewhat. He was clearly a diligent landlord and I find he would have known if the extensive renovations set out in the first Northwood invoice were made to 489 Champagne and the volume of equipment, furniture and fixtures was delivered there as set out in the second Northwood invoice.

259 Mr. Kazman testified that he understood that Northwood outsourced to Mr. Levy's general contracting company, MDC Modern and that since Mr. Levy did not have any trucks or construction equipment that he outsourced to other contractors as well. This is an example of where on the one hand Mr. Kazman would profess to have no knowledge of something; in this case Northwood, and then on the other hand suggest what he believed might have happened. In any event Mr. Kazman fairly admitted that he had no reason to disagree with Mr. Pianosi's evidence and that on the face of it, it looked like work was not done at 489 Champagne and that Ms. Cohen defrauded the BNS. That opinion of course is not binding on me but it does suggest that on this point Mr. Kazman was a fair witness.

260 Mr. Levy, however, would not concede this point. In cross-examination when Mr. Coristine suggested to Mr. Levy that ELFI was a sham based on the evidence of Mr. Pianosi, Mr. Levy said that he wouldn't say that, that Mr. Pianosi was missing something and that the whole thing is a conspiracy by the RCMP and the banks and he does not know why everyone is charged. He gave a long rant at this point about that subject. Mr. Coristine then took him through all of the

independent witnesses who were called in connection with the other three Cohen SBLs, which I will come to, and essentially Mr. Levy suggested they were all being untruthful. Mr. Levy said that the banks funded Ms. Cohen and they didn't do their due diligence, that that is their issue and that he did not see that as part of Ms. Cohen's problems. It seemed to me as he spoke that he had no concept of fraud. He also seemed unreasonably riled up and defensive given his position that all he knew about ELF I was the Business Plan he prepared and that he otherwise had nothing to do with this SBL.

261 As the Crown points out, the invoice number on the second Northwood invoice suggests that Northwood issued 190 invoices after its first invoice. However the Coort Analysis of the Northwood bank account at DUCA reveals only the loan proceeds from ELF I being deposited into the account, with no other deposits whatsoever between August 8, 2007 and January 30, 2008. I agree with the Crown that there is no way 190 consecutive construction jobs were completed and invoiced by Northwood, but never paid for, let alone in such a short period of time.

262 The Crown put that proposition directly to Mr. Kazman in cross-examination. Having already taken the position that Mr. Levy was responsible for all construction invoices for all 16 SBLs, Mr. Kazman would not comment on the specifics of the Northwood invoices to ELF I. However, having already testified to his legal background and general business experience, Mr. Kazman accepted the suggestion that a business should have sequential invoices (like cheques) so as to properly account for finances. In fact Mr. Kazman later cross-examined Mr. Benlezrah on the non-sequential nature of the Bonded invoices, suggesting it was some evidence that Bonded was a sham, but as I advised Mr. Kazman many times, questions are not evidence. I do find, however, that it is likely that whoever prepared the Northwood invoices created this gap in the invoice numbers in order to misrepresent to the bank that Northwood was a company with other contracts. I also agree with the Crown that this is further evidence that Northwood did not do the work or supply the equipment and was a sham company.

263 Finally, as I will come to, there is no evidence of any payments by Northwood for payroll or suppliers, nor is there evidence of that by any company that Northwood paid funds to in this timeframe.

264 For all of these reasons I find that the Northwood invoices sent to the bank set out leasehold improvements, furniture, fixtures and equipment that were never in fact done or supplied to ELF I. These invoices were completely fraudulent and induced the BNS to advance \$204,607 to ELF I. Given Mr. Levy faxed the first invoice to the bank I find that he prepared both of the Northwood invoices and that both he and Ms. Cohen must have known that the bank would rely upon them in advancing the full amount of the SBL. Whether or not Mr. Kazman had any knowledge of this will depend in part on my finding of whether or not he was in control of Northwood.

(d) Did ELF I operate as a business?

265 Based on the dates of the Northwood invoices, ELF I should have been open by the end of August 2007. I accept Mr. Kazman's position that Ms. Cohen could operate more than one

business from one location. However, given the nature of what she represented to the BNS as to what she intended with ELFI and the evidence I have already reviewed, I have concluded that there was never any such business operating from the premises leased by Save Energy at 489 Champagne, save the Save Energy business.

266 My conclusion is reinforced by the fact that Mr. Coort concluded that his analysis of this BNS account did not show any significant deposits to ELFI from third parties which could be considered revenues from sales and that virtually all deposits into the ELFI account were from Ms. Cohen, Mr. Kazman, Mr. Levy and companies associated with them. No corporate income tax returns were filed with the CRA nor were there any GST/HST filings.

267 There is also no evidence of the payment by ELFI of rent, utilities, taxes or any payments to employees for payroll or commissions. There is evidence in the loan file that ELFI obtained insurance for the contents at 489 Champagne as well as other coverages and that it made SBL loan payments but in my view that was simply to avoid the loan going immediately into default and does not mean it was actually in business.

268 This evidence corroborates my conclusion that ELFI was never an operating business.

(e) The Appraisal of ELFI's Assets

269 The BNS declared the ELFI loan to be in default as of February 11, 2009.⁹

270 The Crown called Anthony Burnett from Corporate & General Inc., an appraiser retained by the Lipman firm, the lawyers for the BNS, to appraise ELFI's assets in early June 2009. He was asked to attend at 489 Champagne and attempt to determine what happened to the company and to identify if any of the company's property and assets remained there. In the letter from Mr. Lipman, Mr. Burnett was reminded that he dealt with Ms. Cohen for the BOM and the LHC SBL that I will come to.

271 Mr. Burnett testified that when he went to 489 Champagne, it was occupied by a new tenant and he was directed to go to 499 Champagne Drive (499 Champagne) where Save Energy was now operating. When he attended at 499 Champagne, he met with a gentleman who told him he was the father of Ms. Cohen; I presume Jack Sade. Mr. Burnett told the gentleman that he was there to appraise the assets of ELFI. Mr. Burnett was asked to meet Ms. Cohen at a storage facility around the corner at 4500 Chesswood Drive called Centron Storage.

272 Mr. Burnett went to Centron Storage and took three pictures at the storage unit but he did not pull items out. He testified that it was about a 12' x 9' unit and denied the unit was "packed" or that the assets that he saw filled the unit; there was sufficient room to move around inside. Mr. Burnett testified that he opened a couple of the boxes that were mostly parts as opposed to complete lights but admitted that he did not open the big box that is shown in the pictures in the middle of the unit. He testified that the filing cabinets were very old and of little value and that the other desks and chairs were nothing of note.

273 As stated in his appraisal report, Mr. Burnett valued the assets "consisting of small qty of

lighting fixtures, parts as well as desks and filing cabinets" at a distress value if sold on site of approximately \$2,000.00 to \$2,500.00, which is what the assets would fetch at auction. He testified that he knew the value because he had liquidated many lighting stores. There is a detailed list of the assets at the end of his report with an approximate asset value total of \$1,815.00.

274 When Mr. Kazman was asked in cross-examination by Mr. Coristine if he was aware that Ms. Cohen panicked when the bank was coming to do an appraisal for ELFI, he testified that she "may have mentioned it to me in passing" although he admitted that at some point the name Tony Burnett came up and that Ms. Cohen may have mentioned that Mr. Burnett was coming to see some chattels for one of her businesses that were in storage. Later Mr. Kazman said that Ms. Cohen was always "tight lipped" about her business and he denied that he suggested to Ms. Cohen that she show "crap." This was yet another example of the many internal inconsistencies in his evidence.

275 It is apparent from the photographs that very little remained of the furniture, fixtures and equipment supposedly purchased from Northwood at a price of almost \$113,000. Mr. Burnett was shown the second Northwood invoice to ELFI. He testified that he possibly saw the office desk and assorted chairs, but he did not see a Compaq computer or a Mac graphic design computer or a complete stereo system and there was no sofa there as there was insufficient space in the unit for one. The photos Mr. Burnett took are consistent with what he described as inventory as there are mostly boxes that appear to be random and consistent with how the inventory would have been packaged when purchased. Given my other findings concerning ELFI, I accept the Crown submission that the photos represent Save Energy inventory. It is clear then that Ms. Cohen misrepresented Save Energy inventory to Mr. Burnett as being assets from ELFI.

(f) The Circulation of the SBL proceeds

276 Mr. Coort analyzed the ELFI account from July 12, 2007, when it opened, to May 1, 2009, when it closed.

277 There was very little activity in the account prior to August 7, 2007. In the period from August 7 to August 24, 2007, Ms. Cohen deposited \$100,000 into the account -- the source is unknown, and the SBL proceeds totaling \$168,975. In the same period the Northwood invoices were paid in full from the account and \$50,000 was paid to City Commercial Realty Inc. but there is no evidence about the purpose of this payment.

278 In the period August 31, 2007 to October 21, 2008, there were also deposits into the ELFI account from Mr. Levy's companies Trust Inc., MDC Modern, and Mosaic and deposits by Mr. Kazman's company 2061914 Ontario Inc. (Blue Glass) as well as deposits by Ms. Cohen personally. In the same period payments from the account were made to MDC Modern, 2061914 Ontario Inc./Blue Glass and Mr. Kazman personally as well as a \$22,000 payment to Save Energy, LHC, Ms. Cohen's third SBL, and a payment to Ms. Cohen personally. These payments represent the vast majority of the money into and out of the ELFI account in this period.

279 Mr. Kazman put a cheque to Mr. Levy that was deposited to the ELFI account from MDC Modern payable to Ms. Cohen dated August 31, 2007, which states RE: "payment on account". Mr. Levy said that this could have been for an invoice and that he bought so many supplies from "her and her father" and that "she supplied all of my buildings... and all of my businesses". He then added that MDC Modern did business with Ms. Cohen and her father but that he did not deal with Ms. Cohen too much, which completely contradicted the evidence he had just given. According to Mr. Levy, Mr. Sade told him to write this cheque to Ms. Cohen. In other cases Ms. Cohen would direct him "through Kazman" to pay ELFI. According to Mr. Levy, Mr. Sade also provided all the labour for all the electrical work that Mr. Levy did. There is also the evidence I heard later from Mr. Levy as to money he loaned Ms. Cohen through both Mr. Sade and Mr. Kazman and loans he arranged for some of the defendants with funds from Ms. Cohen.

280 It was clear in this exchange that Mr. Levy was trying to minimize his relationship and contact with Ms. Cohen. Before Mr. Levy was taken through the loans, the Crown pinned him down to his position that he had only seen Ms. Cohen once before Mr. Kazman referred her to him for the ELFI Business Plan. At no time did he mention any other existing relationship. The internal contradictions in his evidence are of course of concern and this also confirms my impression that with respect to the ELFI loan, Mr. Levy wanted to distance himself from Ms. Cohen and what I have found to be a fraudulent loan.

281 On February 21, 2008, ELFI paid \$13,000 to Lorraine Salt. Mr. Kazman testified that Ms. Salt was a partner with him, Mr. Luska and Ari Yakobson in the property at 2897 Dundas in Toronto. He testified that Ms. Cohen bought out Ms. Salt's interest in the property at some point. Although he did not say when this occurred and was not asked about this payment, it would seem likely that this ELFI payment was a payment towards this purchase, not a business expense of ELFI.

282 By October 21, 2008 the ELFI BNS account was overdrawn and it remained that way until it was closed in May 2009.

283 Turning to the money Northwood received of \$204,607, in two payments from ELFI in August 2007, these were the only funds Northwood received in the period from August to December 2007. Having found that the renovations, furniture, equipment and fixtures set out in the Northwood invoices were not in fact done or provided to ELFI, these payments were funds fraudulently obtained from the BNS by Northwood as a result of the fraudulent invoices. Northwood was not entitled to any of this money.

284 The only payments made by Northwood that could have been for leasehold improvements purportedly done for ELFI, were three payments to a company called LSC Carpentry totaling \$7,500 between August 14 and September 7, 2008. I did not hear any evidence about LSC Carpentry. In any event an amount this small could not represent the purported leasehold improvements done for ELFI. Furthermore, there were no payments made by Northwood that appear to relate to the purchase of equipment for ELFI as represented in Northwood's second invoice.

285 In the month of August to September 14, 2007, Northwood paid \$187,721 in four payments to MDC Modern and Trust Inc. Realty Corp., which represents 91.7% of the total payments in the period. Mr. Kazman testified that he signed these cheques from Northwood at the direction of Mr. Levy. One of the Northwood cheques to Trust Inc. Realty Corp. signed by Mr. Kazman states RE: "on account" and was in the uneven amount of \$27,494.71. Mr. Levy said this cheque was money Mr. Kazman was paying back from a loan or could have been money for another contracting job he did for Mr. Kazman. Given Mr. Levy's evidence as to even and odd amounts, this cheque would not have been a loan repayment. If this cheque was for work done by Mr. Levy for Northwood, there is no evidence from Northwood's account that is consistent with it doing any construction job at this time let alone a job different from the one Northwood purportedly did for ELFI. Mr. Levy was adamant that he did not do any work for the ELFI SBL. ELFI is the only company that provided money to Northwood in this timeframe and no money came into Northwood's account that could have been from any other construction job. It is Mr. Levy's position that these were legitimate payments to his companies and that he did not have to ask Mr. Kazman where Northwood was getting its money and that he did not know it was from a SBL. I do not accept Mr. Levy's evidence that these payments were for amounts legitimately owed to his companies given he was not doing any other work for Northwood at this time and Northwood clearly had no other contracts in this timeframe.

286 Northwood also made a number of payments linked to Mr. Kazman: \$3,700 in two payments to Maxine Henry and \$3,300 to Tony D'Imporio, who had loaned money to Mr. Kazman in August 2007. Again Mr. Kazman testified that he signed these cheques at the direction of Mr. Levy. These payments were clearly personal to him and his position is that these were for the fees he was owed for running the account.

287 In this same period of time; July 16 to August 28, 2007, Eastern Contracting Inc. (Eastern), another one of the Disputed Construction Companies, paid Trust Inc. \$103,388.10 in three payments; \$20,000, \$30,000 and \$48,388.10. Mr. Levy suggested that these might be loan repayments but that would not be for the last payment given it is an odd amount. The source of these funds is unknown save that Eastern received a \$45,000 draft from the Lipman firm and Mr. Kazman signed the deposit slip when this draft and another one were deposited into the Eastern account on August 17, 2009. There was also \$55,000 paid by draft from the Lipman firm dated August 27, 2007.

(g) Summary of the Findings of Fact

288 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the ELFI SBL:

- a) A fraudulent 2006 NOA, which grossly exaggerated Ms. Cohen's actual income, was provided to the BNS as well as a fraudulent HSBC Term Deposit statement. I have also found that Ms. Cohen misrepresented to the bank that the landlord and borrower were at arm's length but the fact is that the lease was a fraudulent document. I have not made a finding of who was responsible for creating these fraudulent documents and providing them to the BNS.

- b) The Northwood invoices were fraudulent since I have found that ELFI never existed, save on paper, and that Northwood did not do any leasehold improvements for ELFI at 489 Champagne and did not supply any furniture, fixtures or equipment as set out in the Northwood invoices that caused the BNS to advance the full amount of the SBL of \$169,830.
- c) I have found that Mr. Levy or someone on his behalf faxed the first Northwood invoice to the BNS, that he prepared both of the Northwood invoices and that both he and Ms. Cohen must have known that the bank would rely upon these fraudulent invoices in advancing the full amount of the SBL.
- d) At the time Northwood purportedly did the extensive renovations to 489 Champagne and purportedly supplied furniture, fixtures and equipment, Mr. Kazman had taken over from Mr. Vatch, the person who incorporated the company. Subject to my finding as to who was in control of Northwood, there is insufficient evidence, considering the evidence with respect to ELFI alone, to find that Mr. Kazman participated in this fraud.
- e) Ms. Cohen misled the bank's appraiser by showing him unrelated assets so the bank would not discover the fraud.

289 If the only issue was the fact that Ms. Cohen misrepresented her income and the fraudulent GIC, I would have to consider whether or not the Crown has proven that the bank relied on this information in approving the SBL but that finding is not necessary as this pales in comparison to the fact that Ms. Cohen and Mr. Levy provided the bank with invoices from Northwood, prepared by Mr. Levy, for leasehold improvements that were not done and for furniture, fixtures and equipment that were not provided. For the same reason I do not need to consider whether or not the bank relied on the false information provided to the appraiser.

290 For these reasons I find the entire ELFI SBL application, which resulted in Ms. Cohen and Mr. Levy deceiving the BNS into disbursing \$169,830 in SBL funds to ELFI so that ELFI could pay the two fraudulent Northwood invoices, to be fraudulent.

291 For all of these reasons Ms. Cohen and Mr. Levy clearly committed a fraud on the BNS of over \$5,000 with respect to ELFI and Mr. Levy is guilty of Count 1.

292 The key issue remaining is whether or not Mr. Kazman was a party to this fraud. It certainly makes no sense that this fraud was Ms. Cohen's idea alone because it makes no sense that she would pay out most of the SBL funds and her start-up capital to Northwood unless she knew she had some control over the money and would be getting some of the money back. That certainly seems to be what happened.

293 ELFI is also relevant to the money laundering count as the ELFI SBL funds took a very circuitous route and virtually all of the money ended up with Ms. Cohen, Mr. Kazman and Mr. Levy. This evidence is consistent with a desire to hide the source of the funds, which was originally the ELFI SBL.

Energy Lighting Inc. (ELI) -- TD -- Count # 2(a) The ELI SBL

ELI (Cohen) was approved for a SBL from the TD on September 4, 2007 in the amount of \$153,000.

294 ELI was incorporated on July 18, 2007, not even a month after ELFI, with an office address stated to be 559 Eglinton Avenue West, Toronto (559 Eglinton). The Articles of Incorporation found in the TD loan file also show ELI at the address 559 Eglinton with a registered office at the same address. Mr. Kazman testified that he likely incorporated this company for Ms. Cohen but said that he had no interest in it. I find that he did incorporate ELI given the fact that at the very least he was doing legal work for Ms. Cohen at this time. I also find it necessarily follows that Mr. Kazman therefore knew that Ms. Cohen was using 559 Eglinton as an address for the company. This is very significant as this was an address that Mr. Kazman was familiar with as he and Mr. Luska purchased the building municipally known as 559-563 Eglinton Avenue West on May 2, 2007, only a couple of months earlier through his company 6747841 Canada Inc.

295 It is therefore clear that Mr. Kazman must have known, at the very least, that Ms. Cohen intended ELI to have some association with his property. However he denied there was any conversation at the time with Ms. Cohen about the fact that she was leasing two properties in two locations for two businesses and that her new company ELI was using the address of his property. That evidence was totally incredible.

296 Mr. Kazman testified that Ms. Cohen bought out Mr. Luska's interest in this property and that he was not sure if Ms. Cohen had done so by the time of this SBL. A certificate of officers and directors for 6747841 Canada Inc. signed for CIBC on February 11, 2008 was signed by Mr. Kazman as President and Ms. Cohen, so she must have bought out Mr. Luska before that date. What I do know from the evidence summarized in Appendix "M" is that Mr. Luska was still involved in this property in the fall of 2007 given the evidence of Mr. Herman Wood, Vice-President of Harvey Kalles, which I accept. I therefore find that at the time of this SBL Ms. Cohen did not have an interest in this property. There is no dispute that Mr. Levy did not have an interest in this property at this time.

297 The ELI loan file contains an Agreement to Lease dated June 7, 2007 between Ms. Cohen in trust for a company to be incorporated and 6747841 Property Management for 559 Eglinton, for 2,500 SF, for five years, to start on July 15, 2007; one month after the ELFI lease. This lease was signed by Ms. Cohen and by the landlord with a signature that does not look like Mr. Kazman's or Mr. Luska's. The tenant was to pay rent in the amount of \$2,000 per month plus GST and all utilities and expenses. There was also to be a deposit of the first and last months' rent in the amount of \$4,505.

298 The TD loan file also contains a commercial lease between the same parties for the same property and on the same terms. Ms. Cohen and the landlord signed the lease on July 7, 2007.

The signature for the landlord does not look like either Mr. Kazman's or Mr. Luska's and looks different than the signature on the Agreement to Lease.

299 Mr. Kazman testified that 6747841 Property Management was not his company and that his company was 6747841 Canada Inc., which he registered on April 3, 2007. He testified that he was not aware of this lease and said it was another example of Ms. Cohen and Mr. Levy using a very similar name to a company registered to him; implying this was like what they did for the ELFI lease with TCM Property Management Inc.

300 For the reasons set out in Appendix "M", I have found that after Mr. Kazman's company purchased this building, he and Mr. Luska renovated and leased the apartments, which are municipally 559 Eglinton, as of January 2008. In other words it is impossible that 559 Eglinton was also leased to Ms. Cohen/ELI for any other purpose, as 559 Eglinton was either being renovated into apartments or leased as apartments. I find that the ELI lease was a fraud and that ELI had no interest as a tenant in 559 Eglinton.

301 Mr. Kazman's evidence on ELI's lease kept shifting. He testified that although he did not make the ELI lease in the loan file there could be another lease, but he never explained how Ms. Cohen could have leased any part of the upstairs that he was renovating into apartments. At one point in his evidence Mr. Kazman also suggested that Ms. Cohen might have used the 559 Eglinton address only as a mailing address and as an owner of the building that was not a problem for him. She was not an owner, however, when ELI began to use this address. Later in his evidence, although Mr. Kazman admitted that ELI did not have a showroom at 559 Eglinton, he maintained that the address was a mailing address for ELI. This evidence was not credible either since 559 Eglinton was being renovated as two apartments that were leased in January 2008 and so any mail would have gone to the tenants of those apartments. Furthermore, ELI's address with the TD appears to have been Ms. Cohen's home address throughout.

302 I note as well that 6747841 Property Management had an address on the lease shown as 561 Eglinton Avenue West (561 Eglinton). A nail salon in fact leased this unit in the building at the time so that was also false.

303 Mr. Kazman testified that Mr. Levy not only prepared the ELI Business Plan that is in the loan file but that he also prepared the SBL application for Ms. Cohen and gave her a completed package to take to the bank. He did not suggest he had any personal knowledge of this so I have not considered this evidence, as it is hearsay. It does, however, contradict his general evidence that Ms. Cohen did not discuss her business dealings with him and is further evidence that he must have known about ELI.

304 Mr. Levy denied preparing the Business Plan dated July 1, 2007 for ELI and he insisted that Ms. Cohen only paid him for one. This Plan does not have a table of contents or page numbers, which Mr. Levy testified would be found in a business plan he prepared, but as I will come to, that was not always the case and so this does not assist me in determining who prepared the Business Plan. This Business Plan is virtually identical to the one prepared for ELFI.

305 Mr. Levy denied ever giving Ms. Cohen an electronic copy of the ELFI Business Plan. He testified that Ms. Cohen is a smart woman and she took the one he gave her for ELFI and duplicated it. By this he meant she scanned it and made changes. I did not hear from Ms. Cohen but the necessary changes to the name and location in the Business Plan, among others, are seamless modifications in the copy in the loan file. The Crown suggests that could only have been done on the "soft copy" but I heard no expert evidence about whether these types of changes could be made by scanning the documents and working from there. I would say though, that that route, even if possible, would require some computer knowledge beyond the basics. Without evidence from Ms. Cohen, and considering the evidence with respect to ELI only, I have no evidence to contradict Mr. Levy save for Mr. Kazman who claimed not to have any personal knowledge of ELI. What I do have however, is the evidence of the other defendants: Mr. A. Tehrani, Mr. Tehrani and Ms. Chapkina, who all testified that Mr. Levy prepared all of their Business Plans which I consider later in this decision.

306 The ELI loan file contains an altered NOA for Ms. Cohen for 2005 stating her line 150 total income to be \$44,153, whereas in fact it was \$10,632. The loan file also contains the same altered NOA for 2006 as found in the ELFI loan file. As such Ms. Cohen's 2005 and 2006 NOAs overstated her income by four and six times respectively.

307 It is significant that the NOA for 2006 in this loan file has a fax header with the HP Fax Number dated June 22, 2007. Given my earlier finding, this means that this document was faxed to the bank by Mr. Levy or someone on his behalf. I therefore presume he provided the 2005 NOA to the bank as well. I am not able to determine on the evidence with respect to ELI alone however, whether Ms. Cohen prepared these documents and provided them to Mr. Levy or whether Mr. Levy prepared them and if so, whether or not Ms. Cohen was aware of them.

308 The loan file contains a Small Business Banking Credit Application that was filled in by type, not handwriting, so I presume a bank representative completed it. Ms. Cohen signed it as part of her personal guarantee. This form states her income as \$47,600 and omitted any reference to the guarantee she signed for ELFI and stated her employment to be self-employed for Save Energy, also without reference to ELFI.

309 When Ms. Cohen signed the Loan Registration Form on September 6, 2007 she certified that the Loan Limit Amount did not exceed \$250,000. Clearly Ms. Cohen controlled both ELFI and ELI and given the outstanding SBL that ELFI had, her representation that the total borrowed was less than \$250,000 was false. Ms. Cohen also certified that the landlord and borrower were at arm's length as stated in the Arm's Length Clause. The lease was a fraud and this overshadows this misrepresentation.

(b) TD Bank Reliance Evidence

310 The Crown called Myra Dacillo, who in 2007 was working for the TD bank at Bathurst and Sheppard in Toronto as a Financial Service Representative. She testified that the first application she had for a SBL was the ELI application from Ms. Cohen and that she did not work on any after that. She did not have notes of her meetings with Ms. Cohen.

311 Ms. Dacillo did not recall if Ms. Cohen came in with a sealed envelope but she testified that when Ms. Cohen applied for a SBL she gathered the documentation. According to Ms. Dacillo, Ms. Cohen would have been in the bank when she signed the application but she did not remember if she signed in her presence.

312 Ms. Dacillo asked for assistance from the SBL advisor at the bank since it was the first time she was processing a SBL. She was referred to the Regional Sales Manager and she reviewed the application with him. He told her what to say and recommended the loan for approval. Ms. Dacillo didn't know if it would have mattered if the contractor was a friend of Ms. Cohen's and she did not know what "arm's length" meant.

313 Ms. Dacillo did not attend at 559 Eglinton and was not asked to.

(c) The Purported Renovations to 559 Eglinton and the Purchase of Equipment, Furniture and Fixtures

314 As I have said the Crown called Herman Wood, Vice-President of Harvey Kalles, who at the material time worked at a satellite office of Harvey Kalles at 532 Eglinton Avenue West, across the street from 559 Eglinton. I have summarized some of his evidence and my findings concerning the renovations I have found were done by Mr. Kazman and Mr. Luska in Appendix "M". For the reasons stated there, I find that 559 Eglinton was the address on the second floor of this building and based largely on Mr. Wood's evidence, I find that during the summer and fall of 2007, Mr. Kazman and Mr. Luska were renovating the second floor into two residential apartments, which were leased in January 2008. It would, therefore, have been impossible for any renovations to have been done by Ms. Cohen to 559 Eglinton for the purpose of ELI. It therefore follows that the invoices provided to the TD in order to obtain the SBL proceeds fraudulently misrepresented work done and furniture, fixtures and equipment supplied in order to deceive the bank into releasing the SBL funds to ELI. Ms. Cohen clearly defrauded the bank.

315 A review of the documentary evidence in the loan file however, may assist in determining if anyone else was involved in the fraud clearly perpetrated on the TD bank by Ms. Cohen. The ELI loan file contains a quote from Eastern Contracting Inc. (Eastern) dated July 20, 2007 for the leasehold improvements and equipment, furniture and fixtures for a total of \$185,000 plus applicable taxes. The file also contains two invoices from Eastern to ELI, the first dated September 10, 2007 in the amount of \$88,510 for the standard Total Gut Job and Total Rebuild and the second dated October 1, 2007 in the amount of \$117,021 for furniture, fixtures and equipment. The invoices were addressed to Ms. Cohen at 559 Eglinton.

316 Mr. Kazman testified that he saw these invoices for the first time in the Crown's disclosure and he admitted that as far as he knew Eastern did not do any work on the property, which confirms the conclusion, I have already come to. However, he would not agree that Ms. Cohen defrauded the TD bank; admitting only that there were "some issues" and that he did not want to use the word "fraud".

317 Mr. Kazman testified that his recollection was that he and Mr. Luska did the renovation

work that was done to this property and he was not sure what company they put the work through. That was an interesting choice of words since Mr. Kazman only admitted to having one construction company: Cramarossa Design and Renovations Inc. (Cramarossa). In any event this evidence confirmed that Mr. Kazman and Mr. Luska did the work and it was unrelated to the ELI SBL. However, when Mr. Coristine showed Mr. Kazman the first Eastern invoice for 559 Eglinton, in cross-examination, Mr. Kazman said it pertained to the upstairs apartments. This was at odds with his other evidence and suggests that ELI SBL proceeds were fraudulently used to benefit his company, which owned the property via payments to Eastern. I will come back to this issue when I review the circulation of the ELI SBL funds.

318 Mr. Kazman took the position that Mr. Levy was the directing mind of Eastern and that Mr. Levy was involved in the contracting work for ELI but he did not explain this or explain how he would know this. Mr. Levy denied this and claimed to have nothing to do with this SBL or the renovations and testified that he did not sub-contract for ELI or Mr. Kazman. I will determine the issue of who was involved in Eastern once I have considered all of the evidence. That finding will determine whether or not Mr. Kazman and/or Mr. Levy fraudulently issued the Eastern invoices to ELI, which were the basis for this fraud.

319 Regardless of my finding in this regard however, I find that Mr. Kazman had to have known more about ELI than he admitted. Given his ongoing work renovating 559 Eglinton into apartments he would have had to have asked Ms. Cohen why she was asking him to incorporate a company with that address. This on its own, however, would not fix him with knowledge of the SBL application and the Eastern invoices.

(d) Did ELI Operate as a Business?

320 Mr. Wood testified that he never saw a 2,500 SF lighting showroom, a lighting warehouse, furniture showroom or an electrical repair store at 559 Eglinton. He never heard of any such businesses in connection with this property. This corroborates the finding that I have already made that ELI did not operate at 559 Eglinton and that this address was for two upstairs apartments.

321 The documents from the CRA show that initially the physical and mailing address of ELI was Ms. Cohen's home address at 49 Henry Welsh. Effective July 31, 2007 the physical location of ELI was represented to be 559 Eglinton. The CRA file for ELI does not include any tax returns and the GST/HST returns filed for four periods from August 12, 2007 to December 31, 2010 show sales and other revenue at \$0.

322 The Coort Analysis of ELI's bank account from August 3, 2007, when it opened, to February 21, 2008 does not show any significant deposits from third parties, which could be considered revenue from sales. Virtually all deposits into the account in this timeframe are from companies associated to Ms. Cohen, Mr. Kazman and Mr. Levy.

323 All of the evidence points to the fact that ELI never operated, it never occupied 559 Eglinton, never did any renovations there and was a sham company to deceive the TD when it applied for and received \$153,000 in SBL funds.

(e) The Appraisal of ELI's Assets

324 The TD declared the ELI loan to be in default on or about November 4, 2008. The TD retained David Wells in January 2009 to appraise the assets of ELI. He was given a copy of the second Eastern invoice dated October 1, 2007 that set out the assets purportedly bought from the SBL proceeds, before he did the appraisal. He was told that the assets would be located at 559 Eglinton.

325 Mr. Wells testified that he reached Ms. Cohen after many attempts. He was told that the assets had been moved to storage in a unit on Chesswood. He was not asked what the address was and so I cannot ascertain if this was the same storage unit Mr. Burnett was asked to attend at 4500 Chesswood Drive when he was shown what Ms. Cohen represented to be the assets of ELFI although I note that the photos Mr. Wells took show the same lantern style lights in boxes as the ones that can be seen in Mr. Burnett's photos for ELFI. In any event, Mr. Wells testified that as a result he never went to 559 Eglinton.

326 Mr. Wells said that he met Ms. Cohen and another man at the storage unit on January 29, 2009. He does not know who this man was and said that this man stayed in the hallway. Ms. Cohen escorted him to an 8' x 10' storage unit on the second floor. Mr. Wells was not sure what was in all of the boxes shown in the photos he took as he did not open them all but he opened as many as he could. In the boxes he opened, he found paperwork and binders. Mr. Wells testified that he usually asks if there are other assets, but he doesn't specifically recall asking in this case and he agreed it is not in his handwritten notes. Given his stated practice I find that he did ask the question.

327 Mr. Wells listed the assets that he did see as part of his appraisal report. He testified that the quality of the assets he did see was secondhand "junk" and that is consistent with what can be seen in the photos he took. Mr. Wells gave these assets a liquidation value of \$1,870.

328 When asked what his impression was as to what he saw as compared to what is listed on the second Eastern invoice, Mr. Wells testified that his impression was that there should be a lot more. He saw two IBM computers, not two Mac graphic design computers as stated on the invoice. He admitted that the HP 3-in-1 fax/scanner/copier that he saw could be the one on the invoice although I note on the Eastern invoice it is stated to be one HP fax, one Canon printer and there is no reference to a copier.

(f) The Circulation of the SBL Proceeds

329 Based on the Coort Analysis, in the period September 21 to October 4, 2007, ELI received the SBL funds totaling \$153,000 and \$100,000 on August 30, 2007 from an unknown source; presumably start-up capital from Ms. Cohen. The Crown's theory is that most of this money came from two payments to Ms. Cohen from Eastern totaling \$69,000: \$19,000 on August 3 and \$50,000 on August 29, 2007. Although that is just a theory, the timing fits and I can think of no other reason why Eastern would be giving Ms. Cohen money. Neither Mr. Kazman nor Mr. Levy tried to justify this payment as a loan as neither claim to have had any control over what Eastern did with its money.

330 In any event from the \$253,000 ELI had in its TD account it paid \$205,531 to Eastern in two payments on September 21 and October 4, 2007, paying in full the two Eastern invoices. In the period between October 4 to November 1, ELI also received \$24,556.61 from Mosaic in two payments. Presumably if Mr. Levy had been asked about this payment he would have said it was for lights Mosaic purchased and that he was directed by Mr. Sade to make the payment to ELI. That would have been possible in theory save that I have found ELI never operated. \$10,000 from Mr. Kazman's company 2061914 Ontario Inc./Blue Glass was also paid to ELI, which I presume Mr. Kazman would have testified was a loan as it is an even amount.

331 In the period from November 1, 2007 to February 21, 2008, ELI paid \$8,000 to M&M, Mr. Kazman's company, and \$14,000 to Lorraine Salt, presumably towards Ms. Cohen's purchase of her interest in 2897 Dundas. Neither payment appears to be related to any possible business expense of ELI.

332 The payments by ELI to Eastern represent 81.2% of the SBL proceeds plus the start-up capital provided by Ms. Cohen. The other significant payment was a \$40,000 cheque from ELI to Cramarossa, Mr. Kazman's company. Mr. Kazman testified that this was "probably another loan" although there is no note on the cheque. He also testified that the cheque could be for money he was loaning out for Ms. Cohen. This money went to Sheila Monterose, a lawyer who was working from Mr. Kazman's office. When this was pointed out to Mr. Kazman he said this money was for a mortgage loan or a purchase. That of course does not explain why the cheque would be payable to his construction company as opposed to Dufferin Paralegal. Regardless, this would not seem to be a legitimate business expense for ELI and if ELI was a legitimate business, this further payment left it with virtually no money to purchase inventory to get the business up and running. By October 31, 2007 the ELI account had a balance of just under \$3,500.

333 In the period from February 26 to March 19, 2008, ELI received a total of \$113,397.38 from Mosaic, Blue Deer and LHC, the company that obtained Ms. Cohen's third SBL. In March 2008, in addition to a loan payment, ELI paid \$10,000 to Blue Glass and \$90,000 as start-up capital to LSC, the company that obtained Ms. Cohen's fourth SBL.

334 Mr. Coort also analyzed the Eastern bank account at the CIBC from when it was opened on June 7, 2007 until December 31, 2008. In the seven-month period from September 2007 to February 2008, the only deposits to the Eastern account came from ELI's payments totaling \$205,531. In the period August 31, 2007 to February 29, 2008, Eastern paid out a total of \$149,670.68 or 71.5% to Mosaic, Trust Inc. and MDC Modern; all companies owned by Mr. Levy. All of the payments were in uneven amounts. The only payment by cheque was to MDC Modern and the RE: line stated "on account". Although based on the general evidence of Messrs. Kazman and Levy, these payments could have been for subcontracting by Mosaic for Eastern. There were no references to invoice numbers and Mr. Levy denied doing any work for ELI. Based on its bank account, the only contract Eastern purportedly had at this time was with ELI. Mr. Kazman's company, 6747841 Canada Inc., received \$6,502.59.

335 The only other payment that Eastern made in this period that could have been for

leasehold improvements for ELI was a payment to Creative Contracting in September 2007 of \$13,733.32 but I did not hear any evidence about this company but the timing of the payment out and the payment back is unusual. I note that \$8,491.16 was paid to Mosaic a few days later.

336 During his cross-examination, Mr. Kazman was questioned by Mr. Coristine about the money paid out by Eastern and he responded that he did what he was told to do by Mr. Levy and asked why should he ask questions when it was not his money. He insisted that he did not have a clue what the money was for. He said that Ms. Cohen bought a lot of stuff from all over the world and her father was involved in different businesses.

337 Mr. Coort analyzed the Mosaic bank account at the BOM for the period September 29, 2007 to November 30, 2008. In the October/November 2007 period Mosaic paid \$62,683.49 in payments to ELFI (two payments), \$24,126.59 to ELI (two payments) and \$76,594.90 to Oakwood Renovations and Construction Ltd. (Oakwood) (two payments), one of the Disputed Construction Companies. The payments from Mosaic to ELFI and ELI all reference invoice numbers.

338 Mr. Levy was asked why Mosaic would be making payments to Oakwood since he claimed it was owned by Mr. Kazman. He said that it is possible Oakwood did work for Mosaic. When asked why he would retain Oakwood given his view of Mr. Kazman as a contractor, Mr. Levy said that Oakwood would buy supplies because Mr. Kazman was well connected and Mosaic would then pay Oakwood back. This evidence made no sense. If Mr. Levy were a legitimate contractor with a number of construction companies as he asserts he was, I would have expected him to have his own accounts with suppliers.

339 ELFI used the money it received from Mosaic in the same October/November 2007 period to pay \$31,000 to Mr. Kazman personally, \$10,000 to his company Blue Glass and \$20,000 to Ms. Cohen personally. The funds received by Oakwood from Mosaic were virtually all paid to Mr. Kazman: \$30,000 to Blue Glass and \$45,000 to Ms. Cohen personally. The circuitous way these funds got to Mr. Kazman and Ms. Cohen are consistent with a desire to hide the source of the funds, which was originally the ELI SBL.

340 In the month of November 2007, Ms. Cohen received \$20,000 from Blue Glass, \$60,000 from Oakwood and \$20,000 from ELFI and this \$100,000 was used as her start-up capital for LHC, which she paid into the LHC account at the BOM on November 30, 2007.

(g) Summary of Findings of Fact

341 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the ELI SBL.

- a) The Agreement to Lease dated June 7, 2007 between Ms. Cohen in trust for a company to be incorporated and 6747841 Property Management for 559 Eglinton was a fraudulent lease as ELI had no interest as a tenant in 559 Eglinton, which were being renovated by Mr. Kazman and Mr. Luska as two residential apartments.

- b) Mr. Kazman likely incorporated ELI for Ms. Cohen and therefore knew that Ms. Cohen was using 559 Eglinton as an address for the company; the upstairs units of the building. It is therefore clear that Mr. Kazman must have known at the very least that Ms. Cohen intended ELI to have some association with this address. Neither Ms. Cohen nor Mr. Levy had an interest in this property at the time.
- c) Fraudulent 2005 and 2006 NOAs for Ms. Cohen that grossly exaggerated her income were provided to the bank and Mr. Levy or someone on his behalf faxed the 2006 NOA to the bank. As such I presume he provided the 2005 NOA to the bank as well. I am not able to determine on the evidence with respect to ELI alone however, whether Ms. Cohen prepared these documents and provided them to Mr. Levy or whether Mr. Levy prepared them and if so, whether or not Ms. Cohen was aware of them or how these documents got to the TD..
- d) Ms. Cohen misrepresented to the TD that her total SBLs through related companies did not exceed \$250,000. Ms. Cohen also certified that the landlord and borrower were at arm's length but the fact is that the lease was a fraudulent document. I have not made a finding of who was responsible for creating the fraudulent lease and who provided it to the BNS.
- e) Having found that during the summer and fall of 2007 Mr. Kazman and Mr. Luska were renovating the second floor; the two residential apartments municipally known as 559 Eglinton, which were leased in January 2008, it was impossible for any renovations to have been done by Ms. Cohen to 559 Eglinton for the purpose of ELI. It therefore follows that the invoices provided by Eastern to the TD in order to obtain the SBL proceeds fraudulently misrepresented work done and furniture, fixtures and equipment supplied in order to deceive the bank into releasing \$153,000 in SBL funds to ELI. Ms. Cohen clearly defrauded the bank.
- f) Whether or not Mr. Kazman and/or Mr. Levy participated in this fraud will depend on my assessment of who was in control of Eastern. However, if this fraud was Ms. Cohen's idea alone, as I said with ELFI it makes no sense that she would pay out all of the SBL funds and most of her start-up capital to Eastern unless she knew she would be getting some of the money back. That certainly seems to be what happened. The ELI SBL funds took a very circuitous route and virtually all of the money ended up with Ms. Cohen, Mr. Kazman and Mr. Levy. This evidence is consistent with a desire to hide the source of the funds, which was originally the ELI SBL.
- g) Apart from the question of Eastern there is no evidence that Mr. Kazman was involved in Ms. Cohen's fraud on the bank although as I have said her use of 559 Eglinton when she asked him to incorporate ELI should have raised questions. I will deal with this when I make my findings with respect to the Disputed Construction Companies. I will also consider the similar fact evidence insofar as Mr. Levy and Mr. Kazman are concerned.

342 For these reasons I find the entire ELI SBL application, which resulted in deceiving the TD into disbursing \$153,000 in SBL funds to ELI so that ELI could pay the two fraudulent Eastern invoices to be a fraud on the TD Bank.

343 ELI is also relevant to the money laundering count as the EFI SBL funds took a very circuitous route and virtually all of the money ended up with Ms. Cohen, Mr. Kazman and Mr. Levy. This evidence is consistent with a desire to hide the source of the funds, which was originally the ELFI SBL.

Light House Contracting Inc. (LHC) -- BOM -- Count # 3

(a) The LHC SBL

LHC (Cohen) was approved for a SBL by BOM on November 13, 2007 for \$179,010.

344 Ms. Cohen incorporated LHC on November 19, 2007. Mr. Kazman was not sure if he incorporated the company but as he was a friend of Ms. Cohen he testified that it was possible and later testified that he assumes that he did. I find that he did. The Articles of Incorporation stated the registered office address of LHC as 2289 Barton Street East, Hamilton (Barton Plaza). Based on the pictures entered into evidence I would describe the Barton Plazas a large commercial plaza, with many units that could be used for retail and/or warehouse space.

345 Mr. Kazman testified that he did not ask Ms. Cohen why she was opening a third lighting company, as it was not his business. He said he was used to people having a number of companies at various addresses. At the very least, given the fact that he had at least a business relationship and was a friend of Ms. Cohen's, I find it hard to believe that Mr. Kazman would not have asked her at least a few questions given this was Ms. Cohen's third company in five months. In any event, Mr. Kazman knew that Ms. Cohen was starting another lighting business, this time purportedly at the Barton Plaza.

346 The BOM loan file contains a copy of an Agreement to Lease between Ms. Cohen in trust for a company to be incorporated and 2143519 Ontario Inc. for 3,000 SF on the main floor of the Barton Plaza for a lighting and furnishings business for five years to commence October 1, 2007. The rent was to be \$2,000 per month plus GST and utilities and other expenses.

347 Save Energy had owned the Barton Plaza since June 11, 1997. Mr. Sade incorporated 2143519 Ontario Inc. on July 26, 2007. Mr. Kazman testified that he acted for Save Energy on the transfer of the Barton Plaza to 2143519 Ontario Inc. on January 11, 2008. He testified that this transfer was done after he suggested to Ms. Cohen and her father that they should not have their biggest asset in the same name as the business they were carrying on and that they should put the property in a numbered company name in the event Save Energy was ever sued. They did so for this reason. I accept his evidence that there was nothing wrong with this advice although I note that 2143519 Ontario Inc. did not own the Barton Plaza at the time the LHC lease was signed.

348 The LHC loan file contains a Business Plan dated November 1, 2007 in the usual form, which Mr. Levy denied preparing. It is virtually identical to the Business Plans for ELFI and ELI. The Business Plan states that LHC was going to specialize in lighting and furnishings and would consist of approximately 3,000 SF of retail and showroom space.

349 This was now the third start-up Ms. Cohen represented to the bank was a sole proprietorship with her being hands-on in the operation of the new business. Ms. Cohen, however, was also representing that she still worked for Save Energy at the time. I agree with the Crown that it is next to impossible that Ms. Cohen would legitimately attempt to open three retail small businesses while still working for a fourth retail company. It is completely incredible that she would choose to open the latest company in Hamilton when all the others were in North York.

350 Ms. Cohen signed a Loan Application and Agreement form on January 10, 2008 and confirmed that she was not in breach of the Loan Limit Clause. This was clearly false given that this was Ms. Cohen's third SBL through companies wholly owned by her.

351 The Crown referred to the Loan Registration Form signed by Ms. Cohen and she also signed the Arm's Length Clause, which was false, as her father owned the property.

352 In 2007 Ms. Susan Zhou worked for the BOM at the Woodbine and John branch in Markham. The Crown called her. She did not remember Ms. Cohen or LHC. In November 2007 she was not very experienced in SBLs and she did not remember the procedure. She did not have a recollection of going to Hamilton and testified that back then they did not go to the physical place that was the subject of the loan.

(b) BOM Reliance Evidence

353 When Mr. Coristine questioned Ms. Zhou about the possibility of a client not being truthful or a T1 General not being accurate she seemed completely puzzled and queried why the bank would doubt their customer unless there were problems with the document. She testified that if the customer brought in a NOA, "it's a NOA" and she asked, "how do we know it's fraudulent?" In re-examination she said that she would only independently check the information provided by a customer if there was an issue.

(c) The Purported Renovations to the Barton Plaza and the Purchase of Equipment, Furniture and Fixtures

354 The BOM loan file contains two invoices from Northwood, the first dated January 21, 2008 in the amount of \$93,712.50 for leasehold improvements for a Total Gut Job and Total Rebuild and the second dated February 7, 2008 in the amount of \$121,701 for furniture, fixtures and equipment purportedly done and delivered to the Barton Plaza. It is significant that the copy of the second Northwood invoice in the loan file has the fax header with the HP Fax Number and a date of February 7, 2008. For the reasons already stated I find that this invoice was faxed to the bank by Mr. Levy or someone on his behalf.

355 Mr. Kazman said that he did not prepare the Northwood invoices and testified that he only went to the Barton Plaza twice for other purposes and that he could not comment on the renovations. He took no position on whether or not the work was done.

356 Mr. Levy denied knowing the number of loans Mr. Kazman did with Ms. Cohen. He testified

that he had no idea about the Barton Plaza and did no subcontracting there. He denied having any knowledge or involvement in this SBL or this property. That evidence was clearly false given he issued the Northwood invoices.

357 For reasons I will come to I find that Northwood did not do any leasehold improvements for LHC nor supply any fixtures, furniture or equipment and as such both of these invoices are frauds.

(d) Did LHC Operate as a Business?

358 LHC filed a corporate income tax return for the 2007 calendar year reporting that its revenue and expenses were nil. LHC also filed a corporate income tax return for the 2008 calendar year reporting sales and other revenue of \$95,933 with expenses of \$96,831 for a net loss of \$898. Given a loss was reported and so there were no tax consequences, this does not alter my conclusion that LHC was a sham.

359 The Crown called three former tenants of the Barton Plaza who were leasing units in the plaza during the time in question. They all testified that they never saw any renovations and were never aware of any kind of lighting store opening up in the plaza.

360 Fred Cassidy was one of the owners of Larry's Sports Store that operated out of a unit in the plaza between 1986 until sometime after November 2009 or possibly 2010. Jack Sade was Mr. Cassidy's landlord and he was aware that Mr. Sade had a business called Save Energy at another location. He was at the store every day save for Monday and Sunday and every other Saturday. Mr. Cassidy drew an outline of the footprint of the building and the individual units as they were in the period October 2007 to February 2009. Mr. Cassidy described a middle section of the building, which was referred to in the evidence as the warehouse area. A banquet hall operated at the west end of the plaza throughout the time that Mr. Cassidy operated his store.

361 Although Mr. Cassidy was obviously inside his shop most of the time, he said that he was outside a lot sweeping and clearing leaves etc. He crossed in front of the warehouse every day as he drove in to his store and always looked that way to ensure everything was fine as there had been a number of break-ins through that area of the plaza. Mr. Cassidy testified that he never saw anyone going into or out of the door that, based on the photographs entered into evidence, appears to open into this section. In the timeframe from October 2007 to February 2009 Mr. Cassidy testified that he never saw or heard of a lighting business called LHC or LSC coming into the plaza or moving into the warehouse area or moving inventory into any unit. He never saw any signs for LHC or LSC. He was not aware of either Jack Sade or Ms. Cohen operating a 3,000 SF lighting store out of the plaza. The only thing he ever saw that might be of significance was a dumpster that was being filled up and ultimately was taken away. I presume that was in the 2007-2009 timeframe. Mr. Cassidy also testified that Mr. Sade would always tell him if a new tenant was moving into the plaza even though he realized he did not have any obligation to do so.

362 Bryan Cranston, the owner of Ultimate Cycle, a motorcycle repair shop that has operated out of a unit at the plaza for 28 years, testified that his shop is open during the week but not

usually on weekends. He knew Jack Sade as his landlord and Ms. Cohen as Mr. Sade's daughter. In the timeframe October 2007-February 2009 Mr. Cranston did not see or hear of a lighting business called LHC or LSC operating at the plaza. He was not aware of either Ms. Cohen or her father, Jack Sade, running a 3,000 SF lighting business out of that location. The wall of the back of his shop is part of the wall of the warehouse. He recalled a plastic recycling business operating out of the warehouse and hearing their forklifts every day. There was also a body shop there for a short time. In 2007-2008 he did not notice any vehicle, any equipment or any Northwood contractors being there. He did not recall the dumpster that Mr. Cassidy recalled but admitted that there might have been one and he just didn't remember it.

363 Domenic Deangelis owned the Renaissance Banquet Centre that was a tenant at the plaza from 1993 to December 1, 2014. He testified that he was there most days and worked anywhere from 40-80 hours per week. Mr. Deangelis was also aware that Mr. Sade operated Save Energy at 489 Champagne.

364 Mr. Deangelis testified that he knew all of his neighbours. He paid attention to businesses opening up in the plaza to see if they might affect his business. He said the entire building was 44,500 SF and that he had blueprints of the whole building but did not have them with him. In 1977 the warehouse area had a siding company that connected inside the building to the area of the banquet hall. The door was still there but it was bolted and as such there was no access from the warehouse unit to his banquet hall. He identified an outside side door to his banquet hall and upper windows for an upstairs smaller banquet hall. According to Mr. Deangelis, the door and window immediately next to the side of the banquet hall entered into the middle unit, which includes the two ramp doors.

365 Mr. Deangelis testified that a sign for Sunshine Windows was by the warehouse area and that this business operated at the plaza for a very short period of time between 2006 and 2008. He recalled a food share business in the warehouse that operated from about 1994 to 2000 and a business that burned plastic pellets that was there for three to four years.

366 Mr. Deangelis also did not recall the dumpster that Mr. Cassidy recalled. He parked in that area and might not have seen it if it was only there a day or two. He had no recall of one being there for any extended period of time. Mr. Deangelis testified that he would have been aware of any major demolition or renovation of a unit in the plaza. The walls are made of cinderblock and he could hear the plumber working next to his banquet hall.

367 Mr. Deangelis was adamant that he knew everything that was going on in the building. He admitted that he was not the property manager and did not have keys to the entire premises but testified that there were a lot of issues with the plaza and he would often be involved with assisting people such as the HVAC repairman to show him where he needed to go or if, for example, the landlord needed to let someone in to fix the roof. He would be asked to show the roofing person where the leak was. He testified that while he was a tenant the space was all original and old.

368 In the period October 2007 to February 2009 Mr. Deangelis did not see or hear of a 3,000 SF lighting business by the name of LHC or a lighting showroom or any signage to that effect. In

the period January to September 2008 he did not see or hear of any business by the name of LSC nor any showroom or signage affiliated with it. In the period October 2007 to February 2009 Mr. Deangelis testified that he did not see a company by the name of Northwood conducting any kind of demolition and disposal work at the plaza. To the best of his knowledge neither Ms. Cohen nor Mr. Sade ran a lighting business out of the plaza.

369 Mr. Kazman argues that none of these witnesses had keys to the Barton Plaza and as such their evidence that LHC never operated from the plaza is not reliable, particularly since this building was about 50,000 SF in size. I do not accept that submission. Given what Ms. Cohen represented to the bank as to the nature of the business and the purported renovations, I have no doubt that her business would have been noticed if it ever in fact opened by likely all of these tenants or at the very least some of them.

370 I also note that the LHC account statements were being sent to 489 Champagne, which is strange if LHC was in fact operating from the plaza.

371 Finally I have the evidence from Mr. Coort that based on his analysis of the BOM's account with LHC he found there were no significant deposits from third parties which could be considered revenue from sales and that virtually all deposits to its account were from entities identified in the report; a reference to Mr. Kazman and Mr. Levy, that did not appear to be related to revenue of the business. I also do not see any payments for rent, employee payroll or other business expenses other than the loan payments that were made.

372 If the documents filed with the CRA are accurate, it seems that LHC may have done some business but I find, based on the totality of the evidence, that no renovations were done to the Barton Plaza by Ms. Cohen for LHC and that LHC never operated at the plaza. It is possible that there were no sales since no tax was payable and that these filings were done to legitimize the company. It is also possible that sales recorded by LHC were actually made by Save Energy. Even if that is not the case and LHC operated elsewhere, that does not affect my finding that it fraudulently obtained this SBL. I make the same finding with respect to LSC, the final Cohen SBL I will come to.

(e) The Appraisal of LHC's Assets

373 BOM never filed a claim with Industry Canada for this SBL but they did arrange for an appraisal of LHC's assets. As already stated, this is not relevant to what I must determine. As I will come to, Mr. Tony Burnett first encountered Ms. Cohen's name when hired to appraise the LSC assets. By letter dated November 21, 2008, Mr. Burnett was instructed by the Lipman firm to attend the plaza and interview the neighbours and landlord if possible and provide a formal report. The letter also asked that Mr. Burnett attend at Ms. Cohen's home and interview her as to where the property and assets were located.

374 Mr. Burnett testified that he would have gone to Hamilton either the same day or the next day after receiving his instructions and that he went to this location three times. Mr. Burnett inquired of two of the six tenants as to their knowledge of LHC and found no signs for LHC at the plaza. Mr. Burnett had difficulty communicating with Ms. Cohen. He reported to the Lipman

firm by letter dated February 24, 2009 about his attendances at the Barton Plaza, and he advised of the details of his unsuccessful attempts to meet Ms. Cohen.

375 When Mr. Burnett was on holiday, Teddy Feferman assisted. In a letter dated February 8, 2010, Mr. Feferman reported to the Lipman firm on his attendance at the Barton Plaza on their instructions to confirm if LHC was presently or had operated in the past from this address. He did not recall anything beyond what he had set out in his letter, which was admitted as past recollection recorded. His letter confirms that on February 5, 2010 he attended at the Barton Plaza and when he drove the perimeter of the building he did not see any signs visibly showing the name of LHC. He also reported that he spoke to two different tenants to inquire about the company who had no knowledge of LHC.

376 Accordingly neither Mr. Burnett nor Mr. Feferman ever conducted an appraisal at any time of the assets of LHC.

(f) The Circulation of the SBL Proceeds

377 Mr. Coort analyzed the LHC account from the date it was opened on November 27, 2007 to September 30, 2008 when it had a balance of \$47,635. The account was frozen by the BOM in October 2008.

378 By February 12, 2008, LHC had the \$179,010 from the SBL proceeds and \$100,000 from Ms. Cohen's personal BNS account that was jointly held with her husband. Mr. Coort determined that prior to the withdrawal of \$100,000 from this account on November 30, 2007, to purchase the draft for LHC, the LHC account received \$20,000 from Mr. Kazman's company Blue Glass, a \$60,000 draft from Oakwood and a \$20,000 draft from ELFI; all in the month of November 2007.

379 From this \$279,010, LHC paid Northwood, directly and via the Lipman firm, \$214,416.28 between January 29 and February 12, 2008. These were the only two payments to Northwood in the two-month period from December 31, 2007 to February 19, 2008. The Northwood invoices total \$215,413.50 and there is no evidence that the small balance owing to Northwood of about \$100 was ever paid. Given the amount, I have not found this to be significant.

380 Payment of the Northwood invoices exhausted the SBL proceeds and about \$35,500 of Ms. Cohen's start-up capital; about 76.8% of the total amount LHC had. In the period from February 12 to September 30, 2008, LHC received almost \$100,000 from various sources including \$50,000 from Contemporary Design Inc. (CDI), a SBL I will come to, as well as Northwood and Mr. Levy's companies Mosaic and Trust Inc.

381 On March 12, 2008, LHC paid \$18,000 to Mr. Kazman's company Blue Glass. Mr. Kazman said that this "might have been a loan". Mr. Kazman testified that he could not really explain why cheques went here or there and that it also could have been a commission/finder's fee or for work done although he did not explain why he would be getting a fee from LHC or what kind of work he could have done to justify such a payment.

382 On March 14, 2008 LHC paid ELI \$63,000 by draft which the Coort Analysis shows was

then part of the \$90,000 ELI paid to LSC on March 14, 2008 for start-up capital. Part of this \$90,000 came from Mosaic and Blue Deer and ELFI made a \$10,000 payment to LSC on March 14, 2008 using money that Mr. Coort traced back to Mosaic-Northwood and ultimately the LHC SBL.

383 The Coort Analysis also describes what Northwood did with the \$214,416 it received from LHC. Mr. Kazman signed all of the cheques. The RE line on some of the cheques is blank but on many it simply states "on act [account]". In the month of February 2008, Northwood paid a total of \$155,892.78 to Trust Inc., Mosaic, Fairbank, and MDC Modern Design, all companies owned by Mr. Levy and \$47,445.75 to M&M, Blue Glass, Dufferin Paralegal, Cramarossa, 1040 Holdings, Raven's Claw and Blue Deer; all companies owned by Mr. Kazman. These payments represented all of the payments out of the Northwood account in the month of February besides about \$10,000 in credit card and Bell bill payments. Notably none of these payments were for leasehold improvements or any of the equipment that Northwood purported to supply to LHC.

384 The two biggest cheques to Mosaic are in the amount of \$43,360 on February 8, 2008 RE "on acct" and \$49,869.55 on February 26, 2008 also "on acct". I have considered whether or not these cheques could be consistent with Mr. Kazman's evidence that Northwood subcontracted to Mr. Levy's construction companies but that evidence makes no sense given his position that Mr. Levy controlled Northwood. Furthermore, there is no evidence that Northwood was in fact doing any leasehold improvements in this timeframe, given I have found that no work was done for the ELFI and LHC SBLs.

385 Mr. Coort found, based on his analysis of payments out of Northwood's account, that there is no indication of any equipment being purchased from Canon, HP or other similar suppliers as shown on the second Northwood invoice to LHC. I also note that apart from payments to Mosaic, there are no payments that could be for employees or construction supplies.

386 Mr. Coort also analyzed the Mosaic BOM account where some of the money from Northwood went. In the period from February 7 to March 19, 2008 almost all of the money received by Mosaic came from Northwood. In that same period from deposits to Mosaic that totaled about \$97,400, Mosaic made payments to Save Energy, ELI, ELFI and LHC; all companies owned by Ms. Cohen; totaling \$77,226. In addition Mosaic paid a number of credit card bills. After MDC Modern Design received over \$35,000 from Northwood it paid money to Mr. Levy and Trust Inc. and almost \$10,000 to Ms. Cohen's company Save Energy in the months of February and March 2008. This is evidence that some of the money from the LHC SBL was going back to Ms. Cohen in a circuitous route.

387 An analysis of the Mosaic and MDC accounts in the February/March 2008 period does not show any obvious payments for equipment of the kind invoiced to LHC or to suppliers of construction material. This corroborates my finding that no renovations to the Barton Plaza were done by LHC.

388 Finally, it is significant that Eastern received \$30,000 on March 19, 2008 that can be traced back in part to Blue Glass and Northwood and over the next six days it paid Mosaic and Trust

Inc. Realty Corp. two uneven cheques that totaled \$30,000. This is completely consistent with money laundering given the money went back and forth over a period of a few days.

389 There is another example of this in the same timeframe. Blue Deer, Mr. Kazman's company, received a \$100,000 cheque from Save Energy dated March 11, 2008. The following week \$99,000 was paid back in four cheques split between Save Energy, ELI and Ms. Cohen. Mr. Kazman denied he was laundering money for Ms. Cohen or that he even questioned this. He then admitted that he might have asked Ms. Cohen why she gave him this money in the first place. He then went on to testify, as if he was thinking out loud, that the money was already in Save Energy so why did it not stay in Save Energy? Why have it go to Blue Deer? He said that it did not make sense that it was given to him and a week later he gave it back. These were all obvious and good questions that Mr. Kazman asked himself on the stand that he should have asked at the time but did not, assuming he did not already know that this was being done to obfuscate where these funds were coming from. In his written submissions Mr. Kazman said that the funds from Save Energy could have been a personal loan that fell through or a deposit for a building-that latter does not make sense unless the deal fell through. These possible explanations he now asserts do not explain why the money was paid back in four cheques to Save Energy, ELI and Ms. Cohen personally.

(g) Summary of Findings of Fact

390 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the LHC SBL:

- a) Ms. Cohen signed a Loan Application and Agreement form on January 10, 2008 and confirmed that she was not in breach of the Loan Limit Clause and that LHC and the landlord were at arm's length, which were both misrepresentations.
- b) The BOM was provided with two fraudulent invoices from Northwood which misrepresented that leasehold improvements had been done and furniture, fixtures and equipment had been supplied to LHC when that was false and LHC did not even exist, save on paper.
- c) I have found that Mr. Levy or someone on his behalf faxed the second Northwood invoice to the bank and that he arranged for the first one to get to the bank as well and that he prepared both of the Northwood invoices and that both he and Ms. Cohen must have known that the bank would rely upon these fraudulent invoices in advancing the full amount of the SBL.
- d) The presentation of the Northwood invoices to the BOM by Ms. Cohen and Mr. Levy fraudulently induced the bank to advance the \$179,010 in SBL proceeds to LHC.
- e) Based on the evidence of LHC alone, there is no evidence that Mr. Kazman participated in this fraud, but that conclusion may change once I determine who was in control of Northwood.

391 For all of these reasons Ms. Cohen and Mr. Levy clearly committed a fraud on the BOM with respect to LHC and Mr. Levy is guilty of Count 3.

Light Source Contracting Inc. (LSC) -- RBC -- Count # 4(a) The LSC SBL

LSC (Cohen) was approved by the RBC for a SBL in the amount of \$175,000 on February 7, 2008.

392 Ms. Cohen incorporated LSC on January 23, 2008. Mr. Kazman admitted that he probably incorporated the company for Ms. Cohen; it would make sense since she was at the very least a friend. I find that he did. The corporate profile shows Ms. Cohen's home address of 49 Henry Welsh. Mr. Kazman said that he very often used home addresses for corporations.

393 Mr. Kazman denied knowing that Ms. Cohen was using the same Barton Plaza address for LSC. He testified that he had no discussion with Ms. Cohen about that and that she was always very secretive about her business. I found this evidence incredible, given their business and personal relationship and as well Mr. Kazman often testified that money Ms. Cohen paid to him was for him to lend out on her behalf to third parties. He would also often give an answer to a question that implied he knew more about Ms. Cohen's business dealings than he would admit.

394 The LSC bank statements show an address of 489 Champagne; an indicator that LSC was not operating at the Barton Plaza. The loan file contains an Agreement to Lease between Ms. Cohen in trust for a company to be incorporated and 2143519 Ontario Inc. dated December 18, 2007 for Barton Plaza for a 3,000 SF lighting and furnishings and related services business, for ten years to start January 1, 2008 at \$2,000 per month plus GST and utilities and all expenses. It purports to have been signed by Ms. Cohen on December 18, 2007 and by the landlord on December 21, 2007. I do not know if that was Mr. Sade or not. Mr. Kazman testified that he does not believe he drafted the lease. I note the lease for LHC for the same location was to start October 1, 2007; another indicator that this lease was also a fraud.

395 The LSC loan file contains a Business Plan dated February 1, 2008, in the usual form, which Mr. Levy denied preparing. The Business Plan is virtually identical to the one Mr. Levy prepared for ELFI. Like the LHC Business Plan it represented that LSC was going to specialize in lighting and furnishings and its location would consist of approximately 3,000 SF of retail and showroom space. It also represented that Ms. Cohen was prepared to invest \$100,000 of her own equity.

396 I note that the nature of the LSC business represented to the CRA was different from the Business Plan and the lease and was shown as "construction -- specialty trade contractors -- building equipment contractors -- electrical" and the physical location effective January 24, 2008 and March 23, 2009 was stated to be Ms. Cohen's home address of 49 Henry Welsh.

397 Mr. Kazman testified that he did not attend with Ms. Cohen at the bank or counsel or advise her. Mr. Levy said he had nothing to do with this loan. He said that he did not prepare the Business Plan and he did not do any work at this location for LSC.

398 The LSC loan file contains a HSBC GIC statement, which is similar to the one found in the ELFI loan file although it is formatted differently from that statement. It has the same principal amount and maturity value as the ELFI statement but the issue date is now June 4, 2007 to mature a year later on June 4, 2008. Ms. Pantaleo testified that she was asked to verify this GIC as well. She said that this GIC had been altered in that it was not a one-year GIC but rather a 30-day term deposit to mature on July 4, 2007. Her evidence was reliable and was not challenged and I find that the GIC statement in the LSC loan file was altered or completely forged by someone, which included alteration of the maturity date. I also find that if one looks at the copy of the GIC statement that the bank had, the alteration or forgery would not be noticeable to someone who was not familiar with the information available to Ms. Pantaleo or was not carefully comparing the original authentic document to this fraudulent one. Both Mr. Kazman and Mr. Levy deny knowledge of this. It is significant that this statement has a fax header with a date of February 4, 2008, a time and the HP Fax Number. It was part of a nine-page fax but I have not been able to determine what else was faxed at that time. For reasons already given, I find that Mr. Levy or someone on his behalf faxed it to the bank. As it was a professional forgery it may be that Ms. Cohen was not aware of this fraud.

(b) RBC Reliance Evidence

399 Mr. Kazman called Antonio Ruivo who was an account manager for RBC in January 2008 at their Bathurst and Centre Street location in Thornhill. Mr. Ruivo recalled speaking to Ms. Cohen about a business loan and he testified that she met with him at his office three or four times, always alone. This was his first SBL application. He was permitted to refresh his memory from the bank's internal "recap notes".

400 Mr. Ruivo's first entry in the recap notes was on January 29, 2008. He recalled that the Business Plan was brought in an envelope but he could not remember if it was sealed or not. It was left for him to review. He didn't ask Ms. Cohen who prepared the Business Plan. Ms. Cohen also told him that she would be injecting \$100,000 and gave him a GIC statement to confirm that she had \$100,000 in her name. Unfortunately he didn't phone the bank to ensure the funds were there. Mr. Ruivo testified that he went on short-term disability partway through the application process and this step fell through the cracks.

401 Mr. Ruivo testified that he reviewed all of the material Ms. Cohen brought in in support of her loan and he would have sought clarification if needed. He said the bank relies on the authenticity and the accuracy of the information. Anything that is untrue or false or misleading would directly impact the bank's assessment. His job however, was to enhance the client's application, not make the lending decision. According to Mr. Ruivo, Ms. Cohen signed the signature card in front of him and Mr. Ruivo confirmed that anything that is signed by the customer has to be signed in front of a bank official.

402 Mr. Ruivo checked Ms. Cohen's credit rating, which was very good and in view of this he had no hesitation in recommending the loan. This is confirmed in the recap note of January 31, 2008 where he also states the fact Ms. Cohen was investing \$100,000 of her own funds into the business. Mr. Ruivo said that he had to fax all the documents to risk management. After the risk

management department was finished they faxed the materials back to the SBL department and they prepared everything from there.

403 Mr. Ruivo testified that it was standard procedure to do a site visit but he didn't do so. He could not say that no one attended at the Barton Plaza but there is no reference in the recap notes to anyone doing so.

404 Ms. Cohen signed the Loan Registration Form on February 2, 2008 and Mr. Ruivo witnessed her signature. She signed the Loan Limit Clause and the Arm's Length Clause. Both representations were false.

405 The recap notes of February 7, 2008 state that the lease is at arm's length and that Jack Sade, as a real estate agent, confirmed this. The real estate agent on the back of the lease states the agent is Jack Sade, Ms. Cohen's father. Mr. Ruivo explained that he must have asked Ms. Cohen if the lease was at arm's length and whether the real estate agent who drew up the lease had any interest in the property with her. She said "no". He testified that he was referring to a relative or that kind of thing but he did not testify that he explained "arm's length" to Ms. Cohen. I find however, that despite any confusion over the meaning of arm's length, it would have been obvious to Ms. Cohen that she and her father were not arm's length. Again, however, this is overshadowed by the fact that for the reasons I will come to, LSC never in fact occupied any part of the plaza.

406 Mr. Chapnick asked Mr. Ruivo what the meaning of "arm's length" was. He said that he was not the best person to answer this as this was his first SBL and it had been a long time. He did say it was someone who had no interest and was not involved in the loan. He talked about a conflict of interest, for example, a parent and son. When asked specific questions he said he couldn't remember the rules. He was trained that if the client had questions about the SBL to answer them or to contact the supervisor to get the correct answers for the client.

407 Mr. Ruivo understood that Ms. Cohen was the sole owner of LSC and he testified that she had to sell her existing business, Oakwood, in order to get the SBL for LSC. He previously thought her signing officer was her partner; a reference to Mr. Kazman, but was then told that that was not the case and that Ms. Cohen was going to sell the business to her signing officer; Mr. Kazman. This is confirmed in Mr. Ruivo's recap note, which states that Ms. Cohen will be selling her existing business Oakwood "to her partner so she can dedicate 100% to this business". That was also a false representation, as Mr. Kazman admits only that he was a signing officer for Oakwood.

408 Mr. Kazman testified that Oakwood was Ms. Cohen's company. He said that when the RBC wanted her to give up her interest in Oakwood she and Mr. Levy wanted to put the company in his name. Mr. Kazman testified that he agreed and that this was the reason that he took over Oakwood for Ms. Cohen and became the signing officer. At another point in his evidence Mr. Kazman testified that it was Ms. Cohen who asked him to take over as a signatory at the bank and that because he knew her and Mr. Levy, he agreed.

409 The Crown called Ms. Coutts who has been employed by RBC for over 26 years. She is

currently an investigator and handles asset recovery and corporate investigations. She is familiar with the small business government guaranteed loans. Although she never worked in a branch she would review the file from start to finish as part of her job and as such was familiar with what every client needed to provide to the bank. She testified that she has been doing this for 11 years and account managers now call her for advice before making SBLs.

410 Ms. Coutts testified that the HSBC term deposit found in the LSC loan file was provided to the account manager of the bank when the loan was applied for to show that the customer had other assets that the bank could have access to if needed. She said that the client provides a business plan, showing cash flow, to the account manager during a loan application. It tells RBC about the business, what the client is looking for, what the forecasts are. These are ordinary business documents for government guaranteed loans.

411 According to Ms. Coutts, the client will sign an invoice direction repayment to confirm that they received all the goods and services and that the money should be released to pay certain invoices. Money is advanced based on that documentation.

412 Ms. Coutts testified that a borrower would provide a lease agreement to the bank to show where they were going to operate their business. This could be faxed in and then would be scanned in by the bank into its data system. A Personal Statement of Affairs is prepared by the client and is provided to the account manager to qualify for the loan. It sets out assets and liabilities of the client.

413 According to Ms. Coutts, a property tax bill, CRA NOAs, and T1 Generals are provided to the account manager to see if the borrower qualifies for the loan.

414 Ms. Coutts testified that someone from the bank completes the Loan Registration Form which the client has to review and sign with the account manager.

415 Ms. Coutts testified that in 2008 it was not standard practice to do a site visit. In 2008 the bank relied on the client's word and the documents provided to the bank. The bank would have a first charge on the leaseholds and equipment being financed. The account manager only had a responsibility to go to the site as of 2010/2011.

416 In cross-examination of Ms. Coutts, Mr. Levy complained that as a result of her actions he was further in default and his account was closed. She said that the bank must have demarketed him as a client. She did not recall doing it but said that the RBC has the right to pick and choose its clients. This evidence was not relevant because as I said to Messrs. Kazman and Levy many times, how and why their loans went into default was not relevant at the liability phase of these proceedings.

(c) The Purported Renovations to Barton Plaza and Purchase of Equipment, Furniture and Fixtures

417 The RBC loan file contains two invoices from Northwood for LSC with respect to Barton Plaza; the first dated March 12, 2008 in the amount of \$92,662.50 and the second dated March

27, 2008 in the amount of \$116,842 for a total of \$209,504.50. The first invoice is for the usual Total Gut Job and Total Rebuild and the second invoice is for equipment, furniture and fixtures.

418 Mr. Kazman testified that he did not prepare these invoices and he denied knowing that they were virtually the same to the invoices from Northwood to LHC. He said that he was not involved in any renovations and that he could not comment on whether or not work was done on Barton Plaza. Mr. Levy also denied any knowledge of these invoices.

419 For each invoice the loan file contains a document entitled Invoice Direction Payment By Customer which is signed by Ms. Cohen on behalf of LSC, confirming that the first Northwood invoice can be paid and states: "we confirm the undersigned [LSC] has received all merchandise or services described in the above mentioned invoice/contract of sale and we hereby authorize the bank to debit our Account Number ...for full payment of same." The box asking that instructions be sent to the branch so that Ms. Cohen can pick up the draft and hand-deliver payment to the vendor is checked off on both forms.

420 Mr. Ruivo was not at the bank when the loan was advanced and it wasn't his decision to pay the invoices from Northwood. He testified that when invoices are presented for leasehold improvements and equipment they are not dealt with at the branch level. They go to the Canadian SBL department who make all the payments. These directions were faxed to the attention of Jennifer Hall who did not testify.

421 I have already referred to the evidence of Messrs. Cranston, Cassidy and Deangelis with respect to Barton Plaza. Mr. Kazman made the same argument concerning their evidence that I have already referred to in connection with LHC. I do not accept that submission for the same reasons. Given what Ms. Cohen represented to the bank as to the nature of the business and the purported renovations, I have no doubt that LSC would have been noticed by all or at least some of these tenants if it ever in fact opened. I find that the evidence of Messrs. Cranston, Cassidy and Deangelis supports a finding that no renovations were done by LSC at Barton Plaza and that LSC never opened a 3,000 SF lighting store there.

422 I also note that the two Northwood invoices for LSC are virtually identical to the two invoices from Northwood to LHC only three months earlier and the description of the property where the work was purportedly done and the equipment, furniture and fixtures delivered to, is described the same: 2289 Barton St. East. In fact the equipment listed on both invoices is virtually identical including some of the serial numbers with only a few exceptions. Similarly the furniture and fixtures on both invoices is identical with the exception that the invoice to LHC has three office desks with two leather executive chairs versus the invoice to LSC was for four office desks with two leather executive chairs.

423 Even if LHC was a legitimate SBL, which I have not found, clearly there would be no reason for Northwood to do the very same work and supply the same equipment for the same type of business at the same location within a matter of months. There is no doubt in my mind that no 3,000 SF portion of the Barton Plaza was gutted even once, let alone twice including the removal of all partitions and walls, all plumbing and electrical wiring and all existing heating and air conditioning systems (HVAC). Furthermore, even if the old HVAC had been removed for LHC

and replaced, which I do not find, there would be no need to do this again only three months later and no legitimate client would do so. In my view, the Northwood invoices to LSC were a complete fraud. By providing these invoices to the RBC Ms. Cohen induced the bank to provide the full SBL proceeds in the amount of \$175,000 to LSC.

(d) Did LSC Operate as a Business?

424 Based on the evidence of the tenants at the Barton Plaza, not only were renovations not done but also I find that no business like LSC operated there in the period beginning January 1, 2008. Furthermore, corporate income tax returns were filed by LSC with the CRA only for the period January 23, 2008 to December 31, 2008 showing nil revenue, expenses and income.

425 This conclusion is corroborated by the Coort Analysis which states that the RBC account of LSC does not show any significant deposits from third parties which could be considered revenue from sales and that virtually all deposits into the LSC bank account are from entities/individuals identified in his report; namely Ms. Cohen, Mr. Kazman and Mr. Levy and do not appear to be related to revenue of the business. There are also no payments out for rent, employee payroll and other business expenses.

426 Mr. Kazman cross-examined Ms. Coutts suggesting that the bank had set Ms. Cohen up for failure because her loan was not in default when the bank acted and put her into default. Ms. Coutts explained that if she determined there was a fraud then the bank would take action vis-à-vis the client by, for example, putting the client on a deposit only system. This means the client has to come into the branch if they want money and they have to ensure that any money deposited has cleared the bank. She admitted that the LSC loan was not in default when the bank began civil action against Ms. Cohen. She said that if she knows something is a fraud she couldn't let it go on, as it is a risk to the RBC. It is her job to protect RBC from further risk. Again this issue is irrelevant to the liability phase of these proceedings.

(e) The Appraisal of LSC's Assets

427 RBC did not file a claim with Industry Canada for this SBL. Mr. Kazman argued with Ms. Coutts that that was because Mr. Ruivo, the Account Manager, didn't follow proper protocol. She would not admit this. This issue is not relevant at this stage of the proceeding.

428 On August 27, 2008, RBC investigator, Walter Turczn, attended at the plaza and could not find any company called LSC. There is no indication that RBC was able to locate any assets of LSC for the purpose of an appraisal.

(f) The Circulation of the SBL Proceeds

429 Mr. Coort analyzed LSC's RBC account from the time it was opened on January 24 to July 18, 2008.

430 As I have already reviewed in connection with the circulation of the LHC SBL, the Coort Analysis shows that LHC, indirectly through companies owned by Ms. Cohen, Mr. Kazman and Mr. Levy, provided LSC's start-up capital of \$100,000, from its SBL proceeds. The final

payments came in from ELFI and ELI in March 2008. LSC also received \$8,472 from Dufferin Paralegal in June 2008, which Mr. Kazman said was for money he owed to Ms. Cohen that she asked him to pay to LSC. He doubted this payment was for products for Dufferin Paralegal.

431 The RBC advanced the total SBL of \$175,000 in two payments; March 17th and 31st, 2008. After receiving the SBL funds plus the \$100,000 in start-up capital and the \$8,472 from Dufferin Paralegal, in the period March 17 to July 14, 2008, LSC paid Northwood for both invoices totaling \$209,504.50. In addition \$10,000 was paid to Oakwood, \$1,000 was paid to Mr. Kazman personally and \$10,000 to his company Blue Glass (2061914 Ontario Inc.) and \$2,500 to Mr. Levy's company Fairbank. That cheque was RE "on Account for Accounting".

432 None of these payments appear to relate to operating LSC as a business, save for possibly the payment to Fairbank. Mr. Kazman admitted that the cheque for \$28,872.25 to David Younan dated July 7, 2008 which states RE "672 Holdings Inc." was for the purchase of 672 Queen Street, where he, Ms. Cohen and Mr. Kalifer were partners. That transaction closed the next day. Mr. Kazman denied that Ms. Cohen was also putting money up for him. He said that they each had to put up their own share and that this was Ms. Cohen's share. I have insufficient evidence to determine if this is true or not. In any event I note that this was not a proper use of SBL funds given to LSC but Mr. Kazman denied knowing this and queried how he would know. He denied being in cahoots with Ms. Cohen from the beginning.

433 Mr. Kazman also denied discussing the \$175,000 that came from LSC to Northwood with Ms. Cohen even though they were friends, he was retained to do work for her, he was the only signing officer for Oakwood, and they owned other properties together. He then said that if he did ask he did not remember what she said. He denied that people hired him and trusted him because he did not ask questions. He denied that what he would know from the money going into and out of the accounts would seem absurd and demand questions.

434 With respect to the distribution of the SBL funds, Mr. Kazman testified that you would have to ask Mr. Levy about the cheques and why they were made out in various amounts. Later however, he said that Mr. Levy gave Ms. Cohen \$50,000 repayment of a loan to LSC. This is another example of when Mr. Kazman gave evidence suggesting he knew more than he would admit to. As for money payable to him, Mr. Kazman said that payments could be for money he was owed for finder's fees or commissions or he said it could be for work done for one project or another. He did not explain this evidence.

435 The Coort Analysis reviews what Northwood did with the \$209,504.50 that it received from LSC. All of the funds went to companies owned by Mr. Kazman and Mr. Levy. Mr. Levy received by far most of the funds through companies he owned. The two largest cheques are in the amounts of \$49,628.48 dated March 25, 2008 to Mosaic and \$69,298.52 dated April 4, 2008 to MDC Modern Design RE "final payment on subcontract". There is also a cheque in the amount of \$12,353.73 payable to Mosaic dated April 8, 2008 RE "final payment on subcontract". Mr. Levy denied doing any subcontracting for Northwood on any project for LSC and given my finding that Northwood did not do any renovations for ELFI, LHC or LSC, there does not seem to be any legitimacy to these payments. The bank account for Northwood in this period confirms it had no other jobs.

436 With respect to the payments made by Northwood, Mr. Kazman said that he was directed to make some of these payments by Mr. Levy. With respect to the cheques that went to him or his companies Mr. Kazman said that he asked Mr. Levy and it was agreed that he would receive these funds presumably as part of his consideration. Payments to Cramarossa, 1040 Holdings and M&M substantially went to pay mortgages for Mr. Kazman. In fact in cross-examination Mr. Kazman admitted that money Northwood received from the LSC loan was used to support his lifestyle although he maintained that he was entitled to a percentage of the money that went through the account and so if \$200,000 went in and he got 10% that was \$20,000 he was entitled to.

437 In the period March 20 to April 22, 2008 Mosaic received funds from Eastern, Northwood and Oakwood as well as Mr. Kazman's company 1040 Holdings. In the same period Mosaic paid money out to ELFI, ELI, and Cramarossa as well as payments to other companies owned by Mr. Levy.

438 In the period March 25 to April 16, 2008 MDC Modern Design received funds from Mosaic and Northwood and paid out \$20,000 to ELFI and \$28,625.48 to Save Energy.

(g) Findings of Fact

439 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the LSC SBL.

440 I have found that the LSC lease for Barton Plaza was a fraud in that it was to commence January 1, 2008 and the lease obtained by LHC for the same location was to start October 1, 2007.

441 The LSC loan file contains a HSBC GIC statement that was altered or completely forged by someone, which included alteration of the maturity date. Although Mr. Levy denied knowledge of this I have found that he or someone on his behalf faxed it to the bank. On the evidence related to LSC alone I am not able to determine whether Ms. Cohen or Mr. Levy forged this GIC statement. As it was a professional forgery it may be that Ms. Cohen was not aware of this fraud even if she saw the statement before it was faxed to the bank.

442 Ms. Cohen signed the Loan Registration Form and she confirmed compliance with the Loan Limit Clause and the Arm's Length Clause. Both representations were false.

443 Both Mr. Levy and Mr. Kazman denied knowledge of the two invoices from Northwood for LSC in the RBC loan file for the usual Total Gut Job and Total Rebuild and for equipment, furniture and fixtures which I have found to be fraudulent in that I have found that the leasehold improvements and furniture, fixtures and equipment set out in those invoices was never done or supplied and that no business like LSC was ever in operation at the relevant time. I have found that the provision of these invoices to the RBC induced the bank to provide the full SBL proceeds in the amount of \$175,000 to LSC. Clearly Ms. Cohen committed a fraud on the bank. There is no direct evidence connecting Mr. Levy to these invoices and so my determination of

his involvement in this SBL and the involvement of Mr. Kazman, if any, will depend on my finding of who was in control of Northwood.

444 As I have already said, it makes no sense that Ms. Cohen would pay out all of the SBL funds and a lot of her start-up capital to Northwood unless she knew she would be getting some of the money back. That certainly seems to be what happened. The LSC SBL funds took a very circuitous route and virtually all of the money ended up with Ms. Cohen, Mr. Kazman and Mr. Levy. This evidence is consistent with a desire to hide the source of the funds, which was originally the LSC SBL. Apart from the question of who controlled Northwood there is no evidence that either Mr. Kazman or Mr. Levy were involved in Ms. Cohen's fraud on the bank with respect to LSC.

Qua Design Inc. (QUA) -- BNS -- Count # 1

(a) The Qua SBL

Qua (Ali Vaez Tehrani) was approved for a SBL from the BNS on March 19, 2008 in the amount of \$171,500. This was reduced to \$155,906.10; the amount actually advanced by the BNS.

445 Mr. A. Tehrani testified that he thought he would try to open his own business and so he talked to his brother Mr. Tehrani about how to do so. He was interested in a solid wood furniture line from India that his brother was starting to import at a great price, which allowed for a nice markup. The Crown argues that it makes no sense that Mr. A. Tehrani would leave a secure job at Leon's given his evidence that he left the jewelry business to get better hours to be with his young children. Mr. A. Tehrani testified however, that he worked for Leon's for ten years and so his children would not be that young anymore. I accept his evidence that given his background in business that he wanted to open his own store. What I do find very difficult to believe is his evidence that right from the beginning he wanted to open three stores and "go big".

446 When Mr. A. Tehrani spoke to Mr. Tehrani about his idea, he told his brother that he didn't have much money and Mr. Tehrani told him he had a business loan; a reference to the SBL Mr. Tehrani obtained for Meez Corp. Mr. Tehrani also told his brother that he knew Mr. Levy, who was a specialist in business loans and that he had helped Mr. Tehrani obtain his loan. According to Mr. A. Tehrani, his brother supported him with his ideas, his information, emotionally and with money. If he needed anything, his brother was always there to help him. Despite this evidence, when it came to specifics for Qua, Mr. A. Tehrani testified that he could handle this, he was in charge and he made all of the decisions. He said that Mr. Tehrani was not involved in negotiating the lease for Qua or applying for the SBL and that he was not around during the renovations of Qua because he was so busy.

447 Mr. Tehrani admitted that he introduced his brother to Mr. Levy and that he told his brother "how it works," referring to the SBL process. However, he said that he was not involved that much because he was busy with his own business. He distanced himself from Qua. For example, he testified that he told his brother that he could provide him with the merchandise but he would have to look after his own place because he, Mr. Tehrani, did not have the time.

448 In summary both brothers minimized the involvement of Mr. Tehrani in Mr. A. Tehrani's businesses. I found this, and other examples I will come to, to not be credible particularly given what was clearly a close relationship between the brothers, based on the evidence I heard which included money Mr. Tehrani loaned his brother for start-up capital that he had to secure on his own home, a large volume of furniture Mr. Tehrani purportedly supplied his brother and the fact that a significant portion of the invoices to cover that furniture were not paid.

449 When Mr. A. Tehrani met Mr. Levy, he testified that Mr. Levy asked him some questions about his background, where he worked and what he owned to see if he was qualified. He told Mr. Levy about his experience with Leon's. Although Mr. A. Tehrani said from the beginning his idea was to open a few stores he did not discuss this with Mr. Levy in the beginning. He said he focused on his first loan. Mr. A. Tehrani testified that he gave Mr. Levy all of the information he needed and that Mr. Levy organized and prepared "everything for me". Mr. A. Tehrani made no specific mention of what documents he was referring to initially other than a Business Plan. Mr. A. Tehrani testified that it looked like Mr. Levy knew what he was doing and so he relaxed and accepted his advice. He said that if he had been doing this himself he would have paid more attention.

450 According to Mr. Levy, Mr. A. Tehrani and Mr. Tehrani came together to see him about the SBL for Mr. A. Tehrani. They brought pictures of what they wanted to sell. Mr. A. Tehrani gave information about his management experience, how much he wanted to contribute and how much he wanted to borrow.

451 According to Mr. A. Tehrani, Mr. Levy suggested there was a nice place at 677 Queen Street West, Toronto (677 Queen). 677 Holdings Inc. (677 Holdings) purchased 677 Queen just a few months before Qua opened and Mr. Kazman admitted that he and his partners Messrs. Luska and Yakobson owned the company that owned the building. According to Mr. Kazman, Mr. Levy had nothing to do with the company as an owner or shareholder and Mr. Levy did not dispute this. This property consists of two storefronts, 677 and 679 Queen, and second and third storeys with apartments.

452 Mr. Levy admitted that he knew that Mr. Kazman had a vacant location at 677 Queen but he denied recommending this property to Mr. A. Tehrani. He testified that he introduced Mr. A. Tehrani to Mr. Kazman and that it was Mr. Kazman and his partner Mr. Luska who offered the location to Mr. A. Tehrani. Mr. Levy testified that when he met with Mr. A. Tehrani and Mr. Tehrani they told him the square footage of the location they had, which suggested that they had already looked at 677 Queen.

453 Mr. Kazman and Mr. A. Tehrani denied this. Mr. A. Tehrani testified that although he did not know what Mr. Levy's relationship was to the building, he always dealt with Mr. Levy although he did meet Mr. Luska. Mr. A. Tehrani testified that he did not know of Mr. Kazman at the time or of any relationship between Mr. Kazman and Mr. Luska or that Mr. Kazman was affiliated with 677 Queen or involved in the alleged SBL scheme.

454 How Mr. A. Tehrani found 677 Queen would only be relevant if I could make a finding as to

whether or not he met Mr. Kazman at the time he entered into a lease for 677 Queen. Mr. A. Tehrani would have no reason to lie about this and so I find it likely that Mr. Levy was the one who told him about the property.

455 Mr. A. Tehrani's evidence as to how he decided that he would actually rent 677 Queen for Qua was totally incredible. He testified that when he went the first time to the location he did not go inside the building; he did some "marketing" by looking at the area and the traffic. The area looked great because it was busy. He said that the size of the unit was good for him because he did not want to get too big, although it is not clear how he would have known this as later in his evidence he admitted that he only went close to the windows. He was very definite that he did not go inside the unit.

456 When Ms. Brun put to Mr. A. Tehrani that it would have been prudent to go inside the building given his goal was to run a furniture store, he responded that he didn't say exactly that he didn't go in, resiling from his earlier evidence. He then changed his evidence to say that the first time when he looked at the area and did his marketing for traffic he couldn't remember if he went inside to take a look. He agreed with Ms. Brun that a big part of a furniture store is the presentation of items that you want to sell and told her that "you're making sense ma'am" and that it was possible Mr. Levy showed him the inside. At another point he implied that he could not get in because he was sure if he passed the location, that he took a "fast look" maybe, but it was dark and empty - "what can I do?" Mr. A. Tehrani's evidence that he agreed to rent this location without even going inside is completely unbelievable, particularly given his experience at Leon's and his business experience. He clearly recognized this as Ms. Brun questioned him and so he changed his evidence. This type of exchange happened more than once and did not give me any confidence about the veracity of this and other evidence from Mr. A. Tehrani.

457 Despite all of these concerns however, I still find that Mr. A. Tehrani intended to start a legitimate business given he was leaving Leon's. However, I would say that if chronologically Mr. A. Tehrani had already obtained the Alta SBL I might conclude differently as that, as I will come to, was a substantial fraud that he must have shared in financially in some way.

458 The BNS loan file contains a copy of an Agreement to Lease dated January 28, 2008, between Mr. A. Tehrani in trust, for a company to be incorporated, and 677 Holdings for 900 SF on the main floor of 677 Queen to start March 1, 2008 at \$3,500 per month plus GST in addition to \$250 for taxes, maintenance and insurance. Mr. Kazman testified that he believed that he prepared the Agreement to Lease and that makes sense, as he was one of the owners of the property.

459 Mr. A. Tehrani could not remember signing the lease but there is no dispute that he did on February 7, 2008. He could not say anything about the landlord's signature, which is undated and could not remember if he signed the lease with the landlord or on his own. When Mr. Levy asked Mr. A. Tehrani if he signed the lease with Mr. Kazman and Mr. Luska, he said he couldn't remember. In other words he did not admit to meeting Mr. Kazman at the time the lease was signed.

460 Mr. Kazman testified that he wrote Mr. Luska's name and put it in quotes on the signature

line for the landlord of the Agreement to Lease because Mr. Luska could not come down to sign the lease and asked Mr. Kazman to do so. The reason he did not sign his own name was that he said he was not a director of the company. I only have the initial incorporation documents and that appears to have been correct and so I accept this explanation. Mr. Kazman testified that he did not know if he met Mr. A. Tehrani before drafting the lease although he admitted that he met him at some point through Mr. Levy.

461 I note the Agreement to Lease was entered into before Qua was incorporated and Mr. A. Tehrani even applied for the SBL. In fact that is true for all of the 16 SBLs. This was not a fact that was raised with any witness at trial and it appears that in each case the bank was provided with a copy of the lease. It is surprising that the defendants would commit themselves to lengthy leases before they even knew if they would get a SBL to start their business but I have not considered this as a factor given the lack of evidence on this point.

462 Mr. A. Tehrani incorporated Qua in March 6, 2008 with an address of 677 Queen. He did the incorporation himself. He was the only signing officer on the account he opened for Qua with the BNS.

463 There is no dispute that Mr. Levy prepared a Business Plan for Qua because he testified that he prepared the Business Plan for Mr. A. Tehrani's first SBL and there is a Business Plan in the BNS loan file dated March 1, 2008. In the Business Plan Mr. A. Tehrani represented that he was going to invest \$100,000 "of his own equity."

464 Mr. Levy testified that he showed the draft Business Plan to Mr. A. Tehrani and Mr. Tehrani, which they liked and he bound it up and gave it to them. Mr. A. Tehrani denied this and I do not believe Mr. Tehrani was asked about this.

465 Mr. Levy was shown the Business Plan in the BNS loan file but when he saw that it did not have a table of contents or page numbers he testified that he could not say for sure that he prepared this Business Plan. He admitted that the layout and the wording was consistent with what he did but said the Projected Income Statement and Opening Balance Sheet was not formatted the way he prepared them. He was certain that someone modified this Business Plan. I do not accept this evidence. Other Business Plans that Mr. Levy admitted he prepared, as found in the bank files, are missing the table of contents and page numbers. Given his admission that he prepared Mr. A. Tehrani's first Business Plan, I find that Mr. Levy prepared the Business Plan found in the bank file. That said, I do not fault Mr. Levy for being confused about this, as all the Business Plans look virtually the same.

466 The Business Plan in the bank file speaks to the location for Qua being a street level location on Queen Street of approximately 2,000 SF. When Ms. Brun pointed this out to Mr. A. Tehrani he answered that his idea was to have a 2,000-4,000 SF store. When she pointed out that the unit he leased was only 900 SF according to the lease, he said couldn't remember; something he said quite often during the course of his evidence.

467 Mr. A. Tehrani said Mr. Levy charged a fee of roughly \$2,000-\$2,500 for the Business Plan;

he couldn't remember exactly. He paid the fee in cash. This is consistent with Mr. Levy's evidence.

468 According to Mr. A. Tehrani, he asked Mr. Levy which bank he should go to for the loan and Mr. Levy directed him to the BNS on College. Mr. Levy told him that this branch had already dealt with Mr. Tehrani. This was in fact not correct as Mr. Tehrani's SBL for Meez Corp. was from the BNS branch at Steeles and 404 in Thornhill. Mr. A. Tehrani admitted that Mr. Levy never said he should go to a particular bank manager by name and never said he knew a particular bank manager.

469 Mr. A. Tehrani had an existing relationship with the TD and National Bank. He admitted that although it made sense that he would go to a bank he had a relationship with, he did not question Mr. Levy as to why he should go to BNS. Mr. A. Tehrani said he did not know who Mr. Tehrani's bank manager was at BNS so presumably he did not know he was not going to his brother's bank.

470 Mr. A. Tehrani testified that Mr. Levy prepared a closed package with a Business Plan and "everything" and instructed him to go and ask for the bank manager. In follow up questions from Mr. Inoue, Mr. A. Tehrani testified that Mr. Levy gave him a yellow envelope that was the size of regular paper and was closed. He did not see Mr. Levy prepare the package and Mr. Levy did not tell Mr. A. Tehrani what was in the envelope and Mr. A. Tehrani didn't ask any questions about what was in the envelope. He admitted that he did nothing to verify what the documents were in the envelope or their accuracy. Mr. A. Tehrani testified that he didn't feel he needed to review it and that he did not open the envelope before he got to the bank. He was not clear on what he thought was in the package but he testified that he did not bring any other documents to the bank when he brought the envelope and so according to Mr. A. Tehrani, if a document is in the Qua loan file it must have been in the envelope. In response to questions from Mr. Kazman, Mr. A. Tehrani admitted he had no idea what was in the envelope when he brought it to the bank; he "assumed" it had a Business Plan in it. I do not find that Mr. A. Tehrani's answers to these leading questions put to him by Mr. Kazman are helpful. Mr. A. Tehrani clearly did not have any animus towards Mr. Kazman.

471 Mr. Levy denied that he told Mr. A. Tehrani to go to a particular BNS location. He also denied giving Mr. A. Tehrani his Business Plan in an envelope.

472 Mr. A. Tehrani went to the bank unannounced and introduced himself to the bank manager and told him he wanted to apply for a business loan. When he saw the name Jesse Moffat on a document while he was testifying, Mr. A. Tehrani remembered that was the bank manager's name.

473 Mr. Moffat took Mr. A. Tehrani into his office for about 10-15 minutes. He opened up the sealed envelope with Mr. A. Tehrani sitting at the opposite side of the desk. When Mr. Moffat pulled the documents out of the envelope Mr. A. Tehrani testified that he did not take an opportunity to see what was in the envelope. When Mr. Moffat looked at the contents Mr. A. Tehrani testified that he couldn't see what Mr. Moffat was looking at although he admitted that he saw the Business Plan as the bank manager pulled it out of the envelope. Although Mr.

Moffat was focused on the Business Plan, Mr. A. Tehrani did not look at it and did not explain how he would even know that it was the Business Plan Mr. Moffat was looking at if he had never seen it before.

474 Mr. Moffat told Mr. A. Tehrani that he liked how it; I presume the package, was organized. Mr. A. Tehrani gave Mr. Moffat his phone number and told him to call if he had any questions. According to Mr. A. Tehrani, Mr. Moffat called him back sometime later and told him he was approved and that he needed to come into the bank to sign the business loan documents.

475 Ms. Brun pressed Mr. A. Tehrani a number of times on the fact that it did not make sense that he didn't know what was in the envelope given his family background, the expectation he'd be in business, his experience with banks and furniture stores and that it was important to ensure the documents were accurate as it was his name on the loan, his credit score and his reputation which were all at stake. In response Mr. A. Tehrani kept repeating that he trusted Mr. Levy, that he had explained the process to him, and everything he needed he told him and he had confidence in him. He queried why he should see the Business Plan when he had given Mr. Levy information about management. When Ms. Brun suggested he needed to know as otherwise he would not be able to answer questions if the manager had asked, Mr. A. Tehrani repeated that he had given information to Mr. Levy and had a "little bit" of "an idea of what was going on". Mr. A. Tehrani admitted that he didn't tell Mr. Moffat that he didn't know what was in the envelope and that he knew that would have jeopardized his getting the loan.

476 Mr. A. Tehrani testified that when he went back to the bank the bank manager had prepared everything and simply told him where to sign. He said this meeting went quickly too; somewhere between 15 and 25 minutes, because the documents were already prepared. When Ms. Brun put to Mr. A. Tehrani that the bank manager reviewed the documents in support of the loan with him as well as the documents that he filled in and signed after his SBL was approved, he said he couldn't remember.

477 Mr. A. Tehrani had earlier given different evidence. When Mr. Inoue questioned Mr. A. Tehrani about the creditor life insurance form in the Qua loan file and asked him what it was, he responded that he couldn't remember exactly what it was but that when you go to the bank they review the documents and then check off and you sign. A few minutes later he said that the banker prepared the form and explained it and then he initialed it. He said "he prepared -- he explain and then initial here and signature". This evidence is important generally as it is an admission that the bank manager, at least Mr. Moffat, did review documents with Mr. A. Tehrani before asking him to sign them. Furthermore, it makes it clear that other evidence of Mr. A. Tehrani was not correct. Mr. A. Tehrani admitted that his handwriting is on the Application for Banking Service and that he signed it on March 4, 2008.

478 On the page that is headed "About You" Mr. A. Tehrani wrote down that he had two GICs, one with the TD and the other with the National Bank totaling \$115,312.39. The bank file contains a GIC from the National Bank in the amount of \$20,062.39 and a TD Canada Trust confirmation of investment (TD GIC) in the principal amount of \$95,250 issued on February 27, 2007 to mature on February 27, 2008. These two GICs total \$115,312.39, which is the identical amount Mr. A. Tehrani wrote on the form.

479 The Crown called Ms. Mary Jane Gallienne, a Senior Investigator with the TD bank in the Corporate Security Department, who had been with the bank for 14 years. She only became involved in this matter the day prior to giving evidence when the affiant of the affidavit that had been disclosed was unable to attend. Ms. Gallienne could not say if the TD GIC was authentic or not.

480 Mr. A. Tehrani was very vague about the TD GIC. He said that he purchased the GIC with proceeds from the sale of a condo he owned with Mr. Tehrani. He couldn't remember when he purchased the TD GIC and thought that he only had it for a short period of time but could not say for how long. When asked whether he had it for one year, Mr. A. Tehrani said he didn't think so. The fact Mr. A. Tehrani testified that he had no idea how the bank got the TD GIC is troubling given he would have been aware of the Crown's theory that the issue date of this GIC was altered. However, the Crown did not call a witness who could establish this and conceded that it had not proven that the TD GIC had been altered.

481 Mr. A. Tehrani paid a total of \$133,610 into Qua as start-up capital in the period March 31 to April 24, 2008, which he testified was from the condo that he and his brother Mr. Tehrani owned jointly and sold and he also had a line of credit for \$25,000 and credit cards which he said he used for the business.

482 Mr. A. Tehrani signed a personal guarantee on March 28, 2008. The middle paragraph of that document states that by signing the document Mr. A. Tehrani certified that the information "About You" in this Service Request and any other information provided now and in the future is accurate and complete. Mr. A. Tehrani was not asked if he read this before signing the document but it is evidence of what the BNS was relying upon in processing the SBL application.

(b) BNS Reliance Evidence

483 I have already set out a summary of the evidence of Ms. Alulio in connection with the ELFI SBL. No other witness from the BNS was called.

(c) The Purported Renovations to 677 Queen and Purchase of Equipment, Furniture and Fixtures

484 The first question is what state was this property in when Mr. A. Tehrani agreed to lease it for Qua? Mr. Kazman said that after they acquired the property they did a lot of work upstairs and they renovated the apartments a bit. Essentials Hair Salon was an existing tenant; I presume in 679 Queen. There is however, no evidence as to what condition Mr. A. Tehrani's store was in when he signed the lease.

485 Mr. A. Tehrani denied hiring the contractor for the renovations and he denied asking Mr. Luska to do the renovations. However, he also said that he could not remember if he met with Mr. Kazman or Mr. Luska for the contracting and that he kept getting Oakwood, the contractor for Qua and Northwood, and the contractor for CDI, his next SBL, mixed up. This is another area where his evidence was not reliable but he denied Mr. Levy's suggestion that Mr. Kazman said

he would do the contracting and he maintained that he was dealing with Mr. Levy as the general contractor and not Mr. Kazman. Mr. A. Tehrani recalled that Mr. Luska would collect the rent and he dealt with Mr. Luska for maintenance. He testified that he didn't know that Mr. Luska was Mr. Kazman's partner. Mr. Levy told him he would take care of everything including the contractor and that he agreed to this because Mr. Levy had been recommended by his brother and had helped his brother with his store.

486 Mr. Kazman's evidence was consistent with Mr. A. Tehrani's. He maintained that he did not do the renovations for Qua and that he did not know if work was done by Oakwood or a subcontractor, what was done or what equipment was supplied. It was his position that the work was done by Mr. Levy although he did not explain how he knew this. He had no recall about being approached for permission to do significant renovation work on the property but he said that Mr. Luska might have been. Mr. Kazman's position is that if significant renovations were being done he did not go to inspect and Mr. Luska did not either. They were "easy" landlords so long as the tenant did not affect the structure of the building; he queried why do we care if the tenant wants to beautify the building? He also said that he was not a big stickler for permits. I found much of this evidence incredible. It makes no sense that Mr. Kazman would not at least inquire or be told by Mr. Luska about what the tenant was doing to the property. Apart from the common sense concern of ensuring that the tenant was not doing any work that could damage the property, the renovations being done would most likely improve the value of the property to the extent they included work such as new plumbing and electrical and certainly Mr. Kazman was interested in any increase in the value of his property.

487 Mr. Levy denied the suggestion from Mr. Inoue that using Oakwood was his idea. He said that Mr. A. Tehrani knew Mr. Kazman and it is his position that Oakwood was Mr. Kazman. Mr. Levy also testified that to the best of his knowledge he did not do subcontracting on this job. Later in his evidence however, Mr. Levy said that he might have completed this work for Qua and added that he did so many jobs-how could he remember? That evidence was incredulous.

488 I find that it was Mr. Levy who arranged for whatever work was done for Qua even though Oakwood was the named contractor. On this point I prefer the evidence of Mr. A. Tehrani that he dealt only with Mr. Levy. I also rely on Mr. Levy's indirect admission in connection with Kube, which I will come to, and his professed uncertainty about whether or not he did any subcontracting for Qua which I do not accept.

489 As for what leasehold improvements were to be done and what equipment was needed, Mr. A. Tehrani testified that he just told Mr. Levy to take care of everything for him. He said that when somebody recommends someone you can trust them to do a good job and that is why he didn't pay attention to anything and didn't go into details with Mr. Levy. Mr. A. Tehrani did testify, however, that he didn't tell Mr. Levy to pull down all the partitions, existing walls and the plumbing and fixtures etc. He was focused on the design, the paint colour and the floor. For the rest he didn't go into too many details because Mr. Levy knew what he was doing and he knew he was doing the work. Mr. A. Tehrani said that the workers changed the walls, the ceiling and floor.

490 Ms. Brun put to Mr. A. Tehrani that Mr. Levy had testified that when he was responsible for

leasehold improvements he would go into the building and discuss with the borrower what was to be done and the borrower would take an active role. To this Mr. A. Tehrani responded that that made sense and it was possible he went with Mr. Levy to explain to him what he liked and that he took an active role in the leasehold improvements and equipment for Qua, but he couldn't remember. He also said that he didn't know anything about contracting and he believed Mr. Levy knew exactly what he was doing and he would listen to Mr. Levy if it made sense. This is yet another example of Mr. A. Tehrani's evidence changing while he testified.

491 Mr. A. Tehrani said he was still going back and forth to Leon's and was busy while Qua was being made ready. He thought however, it was best to take a look and so he went a few times to the property and when he did he testified that he saw people working. He also told Ms. Brun however, that he couldn't remember if he was still at Leon's at the time and that he was "curious" if they were doing a good job and so he went a few times.

492 The BNS received two invoices from Oakwood, the first dated April 8, 2008 in the amount of \$72,125 after credit for a deposit of \$25,000 and the second dated April 18, 2008 in the amount of \$134,272.25 for a total of \$206,397.25.

493 The first invoice was for the usual Total Gut Job and Total Rebuild which included an all-new glass storefront with a glass door, and new air conditioning system. The invoice also included new framing for the basement although I note that the lease did not include the basement. Mr. A. Tehrani was not asked about this.

494 Mr. A. Tehrani personally paid the deposit shown on the first invoice by a cheque dated March 19, 2008 for \$25,000. This is the day the Qua SBL was approved by the BNS. Mr. A. Tehrani was not able to give any evidence about this cheque and in particular he did not remember whom he physically handed this cheque to or, if it was mailed, to whom.

495 I accept the argument made by the Crown that it makes sense that any renovation work at 677 Queen for Qua would not have started before the deposit was paid. I also accept the proposition, which was not disputed by any of the defendants, that once an invoice was issued it was being represented that all of the work on the invoice had been done or that all of the equipment, fixtures and furnishings as stated on the invoice had been supplied. This means that the purported Total Gut Job and Total Rebuild for Qua was done between March 19 and April 8, 2008 a period of three weeks. Mr. A. Tehrani testified that he couldn't remember if he found it odd that all the work was done in less than a month and said he couldn't remember how long it took.

496 Mr. A. Tehrani admitted that the first Oakwood invoice was for basically a gut job. When Ms. Brun asked him about the air conditioner that the invoice states was supplied and installed, he responded "what do you mean - it was done?" a telling answer. When she said that Mr. Levy said it was done, Mr. A. Tehrani responded that he didn't get involved in this, as he was interested in the fact it was a good location with nice décor and was organized. He repeated that because Mr. Levy did the work for his brother he was really relaxed and could trust him to do the job. In short, Mr. A. Tehrani repeated a number of times that he left the leaseholds and equipment up to Mr. Levy. He didn't know whom Mr. Levy hired and testified that you don't ask

this detail of a general contractor. He did not explain how he would know that given he had no construction experience.

497 With respect to the second invoice, although Mr. A. Tehrani admitted this was now more personal to him he said it was his first business as a furniture store and he didn't go into much detail and he repeated his evidence about trusting Mr. Levy.

498 Mr. A. Tehrani denied that the Oakwood invoices were patently false. He said he did his part, he took a look and he trusted the person and for him it was "OK".

499 Because I do not have any evidence as to how Mr. A. Tehrani's unit looked before the leasehold improvements were done, I am not able to conclude that the invoices are necessarily fraudulent. However, it is clear that Mr. A. Tehrani did not give much in the way of instruction to Mr. Levy or supervise the work being done by Oakwood. I found this evidence to be incredible although I accept that given his lack of construction experience he may not have paid any attention to what Mr. Levy was doing behind the drywall. Although Mr. A. Tehrani was only responsible for 25% of the loan, to simply let Mr. Levy do what he wanted to the premises makes no sense. It was his money and given it was his first business and given his business experience I would have expected him to be more than "curious" about how his money was spent. I do not believe that he would agree to pay over \$72,000 for renovations without any inquiries about the proposed work or any scrutiny of the invoice to see what in fact was done. There could be a number of reasons for this. The Crown's theory is that Mr. A. Tehrani was in on the alleged fraudulent scheme and that could certainly explain his behaviour. It could also be that he is really naive and as his counsel submits, was a victim of Mr. Levy's. Without more I cannot conclude that Mr. A. Tehrani knew or ought to have known that some part of these invoices might be fraudulent. As I will come to however, there is no evidence of any significant money being paid to contractors for Qua, suggesting that the renovations and supply of equipment was not as extensive as represented to the bank.

500 Mr. A. Tehrani testified that when the leaseholds were finished Mr. Levy gave him an invoice. I presume the same is true for the second invoice. Mr. A. Tehrani couldn't remember who gave the invoices to the bank but did testify that he thought he gave the invoices to the bank manager so that the contractor was paid. However, he didn't remember if "I drop it or I fax it or we fax it; I don't remember". This suggests that he did have the ability to fax at this time.

501 Mr. A. Tehrani also testified that the manager wanted to be clear on who the bank had to pay and that maybe the bank manager gave him a copy of the form to sign; a reference to the Supplementary Receipt Schedule signed by Mr. A. Tehrani that is dated March 3, 2008 that refers to both Oakwood invoices. Ms. Brun put to Mr. A. Tehrani that the evidence of Ms. Alulio from the BNS was that the bank practice was that there had to be confirmation from the borrower before funds would be released. Mr. A. Tehrani replied that that was why the bank manager filled out the form that he signed to confirm that the right person was being paid. He clearly understood that he needed to give the bank approval in order to release SBL funds to pay the invoices.

502 Given this evidence there is no doubt that Mr. A. Tehrani saw the two Oakwood invoices

and is the one who got them to the BNS for release of the SBL funds. Mr. A. Tehrani testified that he didn't remember if he reviewed the invoices to be sure they were accurate before he provided them to the bank although he admitted that it was possible that he went through them.

503 In cross-examination, Mr. Coristine showed Mr. Kazman the first Oakwood invoice. Mr. Kazman testified that he did not know if Mr. A. Tehrani gutted the place or not, what partitions and walls were disposed of or what electrical or plumbing work was done, as he did not go to the premises and observe that. Mr. Kazman said that he was not involved in the project at all. Mr. Luska told him they were doing a lot of work there. When asked, Mr. Kazman said he did not know because he did not see what work was going on. Mr. Coristine put it to Mr. Kazman that given his investment in purchasing the property he would want to know what was going on. Mr. Kazman maintained that he did know and that the store looked nice when it was finished. He denied he was waffling, which he was in fact doing. Furthermore, as I have already stated, I found his evidence that he had no knowledge of what work was being done to be incredible.

504 It is significant that only \$185,035.40 was paid towards the two Oakwood invoices that after Mr. A. Tehrani's deposit totaled \$206,397.25. There is no evidence that the balance outstanding of \$21,361.85 was ever paid by Qua to Oakwood.

(d) The Comod Corp. Invoice

505 The BNS was also provided with an invoice from Comod Corp. (Comod) dated March 21, 2008 in the amount of \$55,017.90. The Crown submits that it was Mr. A. Tehrani who "presented" the Comod invoice to the BNS. Mr. A. Tehrani identified the Comod invoice in the loan file but he had no real memory of how the invoice got to the bank. Given that he provided the Oakwood invoices to the bank I find it likely that he brought this invoice to the bank as well. This invoice had nothing to do with Mr. Levy.

506 The Comod invoice was for inventory and should never have been presented to the BNS for payment as SBL funds are not to be used for the purchase of inventory. Qua paid this invoice in full by a draft dated April 28, 2008. When Ms. Barton showed this draft to Mr. A. Tehrani, he couldn't remember this. He said he understood that the SBL was not to be used to purchase inventory and that he did not intend to misuse funds of the bank to purchase inventory. It is unclear, however, whether the BNS paid any part of this invoice as the total amount of the Oakwood invoices exceeds the amount of the SBL.

507 Mr. A. Tehrani testified he recalled purchasing his start-up inventory from Mr. Tehrani. Mr. Tehrani also recalled selling inventory to Qua to get the store started and he testified that when starting up a retail furniture store, you have to fill the store, so you have to buy a full complement of inventory. Mr. Tehrani, however, produced a different version of the Comod invoice from his records, which was identical in content but different in format. He testified he did not know how the version in the bank file was created, because he'd never seen it before and that it "was not one of his". He knew that inventory was not eligible for SBL proceeds and he had nothing to do with that invoice being submitted to the bank for loan disbursement. I accept that there is no evidence that Mr. Tehrani had any involvement with providing this invoice to the bank.

508 The Crown submits that the Comod invoice is suspect for a number of reasons. First of all the Crown relies on the fact that there are two versions of the invoice. Neither the Comod invoice submitted to the bank nor Mr. Tehrani's copy looked much like the other invoices produced from Mr. Tehrani's companies that are before the court. Mr. Tehrani was clear that not being a computer guy, he generally did not prepare his invoices. Mr. Tehrani's copy of the invoice indicates that Mr. Salehi 'sent' the document and there is evidence that Mr. Salehi was working with him at the time. Although I agree with the Crown that it is suspect that Mr. Tehrani denied preparing the Comod invoice that went to the bank and that clearly the Comod invoice should not have been provided to the bank, I have not been able to come to any conclusion about what this evidence means.

509 The Crown also relies on the fact that Mr. Tehrani owned Comod and that Comod had a SBL with BOM at the time. I agree with Ms. Barton however, that this is not suspect. Both Mr. A. Tehrani and Mr. Tehrani's evidence was that from the outset, Mr. Tehrani was to be the supplier for Mr. A. Tehrani's furniture stores - this is entirely consistent with that plan. The Crown also argues that it is suspicious that Mr. Tehrani would "suddenly" use Comod to sell to Qua. I did not hear much about Comod, but Mr. Coort concluded that Qua's payment of this invoice was primarily used by Comod to fund its operations in the period April 28 to May 16, 2008. Subject to determining that this invoice was legitimate, given Comod was owned by Mr. Tehrani and was selling furniture, the fact furniture was sold to Qua, his brother's new store, is not itself suspicious.

510 The Crown also submits the Comod invoice is in error when it states that only 302 pieces of furniture were sold to Qua and that in fact 624 pieces were sold. The Crown argues that it is bizarre that neither Mr. A. Tehrani nor Mr. Tehrani noticed that Qua received double the inventory it purchased and that this amount of furniture would not have fit in a 900 SF store. Ms. Barton agrees there is an error but submitted the number is in fact 590. I have not done the math but will consider whether or not I can conclude that there would not have been room at Qua for 590 pieces of furniture.

511 I accept Ms. Barton's submission that in fact Qua was not billed for more than double the inventory it purchased. Qua paid \$55,017.90 to Comod, purportedly towards this invoice. Ms. Barton prepared a spreadsheet calculating what the 590 items cost based on the prices on the invoice and submitted that that price would be \$52,186 plus HST, which would total \$58,970.18. In other words, although Mr. A. Tehrani did not pay that amount, the amount of the invoice that he did pay was close to the cost of 590 items. I accept that submission.

512 As for space however, I do have some concerns. Mr. A. Tehrani's evidence was sketchy about this at best, He admitted the space for Qua was pretty small but he said that he could get orders from catalogues. That would suggest he would fill orders once he had an order from a client. He also testified that he "stacked" the furniture, which at the time I took to mean that the furniture was assembled and then stacked by putting furniture on top of each other. There is some evidence of that from the pictures of the front of the store and that would make more sense for a showroom than stacking boxes although he did not explain what he meant. If my understanding of his evidence was correct, I accept that could be done for chairs and that

furniture could have been put on top of coffee and dining room tables but he received 20 dining room tables which does seem like a lot for such a small space. Mr. A. Tehrani made no mention of using the basement. Although the Qua lease does not include the basement, a photo produced by Mr. Tehrani shows stairs to a basement and there is no evidence that there is an alternative separate entrance to the basement. For these reasons I accept that in theory this space could have been used even though Qua did not lease the basement and Mr. A. Tehrani did not testify that he used the basement or that he got permission to use it.

513 When Ms. Barton asked Mr. Tehrani about the furniture he sold to Qua, which Ms. Brun had suggested was too much for the space, Mr. Tehrani said it was not a lot of money to open a store and that because the items were packed flat and compact there was plenty of room in the basement where they could be stacked.

514 Ms. Barton also argued that there is no evidence that 600+ piece of furniture would not fit on the main floor of Qua, plus possibly the basement. I do not think that evidence is needed, as I do not have to make a precise finding of fact. I find it incredible that Mr. A. Tehrani actually received all of the furniture he purportedly bought from his brother. Although I can't be precise about it, given he only had 900 SF; let's say 25' by 35' and given customers would need to move around, and given he had his own office furniture and equipment, he simply would not have had the space. If he did get all this furniture it seems to be a very excessive purchase for a new small store. Furthermore, as I will come to, Qua made further payments to Meez Ltd. and Comod Corp. presumably for more furniture. It also makes no sense that he would still be buying inventory in January 2009 when he was about to go out of business.

515 However, given the uncertainty of how the furniture was being stored and whether the basement was available, I am not able to conclude that it was impossible for Mr. A. Tehrani to receive this much furniture.

516 The two Oakwood invoices totaled \$231,397.25. Mr. A. Tehrani paid a deposit personally bringing the amount owing down to \$206,397.25. A total of \$185,035.40 was paid to Oakwood by Qua towards the two invoices. This was \$21,361.85 less than what was owed to Oakwood and Mr. Coort found no evidence that this shortfall was ever paid. When asked about this Mr. Kazman deferred to Mr. Levy given his position that he was not the operating mind of Oakwood. I do not remember if Mr. Levy was asked but no doubt he would have deferred to Mr. Kazman given his position that he was not the operating mind of Oakwood. In any event this shortfall is suspicious, as one would expect a legitimate contractor to expect full payment. Furthermore, as the Crown submits, why would Mr. Kazman and/or Mr. Levy continue to deal with Mr. A. Tehrani for future SBLs if he did not pay his invoices in full?

(e) Did Qua Operate as a Business?

517 Given the timing of the Oakwood invoices, and given the need to obtain some inventory, I assume that Qua was open for business by early June 2008.

518 Mr. Coort analyzed Qua's account at the BNS from March 28, 2008, when the account opened to March 4, 2009 when the account was closed. In the period before June 1, 2008, there

is no evidence of any sales or commissions paid in Qua's BNS account or any payment for rent or utilities even though the lease called for the rent to start on March 1, 2008.

519 Mr. A. Tehrani testified that he had quit his job at Leon's before he started Qua so he could focus on the business. However, in answer to questions from Ms. Barton, Mr. A. Tehrani also said he couldn't remember if he continued to work at Leon's after Qua opened. Based on documents from the CRA and his evidence, Mr. A. Tehrani earned an annual income from Leon's in the range of \$49,000 to \$70,000 during 2005 to 2007. Mr. A. Tehrani's T4 for 2008 states that he earned just over \$22,000. Therefore, it does appear that he left Leon's around the time that he opened Qua, as he did not suggest that he worked part-time at any time.

520 As for employees, in the period from June 1, to December 31, 2008, payments out from Qua show \$1,654.20 paid in four amounts to a Len Ottessen as commissions and \$1,015.35 in two amounts, also as commissions, to Mr. A. Tehrani. In the same period, according to the Coort Analysis, Qua received a total of \$50,617.48 in cash, credit and debit card sales. It would appear that all the cash was not from sales as corporate income tax returns filed for Qua for the period April 1, 2008 to March 31, 2009 showed revenue at \$49,355. Clearly, as Ms. Barton submitted, Qua must have had some of the items from Comod to support these sales.

521 Loan interest payments were made for the months of June to December 2008 as well as monthly insurance payments. Mr. Kazman testified that Mr. A. Tehrani paid rent and utilities to 677 Holdings and occupied the premises for some time. There is no evidence of any utilities ever being paid, nor is there evidence of any rent being paid before June 2008 or after November 2008. Although it is possible that rent was not demanded before Qua opened for business, it is quite suspicious that Qua was permitted to occupy the premises after November 2008 despite the fact it was not paying rent. Again, if this were a legitimate lease, one would expect some action by the landlord.

522 In the period from January 1 to March 4, 2009, there were no cash sales and only \$3,623.53 in credit and debit card sales and those were all recorded by February 2, 2009. The account was regularly in overdraft as of January 2009. When the account closed on March 4, 2009, it was overdrawn by over \$5,000. Mr. A. Tehrani received a cheque for \$1,000 and there were cash withdrawals totaling \$4,200 but they were not shown as commissions. No other payments to Mr. A. Tehrani or possible employees were recorded nor were any rent or loan payments made in this period. Although there was not much business for the month of January 2009, it is likely that Qua was still in the premises given the deposits for sales. As such it is very puzzling that Mr. Tehrani was able to sign a lease for the same location on January 30, 2009.

523 The Crown questioned why, in these circumstances, Mr. A. Tehrani would go with his brother to Las Vegas for a furniture show in February 2009, especially given his struggles with Qua and the fact that by this time, he had already opened his second store; Contempo. Given they are brothers and Mr. Tehrani's evidence that he brought Mr. A. Tehrani along to help teach him the ropes, I am not prepared to draw an adverse inference from this trip.

524 What I do find highly questionable, however, is that in addition to the \$55,017.90 paid to Comod for furniture, Qua made four payments to Meez Ltd. between April 14 and May 28, 2008

that total \$27,300, purportedly for more inventory. Qua then paid a further \$5,184.49 to Meez Ltd. in three payments in the period June 1 to December 31, 2008 and a further \$2,300 to Comod Corp. on January 15, 2009. The last payment in particular is very suspect as at this point Mr. A. Tehrani's business was clearly going under and he was no longer even paying rent. Furthermore, as I will come to, this furniture is not accounted for in any way when Qua closed.

525 The Crown's position is that these payments were not legitimate payments for furniture but rather were part of the money-laundering scheme. Ms. Barton submitted they were legitimate purchases and produced a two-page invoice from Meez to Qua.

526 In summary it appears that Qua was an operating business although there are serious questions about the purported purchase of inventory. Although Mr. A. Tehrani testified that in his opinion the business was not doing too badly, it appears that was an understatement. The Business Plan, which Mr. A. Tehrani claimed to have never read, suggested that his annual sales would be \$340,000 with a net profit after tax of \$28,714.

527 The Crown submits that Mr. A. Tehrani never had any serious intention of operating Qua but I do not accept that the evidence supports that given he gave up his secure and well-paying job at Leon's.

528 Mr. A. Tehrani denied the suggestion that he was locked out by the landlord. He testified that he had a key and he closed the door and left. He also said that when he closed Qua, he left all of his inventory and everything else in the store. He also testified that he didn't have too much inventory left. I do not accept that evidence. First of all, as I will come to, a fax machine that appears to have belonged to Qua was still in use in March 2009 for Modernito Design Inc., a SBL obtained by Mr. Salehi. Furthermore, Mr. A. Tehrani paid a total of \$89,802.39 for inventory to Comod and Meez Corp. between April 14, 2008 and January 15, 2009 and that must have been at wholesale prices. His sales were, at most, \$54,000. Clearly there must have been a significant amount of inventory left at Qua that remains unaccounted for. Either Mr. A. Tehrani took this inventory or Mr. Kazman's company did. Mr. Kazman however, said that he was not aware of Mr. A. Tehrani leaving any equipment or inventory behind. Mr. Levy said that when Qua moved out there was a lot of garbage. He did not explain how he would know this since it was not his property.

529 Although I cannot come to any firm conclusion about the purchase of inventory and what happened to the inventory, based on the evidence concerning Qua alone, I will reconsider this issue when I consider the similar fact application.

(f) The Appraisal of Qua's Assets

530 The BNS declared the Qua loan to be in default as of January 22, 2009. It is not clear when Mr. A. Tehrani vacated 677 Queen save that it must have been some time after the end of January 2009 given there were still sales that month.

531 Sia Mizrahi was retained by the solicitors for BNS to appraise the assets of Qua. He was given instructions that the landlord had locked the tenant out and that he was to contact Mr. A.

Tehrani and find out where the assets were. He testified that he phoned Mr. A. Tehrani on March 24, 2009 and spoke to him. Mr. A. Tehrani told him he would call back with the landlord information but he did not. Mr. Mizrahi tried a couple more times to reach Mr. A. Tehrani again without success. He was then instructed to go to 677 Queen, which he did on March 25, 2009. He found no signs for a business called Qua. He tried to get the name of the landlord from the other tenant, Essensuals, but was not able to.

532 Mr. Mizrahi testified that he saw that 677 Queen was being renovated and he reported this to the lawyers. I will come back to this evidence when I review the Kube SBL.

533 Mr. Mizrahi was then instructed to do a "sight unseen" appraisal of the equipment listed in the second Oakwood invoice. He never saw the items on the invoice and he never spoke to Mr. A. Tehrani about them. He did not know if the assets existed or not. He was to conduct an evaluation of what the assets would bring in at auction if they existed, given their presumed age. Mr. Mizrahi gave the assets a liquidation value of \$6,945. He agreed that after a year of use the value of the assets would decline, especially for computers.

(g) The Circulation of the SBL Proceeds

534 I have already dealt with Mr. Coort's analysis of Qua's BNS account.

535 Mr. Coort also did an analysis of Oakwood's bank account in the relevant period. He concluded that there was no indication of any equipment being purchased for Dell, HP, Sharp, Panasonic, Sony or other similar suppliers as shown on the second Oakwood invoice to Qua. The only payments that could relate to the leasehold improvements for Qua were payments by Oakwood to Mosaic and MDC Modern Design in the period April 15 to April 23, 2008 totaling \$79,472.78. When Mr. Levy was asked about these payments, he said all of them were loans although I note that the payment to MDC Modern Design was in the amount of \$19,472.78 Re: "on account", which is inconsistent with his evidence that only even amounts would be loans. These payments are consistent with my finding that it was Mr. Levy who did the leasehold improvements for Qua. However, Mr. Coort further analyzed the payments to Mosaic and MDC Modern Design and he determined that only a small portion of expenditures appear to have been paid to third party suppliers. This suggests that the leasehold improvements and purchase of equipment for Qua were not as extensive as the Oakwood invoice suggests.

536 In the period April 15 to May 16, 2008, Oakwood also made significant payments out to Ms. Cohen personally and to Save Energy totaling \$44,535.68, as well as payments to Mr. Kazman and his companies, totaling \$96,760.46. This included a payment of \$14,710.46 to Woolfson and Woolfson in Trust by a cheque signed by Mr. Kazman dated April 24, 2008, which has a Re: "1121 Steeles Ave. West". This is the address of the Bochner Condo that I will deal with when I review the evidence concerning Ms. Chapkina and World of Accessories Ltd. (World). This cheque obviously had some part in that transaction and was presumably being paid by Mr. Kazman from Oakwood for that transaction.

537 Quite suspicious in terms of timing is the fact that Ms. Cohen signed three Oakwood cheques dated between May 2 and May 13, 2008, payable to Save Energy, which totaled

\$25,500 and all cleared on May 14th, and she then signed a cheque dated May 14th from Save Energy to Mr. Kazman for the same amount of \$25,500. Mr. Kazman then signed a personal cheque dated May 16th to Oakwood in the amount of \$25,151.71 Re: "first invoice". In other words in a matter of two days (based on when the Oakwood cheques cleared the bank), approximately the same amount of money went and returned to Oakwood via Save Energy and Mr. Kazman. To further mystify these transactions Mr. Kazman then paid \$25,500 back to Save Energy in three separate amounts on May 16th, two days after he received this amount from Save Energy. Save Energy then used these funds as part of a \$100,000 loan to Mr. Salehi made on May 20, 2008 for the Roxy Design Inc. (Roxy) SBL.

538 It was around this time that Mr. Kazman obtained a SBL for Dufferin Paralegal at 1040 Eglinton, a property he owned with partners. He used Oakwood for the renovations and so I presume the "first invoice" is a reference to an invoice from Oakwood. I considered whether or not it is possible that Ms. Cohen was lending Mr. Kazman the money to pay the first invoice. I find that is not the case. Were it so, it could have been done directly from one of her companies rather than three cheques from Oakwood to Save Energy, followed by a cheque from Save Energy to Mr. Kazman and a cheque back to Oakwood. The number of cheques and the timing is consistent with an attempt to obscure where money was coming from. These transactions are highly suggestive of money laundering.

539 Although Dufferin Paralegal is not one of the 16 SBLs, it is the Crown's position that I can consider it since this SBL was from the BOM in May 2008, which is in the timeframe in count #3. I agree, although I do not accept the Crown's submission that I have sufficient evidence to conclude that the Dufferin Paralegal SBL was a fraud.

540 Also suspicious is the fact that Ms. Cohen signed an Oakwood cheque payable to Mr. Kazman for \$54,850 dated May 15th and then Mr. Kazman signed a personal cheque for \$55,000 to Dufferin Paralegal on May 20, 2008. Mr. Coristine suggested to Mr. Kazman in cross-examination that he was using Qua money as seed money to show the bank start-up capital for his Dufferin Paralegal SBL. He answered "possibly" but when he saw the word "contribution" on the cheque he said maybe it was a loan to purchase a property. That does not make sense, as the word "contribution" would be consistent with an injection of equity. In any event, what is suspicious is the timing of the payments back and forth particularly as Mr. Kazman had just received funds from Oakwood.

541 I accept that some of the payments from Oakwood to Mr. Kazman could be legitimate. For example, Oakwood paid his company 6747841 Canada Inc. \$10,000 on April 17, 2008 and the Re: line states: "loan". There may have been legitimate payments to Ms. Cohen as well. When I consider these two examples, however, that I have set out, the only reasonable inference I can think of is that these transactions were done to obfuscate the source of the funds to hide the fact that some of that SBL proceeds were being used to fund another SBL.

(h) Summary of Findings of Fact

542 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Qua SBL.

543 As I have stated, I found a great deal of Mr. A. Tehrani's evidence in connection with Qua to be incredible. It makes no sense that he would only look at the proposed unit from the outside. I do not believe that he had no knowledge of what was in the envelope he alleges Mr. Levy provided to him to take to the bank and his evidence that there was a sealed envelope is highly suspect given his general lack of memory about these events. It seems to have been made up to give him a defence had the Crown proven the TD GIC was in fact altered. However, the Crown did not prove that there were any misrepresentations in the documents provided to the BNS to obtain the Qua SBL.

544 The Crown submits that all of the evidence from Mr. A. Tehrani to this point is unreliable and that at a minimum, it supports a finding of willful blindness given the total lack of information he tried to obtain. It was as if he did not want to know how Mr. Levy would get him an SBL. However, based on this loan alone, I am not able to find that the Crown has proven willful blindness beyond a reasonable doubt in terms of this SBL application process. Mr. A. Tehrani gave repeated evidence that he saw Mr. Levy as an expert whom relied on.

545 I am however convinced that Mr. A. Tehrani took a more active role than he suggests in the leasehold improvements and purchase of fixtures, furniture and equipment for his store. I do accept, however, that it was Mr. Levy that he dealt with respect to the renovations and that Mr. Levy is the one who provided the Oakwood invoices to him. I find that he must have looked at them more closely that he suggested given that it was his money that was being used to pay them.

546 I cannot conclude, considering the invoices alone, that the work that was purported to have been done was not done, given that I do not have any evidence as to the condition of Mr. A. Tehrani's store before the renovations were undertaken. There are, however, a number of concerns with the evidence. The fact that this work was supposedly done in only three weeks is highly suspicious. When asked, Mr. Levy testified that you could do a gut/rebuild job in a week if you put sufficient resources into it. However, Mr. Kazman testified that this type of work would typically take in the order of three months, which in my view is more realistic. Furthermore, given the lack of much in the way of payments to third party suppliers it is likely that at the very least the invoice for leasehold improvements was overstated.

547 In addition, I have a great deal of difficulty with Mr. A. Tehrani's professed disinterest in what was actually done beyond the cosmetics given that he was billed almost \$232,000 for this work; a lot more than what one would pay for a paint job. However, given his surprise about the new air conditioner it seems he really did pay no attention but surely if this was a legitimate business and he was actually putting his own funds at risk he would have been concerned about expensive items such as replacing the storefront and the HVAC. The invoice for equipment also seems excessive. Why would Mr. A. Tehrani need two computers and a laptop? Why would he need two fax machines? Where was he even going to put a conference table with six chairs in such a small space given all of the inventory he says he purchased? It is unfathomable that he would not be concerned about spending so much money on a small 900 SF unit. In my view I doubt that all of the equipment on this invoice was ever delivered.

548 However, despite my doubts, given the lack of evidence about the state of 677 Queen and the equipment actually supplied, I cannot find that it was not gutted and rebuilt as stated in the Oakwood invoices. I am also not able to conclude that the alleged fixtures, furniture and equipment were not provided.

549 If, however, the work that was stated to have been done in the first Oakwood invoice was in fact done, then clearly a great deal of it benefited Mr. Kazman and his partners as owners of the property. Clearly with all new electrical, plumbing, walls, a hardwood floor and an entirely new glass storefront and door, the property was improved significantly. This will become relevant to Mr. Tehrani's company Kube that is the next company to rent these premises.

550 There is another real question as to whether or not all of the payments Qua made to Mr. Tehrani's companies, Comod and Meez Ltd., were in fact for inventory supplied to Qua. I have already commented on the timing of those payments. After the payments were made towards the two Oakwood invoices and the first Comod invoice, Mr. A. Tehrani was left with very little money to run the business. If he did get the amount of inventory he purports to have purchased from Comod and Meez Ltd. it seems excessive, quite apart from the question of whether or not it would have all fit in his small store.

551 I am also troubled by the disappearance of the inventory and the equipment when Mr. A. Tehrani vacated. If he did leave it behind then the landlord, Mr. Kazman's company, must have sold it and Mr. Kazman would have been aware of that. If he did not then Mr. A. Tehrani must have done so or given it back to Mr. Tehrani. Certainly Mr. Tehrani took over the store virtually at the same time as Mr. A. Tehrani vacated.

552 Finally, although there is no evidence that any of the other defendants would have been aware of this, payments from Oakwood to Mosaic are suspicious and the examples I have given of cheques going back and forth between Ms. Cohen and her companies and Mr. Kazman and his companies suggest they were laundering money. However, I cannot be certain of that if I consider only the evidence set out here with respect to Qua.

553 In the end, the onus being on the Crown, I cannot find beyond a reasonable doubt that any of Messrs. Kazman, Levy, A. Tehrani or Tehrani committed fraud with respect to Qua. I wish to emphasize that this finding is made without considering the evidence concerning the other counts, which I have found, can be considered as similar fact evidence. I will make those findings after I consider the evidence with respect to all 16 SBLs.

Roxy Design Inc. (Roxy) - CIBC -- Count # 5

(a) The Roxy SBL

Roxy (Salehi) was approved for a SBL from the CIBC on May 7, 2008 in the amount of \$166,500.

554 Although Mr. Salehi did not testify, based on his driver's licence, I am able to determine

what documents he signed and I am able to confirm that the person who signed those documents is the same person who obtained the SBL's the Crown relies upon.

555 What we do know about Mr. Salehi is that just prior to obtaining this SBL he was an employee for Meez Corp., possibly a partner, and was receiving regular payments from Meez Corp. dating back from November 2006 to March 2008. Mr. Tehrani also testified that he was a partner in Meez Ltd.

556 The CIBC loan file contains a lease dated May 1, 2008 between Roxy and Trust Inc. Realty, (in fact Trust Inc. Realty Corp.), for 1,000 SF at 508 Bloor Street West, Toronto (508 Bloor) for ten years to start May 1, 2008 at \$2,500 per month plus GST plus utilities. Although the signature on the lease does not look like Mr. Levy's, he admitted that he prepared and signed this lease and that he was sub-leasing the property to Roxy. There is no dispute that Mr. Salehi signed the lease on behalf of Roxy. Trust Inc. rented this location for a ladies' clothing store that had been operated by Mr. Levy. Mr. Levy testified that he had his landlord's permission to sublet the premises although that does not explain why he used a different company for the sublease and did not sign with his usual signature. In any event nothing turns on this. Mr. Kazman said he had no involvement with this lease and that he did not see it until these proceedings and there is no evidence to the contrary.

557 Mr. Salehi incorporated Roxy on May 8, 2008 with an address of 508 Bloor. According to documents filed with the CRA, this business was to be furniture and decorating, fashion accessories, and designing.

558 Mr. Salehi received a \$100,000 cheque from Save Energy dated May 20, 2008, which he deposited into Roxy's account at the CIBC along with a personal cheque of \$8,000 as his start-up capital. As I have already set out with respect to the Qua SBL, these funds can be traced back to LSC and Qua. There is no evidence that Mr. Salehi knew this or that he even knew anything about Save Energy but Ms. Cohen at least must have known about this loan.

559 Mr. Kazman denied knowing about this \$100,000 payment and maintained that Ms. Cohen never discussed business with him. He nevertheless testified that this payment was probably a loan. However, as the Crown submits, there is no money observed going back to Save Energy from Roxy, Mr. Salehi or any of his other companies. In his written submissions Mr. Kazman submits that the Crown is in error and that this was a real loan to a third party and secured by appropriate documentation and that the loan was ultimately repaid with interest. He does not refer to any evidence in support of this position nor explain how he would even know this given he denied knowing about this loan. I do agree with him, however, that with respect to Qua alone, there is no evidence that he or Ms. Cohen were aware of any use these funds were ultimately put to.

560 Mr. Levy also denied knowing that Save Energy gave \$100,000 to Mr. Salehi to fund Roxy.

561 Mr. Levy admits that he prepared the first Business Plan for Mr. Salehi but there was no Business Plan in this CIBC loan file. I presume it has been lost.

562 The CIBC loan file contains four pages of documentation about a GIC in the amount of \$98,571.53, purportedly purchased from RBC by Mr. Salehi to mature February 8, 2009. The Crown called Eva Burton (nee Cekanska) who adopted as true an affidavit that she swore when she was employed as a Fraud Analyst for RBC. Ms. Burton's evidence was that the GIC documentation provided to her, which is what was in the CIBC file, had been altered. She attached a copy of a RBC snapshot of the closed GIC information. Mr. Salehi only had a GIC for \$1,000 purchased on April 1, 2008 and cashed out on August 4, 2009. When she checked the GIC account number shown on this GIC documentation it was in fact an investment account for two individuals unrelated to Mr. Salehi. In other words Mr. Salehi did not have \$98,571.53 in his name and that GIC number never belonged to him. Ms. Burton denied that it was possible that she made an error. She testified that when you type in the number you see the person who owns the investment and that number was already in use by another customer.

563 Both Mr. Kazman and Mr. Levy denied any knowledge of this fraudulent GIC.

(b) The Purported Renovations to 508 Bloor and Purchase of Equipment, Furniture and Fixtures

564 The CIBC loan file contains two invoices from Oakwood, the first dated May 21, 2008 for \$90,562.50 and the second dated June 6, 2008 for \$114,299.50, for a total of \$204,862. The first invoice has the usual Total Gut Job and the usual Total Rebuild, which purportedly included a new storefront. The CIBC advanced two payments totaling \$166,500 to Roxy towards the payment of the Oakwood invoices which were then paid in full by Roxy using these funds and some of the start-up capital.

565 Mr. Levy testified that he offered the unit to Mr. Salehi "as is" and that \$200,000 for renovations was "nothing". He said that he authorized Mr. Salehi to "gut" the place and that he did not need the landlord's permission for this as his lease let him do whatever he wanted. I find this hard to believe but this lease is not in evidence. The fact that Mr. Levy used a different company as the sub-landlord does suggest he had concerns but he was not asked about this.

566 Mr. Levy first testified that he had nothing to do with the Oakwood invoices but he said it could be that he subcontracted to Mr. Kazman/Oakwood and that he would have to see the documentation to know. When Mr. Coristine asked him in cross-examination if he remembered this without regard to what was on the cheques, he answered with the query: "how can I remember?" even though this unit was one that he was renting. He added that he did a lot of jobs in 2008 and testified that he could not say if he did the subcontracting-it could be "yes or no." When Mr. Coristine pointed out that Mr. Kazman called contractors to testify who remembered doing certain jobs, Mr. Levy simply repeated that he did a lot of jobs. When he was shown the cheques paid by Oakwood to Mosaic and MDC Modern Design, he admitted that he was subcontracting to Oakwood. This exchange was one of many examples where Mr. Levy would only make an admission when he was boxed in.

567 Later in his evidence Mr. Levy testified that Mr. Salehi did a new storefront; namely a side window and single door and that he put up cabinets, changed all of the lighting to half potlights

and half fluorescent. He said that there was then a flood and the whole ceiling was destroyed. I note that although originally he had no recall of doing the leasehold improvements for Roxy he was suddenly able to remember what was purportedly done; another example of a significant internal inconsistency.

568 Mr. Kazman testified he was not involved in any work done by Oakwood at this location, that he did not go to 508 Bloor during the time of the invoices and that he has no knowledge of what was done. He also denied any knowledge of the Oakwood invoices and testified that he did not know why money was paid to Oakwood and then to other companies. However, he did say at one point in his evidence in chief, when he was reviewing the loans, that he was "happy to get the job" when Oakwood was hired for the job. This was a very telling slip by Mr. Kazman when he was giving his evidence and is consistent with a finding that he and Ms. Cohen were in fact in control of Oakwood. Mr. Kazman's response to this is that he may have been "happy to get the job" if indeed he said that as alleged by the Crown, because as the evidence disclosed, he would have likely been entitled to a commission based on a percentage of the funds that went through the account, or a fee. Mr. Kazman said that he did not step foot on the premises, and did not do any renovations whatsoever, or arrange them.

569 The date of the lease and the first Oakwood invoice suggests that the Total Gut Job and Total Rebuild were done in three weeks. When Mr. Levy was asked about this he said that this job could take five days because there was no structural work. However, he also said he never tried to complete a job this fast-he would go slow to ensure he would get paid. He would do part of the job and then get paid and then complete the work. However, as the Crown pointed out, unless there was a full deposit, for all of the SBLs, payment of the construction invoice was made after the work was done so this evidence did not make any sense.

570 Mr. Levy accepted that Gilles Mechally had received a SBL for "Kaos Clothin" in late 2008 for this location as a sub-tenant to Mr. Levy. The Crown submits that this "means that Gad Levy gutted his landlord's property twice in a 6-month period...". I do not believe Mr. Levy admitted that and the Crown did not otherwise prove this. I pause here to say, however, that I do not accept Mr. Levy's evidence, which he gave on more than one occasion, that there was nothing wrong with gutting a place twice because "everyone has to do what they want." A Total Gut Job involves removal of all walls and partitions, existing wiring, the electrical panel, plumbing, and HVAC, which clearly means stripping the unit back to the bare walls. This is not the kind of work that would have to be done over and over in a matter of a few months or a few years. I do not need expert evidence to come to this common sense conclusion. However, this is another property where I do not have evidence of its condition before it was leased to Mr. Salehi.

571 I also do not accept Mr. Kazman's submission on this that the reason why some premises were gutted many times over is that for Mr. Levy, the larger the invoice the greater his profit. Although I agree with his submission that it is not reasonable or fair for the Crown to now say the work was not necessary, in my view, I am able to come to the conclusion in some cases that the property was not in fact gutted a second or third time. As I will come to, I am able to come to this conclusion because I have found that the tenant did not demand a Total Gut Job or pay attention to the work actually done, and Mr. Levy, wanting to make as large a profit as possible, did not repeat work that had been recently done or install items such as a new HVAC. This

conclusion is reinforced by the fact there is generally very little money spent by the construction companies for construction supplies and equipment. I agree with Mr. Kazman that Mr. Levy's motivation was profit and not doing the work but still billing for it, is the best way to maximize profit.

572 It is also suspicious that Qua and Roxy, owned by two different individuals, would need numerous identical items of equipment. However, that could be because Oakwood was the supplier for both and they are both furniture stores. However, what is possibly evidence of fraud is the fact that on the second Oakwood invoice for the equipment purportedly supplied to Qua, the serial numbers listed on this invoice for five pieces of equipment are identical to Oakwood's second invoice to Roxy; namely a PC Dell Computer, a HP Pavilion 22" LCD Monitor, a Printer, Fax, Scanner Sharp Machine, a Refrigerator Honeywell and a Toshiba Laptop. In addition, further equipment on both invoices is the same with slightly different serial numbers including: HP Fax, Printer, Photocopier, HP Deskjet Printer 460 and Danby Microwave. Clearly the same equipment cannot be sold and supplied to different customers twice. This implicates Oakwood and anyone with knowledge of Oakwood's operation, possibly Mr. Kazman and/or Ms. Cohen and/or Mr. Levy. It is not possible to tell as between Mr. A. Tehrani and Mr. Salehi, who did not get what they supposedly purchased.

573 I will address one of the Crown's submissions here that impacts all 16 SBLs. The Crown argues that it is suspicious that a general contractor would be hired and paid a markup to go shopping for readily accessible retail products such as non-custom office furniture, computers and small appliances. I agree that this seems odd. Mr. A. Tehrani was not asked about his reasons for doing this but Messrs. Tehrani and Ghatan said that their time was more valuable so it was worth it to get a "turnkey" operation. I do not have any evidence that would contradict this and so on this point I draw no adverse inferences against the defendants.

(c) Did Roxy Operate as a Business?

574 Mr. Coort analyzed Roxy's account with the CIBC from the time it opened on May 16, 2008 to September 30, 2008. The account, however, was not closed by this time.

575 In terms of inventory, a demand letter dated March 9, 2009 from the solicitors for Meez Ltd. to Roxy stated that Roxy had purchased merchandise from May 15 to December 5, 2008 in the amount of \$221,135.17, had made payments totaling \$90,770, leaving a balance owing to Meez Ltd. in the amount of \$130,365.17. This amount was demanded within 14 days of the date of the letter failing which legal action would be commenced without further notice (the "Demand Letter").

576 The evidence about this letter is concerning. Apart from issues with the math, which I will come to, Mr. Tehrani testified that he retained a lawyer, Gary Steinberg, to write the Demand Letter even though Mr. Salehi had previously retained Mr. Steinberg. The Crown does not suggest that Mr. Steinberg acted improperly but does suggest that Messrs. Tehrani and Salehi probably deceived Mr. Steinberg to give the appearance of a legitimate debt. Mr. Tehrani denied it was an attempt to obtain creditor status with Roxy for the insurance claim that would follow months later. There is no proof of any of these suggestions.

577 The explanation for the letter however, is unconvincing. Mr. Tehrani said the Demand Letter was an attempt to get Mr. Salehi's wife to help Mr. Salehi with his drinking problem - something we heard about for the first time in cross-examination by the Crown. Mr. Tehrani told of finding wine bottles in the basement at Meez Ltd. It is unclear why Mr. Tehrani did not pursue other means of getting Mr. Salehi help such as calling his wife and the letter was not even copied to her. Given how Roxy was doing in terms of sales, I find it very difficult to believe that Mr. Salehi would have bought the amount of inventory referred to in the letter. When asked by Ms. Barton how the situation ended, Mr. Tehrani said: "I don't know if he paid in full, but we slowly resolved his matter." What is also strange is that Mr. Tehrani continued to do business with Mr. Salehi. For example, Comod Corp. provided \$25,000 in seed money for Modernito Design Inc. (Modernito), Mr. Salehi's next SBL, on March 30, 2009, which makes no sense if Mr. Salehi owed Mr. Tehrani so much money. There is other evidence I will come to that is inconsistent with the position taken in the Demand Letter.

578 The invoices that are claimed to be outstanding were attached to the Demand Letter. The descriptions of items sold are very general such as "assorted purses, assorted earrings, rings, bangles and necklaces". It is not what I understood was the type of merchandise that Meez Ltd. sold. Furthermore, it seems to be an excessive amount of inventory for a new store, especially a store that had low sales. There is an invoice for almost \$25,000 dated May 15, 2008 but the next one is not until October 20, 2008 and then October 22, 2008 and November 5, 2008 with a number of others in November ending December 5, 2008. These invoices total \$194,939.51, less than the amount referred to in the Demand Letter. There is no evidence to explain this discrepancy but this issue is not material to my determinations.

579 The Court Analysis shows that Roxy paid Meez Ltd. \$10,000 by cheque date June 3, 2008; "Re: Purchase"; \$14,570 by cheque date June 10, 2008 "Re: Payment" of what appears to be an invoice number. There are no payments from Roxy to Meez Ltd. after this until September 30, 2008. There is no evidence that this was when the account closed but at that point that account had an account balance of \$577.85. Assuming that there were no payments to Meez Ltd. after this, Roxy only paid \$24,570 to Meez Ltd. for these invoices, not \$90,770 as stated in the letter. There were no payments in this period by Roxy to any other of Mr. Tehrani's companies. There is, however, a letter dated March 5, 2009 from Comod in the Modernito file, which suggests Mr. Salehi was owed \$60,000 and was repaid which could explain some of this. In any event, given that I do not have all of Roxy's banking records I can't be certain that the letter is incorrect. It would appear, however, that the full amount owing was never paid.

580 Possible sales by Roxy include a cheque dated March 30, 2009 from Trust Inc. for \$6,795.52 payable and a cheque date April 3, 2009, from MDC Modern Design for \$6,320.61 Re: Inv #27 which Mr. Levy said were for furniture. He testified however, that he dealt with Mr. Tehrani and made the cheques payable as directed by him. I accept this evidence because as of April 2009, it appears that Roxy was no longer operating and would not be able to sell furniture. There appears to be no legitimate reason for Mr. Tehrani to have instructed Mr. Levy this way.

581 I presume, given the dates of the Oakwood invoices, that Roxy opened around the end of

June 2008. Before July 1, 2008 there is no evidence of any sales or payments for payroll or commissions. According to the Coort Analysis, in the period from July 1 to September 30, 2008, Mr. Salehi had a total of \$26,056.61 in cash, debit and credit sales. In the same period there were payments for payroll and commissions to four women and Mr. Salehi took draws.

582 Roxy reported to the CRA that for the period from May 20 to December 31, 2008, sales and other revenue were at \$49,415. However, for 2009 and 2010 Roxy reported no sales or revenue. Roxy did not file any corporate income tax returns.

583 Roxy paid rent, payments to employees for payroll and commission and loan payments for the months of June to September 2008 but it may be that there were payments that we do not have a record of.

584 Mr. Levy said that Roxy was making a lot of money on Bloor Street and that the only reason the loan went into default was because of a flood. I would not characterize the evidence I have as suggesting that Roxy was making a lot of money. Using the CRA revenue number and adding the payments to Roxy in 2009 that I have referred to, sales were, at most, about \$62,500. This gives rise to the question of why Roxy would be buying the quantity of inventory from Meez Ltd. that the Demand Letter suggests.

(d) The Appraisal of Roxy's Assets

585 According to Industry Canada documentation, Roxy's SBL went into default on May 15, 2009. There is therefore no evidence of what happened to Roxy's assets once it stopped operating.

586 Gowlings retained Mr. Mizrahi on September 22, 2009 to contact Mr. Salehi, so Mr. Mizrahi could get into the leased premises and conduct an appraisal on a "breakout value basis", which he explained means a liquidation value save that he was to value each item separately. He was given two phone numbers and made efforts to contact Mr. Salehi but he never called him back.

587 Mr. Mizrahi went to look at the premises after September 22 and before September 27, 2009. He was not able to tell if there was a business at 508 Bloor or any signs about Roxy because a restaurant at 504 Bloor had taken over unit 508.

588 Mr. Mizrahi sent a reporting letter dated October 28, 2009 to Gowlings, which included information he had received from someone at the restaurant that the business at 508 had closed down immediately after a fire (I understand it was a flood). He didn't see the Oakwood invoices and as a result did not give a value of the Roxy assets.

(e) The Circulation of the SBL Proceeds

589 The Coort Analysis considers what Oakwood did with the money received from Roxy. In the first two weeks of June 2008, Oakwood received payment of its invoices from Roxy in addition to about \$36,500 from Dufferin Paralegal and \$65,000 from the Lipman firm.

590 From those funds in the period from June 5 to June 25, 2008, Oakwood paid out

\$68,964.49 to Mr. Kazman's companies; Cramarossa, Blue Glass, M&M and 1040 Holdings; \$154,745.02 to Mr. Levy's companies; Mosaic, MDC Modern Design and Trust Inc. and \$34,667.14 to Ms. Cohen, ES Hem Co., a company incorporated by her father and Eric Sade who I presume is a member of her family. It is significant that all of these payments were the only amounts greater than \$1,000 paid out of the Oakwood account in this period. In other words there are no payments for equipment purchased from Dell, HP, Sharp, Panasonic, Sony or other similar suppliers that could explain the equipment Oakwood purportedly delivered to Roxy.

591 The payments made to Cramarossa, a company owned by Mr. Kazman, had a Re: on one cheque "on account for inv 266". As an unlikely coincidence this invoice number is one number higher than a payment from Oakwood to MDC. Despite this unlikely coincidence, theoretically it is possible that Cramarossa did a small amount of the renovation work for Roxy.

592 The payments Oakwood made to Mr. Levy's companies Mosaic and MDC Modern Design could have been for renovation work done by those companies for Oakwood. The cheque to MDC Modern Design has a Re: "On account for inv 265" and a cheque to Trust Inc. has a Re: "on account for inv 267". Mr. Levy testified that Trust Inc. did not do construction work and speculated that the payments from Oakwood to Trust Inc. may have been Mr. Kazman paying money back to him slowly, which in my view does not explain this.

593 I will deal with what came of the payments Oakwood made to Mosaic when I consider Contempo, which was the next SBL that Mr. A. Tehrani obtained.

594 In the same period, Oakwood paid \$75,421.50 to Meez Ltd. on June 13, 2008 which, according to Mr. Tehrani, was a loan; what I will refer to as the Oakwood Loan.

595 Also in the period from June 13 to 23, 2008, from the \$69,754.22 that MDC Modern Design received from Oakwood, it paid out \$35,256.29 to Comod, \$8,657.21 to Meez Corp. (Re: Account for Inv. 2021) and \$8,868.25 to Trust Inc., which paid back the same amount to Comod "on account" on the same day. MDC Modern Design also paid more than \$6,000 back to Qua "on account" which Mr. Levy said was for furniture. Mosaic also paid a total of \$29,995 to Meez Corp. This was a lot in terms of payments purportedly for furniture. The Crown takes the position this was money laundering but based on these payments alone I could not conclude that. I will revisit this issue when I consider the similar fact evidence.

(f) Findings of Fact

596 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Roxy SBL.

597 The Crown submits that this SBL established a link between Ms. Cohen, who was a total fraudster having obtained four fraudulent loans, and Mr. Salehi and her involvement is probative of Mr. Salehi's intention to commit fraud at the very outset of the Roxy loan. In particular the Crown submits that Ms. Cohen conspired with Mr. Salehi to launder the seed money he received from Save Energy back through Oakwood.

598 The problem with this submission is that there is no evidence that Mr. Salehi knew Ms. Cohen or that he had met her or that he was aware of her prior SBLs or that he knew anything about Save Energy apart from the fact he received a \$100,000 loan from that company. Mr. Kazman's suggestion that this payment could have been a loan is certainly a possible inference and if it was not paid back, that does not mean Mr. Salehi was a party to a fraud given his lack of success in his business. Based on all of the evidence I have heard Mr. Salehi would not necessarily have met Ms. Cohen to obtain a loan from her.

599 The Crown submits that Roxy features the same *modus operandi* for Mr. Kazman and Mr. Levy - both appear in some form as contractor and/or landlord and both receive significant payments throughout the course of the circulation of the SBL proceeds. The involvement of Ms. Cohen, their close business partner, also provides probative evidence of a conspiracy between Ms. Cohen, Mr. Kazman, and Mr. Levy to defraud CIBC through Roxy. I do find that from the money paid to Oakwood for the invoices issued to Roxy, most of the money was paid to Mr. Tehrani's companies, purportedly for inventory and the Oakwood Loan and to Mr. Levy's, Mr. Kazman's and Ms. Cohen's companies. Based on the evidence related to Roxy alone, I cannot come to any conclusion about this but I will come back to this question when I consider the similar fact evidence.

600 The Crown also submits that both Mr. Tehrani and Mr. A. Tehrani are implicated here because of the circulation of funds; Mr. Tehrani because of the funds he received which he loaned to his brother to fund the next loan in the "scheme", Contempo. The Crown argues that the Tehranis were knowingly using laundered Roxy proceeds to further their own interests and is proof beyond a reasonable doubt that they acted as parties to the Roxy fraud.

601 Based on the evidence concerning Roxy alone, I find that the evidence does not support this submission. Based on the evidence concerning Roxy alone, I could not find that Mr. Salehi or any of the other defendants are guilty of a fraud on the CIBC. I wish to emphasize again that this finding is made without considering the evidence concerning the other counts, which I have found can be considered as similar fact evidence. I will make those findings after I consider the evidence with respect to all 16 SBLs.

Contempo Design Inc. (Contempo) -- RBC -- Count # 4

(a) The Contempo SBL

Contempo (Mr. A. Tehrani) was approved for a SBL from the RBC on June 8, 2008 in the amount of \$175,000; the loan was later limited to \$85,185.

602 Mr. A. Tehrani explained his decision to start a second store: Contempo. He began this process even before he opened Qua, in early June 2008. As I have said, Mr. A. Tehrani testified that he wanted to "go big" and his goal was to put all his energy into the business and be a success. According to Mr. A. Tehrani, his brother Mr. Tehrani also wanted to sell large volumes of furniture through more furniture stores. When Mr. A. Tehrani spoke to Mr. Levy about what to do if he wanted to open another store, Mr. Levy told him that a second loan was no problem and

that he had a nice store at 1048 Eglinton, below his offices. Mr. Levy's evidence was consistent with this save he said that it was both Mr. A. Tehrani and Mr. Tehrani who came to see him about another location. There is no dispute that it was Mr. A. Tehrani's decision to expand.

603 Trust Inc. Realty Corp. owned 1048 Eglinton at the time. Mr. Kazman testified that he was a silent 50% shareholder in the company although he admits that he was not a signing officer. Mr. Levy disputed this evidence. I do not have to resolve this issue but do find that Mr. Kazman's position undermines his professed lack of knowledge about Contempo.

604 Mr. A. Tehrani testified that when he went to 1048 Eglinton, he didn't pay attention to the inside and looked mostly on the outside at the area and the traffic. It was a good-sized store in a great area. Mr. A. Tehrani said in the beginning he did not know that Mr. Levy was the landlord for Contempo but Mr. Levy denies this. Mr. A. Tehrani testified that he just thought Mr. Levy was connected "to all these people". He was not clear on who he was referring to.

605 The RBC loan file contains the Agreement to Lease dated May 7, 2008, prepared by Mr. Levy between Mr. A. Tehrani for a company to be formed and Trust Inc. Realty Corp. for 2,000 SF on the main and lower floors of 1048 Eglinton for retail home décor, furniture and accessories for five years to commence June 1, 2008 at \$3,500 per month plus utilities and all expenses. Mr. A. Tehrani and Mr. Levy signed the lease on the same date. Mr. Levy said that between the main level and the lower level the square footage was 2,600 SF but I do not accept that evidence. The Business Plan and the lease both refer to a 2,000 SF space and Mr. Levy does not strike me as the type of businessperson who would significantly understate the square footage in a lease.

606 Mr. A. Tehrani then incorporated Contempo on June 10, 2008, just three months after he incorporated Qua.

607 In terms of his application for a SBL, Mr. A. Tehrani testified that he believed Mr. Levy had most of his information and it is his evidence that again Mr. Levy prepared the whole package including a Business Plan. The one found in the loan file is dated June 1, 2008 and is virtually identical to the Business Plan for Qua. Mr. A. Tehrani didn't remember going through the Business Plan. Mr. Levy testified that he only prepared Mr. A. Tehrani's first Business Plan which would be the one for Qua and that the Contempo Business Plan was duplicated from the first one he gave Mr. A. Tehrani and that he did not prepare it. The Business Plan in the loan file does not have a table of contents or page numbers but as I will come to, I have found that that is not determinative of whether or not it was prepared by Mr. Levy.

608 This Business Plan represented that Mr. A. Tehrani was going to invest \$100,000 of his own equity in the business. The Coort Analysis shows that Meez Ltd. gave \$100,958.89 to Contempo on June 23, 2008. These funds came from payments to Meez Ltd. by Roxy (about \$25,000) and Oakwood (the Oakwood Loan of about \$75,000) that Mr. Coort traced, in part, back to SBL proceeds obtained by Roxy.

609 Mr. Tehrani testified that the \$75,421.50 that Oakwood paid to Meez Ltd. from the Roxy SBL proceeds was a loan from Oakwood (Oakwood Loan), which he said he borrowed for Mr. A.

Tehrani for his start-up capital for Contempo; the net amount of the loan cheque dated June 13, 2008 was for \$75,421.50 (\$80,000 less three months pre-paid interest). Ms. Barton put to Mr. A. Tehrani that because of the breakdown in his relationship with his wife, he couldn't put a mortgage on his house to fund Contempo. Mr. A. Tehrani did not seem to appreciate that suggestion save that he said he had a "difficult situation". His evidence on this loan was uncertain. At most he knew that his brother loaned some money to him.

610 The Oakwood Loan was secured by a promissory note dated June 12, 2008 signed by Mr. Tehrani in favour of Oakwood. The interest rate on this loan was 22%. Mr. Tehrani testified that it was worth it to him to pay the 22% interest because he made more than that in profit with his furniture importing, and it was more important to him to have the money to work with in the present. This loan was also supposed to be secured by a mortgage on Mr. Tehrani's home at 245 Keele Street (245 Keele) which at the time was in his name alone, but that mortgage was never registered. Mr. Tehrani testified that he did not know that it had never been registered.

611 Mr. Kazman said that it looked like he prepared the promissory note and his recollection was that a mortgage was prepared but he admitted that the mortgage was not registered and said that it depended on his instructions from Mr. Levy and Ms. Cohen. He also admitted that he may have been told to register the charge and did not do it inadvertently. If he was not a lawyer at the time, he would have had to get a lawyer to register the mortgage. Mr. Kazman said that he did not know what the purpose of the loan was and that Mr. Levy assured him that it would be repaid.

612 Mr. Tehrani testified that there was no documentation between him and Mr. A. Tehrani with respect to the loan. Mr. A. Tehrani's intention was to pay him back but he didn't know when. Mr. A. Tehrani said he paid money back on this loan when he could but he was not sure how much he paid back. Mr. Tehrani testified that he paid the loan back to Oakwood and this is confirmed by a Discharge Statement signed by Mr. Kazman on behalf of Oakwood, on Oakwood letterhead dated June 8, 2010, which confirms that the principal of \$80,000 plus interest of \$30,000 was paid. Under Mr. Kazman's signature it states that he had authority to bind the corporation in this transaction. Mr. Kazman directed that the payment be paid to his company, 6747841 Canada Inc.; a company he and Ms. Cohen had an interest in. The Crown did not dispute this repayment of the loan, which occurred after the timeframe of the Coort Analysis. There is no evidence as to why money lent by Oakwood was ultimately received by Mr. Kazman's company.

613 I find it very difficult to believe that Mr. Tehrani would agree to a loan at such a high interest rate, that put his home at risk, in order to lend money to his brother, given how poorly Qua was doing and how quickly Mr. A. Tehrani was moving on a second store. I appreciate that for Mr. Tehrani, his brother was a client to the extent he could afford to pay for inventory, but this does suggest that there might be another reason for Mr. Tehrani to be helping his brother get a second SBL.

614 The Crown also submits that it is suspicious that Mr. A. Tehrani would have his brother borrow money at 22% annual interest to start Contempo when he had a GIC for the same amount. I agree, but the Crown failed to prove that the GIC did not exist. The Crown also queries why the loan from Ms. Cohen was to Mr. Tehrani, as opposed to Mr. A. Tehrani since

Ms. Cohen must have known Mr. A. Tehrani, as Oakwood was the Qua contractor three months earlier. That is a good question that was not answered in the evidence. The Crown also submits that even though Mr. Tehrani said he only knew Mr. Levy who arranged the loan for him, he must have known, at the very least, that it was coming from "other sources" to assist him with fraud. That I do not accept based on the evidence with respect to Contempo alone.

615 The Crown submits that it is highly suspicious to say the least, particularly given what is known about the veracity of Ms. Cohen's four loans, that companies associated to her were making loans to the defendants. Although I do agree that it is highly suspicious that Mr. Tehrani would agree to such a loan, particularly if his brother had a GIC, as he represented to the bank, and that it is odd that the loan was not to Mr. A. Tehrani, these concerns are not sufficient to prove that Mr. Tehrani knew anything about a fraudulent scheme at this time.

616 The Crown argues that the level of co-ordination and planning makes it impossible to believe that the parties were not, at least generally, aware of each other and that even if Mr. Kazman and Ms. Cohen were operating behind the scenes, the Tehranis could not reasonably have assumed Mr. Levy was doing all of this alone. However, as Ms. Barton submitted, Mr. Levy, as a "control freak", could well have been seen to be doing it all himself. On the evidence it seems that Mr. Levy would arrange this and other loans and Mr. Kazman would prepare the paperwork. Given Mr. Kazman's relationship to Mr. Levy and Ms. Cohen, I do not find it so unlikely that Ms. Cohen would lend out money without meeting the borrower. I accept Ms. Barton's submission that it may be that Mr. Tehrani did not meet Ms. Cohen and Mr. Kazman at this time, given Mr. Levy arranged the loan.

617 The Crown also argues that this was a convenient way to launder the Roxy loan proceeds and provide the appearance of a legitimate paper trail in the process. This is a submission I will consider when I consider the similar fact evidence. I could not conclude this based only on the fact this loan was made by Oakwood particularly given it was paid back.

618 Mr. A. Tehrani testified that he asked Mr. Levy, because he was the expert, which bank he should go to and this time Mr. Levy told him to go to the RBC at St. Clair and Yonge. When cross-examined by Ms. Brun, Mr. A. Tehrani denied that it was shady that he applied for this SBL with the RBC given the Qua SBL was with the BNS. In my view, the fact that Mr. A. Tehrani asked Mr. Levy which bank to go to is concerning and he gave no explanation for why he would not have assumed he would simply go back to the BNS. Furthermore, given his lack of memory, this seemed to be a strange detail for him to remember given that he remembers very little.

619 I find that Mr. A. Tehrani went to a different bank, probably at the suggestion of Mr. Levy, because he knew he would not get a second SBL with the Qua loan outstanding, particularly with Qua barely open. When asked by Mr. Kazman if he had talked with the bank manager about Qua, Mr. A. Tehrani said that everything he told the manager was true because he told him that he had an account at BNS but it is clear he did not tell him that he had the Qua SBL there. Furthermore, there is no reference to Qua in the Contempo Business Plan, which one would have expected if Mr. A. Tehrani wanted to highlight his business experience and his desire to "go big". Although Mr. A. Tehrani testified he never read the Business Plan, there is no doubt that he did not want the RBC to know about his plans to "go big" in such a short

timeframe. In fact, Mr. Tehrani candidly admitted he did not go back to the same bank when he applied for a SBL for Kube because he knew that the bank would not fund a second SBL. Obviously this was in Mr. A. Tehrani's mind as well.

620 Mr. A. Tehrani testified that he went to RBC and met with the bank manager and told him he wanted to apply for a business loan. Mr. A. Tehrani said this first meeting was about ten minutes long because the bank manager was very busy. The manager opened the envelope that Mr. Levy gave him and, according to Mr. A. Tehrani, he really liked the Business Plan. As before, Mr. A. Tehrani gave him his phone number and told him to call if he had any questions.

621 Mr. A. Tehrani did not testify about filling out any forms at this first meeting and said that he went back to sign documents after the loan was approved. This must be incorrect as he admitted that he filled in the document headed RBC Royal Bank Financing Options Application and he signed this document on May 15, 2008, which is before the SBL was approved. Mr. A. Tehrani admitted that all the handwriting on this document was his save for the notes on the bottom. For his personal net worth calculation Mr. A. Tehrani referred to both the TD and National Bank GICs totaling \$115,312. In terms of liabilities, Mr. A. Tehrani referenced having accounts at BNS where he had his Qua business account and SBL but he made no reference to having another SBL as part of his liabilities. It is true that the Qua loan was a liability of Qua but Mr. A. Tehrani was on the hook for the guarantee amount. Under the heading (4) Agreement and Signatures, he certified that the information provided was accurate and complete and acknowledged that the bank would be relying on the information.

622 Mr. A. Tehrani testified that the manager called sometime later to say he was approved. I presume this was on July 11, 2008 when Mr. A. Tehrani signed the RBC Client Agreement. Again, Mr. A. Tehrani testified that when he went back to the bank to sign the documents, he was simply told where to sign. In answer to questions from Mr. Kazman, he said the bank manager did not review documents with him that he needed to sign. As I said in connection with Qua, this evidence contradicts Mr. A. Tehrani's general evidence when he was asked about the creditor life insurance form in the Qua loan file by Mr. Inoue.

623 The loan file also contains a number of documents that were faxed to the bank. They were attached to a typed Facsimile Transmittal Sheet with the heading Mr. A. Tehrani and then Contempo's name and address with a telephone number and in the body a different phone number and fax number. Mr. A. Tehrani did not sign any of the transmittal sheets in the file. The documents faxed to the bank included the Opening Balance Sheet for Contempo as at June 1, 2009 faxed on June 6, 2008, a fax coversheet faxed May 20, 2008 which enclosed Mr. A. Tehrani's 2007 property tax assessment, and the two Northwood quotes dated May 1, 2008, and the first Northwood invoice, a fax coversheet faxed on July 2, 2008 which stated the GST number, a fax coversheet faxed on July 14, 2008, which stated it attached the final invoice #9221 for furniture, fixtures and equipment, and an Invoice Direction Payment form and the second Northwood invoice faxed on July 14, 2008. It is significant that across the top of these documents, the fax header has a reference to the HP Fax Number. I find that this Northwood invoice was faxed to the bank either by Mr. Levy or someone on his behalf.

624 The RBC loan file contains the same TD GIC that is found in the Qua SBL loan file. The

Crown argues that Mr. A. Tehrani lied about this GIC because he used just over \$100,000 from Mr. Tehrani as his start-up capital. The difficulty with this submission is that, as already stated, the Crown failed to prove that this GIC statement had been altered or that it is not authentic. Although I agree it is likely that this GIC was not legitimate, as had it been there would have been no need for Mr. Tehrani to agree to a 22% loan, I cannot conclude on the evidence that this GIC did not exist.

625 Mr. A. Tehrani checked off compliance with the Loan Limit Clause, which was a misrepresentation given the outstanding Qua SBL, which meant he had more than \$350,000 in outstanding loans. Mr. A. Tehrani testified that the bank manager did not explain anything to him and just told him where to initial and sign. I cannot find that he checked off the box, but as I have already said, his evidence that no bank documents were explained to him was contradicted by his other evidence.

626 As a related issue to this address, the Crown takes issue with Mr. Levy's evidence that he was operating Mosaic from the upstairs of this property at 1048A Eglinton and points out that Mosaic's address on the bank statements do not show the address as 1048A Eglinton. Mr. Levy said there was signage showing a different entrance for Mosaic versus Contempo but the Crown advised that there is no picture of this. The Crown argues that if I accept that Mosaic represented to be in the same space at the same time as Contempo, based on all the official documentation, there would be no reason to believe the Contempo renovations were done. I do not accept that submission. It may be that Mosaic made misrepresentations with respect to its SBL but that is outside the scope of the Indictment and in my view does not assist me in determining what leasehold improvements were done for Contempo.

(b) The Purported Renovations to 1048 Eglinton and Purchase of Equipment, Furniture and Fixtures

627 I have dealt with the history of the renovations to 1048 Eglinton after Trust Inc. Realty Inc. purchased the building in Appendix "L". As set out there, I have found that after the purchase, the basement and the upper two floors of the property were renovated, which included gutting the premises, building a new storefront, installing at least new duct work including grills, diffusers and exhaust fans, new plumbing, which included the fixtures for one washroom and new drywall throughout. These renovations were all done before the lease with Contempo.

628 Northwood was the purported contractor/supplier for this loan. Since Mr. A. Tehrani was happy with the work Oakwood did for Qua, common sense would dictate that he would have wanted Oakwood to do any renovations for Contempo. In fact, Mr. Levy made this point when he testified that Mr. A. Tehrani was satisfied with the work done in the first location and so he wanted to use the same contractor. The problem with that evidence is that the contractor for Contempo was Northwood, not Oakwood. This suggests that from the perspective of whoever was controlling these Disputed Construction Companies, it did not really matter what named contractor was used.

629 Mr. A. Tehrani testified that he doesn't even remember who Northwood was although he did say that he did not know that Northwood was not Mr. Levy when Mr. Levy suggested this to

him. Again, he testified that Mr. Levy said he was going to do the contracting. He told Mr. Levy that he was focusing with him to do everything and that Mr. Levy told him he knew the contractor and so why should he worry about details -- Mr. Levy was organizing it. He testified that he didn't go into details as to who the contractor was and queried why he should have. In fact, he testified that he got Oakwood and Northwood mixed up. In his mind it appears he was dealing with Mr. Levy and he paid no attention to the name of the company. Mr. A. Tehrani said he could not remember Mr. Kazman going to court when the bank wouldn't pay the second Northwood invoice and taking the position that Mr. Kazman was the contractor. He said he was dealing just with Mr. Levy and not focusing on the contractor's name. This evidence was incredible given the evidence provided by Mr. Kazman in that litigation but I do not know how much attention Mr. A. Tehrani was paying to that litigation.

630 Mr. Levy denied that using Northwood as the contractor for Contempo was his idea. I do not accept that evidence, as it seems clear that Mr. A. Tehrani was so disinterested in the actual renovations that he would not care and at the outset he would not have even heard of Northwood. In any event Mr. Levy did admit that he must have subcontracted to Northwood. He resiled from this somewhat later in his evidence and suggested that he "could" have done the subcontracting. I do not accept that and find that whatever work was done on the property was organized by Mr. Levy.

631 In terms of the work to be done, Mr. A. Tehrani testified that he discussed the work that he was going to do with Mr. Levy but then he contradicted himself when he testified that because Mr. Levy had done his first store, they didn't need to discuss much as he trusted Mr. Levy. He wanted it "simple" and "classic" with the right paint colour and gave no other details as to his instructions to Mr. Levy. His position was simply that Mr. Levy was going to take care of it. Although he admitted that he didn't see Mr. Levy actually doing the work, Mr. Levy was the person that he dealt with.

632 The loan file includes two quotes from Northwood, which were faxed to the RBC on May 20, 2008. Both have a typed message at the bottom purporting to come from Marco, on behalf of Northwood. RBC was also provided with two invoices from Northwood, the first dated June 23, 2008 for \$99,382.50 and the second dated July 14, 2008 for \$134,809 for a total of \$234,191.50. Contempo paid the first invoice in full, but for the reasons that follow only paid \$55,000 towards the second invoice, leaving a balance outstanding of \$79,808 which was never paid by Mr. A. Tehrani.

633 The first invoice was for the usual Total Gut Job and Total Rebuild, which included installing a new stainless steel frame storefront and new HVAC. The second invoice lists pieces of equipment that are identical to equipment on Oakwood's invoice dated April 16, 2008 to Qua including the serial number, namely the printer, fax, scanner Sharp machine and the telephone system Panasonic. In addition five pieces of equipment were identical with slightly different serial numbers, namely the HP Pavilion plus 22 LCD Monitor, PC Dell Computer, and HP fax, printer, photocopier machine, a HP Deskjet Printer and a Toshiba Laptop.

634 Mr. A. Tehrani testified that Mr. Levy did the invoicing. Again he couldn't remember how the Northwood invoices got to the bank. It would appear from the loan file that they were faxed since

the loan file contains two faxes purporting to come from Mr. A. Tehrani attaching the Northwood invoices and an Invoice Direction Payment form. Mr. A. Tehrani signed this form but it is not clear if he just signed it for the bank or more likely Mr. Levy and the invoices came later because the one he signed on June 13, 2008 refers to Northwood's first invoice dated June 23, 2008. Furthermore, there is an issue of who actually faxed these invoices. The first invoice has the fax header with the HP Fax Number dated May 20, 2008. Again, for the reasons already set out, I find that the first Northwood invoice was faxed to the bank by Mr. Levy or someone on his behalf.

635 There is therefore an issue as to whether or not Mr. A. Tehrani ever saw the actual invoices. Despite his general disinterest I find that if he were acting reasonably, he would have at least reviewed the work done and equipment supplied according to the invoices.

636 In terms of what he observed of any work done, Mr. A. Tehrani testified that he had more time to observe the renovations because he had people working for him at Qua. He said the first time he went to the location "everything was open" and "torn down" and they were working on the ceiling, walls and floor; it was a major renovation. After a little bit of time the ceiling, walls and floor were changed and Mr. A. Tehrani liked what Mr. Levy did.

637 As set out in Appendix "L", I have accepted the evidence of Richard Meikle, a building inspector for the City of Toronto, and so there would have been no reason to believe that another extensive renovation would take place for Contempo less than one year later. I accept that in this case the ceiling may have been opened up somewhat if different lighting was installed but I find that the premises were not gutted a second time and that all plumbing, electrical and HVAC was not removed a second time and that the new storefront that was installed that Mr. Meikle saw was not ripped out and replaced. Perhaps given it was to be a lighting store, another electrical panel or bigger panel was required but in my view it is a matter of common sense that the lifespan for wiring, new plumbing, new HVAC and a new storefront is longer than a year or two. Mr. Kazman admitted that a furnace usually comes with a guarantee and that he would not disagree too strongly with the Crown that it seems unlikely that the furnace was replaced twice in 18 months. Mr. Kazman also admitted that it would not make sense if new wiring was already done that Contempo would do it again. This would explain why there is no evidence of payments to third parties that could have supplied, for example, a new HVAC or storefront.

638 When Mr. Levy was asked about why Contempo would need to renovate a property previously gutted for a simple clothing store, he said he would "do whatever the client ordered", even allowing a new lessee to make unnecessary, major structural changes. Mr. Levy admitted that the main floor for Contempo was open but said that Mr. A. Tehrani did renovations with partitions in the basement and in his office and that he completely changed the whole store. According to Mr. Levy, whatever the tenant does is the tenant's business and Mr. A. Tehrani did not have to explain why he wanted Mr. Levy to gut the unit. Mr. Kazman also took the position that it was Mr. A. Tehrani's money to waste and if he wanted to rip out the walls and re-do them that was his business. In my view as a matter of common sense, there is really no reason why back-to-back furniture stores in a relatively small retail space would require major structural renovation, including a new storefront and HVAC although I accept that if Mr. Levy was

instructed to do this that as a person in business for a profit he might not have a duty to advise the client that this work was not necessary.

639 However, I find that Mr. A. Tehrani did not instruct Mr. Levy to gut the premises or for that matter to do any of the specific work on the first Northwood invoice save for the finishes to the walls, floor and ceiling. Despite all of my issues with Mr. A. Tehrani's evidence, I do accept that he was only concerned about how the premises looked cosmetically. Furthermore, as Mr. Kazman fairly admitted, a tenant would want to do the least amount of work possible when opening up a new business. This is also a matter of common sense although the only time I heard evidence on this subject that made sense was when Mr. Tehrani testified about opening up his store As Is Home Décor Corp. (As Is), which he said he was able to renovate for a mere \$15-\$20,000 in early 2010. I note that he had not applied for a SBL for this store so he was using personal funds to renovate.

640 As for Mr. Tehrani, when asked what he knew about the Contempo renovations he said he was not involved very much and added that Mr. A. Tehrani was his older brother and he, Mr. Tehrani, had to get advice from him. That evidence was not credible given the other evidence of the brothers and the fact that Mr. Tehrani had more experience in actually operating his own furniture stores. In any event it seems that neither of them took much if any interest in the work Mr. Levy was supposedly doing.

641 Setting aside whether or not Mr. Tehrani would have wanted to help his brother, the money Mr. A. Tehrani was borrowing was meant to be paid back to the bank and one would expect him to have some concern about saving costs. The fact he was not able to testify in any detail about how the premises looked when he rented them and what really needed to be done is suspect. I accept that he may not have known that it was not necessary to gut the premises again but he would have seen the new storefront and the work Mr. Meikle described. Furthermore, had he been more diligent, he would have seen and reviewed the invoices and therefore known what work Mr. Levy was representing had been done. I do not believe that he would agree to pay almost \$100,000 for renovations without any inquiries about the proposed work or any scrutiny of the invoice to see what in fact was done.

642 Mr. Kazman admitted that he was sure he did check in on the renovations at some point and he testified that he did not recall all the work done in the unit by Mr. A. Tehrani but he knew that he did a lot of work and that Mr. Levy was in charge of it. The windows were papered up so if he drove by he could not see what was going on although he also said that he did not know if Mr. Levy moved some walls but did observe that they put in new floors and painted. Mr. Kazman did not explain why he would have any interest in the renovations. Although he claimed to have an interest in the property, which Mr. Levy disputes, in other cases where Mr. Kazman owned properties with others such as Mr. Luska, he professed to take no interest in renovations and claimed to be an "easy landlord."

643 In cross-examination Mr. Coristine put to Mr. Levy that it was a big risk as a property owner to let a tenant gut a property that he had already gutted and redone because the tenant could run out of money or just leave and then as the owner of the property Mr. Levy would have to do all of that work again. Mr. Levy denied he was taking a risk and he said that it happens all the

time. Mr. Kazman's position as the "easy landlord" was essentially the same. I can understand Mr. Levy's position since he was the contractor purportedly doing the gut job. However, I do not think his position makes sense for a property that he owned and the fact that in this case the evidence is that a gut and rebuild had been done in 2006-2007, presumably using his own funds. This risk in those circumstances is illustrated by what happened in this case when RBC refused to advance all of the SBL. That could have happened with respect to the first invoice in which case, as the property owner, Mr. Levy would not have received full payment for gutting and rebuilding the premises a second time.

644 I have also considered whether since Mr. Levy was the contractor, he would gut the premises again because Mr. A. Tehrani did not know any better, and then be able to bill for it, making, as Mr. Kazman submitted, a bigger profit. There would be the risk of non-payment I have just mentioned. Having found that Mr. A. Tehrani did not instruct Mr. Levy to gut the premises, there would be no incentive for Mr. Levy to demolish work that had been done and then bill for it. Given the lack of attention Mr. A. Tehrani was giving he would make a far greater profit by billing for a Total Gut Job and Total Rebuild and then only doing some necessary cosmetic work to keep Mr. A. Tehrani happy. This could be the case even if Mr. A. Tehrani was not involved in the alleged fraudulent scheme.

(c) The Contempo/RBC Litigation

645 The RBC only advanced \$85,185 towards the first Northwood invoice and refused to pay anything towards the second Northwood invoice based on information received from Mr. William Sykes. Mr. Sykes is a former police officer and after he retired he joined RBC, as an investigator in 2001, where he worked until 2012. He was called by the Crown and testified about his attendance at 1048 Eglinton on July 28, 2008 to see if the work reflected in Northwood's first invoice had been done and the equipment listed in the second Northwood invoice had been delivered.

646 The Crown generally does not rely on the observations made by Mr. Sykes, which it admits are unreliable, not because he was a dishonest witness but because he only took sparse notes and did not take pictures or open boxes. There are however, parts of Mr. Sykes' evidence that the Crown does rely upon as follows.

647 When Mr. Sykes attended 1048 Eglinton on July 28, 2008 - two weeks after the second invoice from Northwood had been submitted to the RBC, he reviewed the invoices and reported numerous items missing from the second Northwood invoice, such as tables, laptops, power tools, and a Mac computer. When he told Mr. A. Tehrani that there were things on the invoice that were obviously not there, Mr. A. Tehrani said that they had not arrived yet and that the contractor was threatening to sue him. Mr. Sykes suggested to him that that should be the other way around.

648 Mr. Sykes' evidence is corroborated by his subsequent visit on August 5, 2008. Mr. A. Tehrani told him that there had been some changes and he advised that many items had been substituted by the contractor and he gave Mr. Sykes an "amended" invoice dated August 1, 2008 from Northwood in the same amount as the first invoice but this time showing a deposit

paid by Contempo of \$55,000. According to Mr. Sykes, several items had been switched on the new invoice and this can be seen by a comparison of the two invoices. A few pieces of furniture and fixtures and some of the tools were no longer listed and significantly, different and less computer equipment appeared on the amended invoice as compared to the first so I don't see how the price could still be the same. Mr. Sykes testified that the goods now lay in unlabeled boxes, apparently not assembled. Mr. A. Tehrani generally agreed with the evidence of Mr. Sykes although his evidence was vague. Mr. Sykes told him that the bank thought that he didn't do the job.

649 It is interesting that Mr. Kazman testified that Mr. Levy prepared the amended Northwood invoice but that he, Mr. Kazman, might have faxed it off if he was asked to. I considered whether or not this impacted my finding that Mr. Levy or someone on his behalf faxed the documents that have the HP Fax Number but I have decided that it does not since some of the documents with that fax header were faxed on behalf of companies that only Mr. Levy had an interest in.

650 It is significant that the amended invoice has two pieces of equipment that are identical to Oakwood's second invoice to Qua, including identical serial numbers (save for one digit), namely the HP Pavilion PC and 22 LCD Monitor and the HP Deskjet. The fact that the last digit of the serial number for the Deskjet is "Z" on the Contempo invoice and "2" on the Qua invoice is likely a typo. This cannot be a coincidence and I find this means that whoever was involved in the preparation of the Oakwood invoices was also involved in preparing the Northwood invoices. This implicates at least Mr. Levy, subject to my determination of whether or not Mr. Kazman had any control over Northwood and/or Oakwood.

651 The amended Northwood invoice is also reliable evidence that Mr. A. Tehrani misrepresented the fact he had received all of the equipment on the second Northwood invoice when the invoice was submitted to the RBC. Even if he did not give the original invoice to the bank he was clearly aware of it and knew that it was not amended. As the Crown submits, one has to wonder - but for the site visits by Mr. Sykes - if Mr. A. Tehrani would have ever had the items present. It also means that for these pieces of equipment with the same serial number, Mr. A. Tehrani got two invoices; one for Qua and the other for Contempo and he intended to pay both even though he could only have gotten one piece of each of these pieces of equipment.

652 Mr. Sykes also made observations of the exterior of the store and came to the conclusion that the stainless steel façade had not been installed recently. I have not relied on that observation but not surprisingly Mr. Sykes concluded that things were not on the "up and up" and he told Mr. A. Tehrani that unless he could provide a building permit and a complete inventory sourcing the items, that the bank would not advance any further funds. Mr. Sykes recommended to the bank that the matter be reported to police and that a civil action be commenced to recover the money advanced.

653 Although Mr. A. Tehrani testified that he decided to sue the bank, it appears that the RBC sued first. In September 2008, the RBC brought an action with respect to a number of SBLs including Contempo, claiming damages for fraud. The defendants included Mr. A. Tehrani, Contempo, Northwood and Mark Vatch. RBC obtained an *ex parte* injunction to freeze Northwood's account where I presume RBC's payment for the second Northwood invoice to

Contempo was being held. Messrs. Kazman and Levy each provided affidavits to get these funds, the balance of the SBL funds, released. They were successful. I presume that this meant that Northwood received the funds that were frozen but the case proceeded as though Contempo was never fully funded by the RBC. Mr. A. Tehrani testified that he did not find this out until the trial. Although this was not explored at trial, this suggests that Northwood kept the money that was released. I have dealt with the admissibility and use of the affidavits Mr. Kazman and Mr. Levy swore in Appendix "O".

(d) Was Contempo an Operating Business?

654 Given the dates of the Northwood invoices I find that Contempo must have been open for business by the end of July 2008. There are photos that show the exterior of Contempo as a functional store filled with lamps and furniture.

655 Mr. Coort analyzed Contempo's account at the RBC from the time it opened until January 25, 2010, by which time it had been dormant for some months and in overdraft.

656 Mr. Tehrani introduced evidence that Contempo purchased inventory from Meez Ltd. He produced an invoice dated July 15, 2008 for furniture that included sideboards, barstools, leather chairs and other chairs, in the amount of \$13,324.02, which was paid by three cheques between August 6 and September 7, 2008. These payments appear in the Coort Analysis but Mr. Coort was unable to identify the cheques. It therefore appears that Contempo did buy inventory from Meez Ltd. although the amount is significantly less than the inventory purportedly purchased by Qua.

657 In the period July 24, 2008 to February 26, 2009, Contempo only received about \$22,400 in sales. Contempo did not file any corporate income tax returns or report any sales. This was a far cry from the projected gross sales of \$610,000 in the Business Plan.

658 In the same timeframe, there were 22 cash withdrawals totaling \$10,040, which could be payroll or commissions. Although Mr. A. Tehrani said that he thought all his loan payments were up to date, Contempo only made three loan interest payments for August to October 2008. In this period, although Mr. A. Tehrani testified that he gave Mr. Levy the first and last months' rent, Contempo only paid rent in the amount of \$5,250 for the month of August 2008. Mr. A. Tehrani said he couldn't remember if Mr. Tehrani paid the rent for him sometimes directly to Trust Inc.

659 By February 26, 2009, Contempo had an overdrawn balance and the account was basically dormant. There is no evidence that Contempo operated after February 26, 2009.

660 The Contempo location was bigger than Qua and Mr. A. Tehrani testified that he used part of the basement to store inventory and to show samples. Mr. Sykes confirmed that when he attended Contempo on July 28, 2008, it was filled with premade completed furniture and the front of the store was completely full with chairs, tables, bookcases and shelves. Mr. A. Tehrani told him that he imported furniture from India and had received some from his brother. Mr. Kazman said that he bought a couple of chairs or stools from Mr. A. Tehrani and that the store was fixed up beautifully and packed with furniture. It is puzzling that such a big store with a

basement would be packed full with furniture given the only evidence of an inventory purchase is for a little over \$13,000. Mr. A. Tehrani was not asked about this but it is certainly at odds with the evidence I have about whether the premises for Qua could contain the volume of furniture purportedly purchased.

661 Mr. A. Tehrani testified that he found this location tougher because there were more rich people living in the area who were more sensitive to the type of furniture line he carried. He also said that the problems with the bank for Contempo affected Qua and put him in "so much difficulty" that his energy was down and he couldn't focus and do what he had to do because he was worried. He testified that it was "half a job"; referring to the fact he did not get all the SBL proceeds, and queried "how can I survive?" although the renovations were paid for and the invoice that was not fully paid was for furniture, fixtures and equipment. Mr. A. Tehrani was never asked to explain whether Northwood had re-possessed some of the items listed on the amended Northwood invoice and what it was that he lost that impacted his ability to run the business.

662 In any event Mr. A. Tehrani testified that he ran into problems and couldn't pay his rent and then the recession came. According to Mr. A. Tehrani, he spoke to Mr. Levy who told him he had no choice but to close the door. Mr. A. Tehrani said that when he closed he left all of his inventory and everything else in the store. Mr. Levy testified that at some point Mr. A. Tehrani owed two to three months of rent and told him that he was leaving so Mr. Levy could re-rent the premises. Mr. Levy said they did this amicably and he testified that he did not seize Contempo's assets. He did not recall if Mr. A. Tehrani left inventory behind. Mr. Levy was not asked about equipment. Again, there is inconsistent evidence as to what happened to all of the furniture, fixtures, equipment and inventory that Contempo owned.

(e) The Appraisal of Contempo's Assets

663 RBC declared the Contempo loan to be in default as of October 14, 2008. RBC made no attempt to appraise the assets of Contempo. There is therefore no evidence of what happened to the items that remained from the amended Northwood invoice and the inventory.

(f) The Circulation of the SBL Proceeds

664 From the \$154,382 that Northwood received from Contempo in the period July 7 to August 8, 2008, Northwood made payments to Eastern in the amount of \$32,695.48; to Icon Contracting Inc. (Icon) totaling \$21,479.52; to Mr. Kazman's companies Blue Glass and Cramarossa in the amount of \$6,000, and payments to LHC and Ms. Cohen totaling \$54,332.32. The \$50,000 payment to Ms. Cohen personally was by cheque signed by Mr. Kazman Re: "repayment loan". In addition \$89,050.18 was paid to Mr. Levy's companies MDC Modern Design and Trust Inc. Some of the cheques to MDC Modern Design have Re lines referring to invoices or draws, which corroborates Mr. Levy's evidence that his construction companies were subcontracting to Northwood.

665 From the funds Eastern received, it paid \$30,000 to Mr. Kazman's company 6747841 Canada Inc. and the balance to his company 1040 Holdings. Notably, 6747841 Canada Inc. then sent a payment of \$55,000 to Mr. Salehi on August 14, 2008 - the same day it received the

Eastern payment. Approximately four days later, Mr. Salehi deposited \$100,095 into the "Contemporary Design Inc." account at BNS, the next SBL.

666 It is suspicious that the \$32,695.48 Eastern received from Northwood on August 8, 2008 was paid in two amounts that add up to this sum to the penny to two different companies owned by Mr. Kazman, 6747841 Canada Inc. (Ms. Cohen also had an interest) and 1040 Holdings, both paid on August 14, 2008. This is consistent with an attempt to obfuscate the source of the funds.

667 Prior to receipt of these funds, Icon's bank account had a balance of only \$367 and from the funds received in the period August 14 to 18, 2008, Icon made payments primarily to Mr. Kazman's companies, Cramarossa and M&M, and Ms. Cohen's companies Save Energy, LHC and LSC, as well as Mr. Levy's company Trust Inc. In addition, \$500 in two payments was made to two individuals for "Demolition" [sic] on September 15, 2008. Mr. Levy testified that the payment to Trust Inc. "on acct." was a repayment of a loan by Mr. Kazman but I do not accept that evidence as that cheque, signed by Mr. Kazman, was in the amount of \$3,212.84, not an even amount as Mr. Levy testified would indicate a loan.

668 If I also consider a payment of almost \$102,000 to Northwood from Mr. A. Levy on August 29, 2008, which Mr. Levy said was a loan, payments by Northwood were also made to Mr. Kazman personally and substantial payments were made to Mosaic totaling \$101,871. Mr. Levy testified that the payments to MDC Modern Design and Mosaic were for subcontracting work done by Mosaic. That money was then distributed to Mr. Levy personally, Trust Inc., M&M, Mr. Kazman's company and \$25,000 was paid to Mr. A. Levy on September 8, 2008 which Mr. Levy said was a loan.

669 The Crown alleges that it is very strange that Northwood made payments to six other purported general contractors involved in these 16 SBLs. One supposed contractor, the non-existent LHC, is Northwood's former client at the Barton Plaza. Cramarossa is Mr. Kazman's company. The Crown submits that it cannot seriously be argued that Mr. Kazman was outsourcing to himself. I agree although, I still have to determine if Mr. Kazman had any ownership interest in Northwood.

670 It is also significant that, the Coort Analysis of payments of Northwood's account does not indicate any equipment being purchased from HP, Dell, Sharp, Toshiba or other similar suppliers as shown on Northwood's second invoice to Contempo.

671 Of the approximate \$83,000 received by MDC Modern Design, payments were made to Trust Inc. and \$26,928.49 was paid to Comod on July 17, 2008, Re: "on account for INV (0256418)" and \$8,634.22 to Meez Corp. on July 21, 2008 for invoice number 02569191. The Crown was also able to show that Mr. Levy used loan proceeds to purchase his home at 23 Tresillian on Sept. 26, 2008 for \$1.075 million.

(g) Summary of Findings of Fact

672 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Contempo SBL.

673 As submitted by the Crown, given the money Mr. A. Tehrani put into Qua and given how poorly it was performing, it makes no sense for him, as a new entrepreneur, to immediately open a second store when he had only just opened Qua unless it was a fraud and the fate of each business was pre-determined. Mr. A. Tehrani seemed to have no interest in how the SBL proceeds and his start-up capital were spent which, as I have said, I find incredible if this was a legitimate business. However, as submitted by Ms. Barton, on the evidence, it appears Mr. Levy was pretty persuasive and I cannot conclude, on the evidence with respect to Contempo alone, that Mr. A. Tehrani agreed to get a second SBL to facilitate a fraud. That does not explain however, why Mr. Tehrani would go to such lengths to borrow \$100,000 for him.

674 I have also found that all of the work Northwood billed for was not done. I will still determine who really had control over Northwood but it made payments out to Mr. Kazman, Ms. Cohen and Mr. Levy who profited from the payment of the fraudulent invoice that represented work done that was not in fact done.

675 I have found that it would have been impossible that Mr. A. Tehrani would not know that 1048 Eglinton had already been renovated when he first saw it. I have also found that if Mr. A. Tehrani had paid any attention to how his loan money was being spent he would have at the very least realized that he should not be paying for a new storefront. On the evidence of Contempo alone I am not able to find beyond a reasonable doubt that Mr. A. Tehrani was actually aware of this or willfully blind to this, particularly as there is evidence that Mr. A. Tehrani invested funds, albeit funds borrowed from his brother and there is no evidence of payments back to him suggesting he was benefiting from any fraud. The Crown does not have to establish this but the lack of motive is a factor when considering the evidence for Contempo alone. As I have said however, I will revisit these findings once I consider the similar fact evidence.

Contemporary Design Inc. (CDI) -- BNS -- Count # 1

(a) The CDI SBL

CDI (Salehi) was approved for a SBL from the BNS on July 15, 2008 in the amount of \$153,000.

676 Mr. Salehi incorporated CDI on July 17, 2008 with his home address of 14 Equator Crescent, Maple (14 Equator). I have the Known Signature of Mr. Salehi and have been able to conclude that he in fact signed the documents that I specify below.

677 The loan file contains a Business Plan dated August 1, 2008, although it states it is for Contemporary Inc., which was not the ultimate name of the company. According to Mr. Levy, he did not prepare this one and he testified that it was duplicated from the one he prepared for Roxy. As already stated, the Roxy Business Plan is not in evidence.

678 This Business Plan represented that Mr. Salehi would contribute \$100,000 of his own equity into the business and that CDI would be located on street level in a location of about 1,000 SF. The lease in the loan file is 12 pages long and purports to show that CDI entered into a lease with Anticoni Sakellariou dated September 15, 2008 for 2906 Dundas St. West, (2906 Dundas) for 1,200 SF being the full main floor at street level and the basement for five years to start September 1, 2008 for \$2,500 per month plus expenses.

679 For reasons I will come to, I find that this was a fraudulent lease (the Fraudulent CDI Lease) and I will come back to the significance of this. What is also significant about this property is that the next SBL in the chronology was for Alta, obtained by Mr. A. Tehrani, and he purported to sublease 2906A Dundas Street West (2906A Dundas) from CDI and Mr. Tehrani incorporated As Is on January 12, 2009 with a registered address of 2906B Dundas Street West (2906B Dundas). Mr. A. Tehrani said that for a period of time his brother shared the space while he was running "As Is" and he sometimes used the basement for storage but he couldn't remember exactly. Given the date of the incorporation of As Is I assume this was sometime after January 2009.

680 The Crown called Frank Sakellariou, whose mother, Anticoni Sakellariou, has owned 2906 Dundas since 1988. He testified that his mother's English is not very good and that he helps his mother and helped his father until he died in 2014 with reviewing all documents before they signed them. Mr. Sakellariou produced what I find to be the real lease that CDI entered into with his mother, Anticoni. It was made as of September 15, 2008 and was signed by Anticoni Sakellariou and Mr. Salehi; their signatures are undated. This lease is 37 pages long and is for 5,800 SF which, according to Mr. Sakellariou, is accurate for the main floor - the basement was not included in the square footage number and the rent is stated as \$3,383.33 monthly, plus expenses. This means that the Fraudulent CDI Lease is for about a fifth of the actual space.

681 Mr. Sakellariou identified Mr. Salehi in the courtroom as the person who signed the real lease and the man at the premises behind CDI (Mr. Salehi was still a defendant at this time). Given the number of people in the courtroom and the number of men not in robes, this was a very solid identification. Mr. Sakellariou testified that he was involved with Mr. Salehi directly in negotiating the terms for leasing the property including rent, length of lease and conditions to take over the property. He helped his father and his father's lawyer who prepared the lease. Mr. Sakellariou witnessed both signatures and all the initials on this lease.

682 A comparison of the real lease and the Fraudulent CDI Lease provided to the bank shows that they are the same for the first seven pages and then the latter skips pages from the real lease and picks it up again at page 34 of the real lease, altered to page 8 of the fraudulent lease. Basically paragraph and page numbers were altered and the rest was photocopied to maintain a copy of the original signatures and initials. I have no evidence as to who did this but it would have to have been Mr. Salehi or Mr. Levy, if Mr. Levy was involved in the preparation of his materials for the bank.

683 The real lease has Articles that are not present in the Fraudulent CDI Lease that are relevant as follows:

- a) Article 11 provides that unless otherwise provided tenant accepts the premises "as is" and sets out requirement that tenant not make any alterations, additions or leasehold improvements without the written consent of the landlord,
- b) Article 25 (a) provides that tenant shall not assign the lease in whole or in part or sublet all or any part of the premises without the prior written consent of the landlord,
- c) Article 49 (a) provides that the landlord warrants that all mechanical, plumbing, heating, ventilation, air conditioning equipment (HVAC) and electrical equipment are in good working order and that the landlord shall supply and install a new heating and air conditioning system for the premises at the landlord's expense which work is described in the quotation from Active Temperature Control Inc.

684 The Active Temperature Control Inc. (Active Temp) quotation was not a schedule to the lease but Mr. Sakellariou produced an Agreement to Lease made August 28, 2008 signed by Mr. Salehi and Mr. Sakellariou's mother on September 12th and 13th, 2008, that includes, in Schedule C, an agreement that the landlord supply and install a new HVAC system for the premises at the landlord's expense as per attached quotation from Active Temp. Two quotations are attached for identical amounts totaling \$8,925 but are not photocopies of one another, suggesting that two systems were being installed. I note that Schedule A to the Agreement to Lease also provides that the tenant will have possession of the premises on September 1, 2008, net rent free for a period of three months to the lease commencement date in order to prepare the premises for the operation of its business.

685 Mr. Sakellariou recalled that Mr. Salehi was given two months free; namely September and October 2008. The property had hot air/radiators for heating and as I have already set out, a condition of the lease was that his mother remove the old system and put in a forced air system with a new furnace, air conditioner and heating ducts. According to Mr. Sakellariou, Mr. Salehi introduced him to someone he knew at Active Temp and he agreed to use this company to supply and install the new HVAC as required by the lease, at the landlord's expense.

686 Both Mr. Kazman and Mr. Levy denied any knowledge of any version of the CDI lease.

687 The loan file includes a NOA for Mr. Salehi for the 2005 tax year that shows total line 150 income at \$52,901 and a NOA for 2006 showing total line 150 income at \$52,085. Both of these were altered or forged as the actual NOAs from the CRA show that Mr. Salehi's income for 2005 was in fact \$13,000 and for 2006 was \$1.

688 The numbers in the altered NOAs are consistent with the Statement - About You signed by Mr. Salehi on July 31, 2008, which states a gross annual income of \$42,000. In the BNS Summary of Personal Finances it states that Mr. Salehi's current employer is Meez Ltd., that he has been there for four years as manager with a gross personal employment income at \$52,085 and his assets included reference to a RBC GIC for \$98,571.33.

689 The loan file also contained the same altered RBC GIC statement purportedly for

\$95,571.53 that was found in the Roxy loan file. I have already set out the evidence of Ms. Burton with regard to this altered GIC.

690 Mr. Salehi did, however, pay \$100,095 as start-up capital to CDI. This was derived in part from a draft of \$55,000 from Contempo via Mr. Kazman's company 6747841 Canada Inc.

691 Mr. Salehi signed a personal guarantee on July 31, 2008 and like the other BNS guarantees signed in the loan files, it contained a statement that by signing the document Mr. Salehi certified that the information "About You in this Service Request and any other information provided now and in the future is accurate and complete."

692 The Loan Registration form was filled out by hand. I cannot tell if Mr. Salehi filled it in but he did sign it on August 25, 2008. By checking of the Loan Limit Clause, he certified that his total outstanding SBLs were less than \$250,000, which was false given the Roxy SBL.

(b) The Purported Renovations to 2906 Dundas and Purchase of Equipment, Furniture and Fixtures

693 The BNS loan file has invoices from Mosaic, LHC and Icon. There were two invoices from Mosaic, the first dated October 14, 2008 for \$69,294.75 for the usual Total Gut Job and the first phase of the Total Rebuild and the second dated October 24, 2008 for the final phase of the Total Rebuild in the amount of \$23,782.50. Based on the dates of these invoices I find that whatever work was done by Mosaic in the way of leasehold improvements was completed by October 24, 2008.

694 I appreciate that the fraudulent lease is for 1,200 SF; just over one-fifth of the actual square footage of the store, but it was one open space and it is significant that these Mosaic invoices for work done make absolutely no reference or suggestion that work was only being done on a fraction of the store. When Mr. Coristine cross-examined Mr. Levy and asked if he did half the job and then the other half once he got the job for Alta, Mr. Levy gave an answer that he often did and "said show me the invoice and I can tell you."

695 The invoices include the removal of existing partitions and walls, existing plumbing and plumbing fixtures and the existing and entire HVAC system and the supply and installation and construction of dividing walls including "extra partitions", and "new dividing walls", the new opening for a new stairway including everything related to that new stairway, the supply and installation of new plumbing and installation of two high efficiency York furnaces and everything associated with that including all duct work and an air conditioning system, new wiring, new doors, and new ceramic flooring at the entrance of the store. I will come back to this.

696 Mr. Levy did not dispute that Mosaic did the leasehold improvements for CDI and he admitted that he prepared the Mosaic invoices and had his secretary type them up. According to Mr. Levy, all the work was done and paid for and he said that he had no issue with Mr. Salehi. Mr. Levy said that he had a group of people working for him through Danil Contracting and that he did not subcontract this job to Morningstar General Construction (Morningstar).

697 The LHC invoice dated October 31, 2008 was for furniture and fixtures for a total of \$50,594.62 although it purported to also include a new electrical panel for the new HVAC. The LHC invoice shows a \$50,000 deposit that was paid by CDI on August 28, 2008. Mr. Kazman said that this was part of a repayment of a loan to Ms. Cohen and that Mr. Levy structured it this way even though it was set up to look like a deposit. He went on to say that Ms. Cohen explained this to him and when Mr. Coristine pointed out to Mr. Kazman that this meant she did discuss these things with him he said she told him this about the time of the second set of charges. He agreed that Mr. Salehi misrepresented this deposit to the bank. I note as well that this invoice included the supply and installation of new handrails for the stairs, which Mosaic had already invoiced. Finally, the Icon invoice dated November 10, 2008 was for equipment and fixtures for a total of \$52,268.15.

698 The Coort Analysis of the LHC BOM account shows that in the month of October 2008 there is no evidence of LHC paying any money for a new electrical panel or any of the other items in the invoice. I also note that the LHC invoice is very similar to the format of the Mosaic invoices. Given my finding that LHC was never an operating company and that LHC was a company in name only, in my view it could not have supplied the furniture and fixtures listed in the invoice. Furthermore, Mr. Sakellariou testified that most of the light fixtures were present before Mr. Salehi's lease and that Mr. Salehi did not replace all of the potlights.

699 The Icon invoice for equipment and fixtures has equipment that is identical to Oakwood's invoice dated April 16, 2008 to Qua and/or its invoice dated June 6, 2008 to Roxy, including serial numbers; namely the Printer, Fax, Scanner Sharp Machine, Telephone system Panasonic, Refrigerator Honeywell, Cash Register Sanyo and Microwave Danby. Furthermore, equipment shown on the Icon invoice also appears on the Oakwood invoice to Qua and/or its invoice to Roxy but with slightly different serial numbers including PC HP Pavilion including 22 LCD Monitor, PC Dell Computer, HP Fax, Printer, Photocopier Machine HP; Toshiba Laptop; and Danby Microwave. Finally some equipment on the Icon invoice to CDI is identical to the Northwood invoice dated July 14, 2008 to Contempo, namely PC HP Pavilion including 22 LCD Monitor, PC Dell Computer and the Mac Graphic Design Computer. This means that whoever was in control of Oakwood must also have been involved with Icon. In addition the photographs taken by Mr. Manimankis show mismatched furniture that appears to be of low quality and the computer and electronic equipment is very dated which suggests that Mr. Salehi misrepresented the assets of CDI to the BNS.

700 Mr. Kazman said he was not aware of these invoices and said he was not involved in the renovations. He also denied any knowledge of Icon's activity at this property.

701 The evidence of Mr. Sakellariou is important with respect to the two Mosaic invoices for two reasons. First of all, he was confident that Mr. Salehi did not pay for any part of the new furnace and air conditioner in the premises. He testified that his mother paid for the installation of the new HVAC system. He said that Active Temp was at the premises for two to three weeks and in the space of almost 6,000 SF removed the boilers, piping and rads and installed all new ducts and the two HVAC units, which are still there today. Mr. Sakellariou testified that he did see some of the work being done but that Mr. Levy was not there.

702 Mr. Sakellariou introduced various documents both on the first day he gave evidence and when he returned to finish his evidence to prove that his mother paid for the new HVAC as required by the lease. In summary he produced a credit application filled out by his father which confirmed the details of a \$12,000 loan his mother took out with SNAP Financial to cover part of the cost of a York furnace and York air conditioner on October 16, 2008 and his mother's bankbook which shows a payment to Active Temp for an HVAC system for 2906 Dundas in the amount of \$5,850 on October 23, 2008, which Mr. Sakellariou testified was the balance of the payment. He advised that the loan was an interest free promotion through York and that if a York furnace was purchased York would finance part of it. His mother's bankbook also shows a payment to Conair Mechanical Inc. for HVAC for 8 Arcade Drive, his parents' home, in the amount of \$6,195 on September 26, 2009. Mr. Sakellariou testified that he entered about 90% of the entries in this bankbook and it was on that basis that it was admitted as an exhibit.

703 It is Mr. Levy's position that the HVAC Mr. Sakellariou testified to was for his parents' home. According to Mr. Levy, Mosaic paid for and installed the HVAC for CDI, not Anticoni Sakellariou. Mr. Levy testified that there may be payments from Mosaic to Active Temp for 2906 Dundas, 344 Wilson Avenue (344 Wilson), 846 Sheppard Avenue West (846 Sheppard) and a repair for 317 College. He said that he knew the payment was for Dundas because Active Temp must have asked him to pay for all jobs at the same time. He said that is 100% the reason for the note on the cheque. Mosaic paid Active Temp a total of \$8,604.75.

704 On this issue I prefer Mr. Sakellariou's evidence. He had no motive to make any misrepresentations to the Court on this issue and cannot be faulted for not having ironclad proof of payment. Given the terms of the lease, Mr. Salehi would have had to be a fool to agree to pay for the HVAC instead of insisting that the landlord do so. As for Mr. Levy's theory, Mr. Sakellariou provided evidence of an air conditioner being installed in his parents' home that they paid \$6,195 to Conair Mechanical for.

705 Mr. Sakellariou's evidence is also important with respect to what leasehold improvements were actually done by Mosaic for CDI. Based on his evidence I find that Mosaic charged CDI for leasehold improvements that were not done. He said that at the beginning of the lease he went a couple of times to the store to see what was being done. He acknowledged that he did not have keys but he said that he visited that shop usually once per month. His parents had a property down the street at 2910 Dundas Street West where they had a restaurant tenant and an upstairs apartment tenant, which he attended regularly. Mr. Levy disputed this evidence and testified that he only met Mr. Sakellariou's father and that he talked to him once or twice at this location. Mr. Levy said that he did not meet or ever see the son, but Mr. Sakellariou did not contest this as he said that he was not familiar with Mosaic or Mr. Levy. I find given the detailed evidence that Mr. Sakellariou gave, which is corroborated by other evidence including photographs, that he could give reliable evidence about the renovations that were actually done to the premises.

706 Mr. Sakellariou testified that once Mr. Salehi took possession, the space was open and there were no walls or partitions to be moved. He testified that Mr. Salehi built a partition of drywall down the middle of the space that started 15-20 feet back from the front door and was

about 80 feet long and had two openings along its length so you could go from one side of the unit to the other side. Both sides remained a showroom although he also said that the right side was used for storage. Mr. Sakellariou made a sketch of the store showing the entrance and the partition that was put up in the middle. His sketch showed that this partition, which started a few feet back from the front of the store, had two openings along the partition itself and an opening at the end of the partition, where the back office was located that he acknowledged was also built by Mr. Salehi. This allowed for movement between each side of the partition at various points in the unit.

707 Mr. Sakellariou testified that in addition, Mr. Salehi changed the front entrance from the existing two doors on either side of a window to **three** doors and he installed potlights in the outside overhang in front of the entrance doors. Inside there were panels put on the upper part of the walls to allow frames to hang and the walls were painted. According to Mr. Sakellariou, Mr. Salehi did nothing to the ceiling except paint it. Mr. Salehi had requested that they upgrade the lighting and the wiring as he wanted to put new lighting in on the main floor but Mr. Sakellariou told him that this was his responsibility and the existing lighting was not changed. The flooring at the front of the store was ceramic tile that Mr. Salehi installed but the rest of floor remained vinyl tile that was there before the lease but Mr. Salehi polished it. According to Mr. Sakellariou, no new floor or walls were installed in the basement and the ceiling remained exposed as before. All that Mr. Salehi may have done in the basement was paint the floor and Mr. Salehi may have changed the fixtures in the one basement bathroom but he did not remove the existing plumbing.

708 Mr. Sakellariou testified that the stairway near the front of the store, going down to the basement, was widened and made larger than the original staircase but he said that was done without the landlord's permission. He produced a letter from his mother to Mr. Salehi dated October 11, 2008 complaining about this. It is significant that the letter also stated that the tenant accepted the premises "as is" and that the only item the landlord was responsible for was to supply and install the new heating and air conditioning system which they began as soon as possible with Active Temp.

709 Mr. Sakellariou identified a photo of the main floor of the premises which he testified shows how the unit looked after Mr. Salehi left the premises, looking from back to front. He said that the wall on the left is the partition Mr. Salehi put up and it is as he described it. He did not recall if there was a showroom in the basement; he recalled there were a lot of boxes there. Mr. Sakellariou identified some photographs that he testified showed how the basement looked after Mr. Salehi left. As I will come to, the appraiser Tom Manimankis took some of these photos. They show the furnace and exposed vents and what looks like a slide that came down from the first floor which Mr. Sakellariou said was there when the premises were rented. The pictures show an open doorway that leads to the back half of the building and a room behind the wall at the end of the picture. There is also a third room, which is lower than the main floor of the basement.

710 Mr. Levy suggested that all of the work that Mosaic did in the basement was taken down and he testified that if the pictures were taken of the basement earlier it would have been a different story as he did the entire basement beautifully as a showroom and for storage. When I

asked Mr. Levy how the pictures would have been different, his answer was pretty vague. He admitted that he did not cover the ductwork with drywall. He said he removed some posts that could not be seen in the picture although he left some in the back.

711 The photos taken by Mr. Manimankis show what clearly appears to be an unfinished basement. There does not appear to be even a hint that any work was done in the basement based on these photographs. On this issue I prefer Mr. Sakellariou's evidence. Furthermore, there would have been no reason for Mr. Salehi and Mr. A. Tehrani, who also rented these premises for Alta, to trash the basement after they moved out. If there was furniture in the basement while CDI was in operation, I find given the basement was unfinished, it was there for storage.

712 Mr. Sakellariou was shown the four Mosaic invoices to CDI that add up to about \$200,000. He testified that between the main floor and the basement he did not see anything near that kind of work being done. He has been involved with the property since he was 24 and he said that he could tell what was new or old.

(c) Did CDI Operate as a Business?

713 Mr. Sakellariou testified that the store was open and operational in late October, probably November, 2008. Given the dates of the invoices, the earliest CDI would have been open would have been the beginning of November. Mr. Sakellariou said that there was furniture in the store and that they had a reception desk, although from what he saw one side of the partition was being used for storage. The rent was being paid by cheque to his mother.

714 Mr. Sakellariou also identified Mr. A. Tehrani as someone he saw at the store regularly assisting Mr. Salehi. Mr. Sakellariou observed that Mr. A. Tehrani helped with sales and moved inventory in and out. Mr. Sakellariou testified that he also recognized Mr. Tehrani.

715 Mr. Levy's evidence is consistent with Mr. Sakellariou's as he testified that it appeared to him as though Mr. Salehi, Mr. A. Tehrani and Mr. Tehrani were all working together in this location. Mr. Kazman testified that he only went to the property once the business was up and running. His recollection was of a store filled with furniture on two levels. He had no recollection of the partition.

716 There is an exterior photo of the signage at 2906 Dundas taken by Tom Manimankis while appraising CDI. It shows various pictures of furniture without any store names. The Crown submits that considering the Alta SBL, which is the next SBL, that this makes sense as there was obviously a conspiracy to confuse the banks and conceal the existence of two separate furniture loans at one location. As I will come to, I agree with this submission. This also allowed Mr. A. Tehrani and Alta to avoid detection by Mr. Sakellariou.

717 Mr. Coort analyzed CDI's account with BNS from the time it opened on July 31, 2008 to November 13, 2009, when it was closed.

718 In the period between September 26 and November 19, 2008, six payments totaling

\$52,675.85 were made by CDI to Meez Ltd., most with Re: "inventory purchases". About \$3,800 was also paid to Roxy RE: "Purchase Accessories". According to the Coort Analysis, one of those payments, on November 12, 2008 in the amount of \$7,534.75, was funded by a payment of \$9,525.99 from Alta to CDI on the same day. I agree with the Crown that this is strange considering that Alta was supposedly a competitor operating on the other side of the open partition at 2906 Dundas.

719 According to the Coort Analysis, there were no significant deposits from third parties into CDI's account, which could be considered revenues from sales. Virtually all deposits into the CDI bank account, save for Mr. Salehi's start-up capital, were from companies owned by Mr. Levy, Mr. Tehrani and Mr. A. Tehrani. In the period August 1 to November 13, 2009, when the bank account was closed, there was very little activity in the account. The Crown argues this means there were no sales but CDI's records filed with the CRA for the period Sept. 24 to December 31, 2008, show sales and other revenue as \$4,421; for the period January 1 to June 30, 2009 as \$4,035 and for the period July 1 to September 30, 2009 as \$766. For the period October 1, 2009 to December 31, 2010 sales and other revenue is shown as \$0. Mr. Salehi did not file any corporate tax returns. In any event, if there were sales they totaled less than \$10,000.

720 According to the Coort Analysis, CDI made loan payments from September 2008 to June 2009. CDI paid Anticoni Sakellariou for the taxes and insurance for the property for the months of October and November 2008 and then the monthly rent in the amount of \$5,582.49 (as compared to the rent of \$2,500 in the Fraudulent CDI Lease) for the months of December 2008 to August 2009. According to Mr. Coort, the BNS records for Meez Corp. show that in the period from December 1, 2008 to July 31, 2009, Meez Ltd. made payments to cover CDI's rent payments.

721 Mr. Sakellariou testified that CDI left the premises in the second half of 2009; a little less than one year after the lease was signed. He said that a big truck was parked in front of the store and they emptied the store and abandoned the lease. According to Mr. Sakellariou, after Mr. Salehi left the premises, Mr. Tehrani remained on the property.

722 He was not asked about this but I assume this means that whatever inventory Mr. Tehrani had at the premises remained; perhaps stored in the basement. This is consistent with the evidence I have already referred to. Mr. Sakellariou testified that Mr. Tehrani wanted to sign a new lease. Instead of making a new legal document, Mr. Sakellariou got a copy of the real CDI lease from his lawyer and changed some of the terms and then had Mr. Tehrani sign it for As Is. He could not remember if Mr. Tehrani or someone else signed the lease. While Mr. Tehrani was a tenant he kept getting the rent.

(d) The Appraisal of CDI's Assets

723 BNS declared the CDI SBL in default as of August 17, 2009.

724 Mr. Tom Manimankis was asked by Noik & Associates (Noik) to evaluate and appraise the assets of CDI. He had no instructions as to what to expect; he assumed it was a failed business.

Mr. Manimankis went to 2906 Dundas sometime between October 5 and November 1, 2009. He was not able to gain access to the premises. He took a photo of the front entrance of the store, which shows the sign I have already described and Mr. Manimankis saw no reference to CDI or Alta. The windows were papered up and he was not able to see inside. He did not see or speak to anyone.

725 Mr. Manimankis contacted Mr. Salehi who told him that he was the owner of CDI, that the business was no longer in operation and that the landlord had locked him out. That evidence is hearsay but I find that Mr. Salehi was not locked out given the evidence of Mr. Sakellariou. Mr. Salehi told Mr. Manimankis that some of the business items were located in storage at his friend's home at 245 Keele; the home of Mr. Tehrani. Mr. Tehrani testified that Mr. Salehi had asked to store these assets in his home because Mr. Tehrani lived closer to the store.

726 On November 10, 2009 Mr. Manimankis went with Mr. Salehi to look at assets that were in Mr. Tehrani's home. Mr. Salehi took him to the basement and he pointed out the assets that related to the business. Mr. Salehi was specific with him saying "here, here, here ..." Mr. Manimankis reviewed the Icon invoice with Mr. Salehi. It was relatively easy to photograph the assets; he only had to move a few things. Photographs of what he saw were introduced into evidence.

727 Mr. Manimankis saw a very small amount of computer equipment, most of which did not match the asset list from invoices and some minor household items. All of the computers were very outdated with limited resale value. When asked about what he saw compared to the Icon invoice, he testified that some of the other equipment such as the Brother fax, copier / scanner, the Sharp electronic cash register and Black and Decker tools did not match the invoice. He asked Mr. Salehi where the remaining assets were and he did not respond although he did tell him that everything was left behind when the landlord locked him out. Mr. Manimankis asked Mr. Salehi if there were any other assets and Mr. Salehi just pointed these assets out.

728 Mr. Manimankis also went to 2906 Dundas shortly after he obtained contact information for the landlord. He met with Mr. Sakellariou's father on November 14, 2009 and he was given access to the building and shown around. The location was empty except the small office. He took more photos, some of which I have already referred to. He saw no physical assets for CDI except very limited office equipment and furniture in the back, and a pump truck and display cases in the basement. Although these items were in good condition the cost involved to remove them would be far greater than their value. Based on the photos of those assets I would not describe the furniture as custom or high-end. They appear to be of the type of furniture one sees at Ikea.

729 Mr. Manimankis gave a liquidation value for the assets of \$950, the value at "the price at which the property would change hands when there was a financial situation, or other limiting circumstances, existing at time of sale so as to require a sacrifice" and in his report to Noik he listed what he saw at both locations. Mr. Manimankis agreed that the value was significantly decreased after one year and even more if the items were scratched and dented. The items on the last page of his report are the items that Mr. Salehi identified as CDI assets at both locations.

730 The Crown questions why Mr. Salehi would take anything to Mr. Tehrani's home since CDI left some assets at 2906 Dundas and what Mr. Salehi did move to Mr. Tehrani's home was not very much or of much value. Furthermore, this favour occurred seven months after Mr. Tehrani sent the Demand Letter that I have already referred to which demanded payment from Mr. Salehi for unpaid invoices. I agree that this is suspicious conduct on both the part of Mr. Salehi and Mr. Tehrani. At the very least it is strange that in light of the Demand Letter Mr. Tehrani would agree to this but based on this evidence alone I cannot find that Mr. Tehrani was aware of any fraud in connection with these assets.

(e) The Circulation of the SBL Proceeds

731 The BNS paid the SBL proceeds of \$150,000 to CDI and with those funds and Mr. Salehi's start-up capital of \$100,095 as well as a payment of about \$9,500 from Alta, in the period from July 31 to November 28, 2008, CDI paid the two Mosaic invoices that totaled \$93,077.25, the invoice from Icon in the amount of \$52,268.15 and \$50,000 towards the invoice from LHC, for a total of \$195,345.40 leaving a shortfall of \$594.62 owing to Icon which was never paid.

732 From the \$93,077.25 Mosaic received from CDI in payment of its invoices and a \$15,035.52 cheque from Icon on October 14, 2008, in the period between October 20 and November 7, 2008, it paid a total of \$26,672.50 to Morningstar but this was not for work at 2906 Dundas. Rather these payments were for work done at 1040 Eglinton and Mr. Levy's home. According to Mr. Levy, with respect to 1040 Eglinton, this was for stucco work to the exterior of the building and both he and Mr. Kazman had an interest in this property at this time. The only other payment out that could relate to leasehold improvements for CDI was a payment of \$4,121.35 to Union Electric Lighting Co. Ltd.

733 When Mr. Levy was asked how Mosaic was paying for the work Mosaic purportedly did, Mr. Levy said he used Morningstar as a contractor but, as I have stated, that was not for any work done at 2906 Dundas. As for supplies, Mr. Levy said it was all in his Mosaic statements and that he pre-bought supplies. Mr. Coristine completed a search while Mr. Levy was on the stand and put to him that the bank records show that Mr. Levy spent a little over \$12,000 as of July 2009 on supplies. I have already given my reasons for why I do not accept Mr. Levy's evidence on this point.

734 Payments of almost \$15,000 were also made to Mr. Kazman's companies M&M, 1040 Holdings and Cramarossa. Mr. Levy testified that the payment to M&M was so that Mr. Kazman could pay the mortgage on Sandringham and the payment to 1040 Holdings was for expenses for that property. The notes on the cheques are consistent with this. As for the deposit to Cramarossa of \$1,159.64 on October 17, 2008, Mr. Levy testified that it must have been for some work that people Mr. Kazman hired, did for Mosaic or for supplies Mr. Kazman had bought for Mosaic and Mr. Kazman directed that he, Mr. Levy, pay Cramarossa for them. I do not accept this evidence as Mr. Levy generally testified that he would have to bail Mr. Kazman out when it came to his construction efforts and as I have already said, there is no reason why Mr. Kazman would have better contacts for construction supplies than Mr. Levy. The rest of the money went to Mr. Levy personally and Trust Inc.

735 Prior to receiving payment of its invoice, Icon had only a little over \$1,000 in its bank account. In the month of November 2008, in addition to the just over \$52,000 Icon received from CDI, it received almost \$85,000 from Western Leather, another SBL that I heard evidence about. From these funds, in the period between November 18 and 30, 2008, Icon paid a total of just over \$130,000 to companies owned by Mr. Levy: MGM Inc., MDC Modern Design, Mosaic and Trust Inc. With respect to the payment to Mosaic, Mr. Levy testified that Icon did not complete some of the work for CDI and so Mr. Kazman paid Mosaic to complete it. About \$6,300 was paid to Mr. Kazman personally (RE: "petty cash") and to Dufferin Paralegal. One of the cheques to Dufferin Paralegal is RE: "on acct (companies x2)". I heard no evidence about this cheque but it could have been for legal services for incorporating two companies although why that would be work for Icon is a mystery.

736 One of the payments made by MDC Modern Design from these funds was a payment of \$5,125.83 to Roxy and then Roxy paid rent to Trust Inc. in the amount of \$3,273.75 dated December 1, 2008 RE: "Dec/08 Rent Payment". Mr. Levy testified that MDC Modern Design's payment to Roxy was for accessories. I find that an odd purchase in this amount for one of Mr. Levy's companies, given he was supposedly in the construction business.

(f) Summary of Findings of Fact

737 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the CDI SBL.

738 Without hearing from Mr. Salehi, I cannot conclude that he knowingly provided the altered GIC statement and NOAs to the bank. I will revisit this issue once I consider the similar fact evidence. However, given the evidence with respect to the Alta SBL that I will review next, I do find that Mr. Salehi and Mr. A. Tehrani must have come up with their plan to split 2906 Dundas before Mr. Salehi went to the BNS for the CDI SBL because that would be the only reason for someone to have created the Fraudulent CDI Lease for a fraction of the space to give to the bank. Mr. Salehi certainly had to know that the bank was provided with a fraudulent lease as he did not provide his actual lease for the property to the BNS. I have no evidence as to whether Mr. Levy or Mr. Kazman was involved in the preparation of Mr. Salehi's materials for the bank.

739 Although I cannot find that Mr. A. Tehrani was aware of this fraudulent lease, as I will come to, when I review the evidence concerning Alta, I have concluded that Mr. A. Tehrani participated in this fraud with Mr. Salehi when he purported to sublease 2906A Dundas Street West (2906A Dundas) from CDI and provided that lease to the CIBC and then provided fraudulent invoices to the bank. I have also found that Mr. Tehrani was using some of the space leased by CDI once Mr. Tehrani incorporated As Is in January 2009, although that does not mean that he was aware of this fraudulent conduct. I also find that Mr. Tehrani was in this store more than he would admit but that also does not mean he was aware of any fraudulent conduct.

740 I have found that there is no reason why Mr. Salehi and Mr. A. Tehrani could not have had a single supplier for inventory, namely Mr. Tehrani. That said, as I have said, it is strange that Alta would purchase the same inventory that was purchased by CDI since they were both

purportedly operating from one location. I am, however, not able to conclude, as submitted by the Crown, that the payment to Meez Ltd. by CDI was not for the purchase of inventory.

741 I have found that the loan file contained the same altered RBC GIC statement purportedly for \$95,571.53 that was found in the Roxy loan file but I am not able to determine how that was provided to the bank on the evidence with respect to CDI alone.

742 I have found that Mr. Salehi signed the Loan Registration Form and by checking off the Loan Limit Clause, he certified that his total outstanding SBLs were less than \$250,000, which was false given the Roxy SBL.

743 The BNS loan file has invoices from Mosaic, LHC and Icon. I have already reviewed the details of those invoices. I have found, based on the evidence of Mr. Sakellariou, that I accept, that the Mosaic invoices misrepresented the work done by Mosaic and that Mosaic charged CDI for leasehold improvements that were not done. This caused the BNS to advance SBL funds for work that had not been done but I cannot conclude Mr. Salehi was aware of this without hearing from him. Mr. Levy however, had to have known as he admits that Mosaic is his company and he prepared the invoices. As such, Mr. Levy is guilty of fraud in this respect and as such is guilty of Count 1.

744 I have considered whether or not Mr. A. Tehrani would have been aware of this but have concluded that the Crown has not proven this. Similarly, if I considered the evidence concerning CDI alone, I would not be able to find that Mr. Kazman was aware of this fraud.

745 There is an issue with the LHC invoice dated October 31, 2008 for furniture and fixtures and a new electrical panel for the new HVAC, given that I have found that LHC was never an operating company and that LHC was a company in name only. As a result I have found that it could not have supplied the furniture and fixtures listed in the invoice. Furthermore, the LHC invoice shows a \$50,000 deposit that was paid by CDI on August 28, 2008. Mr. Kazman agreed that Mr. Salehi misrepresented this deposit to the bank.

746 I have also found that the Icon invoice for equipment and fixtures has equipment that is identical to Oakwood's invoice dated April 16, 2008 to Qua and/or its invoice dated June 6, 2008 to Roxy, and finally some equipment on the Icon invoice to CDI is identical to the Northwood invoice dated July 14, 2008 to Contempo. This equipment could not have been sold twice and I have found that this means that whoever was in control of Oakwood must also have been involved with Icon.

747 I have found that CDI was an operating store. Based on the evidence of Mr. Manimankis, I find that Mr. Salehi misrepresented dated assets as the assets of CDI. He clearly committed a fraud on the BNS. However, even though those assets were at Mr. Tehrani's home, I cannot conclude based on the evidence related to CDI alone that Mr. Tehrani was aware of this deceit although for the reasons stated, I do find that his conduct was suspicious but his denial on that point raises a reasonable doubt.

Alta Design Corp. (Alta) -- CIBC -- Count # 5

(a) The Alta SBL

Alta (Mr. A. Tehrani) was approved for a SBL from the CIBC on September 24, 2008 in the amount of \$188,190.

748 Mr. A. Tehrani's evidence about why he decided to open a third store was nonsensical. He testified that at this time; the fall of 2008, he was having problems with his wife and that this was when his depression started. The lack of financing was a problem for him; I presume a reference to Contempo, and so he talked to Mr. Levy who told him that he could get yet another loan. Mr. A. Tehrani testified that it was so hard to decide and he was under so much pressure but he thought it was a good idea to get another loan as he didn't want to lose his first and second store and he wanted to be a success. Mr. A. Tehrani did not strike me as being so naive as to seriously think, given his circumstances at this time, that he could make a third store a success. Had there been no issues with this loan, I might not have concluded that it was a sham based on this evidence only, but for the reasons I will come to it is clear that this SBL was a sham and obtained based on very significant misrepresentations to the CIBC in order to obtain a SBL and use the funds for purposes other than those represented to the bank.

749 Mr. A. Tehrani admitted that he and Mr. Salehi came up with the idea that he would operate Alta from half of Mr. Salehi's store CDI at 2906 Dundas. They must have come up with the idea to refer to Mr. A. Tehrani's part of the store as 2906A Dundas because Mr. A. Tehrani testified that he told Mr. Levy that he was going to lease 2906A Dundas. He did not testify that this was Mr. Levy's idea. Mr. Levy also denied discussing the possibility of Mr. A. Tehrani doing a double store with Mr. Salehi and he also denied arranging it. Mr. Levy denied being involved in any way with Mr. A. Tehrani deciding to open a third business although he did say that there was nothing wrong with Mr. A. Tehrani opening Qua in March 2008, Contempo in June 2008 and Alta in September 2008 - Mr. A. Tehrani was branching out and was ambitious. Mr. Levy testified he did not believe in a recession.

750 Mr. A. Tehrani identified the Agreement to Lease in the CIBC loan file that is dated August 22, 2008, between him for a company to be formed (which became Alta) and 1774531 Ontario Inc., which is the Ontario corporation number for CDI. The lease was for 2,500 SF on the main and lower levels at 2906A Dundas for a furniture showroom, home décor and accessories, for 10 years to begin September 1, 2008 at \$3,500 per month. This Agreement to Lease was signed on August 29, 2008 by both Mr. A. Tehrani and someone on behalf of the landlord, whom I find to be Mr. Salehi, given that the initials are clearly "AS" and he was the only authorized signing officer for CDI, even though the actual signature looks different from his usual one. Mr. Levy testified that he had nothing to do with the lease. Mr. Kazman also testified that he did not prepare this lease. Mr. A. Tehrani did not contradict any of this evidence.

751 It is significant that Mr. Salehi did not enter into an Agreement to Lease for CDI until at least two weeks after the Alta sublease was entered into. Setting aside the fact that CDI did not have permission from the landlord, Anticoni Sakellariou, to sublet the property, it is very significant that the Alta sublease was signed on August 29, 2008 before Mr. Salehi/CDI even had any rights to 2906 Dundas.

752 Mr. Sakellariou testified that there is no 2906A Dundas Street West and that logistically there is only one front entrance, even though there were two entrance doors and one rear entrance and so it would not have even been possible to sublet part of the space. He also testified that he was never approached to sublet or assign the CDI lease and he did not see the Agreement to Lease that was in the Alta loan file prior to testifying. I accept that evidence, as it is clear from all of the evidence that Messrs. Salehi and A. Tehrani did not want the landlord to know what they were up to.

753 What is most significant is the fact that clearly by August 29, 2008, Mr. Salehi and Mr. A. Tehrani had reached their agreement that they share 2906 Dundas. This is the only possible explanation for why the Fraudulent CDI Lease was for less square footage than the actual space and why the real lease with Anticoni Sakellariou was not provided to the BNS for the CDI SBL and why the CDI/Alta lease was provided to the CIBC. I appreciate Mr. Inoue's submission that there is no evidence that Mr. A. Tehrani believed that his sublease was in any way inappropriate and that there is no evidence that he was aware of the Fraudulent CDI Lease provided to the BNS but he had to have been aware of the fraud, as I will come to, in terms of the invoices presented to the CIBC for payment.

754 I accept Mr. Sakellariou's evidence that the address for this property was simply 2906 Dundas. Although I cannot find on the evidence that the use of CDI's company number as the landlord was known to Mr. A. Tehrani, the fact he and Mr. Salehi in effect created an address, namely 2906A Dundas, was known to him and this was clearly done in an effort to legitimize this purported sublease. The fact Anticoni Sakellariou was not on this lease eliminated the chance that she would be contacted by the CIBC about the lease.

755 Mr. A. Tehrani's evidence about his relationship with Mr. Salehi before he applied for the Alta SBL made absolutely no sense. On the one hand he said he didn't know Mr. Salehi. However, he also testified that he was a nice guy and he was visiting him in his store, CDI, to see if he could help him. Given Mr. A. Tehrani already had two stores to run and supposedly did not know Mr. Salehi, this evidence is nonsense. Mr. A. Tehrani testified that when he was visiting Mr. Salehi, Mr. Salehi suggested that it was a big place and he could sublease half of his store to him. In Mr. A. Tehrani's opinion it was a good size and he didn't think it would be expensive.

756 Although this evidence suggests that the idea to sublease came up after Mr. Salehi was running his store and Mr. A. Tehrani was helping him, this is clearly not correct given the timing of the leases I have referred to. Furthermore, Mr. A. Tehrani also said that they both decided "from the beginning" not to close the whole wall between them; a reference to the partition described by Mr. Sakellariou and that is consistent with the timing of the sublease from CDI to Alta and the renovations purportedly done by CDI. Had the sublease come later, as the Crown points out, there would have been no need to re-renovate the supposedly recently renovated store.

757 Based on the evidence of Mr. Sakellariou, and given the dates on the Mosaic and Icon invoices to CDI, it is clear that Mr. Salehi was renovating 2906 Dundas during his rent free

months of September and October 2008 and possibly into early November using his \$153,000 SBL and start-up capital. As I have already stated, CDI would not have opened until mid-November at the earliest. This was clearly after the decision by Mr. Salehi and Mr. A. Tehrani that Alta would sublease from CDI.

758 It is therefore obvious and beyond doubt that Mr. A. Tehrani knew about whatever renovations Mr. Salehi was doing to the premises, including the new front doors, the opening of the staircase and building the open partition. Mr. A. Tehrani admitted that he visited Mr. Salehi at CDI and that is where they talked about this arrangement. Before I continue with the significance of this I will set out the balance of the chronology of Alta's SBL.

759 Mr. A. Tehrani incorporated Alta on September 15, 2008, with an address of 2906A Dundas.

760 According to the Coort Analysis, Alta received \$100,000 from Ms. Cohen's personal account at the BNS by draft dated November 6, 2008 for start-up capital. Mr. A. Tehrani testified that he did not know Ms. Cohen and that he believed that his brother tried to help him but said he didn't remember too much as he was under so much pressure at that time because of the divorce and his finances and he really wasn't focused. He couldn't remember how his brother did it. Later in his evidence Mr. A. Tehrani said he knew it was a loan that his brother arranged for him but he did not know who it was from. This is another example of what I consider to be a failure to remember to avoid answering the question. Mr. A. Tehrani said he gave money back when he could but he is not sure how much he paid back. He did not say whom he was making these payments to.

761 Mr. Levy testified that he did not lend Mr. A. Tehrani money for either Contempo or Alta and that if Mr. A. Tehrani needed start-up capital he knew Mr. Kazman and would have gone there. Mr. Kazman said he would have some knowledge about this loan if he drafted the security documents but he also testified that he was aware that Mr. Levy introduced Mr. A. Tehrani to Ms. Cohen to get a loan. This was another example of Mr. Kazman knowing about Ms. Cohen's business dealings despite his evidence to the contrary. Mr. A. Tehrani however, denied ever meeting Ms. Cohen before the criminal proceedings. Later in his evidence Mr. Kazman had better recall and testified that Ms. Cohen loaned Mr. A. Tehrani \$100,000 on a mortgage and that he prepared some documentation; a promissory note or "something of that nature". He testified that Ms. Cohen did get her money back with interest but it was probably through a circuitous route. It would have been secured on property owned by Mr. Tehrani. Mr. Kazman also said that he was not involved in the loan or this property at all although he may have attended there once, once the store was open, contradicting his evidence that he prepared loan documentation.

762 Mr. Tehrani was also vague at first and said that it could be that he borrowed the money for his brother for this SBL but he later admitted that he did and he produced a demand \$100,000 promissory note that he and his wife, Caroline Parise, signed on November 6, 2008 with 274 Holdings Inc., a company owned by Ms. Cohen and Mr. Kazman. Mr. Tehrani said that he did not know who owned this company. There was to be a mortgage registered against his house to secure the loan but he didn't know if that was done. Based on the Abstract, the mortgage was

never registered although one was prepared, it would seem, by Mr. Kazman given his office address was stated for service.

763 The promissory note was payable on demand and subject to interest at the rate of 25% per year which was reduced by an Acknowledgment dated the same day to \$2,000 per year; 22%. Mr. Tehrani used these funds to purchase a \$100,000 draft payable to Alta on November 6, 2008. Mr. Tehrani said that he got this high interest loan for Mr. A. Tehrani "to teach him a lesson in responsibility" and that he told his brother about the loan over a meal of chicken wings.

764 Ms. Barton submits that Mr. Tehrani's evidence is reasonable. Mr. A. Tehrani's marriage was breaking up and he was not in a position to obtain such a big loan on his own. He was starting out in his own business and seeking guidance from his brother. It is not disputed that Mr. A. Tehrani, Mr. Tehrani and Mr. Salehi cooperated and helped each other out financially from time to time. Because Mr. Tehrani was the supplier of inventory, he tended to be the one with the most funds, but he received loans from Mr. Salehi from time to time as well.

765 Given this was now Mr. A. Tehrani's third SBL in a short period of time and the lack of success of his first two stores, it makes little sense that his brother would even encourage him to open up a third store let alone lend him money to do so, especially given the high interest rate and the fact that Mr. Tehrani needed the consent of his wife and had to put his home on the line. He would not have known that Mr. Kazman failed to register the mortgage that was to secure the loan. His evidence of why he lent his brother another \$100,000 made no sense and suggests that there was something in it for him beyond the ability to sell furniture to his brother. On its own however, I cannot conclude that the reason was because of the alleged fraudulent scheme.

766 There was other interesting evidence about this promissory note. Mr. Tehrani produced the original of this document, which was in four pieces taped together. According to Mr. Tehrani, it had been ripped up by Mr. Levy but he had an opportunity to grab it for his "own security" and he taped it back together. According to Mr. Tehrani, this was not the only piece of paper that Mr. Levy ripped. He produced a Ziploc bag containing ripped pieces of paper and testified that every time he had a loan with Mr. Levy he had to sign a few pieces of paper and then when he paid the loan back Mr. Levy would rip the paper up "not to have anything on the record". In answer to questions from Mr. Coristine, Mr. Tehrani denied that he knew it was important to keep the papers that Mr. Levy ripped up although he said he wanted to keep them for the safety of his home. It certainly suggests that he did not trust Mr. Levy as much as he professed to when he testified about why he would not check the package he got from Mr. Levy before giving it to the bank during the SBL application process; evidence I will come to.

767 According to Mr. A. Tehrani, Mr. Levy told him that he would prepare a Business Plan but there is no Business Plan in the CIBC loan file. Mr. Levy testified that he did not prepare one although his position was that one would have been needed. I presume therefore, that there was a Business Plan for this SBL that has been lost.

768 Mr. A. Tehrani testified that Mr. Levy prepared everything again and gave him a closed

envelope to take to the bank and that he did not know what was inside. All the documents were in the envelope and he didn't bring any other documents. Mr. Levy denied this.

769 Mr. A. Tehrani testified that this time Mr. Levy told him to go to the CIBC at Ellesmere in Scarborough. Mr. Levy also denied this. Mr. A. Tehrani testified that he asked for the bank manager and talked to him. He gave the bank manager the package and the manager told him that it looked good. He gave the manager his phone number and the manager called him later and said he'd been approved for the loan. Again he went to the bank and signed all the loan documentation and he told Mr. Levy who then started the renovation.

770 The loan file contains a TD GIC statement dated February 27, 2008, purporting to be for \$95,250 issued February 27, 2008 and to mature a year later. Sherry O'Quinn from the TD bank testified that this GIC statement was altered. The last two digits of the account number should have been "02", given that it appeared to be a renewal of the prior GIC provided for Qua and Contempo. This evidence was not really disputed by Mr. A. Tehrani and I accept it. According to Mr. A. Tehrani, the bank somehow ended up with the statement without him being aware of it and as I have stated before, he was very unclear about the details of the GIC he said he owned. When Mr. Levy was shown this TD GIC statement he said he didn't know anything about it and testified that he didn't send it or bring it to the bank or do anything with it.

771 In the Loan Registration Form signed by Mr. A. Tehrani on September 29, 2008, the Loan Limit Clause was checked off which was a misrepresentation since the three SBL loans that he now had totaled well over \$400,000.

(b) The Purported Renovations to 2906A Dundas and Purchase of Equipment, Furniture and Fixtures

772 Mosaic and Icon were the purported contractors for Alta. When asked how he chose the contractors for Alta, Mr. A. Tehrani gave his standard answer; he was dealing with Mr. Levy because he was recommended, he trusted him and he controlled the contracting for all three stores. When Mr. Levy asked him who Icon was, he said he didn't know exactly and believed it was a contracting company but did not know who owned it. Mr. A. Tehrani said he paid Icon but could not remember whom he was dealing with. Mr. A. Tehrani consistently said that he always dealt with Mr. Levy and that Mr. Levy controlled everything.

773 Mr. Kazman said that he was not involved in the renovations or equipping of Alta.

774 Mr. Levy's evidence about Alta was all over the map. He said at one point that he had nothing to do with the location although he admitted that he built the partition. Then he admitted he was the contractor for Alta and that he did all the work for Alta at 2906A Dundas and did a great job. Mr. Levy said they had to split the property in two to get enough money, implying that he needed Mr. Salehi and Mr. A. Tehrani to get two SBLs to pay for all the work that needed to be done.

775 Mr. Levy never denied that the Mosaic invoices were his. He also testified that he believed that he took over the job from Mr. Kazman, I presume Icon, and that he did not think he did the

whole location; according to Mr. Levy the work was split between him and Mr. Kazman. Mr. Levy said he had nothing to do with the Icon invoice but that he did some subcontracting for Icon and was paid by several of Mr. Kazman's companies. Mr. Levy said that he came to the rescue when Mr. Kazman's trades walked away because they were not being paid.

776 Mr. Inoue put to Mr. Levy that Mr. A. Tehrani did not know what is required for a furniture store. Mr. Levy responded that he had his brother with him and that the client -- Mr. A. Tehrani, knew exactly what he wanted. He agreed that Mr. A. Tehrani would know he needed air conditioning but he would not know the number of units or where they would be installed. That would be the contractor. Mr. Levy agreed that the contractor gives advice as to what should be done. Mr. Levy agreed that when he was the contractor that he had the expertise and that he gave this advice and Mr. A. Tehrani accepted his advice.

777 It would appear that the billing to Alta was split between Mosaic, Mr. Levy's company, and Icon but this appears to have been the plan from the outset. The CIBC loan file contains a quote dated September 15, 2008 from Mosaic for three phases of work, signed by Mr. Levy on that date, totaling \$95,000. It is interesting that this quote refers specifically to the removal of the existing storefront and the rear entrance and loading dock and the installation of a new storefront and a new rear entrance and custom loading dock. The rest of the quote substantially duplicates work already included in the CDI invoices.

778 There is also an Icon quote dated September 22, 2008 for equipment, tools, furniture and fixtures that is two pages long. Mr. A. Tehrani admitted that he signed and dated the second page but he didn't remember how this quote got to the bank.

779 The CIBC was provided with two invoices from Mosaic and two invoices from Icon for purported leasehold improvements, fixtures, furniture and equipment for Alta. The Mosaic invoices stated a mailing address for Alta of 2906A Dundas Street but the job location address was stated to be 2906 Dundas. These two invoices total \$101,818.50.

780 The first invoice from Mosaic is dated November 5, 2008 and is for \$52,129.75 for the usual Total Gut Job and the first phase of the Total Rebuild. The Total Gut Job has the identical work listed to the work purportedly done a month earlier by Mosaic for CDI to the very same location including entire removal of the existing HVAC system. Similarly the first phase of the Total Rebuild lists work that is virtually identical to the earlier Mosaic invoice to CDI for the same location for including the new opening for a new stairway and installing the new stairway and everything associated with that and the supply and installation of one new high efficiency furnace and air conditioner including all duct work. The only significant difference was that, in the case of CDI, purportedly two new furnaces were supplied and installed whereas only one was purportedly supplied and installed for Alta in the same location. Furthermore, the Alta invoice does not include repair and plastering and is about \$17,000 less than the first Mosaic invoice to CDI. Surprisingly, the Total Gut Job portion on both invoices makes no reference to removal of the existing storefront and the existing rear entrance and loading dock and the rebuilding of these items.

781 Mr. Levy denied that he was paid twice to do the same work. He said that they were two

different locations and that it was two jobs and that it was not the same work. However, Mr. Levy admitted that he did the work on both sides of the partition and that the work was the same on both sides. Mr. Levy testified there were two entrance doors but only one stairway to the basement and both CDI and Alta were using the basement. He built the partition down the middle and said this is why it was open at either end. He said that there were at least three offices at the back.

782 As for the HVAC, Mr. Levy's evidence was that it was a big space and they needed two HVACs. He said there is a typing error in one of his invoices; a reference to his invoice to CDI and testified that it should be 1x80 not 2x80; *i.e.*, one HVAC system. Mr. Levy testified that Mr. A. Tehrani asked him to do the HVAC and he installed new HVAC for both 2906 and 2906A. For reasons already stated, I do not accept this evidence. I accept Mr. Sakellariou's evidence that the landlord installed and paid for a new HVAC system suitable to the entire building as required by the terms of its lease with Mr. Salehi and find that this was not done again by Mosaic for Alta or CDI. Furthermore, there is no explanation for why both the CDI and Alta invoices include work to open up and widen a new stairway given Mr. Levy admitted that was only one stairway to the basement, which is corroborated by the photos of the interior of this building.

783 The second Mosaic invoice dated November 19, 2008 for \$49,638.75 was for "Phase III for the rest of the Total Rebuild. It was \$25,856 more than the second Mosaic invoice to CDI and included many items already invoiced to CDI such as new ceramic tile flooring, new ceiling with track and potlights, new washrooms to the lower and main level, removing all partitions in the lower level including refinishing and painting existing flooring, walls and ceiling.

784 Given the dates of these invoices, the purported Total Rebuild was not finished until November 19, 2008. These invoices are dated after the CDI invoices and my finding that any work done by Mosaic for CDI was completed by October 28, 2008. Although I cannot determine when the purported leasehold improvements for Alta began, clearly they continued well after the purported leasehold improvements for CDI were completed-a period of three weeks. There is no doubt that Mr. A. Tehrani would have known that he was being presented with invoices for work that had already been done for Alta.

785 The other two invoices were from Icon and were dated December 1 and December 15, 2008. The first was for furniture and fixtures for \$61,268.60 and the second was for more equipment, computers and tools for \$65,297.05; for a total of \$126,565. These invoices would suggest that for Mr. A. Tehrani's side of the store there was a second conference table with six chairs, a third custom reception counter, and four more computers including a Mac Graphic Design Computer, in addition to the four Mr. Salehi had, two more printers, in addition to the two Mr. Salehi had, three more fax machines, in addition to the two Mr. Salehi had, a second phone system and a second alarm system. Although the second invoice from Icon to Alta does not show any serial numbers, some of the equipment is very similar to that reportedly supplied by Oakwood to Qua and Roxy, Northwood to Contempo or Icon to CDI, including: HP Pavilion including 22 LCD Monitor; PC Dell computer: Mac Graphic Design computer, Panasonic Telephone system and Toshiba Laptop.

786 I don't need an expert witness to tell me that this was a ridiculous amount of additional

equipment for two stores supposedly operating from the same location. I find that all of the equipment on the Icon invoices was not supplied to Alta.

787 Even if Mr. A. Tehrani was operating Alta separately from CDI under no circumstances should there have been two sets of invoices for CDI and Alta, purporting to have done the same work to the same location twice. There is no suggestion in any of the invoices that the work being done was for only some fraction of the total space. The grand total of the Mosaic invoices for leasehold improvements is \$194,895.75. This amount is improperly inflated not only because it charges CDI and Alta for the same work but also because it charges for work that I find was not done based on the evidence of Mr. Sakellariou. This means that Mr. Levy defrauded the bank when he prepared these invoices.

788 Mr. Coristine asked Mr. Levy how he was paying for work for Alta and Mr. Levy said that he saw some payments to Home Depot but that Mr. Coort did not see his credit card statements. Mr. Levy again took the position that he had money in his other accounts that Mr. Coort did not have, that he used. I have already rejected Mr. Levy's position that anything meaningful is missing from his bank records.

789 Mr. A. Tehrani was very vague about what he saw in terms of the purported leasehold improvements although he did say that the basement was finished nicely and they divided part of it for inventory and part for furniture samples. As I already stated in connection with CDI, although I accept that inventory could have been stored in the basement, neither Mr. Salehi nor Mr. A. Tehrani renovated the basement. Mr. A. Tehrani's evidence to the contrary is false. When Mr. A. Tehrani was asked if he saw work being done on the property in accordance with the Mosaic invoices his response was non-committal, indicating only "ya, I saw some workers there." In cross-examination by Mr. Levy, Mr. A. Tehrani was clear that he did not remember the name of anyone. He said that he left it all up to Mr. Levy because he was "comfortable."

790 I find that Mr. A. Tehrani had to have known that Mr. Levy was not doing all of this work for him when it had already been billed to CDI.

791 The CIBC made four advances of the SBL funds into Alta's CIBC business account totaling \$188,190.50 between November 12 and December 17, 2008. Mr. A. Tehrani used those funds along with his start-up capital to pay all four invoices in full. The two invoices from Mosaic totaling \$101,818.50 were paid in four payments between November 12 and November 26, 2009. Alta also made four payments to Icon totaling \$126,565.65 between December 3 and December 19, 2008.

(c) Did Alta Operate as a Business?

792 Based on the invoices from Mosaic and Icon, Alta should have been open for business by January 2009.

793 The Crown questioned the logic of two competitors operating side by side from the same store. No evidence was called on this from any retail expert. Mr. A. Tehrani said it was an advantage because it would show a bigger store even though they were individual stores. I

believe I can take judicial notice of the fact that there appear to be stores that operate in this manner that I have experienced but it seems unusual in this case since both CDI and Alta were buying inventory from the same source; Mr. Tehrani's companies.

794 There is a real question as to whether or not Alta in fact operated from 2906 Dundas at all. Mr. Sakellariou testified that CDI was the only tenant that he was aware of. He thought Mr. A. Tehrani worked for CDI although I accept that he would not be able to tell that solely from Mr. A. Tehrani's presence in the store. Mr. Sakellariou testified that he saw nothing physically at the premises that would imply there were two businesses in that location and he was not familiar with a company called Alta Design. More significantly, Mr. Sakellariou testified that the side on the right side of the partition as you look from the back to the front of the store looked like it was being used for storage as opposed to a competing furniture store. That evidence is consistent with the fact that there is a photo taken after CDI vacated that shows wooden pallets on the floor.

795 Common sense would suggest that there would be some signage identifying each store. There was no signage for CDI and in July 2009 Alta only had a very small sign in the window that looks like an 8.5" x 11" piece of printer paper that said "Alta Now Open". It is not very visible and I accept that Mr. Sakellariou never saw it. I would have expected there to be more. However, based on the photo of the front of the store, there was furniture along the entire street side and so the one side of the partition was not entirely storage.

796 Mr. Kazman said that he may have attended at the premises once well after Alta opened. It might have been to meet Mr. A. Tehrani. He did see inventory in the store. He said that, by coincidence, he was involved in an apartment building at 2897 Dundas Street with Messrs. Luska and Jacobsen, which was a couple of blocks away. He did not give any evidence about the fact CDI was also purportedly operating from the same premises. Ms. Cohen became involved when she bought out Lorraine Salt's interest..

797 Mr. Coort analyzed Alta's CIBC business account from the time it was opened on October 1, 2008 to when it closed on October 26, 2009. By December 22, 2008, Alta had only a balance of a little over \$8,000 in its account.

798 In the period between December 23, 2008 and September 30, 2009, Alta did make some sales; approximately \$53,600 based on receipts of credit card and cash deposits referred to in the Coort Analysis. This assumes the approximately \$8,300 in cash deposits were sales. However, no corporate income tax returns were filed by Alta with the CRA. Many months later, MDC Modern Design paid Alta \$7,968.45 by cheque dated April 2, 2009 which referred to an invoice number. Mr. Levy testified that he must have bought some furniture and said that he dealt with Mr. Tehrani and he paid this as directed by him. I do not accept this explanation for this payment as on the evidence Alta was closed as of January 2009 and so it would not be possible for Mr. Levy to buy furniture from Alta. On this point I accept Mr. Levy's evidence that he dealt with Mr. Tehrani.

799 The fact there are credit card receipts and cash deposits does not necessarily mean that there was an entire separate operation for Alta. Mr. Tehrani testified that when the BNS closed

his accounts he used his Visa machine from As Is to make sales. In other words, all it would take for Mr. A. Tehrani to record sales from Alta would be a Visa machine.

800 In the period October 31 to December 22, 2008, Alta paid a total of \$44,467.97 to Mr. Tehrani's companies; purportedly for inventory; \$21,895.48 to Meez Ltd. and \$9546.50 to Comod. Mr. A. Tehrani also paid CDI \$9,525.99 with a cheque dated November 13, 2008 that had a RE of "purchase inventory". Mr. A. Tehrani said that maybe he bought from Mr. Salehi because they were close to each other. That does not make sense since they were both selling inventory purchased from Mr. Tehrani and so I find that hard to believe. In the period from December 23 to September 30, 2009 Alta paid \$3,500 to Meez Corp. Most of these cheques are marked with some reference to "purchase" or "inventory". If these payments were in fact for inventory, it means that Alta purchased about \$45,500 in inventory during this period of time.

801 There are no payments from Alta that appear to relate to payroll or commissions but Mr. A. Tehrani was withdrawing some cash regularly. In the period between December 23, 2008 and September 30, 2009, he withdrew a total of \$12,705 in nine payments but there were a number of cash withdrawals throughout the period of the Coort Analysis.

802 Mr. A. Tehrani testified he paid rent to Mr. Salehi. However, Mr. Coort found Alta's business account did not show any regular monthly payments of \$3,500 from Alta to CDI/1774531 Ontario Inc., which could be considered rent. However the CDI account does show that Alta paid CDI \$8,350 in four payments in the period December 1, 2008 to July 31, 2009 which could have been towards rent although the amount does not accord with the lease.

803 Alta did not make any loan payments until January 2009 and then it made those payments until August 2009. There are also payments that appear to be for insurance, between January and August 2009.

804 Considering all of the evidence, I cannot conclude that Alta did not operate from 2906 Dundas but certainly there are a number of facts that suggest it was not a serious operation.

805 Mr. A. Tehrani testified that in 2008 there was a recession and that is part of the reason why Alta failed. He still blamed Contempo as the problem. He testified that he didn't want to give up because he had lost his wife and children and he felt he had to do his best to continue Alta. Mr. A. Tehrani testified that when Mr. Salehi was behind in his rent he believed that if Mr. Salehi closed CDI there was no way Alta could remain open. This is another area where Mr. A. Tehrani was inconsistent however, as later he said that Mr. Salehi did not close CDI until later and that when he closed Alta he couldn't remember if CDI was still open. Again Mr. A. Tehrani testified that he spoke to Mr. Levy and Mr. Levy said it was best to close and that he didn't have a choice. He couldn't remember what happened to Mr. Salehi's or to Mr. Tehrani's inventory. Mr. A. Tehrani testified that he did not consider asking his brother to take over Mr. Salehi's half of the CDI premises even though he knew his brother was using some of the space for storage for As Is. In my view that should have been the first thing he thought of, if he was serious about Alta. I find this very suspicious given that Mr. Tehrani did sign a lease for these premises around the time Mr. Salehi and Mr. A. Tehrani vacated. This is consistent with only a half-hearted intent to operate Alta.

806 Mr. A. Tehrani testified that he thought it was not a bad idea that he take what he could from the office and he took a small quantity of equipment to put into storage close to Alta. He testified that he didn't have too much inventory left. This does not seem right given his sales, at most, were just \$9,000 more than what he purportedly paid for inventory and I would have expected a higher margin, particularly given his evidence about why he wanted to buy furniture from his brother in the first place.

(d) The Appraisal of Alta's Assets

807 The CIBC declared the Alta loan to be in default as of August 31, 2009.

808 Mary Turchetti was called by the Crown and confirmed that she was retained by Gowlings on November 17, 2009 to conduct an appraisal on a "break-up value basis", assuming the assets were removed for sale and to advise as to the feasibility of removal for sale. No supplier invoices were provided. When she spoke to Mr. A. Tehrani, he advised her that the assets were in storage at 4 Jackson Place, Suite 101, Fourth Floor (4 Jackson), which was Mr. A. Tehrani's home address at the time. The place she went to however, was not a residential unit, and she was not sure if someone was living there.

809 The Crown submits that it is telling that the appraisal for Alta took place within two weeks of the appraisal for CDI, yet Mr. A. Tehrani did not direct the appraiser to 2906 Dundas. Mr. Manimankis who did the CDI appraisal was able to get access to the store and did see some assets there. I agree that the obvious reason is that Mr. Sakellariou or his father would have told Ms. Turchetti that he had never heard of Alta and that it did not have a lease for the premises.

810 Ms. Turchetti testified that she attended at 4 Jackson on November 23, 2009. When she arrived, she asked the person who met her whether he was Mr. A. Tehrani and he responded, "yes". She did not recognize Mr. A. Tehrani in court. I find that Ms. Turchetti met with Mr. A. Tehrani.

811 Ms. Turchetti asked Mr. A. Tehrani where the assets were and he pointed them out to her. The items that she saw were lined up and stacked and not being used. She asked if there were any more assets and she was told that there was nothing else. She was advised that the carpet the assets were sitting on was not part of the assets. She made a list as she viewed the assets and took photos of what she saw. Ms. Turchetti testified that the assets she inspected were definitely older than having been purchased in December 2008 and they were of very poor quality. Ms. Turchetti's report back to Gowlings of the same date stated a liquidation value for the assets of \$785.00 before the costs of the sale. She included a schedule in her report setting out the specific assets and their individual values.

812 I have compared the photos Ms. Turchetti took to the photos taken by Mr. Manimankis of the purported CDI assets two weeks earlier. Obviously because the assets had been moved to a new location, comparisons cannot be perfect but the assets shown to Ms. Turchetti are clearly virtually the same as the assets shown to Mr. Manimankis. Not only are virtually all of those that I can identify the same item, I find that many, if not all, were in fact the very same items shown

to Mr. Manimankis. Both sets of photos show the same filthy LG monitor, a CPU that was old enough for a floppy drive, the same cash register, a phone system still wrapped in plastic, and the same keyboard with an elastic holding the cord. Mr. Coristine's description of these assets being a "rotating pile of junk" is a good description.

813 Ms. Turchetti never saw the Icon invoices to Alta, nor did she ever go to 2906 Dundas. When she was shown the Icon invoices at trial, Ms. Turchetti testified that very little of what she saw is set out on the Icon invoices. None of the assets on her list match the items on the Icon invoices to Alta. There is no office furniture listed save for the corkboards and the bar fridge. Although there is some computer equipment, the make and type is different from the Icon invoice. She did not see a Mac graphic computer or a phone system or an alarm system. The Dell computer, the cordless tool kit and a Makita sander on her list could be one and the same as on the invoices. She did see a printer/scanner/fax machine, but the one she saw was a Brother, not an Epson. The scanners that she saw were a Brother and an Epson whereas the invoice stated it was a Dell. She saw an LG monitor, not an HP monitor and recorded that the monitor was very old and in very poor condition. She did not see a drill set.

814 This was clearly a further fraud on the bank. Mr. A. Tehrani had to have known that he was not showing assets that belonged to Alta. I say this not only because they had already been represented as CDI's assets but because clearly some of these assets were too old to be any of the items on the Icon invoices.

815 Mr. Kazman denied any knowledge of this. The Crown takes the position that Mr. Tehrani knew this but I find that the Crown has not proven actual knowledge on his part.

(e) The Circulation of the SBL Proceeds

816 I have already reviewed the evidence concerning Alta's bank account.

817 In the period from November 13 to December 8, 2008, Mosaic received \$101,818.50 from Alta, a total of \$71,904.15 in two payments from Icon (from the CDI and Western Leather SBLs) and \$15,332.31 from 1040 Holdings, a company owned by Mr. Kazman and Mr. Levy, for a total of \$189,054.96.

818 Mosaic used this money in part to make four payments to Morningstar but none of these payments were for work that was done at 2906 Dundas or for Alta. According to Mr. Levy, and some of this is confirmed by the RE lines on the cheques, these payments were for tile work done in one of his bathrooms at his home, 23 Tresillian, and for stucco work at 1040 and 1048 Eglinton and stucco and possibly other work at 344 Wilson, which I will come to.

819 Mosaic also paid over \$33,000 to Trust Inc. and about \$1,700 to Mr. Levy's company MDC Contracting & Tiles Import (MDC Contracting), \$3,500 to Save Energy and \$4,000 to Mr. Kazman's companies Cramarossa and 274 Holdings owned by Mr. Kazman and Ms. Cohen. It also paid \$29,695.48 to Comod. The cheque has a RE: "For Inv # 025198 (Final Payment)". Mr. Levy testified that this was for furniture purchased from Mr. Tehrani. A payment to Mortgage Edge for \$3,500 was to pay the broker fee for the purchase of 1040 Eglinton.

820 In the month of December 2008, Icon received \$126,565.65 from Alta and \$39,544.35 from Western Leather for purportedly supplying leaseholds and equipment to this company which had a SBL, for a total of \$166,110. Icon used this money to pay a total of \$150,950 to Mosaic, Fairbank, Trust Inc., Trust Inc. Realty Corp. and MDC Modern Design, all companies owned by Mr. Levy. A total of \$7,882.02 was paid in the same period to Cramarossa and M&M, companies I have found were owned by Mr. Kazman. In this period almost all of the money Icon received went to companies owned by Mr. Levy and to Mr. Levy personally. None of the payments by Icon are for office furniture or computers like those purportedly supplied to Alta, which corroborates my finding that not all of the items on these two invoices were sold to Alta. There is also no evidence of payment for any workers or construction materials or suppliers for work purportedly done for Alta in this Mosaic account. This corroborates my finding that the work Mosaic invoiced Alta for was not done. Although Mr. Levy may have paid cash to do some renovations cheaply, the fact there are no payments for a new HVAC for example, is consistent with what I have already found.

821 The Crown also relies on payments to Trust Inc. Realty Corp. in the period November 13 to January 26, 2009 from 1040 Holdings, Comod, Mosaic and Icon. Mr. Levy testified that the \$100,000 payment to 1040 Holdings was part of the \$200,000 that Mr. Kazman owed him for the transfer of 1040 Eglinton to Mr. Kazman. Mr. Levy instructed Mr. Kazman to pay the money to Trust Inc. That could be legitimate but I cannot think of any reason why Icon would be paying money to Trust Inc. Realty Corp.

822 Payments out from Trust Inc. Realty Corp. include a little over \$4,000 to 274 Holdings and about \$5,000 to Cramarossa. Mr. Levy testified that these payments were loans to Mr. Kazman but the payment to 274 Holdings was an uneven amount so I do not accept that evidence. The two payments to Cramarossa however, were even amounts.

823 From these funds the Ron Kalifer Family Trust was paid \$12,107.59. There is evidence of other payments to Mr. Kalifer and the Crown theory is Mr. Levy paid him for his personal guarantee for Western Leather in addition to Mr. Kalifer's kickback for taking part in what the Crown calls this fraud scheme. Mr. Levy testified that this was money that he owed to Mr. Kalifer and he was instructed to pay it back this way. That evidence is not credible given that it was an uneven amount. However, I have not considered this evidence as it is not part of the Crown's Similar Fact Application and the Crown cannot rely on alleged prior discreditable conduct of Mr. Levy. None of the defendants made any submissions about this.

824 There is also a payment from Trust Inc. Realty Corp. in the amount of \$16,124.20 to Shapiro & Cho in Trust with a RE: "344 Wilson". Although initially Mr. Levy denied the suggestion that he was using loan proceeds from Alta and various other loans to buy 344 Wilson -- he said that he had so many accounts that he did not need loan money to buy this property, he also testified that this cheque was for Land Transfer Tax and closing costs for the purchase of 344 Wilson or 846 Sheppard. Another example of the internal inconsistencies of his evidence.

825 The Crown also did an analysis of funds received by Mosaic in a longer period: from the November 13, 2008 to January 23, 2009. These funds came from Icon and Trust Inc. Realty

Corp. and in turn the funds from those companies can be traced back to Alta and Western Leather. One of the payments from Mosaic to Meez Corp. was in the amount of \$59,995.49 on February 2, 2009 and from those funds Meez Corp. paid Modernito \$60,000; the next SBL by a draft dated February 6, 2009. The draft has a note that it was a "loan return" to Mr. Salehi.

826 I do find it significant that within a space of five days Mosaic paid Mr. Tehrani's companies a total of \$113,806.27; \$16,945.68 to Comod, \$6,860.59 and \$59,995.49 to Meez Corp. and \$30,004.51 to Meez Ltd. Mr. Levy testified that these payments were all for furniture "for one of his buildings" but he could not say which location. The cheques do refer to invoice numbers but Mr. Levy did not open any new business in this period and I find it unlikely that he would have needed all of this furniture in such a short period of time. Meez Ltd. sold residential furniture, not office furniture and I find that it did not sell the type of furniture that Mosaic would buy for companies that had obtained SBLs.

(f) Summary of Findings of Fact

827 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Contempo SBL:

828 I have found that clearly by August 29, 2008, Mr. Salehi and Mr. A. Tehrani had reached their agreement that they share 2906 Dundas which is the only possible explanation for why the Fraudulent CDI Lease was provided to the BNS rather than the real lease with Anticoni Sakellariou and why the CDI/Alta lease was provided to the CIBC. I have not found that Mr. A. Tehrani knew that his sublease was in any way inappropriate and there is no evidence that he was aware of the Fraudulent CDI Lease provided to the BNS.

829 I have found that the loan file contains a fraudulent TD GIC but that I have insufficient evidence based on Alta alone to make any finding on who altered this document and how it got to the bank. I have also found that Mr. A. Tehrani made a misrepresentation in the Loan Registration Form when he signed it with the Loan Limit Clause checked off since the three SBL loans that he now had totaled well over \$400,000.

830 I have found that Mr. A. Tehrani and Mr. Salehi agreed to defraud two banks, the BNS by Mr. Salehi and the CIBC by Mr. A. Tehrani, before CDI entered into a lease for 2906 Dundas by creating false leases. Even if Mr. A. Tehrani was not aware that there was any issue with the lease Mr. Salehi gave him, he had to have known that he and Mr. Salehi were presenting invoices to the BNS and CIBC suggesting work had been done for two different stores when that was not the case.

831 I have found that no leasehold improvements were done for Alta or at the very least, if the cost for the improvements that were done were shared between CDI and Alta, that the Mosaic invoices were inflated. On this basis I am satisfied beyond a reasonable doubt that Mr. Levy is guilty of Count 5 with respect to Alta.

832 I am also satisfied that Mr. A. Tehrani had to have known that Alta and CDI were obtaining SBLs to renovate the very same premises. I have found, given the dates of the invoices to CDI

and to Alta, that there is no doubt that Mr. A. Tehrani would have known that he was being presented with invoices for work that had already been done for CDI. I have found that it is beyond doubt that Mr. A. Tehrani knew about whatever renovations Mr. Salehi was doing to the premises, including the new front doors, the opening of the staircase and building the open partition. Mr. A. Tehrani admitted that he visited Mr. Salehi at CDI and that is where they talked about this arrangement. Even if he was more concerned about cosmetics he had to know that he was being asked to pay for leasehold improvements that had been billed to CDI.

833 I have found that the billing to Alta was split between Mosaic, Mr. Levy's company, and Icon, and that this appears to have been the plan from the outset. I have also found that the Mosaic invoices were improperly inflated because they charged for work that I find was not done based on the evidence of Mr. Sakellariou. This means that Mr. Levy defrauded the bank when he prepared these invoices for presentation to the bank. I have also found that Mr. A. Tehrani had to have known that Mr. Levy was not doing all of this work for him when it had already been billed to CDI.

834 I have also found that the two invoices from Icon for furniture and fixtures and more equipment, computers and tools, were exaggerated and that all of the equipment on the Icon invoice was not supplied to Alta. I have found that Mr. A. Tehrani had to have known that he was not showing assets that belonged to Alta to the bank's appraiser, Ms. Turchetti, because they had already been represented as CDI's assets and that clearly some of these assets were too old to be any of the items on the Icon invoices.⁷ There is no doubt in my mind that this was an attempt by at least Mr. A. Tehrani to try to fool the bank's appraiser and the bank into abandoning the assets and hopefully not pursue what happened to the assets financed by the bank and learn of the fraud.

835 This also implicates either Mr. Kazman and/or Mr. Levy depending on my finding of who was in control of Icon.

836 I have, however, found that there is no evidence that Mr. Tehrani knew what was being shown to the appraiser.

837 It is clear that this SBL was a sham and obtained by Mr. A. Tehrani based on very significant misrepresentations he made to the CIBC in order to obtain a SBL and use the funds received of \$188,190 for purposes other than those represented to the bank. This is corroborated by the fact that Mr. A. Tehrani's evidence about why he decided to open a third store was nonsensical.

838 I have also found it unlikely that the payments made by Mosaic to Mr. Tehrani's companies within a space of five days totaling \$113,806.27 were for furniture because I have found it unlikely that Mr. Levy would have needed all of this furniture in such a short period of time and because Meez Ltd. sold residential furniture, not office furniture. I have found that it did not sell the type of furniture that Mosaic would buy for companies that had obtained SBLs.

839 For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. A. Tehrani committed fraud over \$5,000 of the CIBC with respect to Alta and that he is guilty of

Count 5. The fact there is no evidence that he profited from this fraud does not undermine my conclusion.

Modernito Design Inc. (Modernito) -- BOM -- Count # 3

(a) The Modernito SBL

Modernito (Salehi) was approved for a SBL from the BOM on January 27, 2009 in the amount of \$150,000. It was Mr. Salehi's third SBL in eight months.

840 There is no evidence as to why Mr. Salehi opened a third business. As the Crown points out, there is a real question as to how he could afford to given the low sales of his first two stores, particularly CDI.

841 The loan file contains an Agreement to Lease dated January 1, 2009 between Mr. Salehi for a company to be incorporated and Trust Inc. Realty Corp. for the main floor of 1048 Eglinton for approximately 1,400 SF for ten years to start February 1, 2009 at a rate of \$2,500 per month plus GST, utilities and all expenses. This Agreement to Lease was signed by both Mr. Salehi and Mr. Levy on January 12, 2009.

842 The loan file also contains a Commercial Lease between Modernito and Trust Inc. Realty Corp. made on January 1, 2009 for the same premises at the same rent signed by Mr. Levy and Mr. Salehi. Mr. Levy admitted that he prepared and signed the lease. I find that Mr. Salehi signed the lease on behalf of Modernito. There is a letter signed by Mr. Levy dated March 3, 2009 to the Lipman firm in the loan file which attached an Amendment to Lease, amending it to commence February 15, 2009 instead of February 1, 2009. The effective date of execution of the lease was amended to February 5, 2009 and that amendment is signed by both Mr. Salehi for Modernito and Mr. Levy for Trust Inc. Realty Corp. It is significant that this letter and the attached Amendment to Lease have a fax header with the date of March 3, 2009 and the HP Fax Number. For reasons already stated, I find the Mr. Levy or someone on his behalf faxed the Amendment to Lease to the BOM.

843 Mr. Salehi incorporated Modernito on February 4, 2009, with an address of 14 Equator, his home address. Mr. Kazman did not recall if he incorporated this company. I expect that he did not as the Articles of Incorporation are filled out by hand.

844 Mr. Kazman testified that although he claimed to have had an interest in 1048 Eglinton at this time, he did not know about this lease or that Mr. Salehi had moved into the main level. He said that he never saw Mr. Salehi there. He testified that as long as Mr. Levy had the place rented he really didn't care. Mr. Kazman did admit however, that Mr. Levy introduced him to Mr. Salehi at some point. As I have said, I do not accept Mr. Kazman's evidence that he knew essentially nothing about the tenants of properties he had an interest in.

845 The BOM loan file does not contain a Business Plan and Mr. Levy testified that he did not prepare one. The loan file does contain the same fraudulent RBC GIC that was found in the CDI and Roxy loan files that I have already referred to.

846 The loan file contains a letter dated March 5, 2009 on Comod letterhead, signed by Mr. Tehrani as president and owner of Comod addressed "to whom it may concern", with a Re: line with Mr. Salehi's name and home address. In that letter Mr. Tehrani stated that "in 6th of Feb. 2009, Mr. Alireza Salehi has been repaid the amount of \$60,000 out of \$94,000 investment into Comod Corp". I note that this letter was sent about the same time as the Demand Letter.

847 The Crown relies on a draft dated February 2, 2009 from Mosaic payable to Meez Corp. in the amount of \$59,995.49. Meez Corp. used this money to purchase a draft on February 6, 2009 payable to Modernito for \$60,000 and the reference on the draft states "Alireza Salehi Loan Return". However, based on the Coort Analysis, this money was never deposited into the Modernito account.

848 In the Loan Application and Agreement and Loan Registration Acknowledgment form signed by Mr. Salehi on March 5, 2009, he confirmed compliance with the Loan Limit Clause which was false given Mr. Salehi had outstanding loans with Roxy and CDI at the time.

(b) The Purported Renovations to 1048 Eglinton and Purchase of Equipment, Furniture and Fixtures

849 I have dealt with the history of the purchase of 1048 Eglinton by Trust Inc. Realty Corp. in Appendix "L" and the work done to the property thereafter. As set out there, I have found that after Trust Inc. Realty Corp. purchased 1048 Eglinton, the renovations included the basement and the upper two floors of the property which included gutting the premises, building a new storefront, installing at least new duct work including grills, diffusers and exhaust fans, new plumbing (which included the fixtures for one washroom), and new drywall throughout. I have also dealt with the purported renovations done to the property by Mosaic and Contempo.

850 Mr. Salehi provided the BOM with two invoices from Icon and one from Whitehorse that totaled \$202,592.44. The first Icon invoice dated March 9, 2009 in the amount of \$90,510 refers to three phases of work; namely: Phase I for the usual Total Gut Job Demolition and Phases II and III for the usual Total Rebuild. This invoice included replacing with new the existing walls, plumbing, electrical panel, wiring, HVAC, including ductwork, storefront, and rear entrance. This invoice has a fax header dated March 11, 2009 from number "1234567" and the fax cover page is from Mr. A. Tehrani; presumably for Mr. Salehi, on behalf of Modernito. The same is true for the second Icon invoice for Furniture & Fixtures. The fax cover page from Modernito dated March 25, 2009 for the "last invoice" shows expressly that it came from Qua and the number is 1234567. Given the uniqueness of the number I find that both of these invoices were faxed from Qua, showing that Messrs. Salehi and A. Tehrani were still cooperating with one and other. Also of interest is the fact that by January 2009, Qua was out of business. The only explanation is that a fax machine that belonged to Qua was now being used by Mr. A. Tehrani and Mr. Salehi. Clearly Mr. A. Tehrani was not truthful with the court when he testified that he left all of Qua's assets behind when he closed down the store.

851 The second Icon invoice dated March 19, 2009, in the amount of \$72,489.50, was for furniture and fixtures and the Whitehorse invoice dated March 25, 2009 for \$39,592.94 was for

equipment. This Whitehorse invoice contains equipment that is identical to Oakwood's invoice dated April 16, 2008 to Qua and/or Oakwood's invoice to Roxy and/or Icon's invoice to CDI namely with respect to the photocopier machine, fax and printer HP, the printer, fax, scanner Sharp machine, Toshiba laptop, audio system - Sony Bravia, and cash register - Sanyo. It is also significant that according to the fax header on the invoice, the Whitehorse invoice was sent to the Lipman firm from Qua, not from Modernito.

852 All of the work that was purportedly done by Icon for Modernito had purportedly already been done at 1048 Eglinton by Northwood for Mosaic, as set out in the first Northwood invoice to Mosaic, save there was no reference to the rear entrance. Furthermore, the first Northwood invoice to Mr. A. Tehrani for Contempo dated June 23, 2008 stated that all of this work was done yet again although again there was no reference to the rear entrance. So not only was 1048 Eglinton gutted at least two times before Modernito, each time the electrical, plumbing, HVAC and storefront was purportedly ripped out and replaced. Furthermore, both Contempo and Modernito were furniture stores.

853 Although Mr. Levy denied Mr. Coristine's proposition that one furniture store looks the same as another and there would be no reason to renovate within one year, there is no reason why the same store would need to be gutted over and over within short timeframes. Although I do not know if there was a purported gut job for the Labels clothing store opened by Gilles Meshaly in November 2007, in my view after the work that Mr. Meikle observed was done in the period October 2006 to May 2007, there would have been no need to gut and rebuild the entire premises again for Mosaic, then again for Contempo and now for Modernito. Similarly, as a matter of common sense, there would be no reason to keep replacing the electrical panel, plumbing, HVAC and the storefront particularly when the storefront design was not changed after the work Mr. Meikle saw in the period October 2006 to May 2007.

854 Mr. Levy said that the renovation Mr. Salehi wanted to do was not for a simple furniture store for the amount of renovation that he did. In the course of this answer he admitted that the renovations would give him equity in his property when he was able to sell it. This is an important admission of an obvious fact. Mr. Coristine then put to Mr. Levy that they used the loan proceeds to fix up properties and flip them which he denied. However, clearly to the extent that significant renovations like replacing plumbing, the electrical panel and wiring, the HVAC and the storefront was done to any of these properties and paid for by SBL proceeds, there is no doubt that the value of the property would increase.

855 Mr. Levy also testified that the work done for Modernito was done in accordance with the Icon invoices. To explain how he knew this he said that he "could" have done the subcontracting. When he was asked why he was always subcontracting rather than telling Mr. Kazman that he was tired of bailing him out, Mr. Levy replied that he was making more money than anyone else. Earlier, however, Mr. Levy said that he could not make a lot of money subcontracting. These explanations were a feeble attempt to distance himself from Icon. Later, when asked about Icon payments to his companies, Mr. Levy testified that he did subcontract for Icon for the work purportedly for Modernito.

856 The loan file contains a letter from Michelle Panagiotakos (law clerk) at Torkin Manes dated

March 5, 2009 to Trust Inc. Realty Corp., attention Mr. Levy, asking if various renovations had been done by the tenant including removal of existing storefront, rear entrance and windows, partitions, walls, electrical fixtures, flooring (tiling), plumbing, heating and air conditioning systems, sub ceiling and drop ceiling, new wood framing on storefront, electrical panel and wiring, and construction of new washrooms, doors, custom deck in rear of property. Mr. Levy responded by a letter from him, as president for Trust Inc. Realty Corp., sent by fax with a coversheet on the letterhead of Trust Inc. Realty Corp. dated March 5, 2009, re Modernito Design Inc. In the letter signed by Mr. Levy he stated "... I confirm that the Leasehold Improvements were made by Modernito Design Inc." I find that this is clear evidence that Mr. Levy was familiar with the Icon invoices to Modernito. I also find that he was the one involved in any leasehold improvements that were done by Icon. It is very significant that the fax header on this document, which was clearly faxed by Mr. Levy or someone on his behalf, has the HP Fax Number with a date of March 5, 2010. I expect it was someone on his behalf, however, as the signature does not look like Mr. Levy's usual signature. However, it must have been sent on his instructions since the fax came from Trust Inc. Realty Corp.

857 Mr. Kazman testified that Mr. Levy was the contractor and prepared the Icon and Whitehorse Invoices and that he; Mr. Kazman, was not involved in the renovations and equipment for Modernito. Whether or not Mr. Levy did the work, he could not say. I still have to come to my determination of who was in control of the Disputed Construction Companies which will include Icon and Whitehorse.

858 Mr. Coristine showed Mr. Kazman the first Icon invoice to Modernito and put it to him that surely he would not say that there were three gut jobs done in three months. Mr. Kazman said it was possible but unlikely but that he did not really care what the tenant did so long as they did not damage the building. Mr. Kazman said that Mr. Levy was responsible for this building. Although Mr. Kazman's position was that he was a part owner, he maintained that he wasn't hands on. I have already given my reasons for why I do not accept this evidence.

859 In my view what happened in this case is what happened in the case of Contempo. The Icon invoices presented to the BOM that represented that there was another complete Total Gut Job and Total Rebuild were false-that work was not done. I make the same findings that I did with respect to Contempo. When Mr. Levy represented to the BOM that all this work was done, he knew that was false and this representation was made knowing that the BOM would rely on that representation and pay out the SBL. Mr. Salehi must have known this as well as he would have had to have seen the invoices when he arranged for them to be faxed to the bank. If I find that Mr. Kazman had any control over Icon, he will be implicated in this fraud as well.

860 The BOM advanced \$150,000 in three payments in March 2009 towards these invoices and these invoices were paid in full by Modernito that month.

(c) Did Modernito Operate as a Business?

861 Mr. Coort analyzed Modernito's account from February 13, 2009, when it opened, until October 29, 2010, when the account was closed. It was in overdraft by March 31, 2009 after it

paid the Icon and Whitehorse invoices. After September 1, 2009 there was very little activity in the account.

862 Based on the dates of the invoices, Modernito should have been open by about April 1, 2009. In the period April 1 to August 31, 2009, Modernito received just over \$8,000 in direct deposits and credit card sales. This is consistent with Modernito's GST/HST filings with the CRA, and its reported sales and other revenue for the period February 4 to December 31, 2009 at \$6,765, and for the period January 1 to December 31, 2010 at \$0. No corporate income tax returns were filed for Modernito.

863 Rent was paid for the months of April to July 2009 inclusive but no utilities were billed. Mr. Levy said that in the beginning he paid for the utilities but then they were put in the name of Modernito and it paid direct but there is no evidence of this. There is also no evidence of any payments for employees or commissions. Modernito made its loan payments for the months of March to August 2009.

864 I find based on this evidence that Modernito did operate but it was totally unsuccessful as a business.

865 Mr. Kazman testified that he does not have as much recollection about Modernito as he does Qua and Contempo but he recalls Modernito was an operating business. He did not explain how he would know this given his other evidence that he knew nothing about Modernito. This is another example of internal inconsistencies in his evidence.

866 Mr. Levy testified that he had no knowledge about Modernito's default on the loan but said that it "could be" that Mr. Salehi did not pay the rent and that he had to close him down. In answer to questions from Mr. Inoue, Mr. Levy said he did not recall saying this but testified that he would have done so if the rent was not paid. He said that he would send a letter first demanding that the tenant pay the rent and if they did not, they would have to leave. That appears to be what happened in this case. There is a fax from Mr. Levy on behalf of Trust Inc. Realty Corp. to Torkin Manes dated December 3, 2009 stating that Modernito's lease was terminated for non-payment of rent and arrangements were made for Modernito to remove all of their belongings. Mr. Levy complains they left a big mess and damaged his walls and it cost him \$1,500 to have debris removed.

867 There is a letter from Torkin Manes in response to this letter asking for information including a copy of two appraisals the landlord was to have obtained in respect of their distraint of the tenant's assets. There is no evidence of a response to this letter by Mr. Levy nor was he asked about it.

(d) The Appraisal of Modernito's Assets

868 According to Industry Canada, the SBL for Modernito went into default as of September 30, 2009.

869 David Sisak, the General Manager of Benaco Sales Ltd., was retained by MSI Spergel Inc.,

Trustees in Bankruptcy, on February 9, 2010 to do an appraisal of the assets of Modernito. Mr. Sisak testified that he spoke to Mr. Salehi by phone, but did not meet him and he never went to 1048 Eglinton. Mr. Sisak admitted that he did not ask Mr. Salehi whether anything was at 1048 Eglinton, nor was he instructed to go there or speak to the landlord.

870 Mr. Sisak was instructed to go to 14 Equator; Mr. Salehi's residence and 654 College, which was the address for Mr. Tehrani's companies Meez Ltd. and Meez Corp. I would have expected if the assets were no longer at Modernito that they would be at Mr. Salehi's home. At 14 Equator Mr. Sisak was taken down to the basement of the residence by a lady. The assets were piled in the corner of the room and Mr. Sisak took pictures of everything that he saw. He testified that the age of the equipment varied, but some of the computers were "a little dated" including a vintage computer tower and a computer with a floppy drive; something he had not seen for some time.

871 Mr. Sisak had copies of the invoices from Whitehorse and Icon to Modernito. He testified that he attempted to compare the items that he saw with the invoices, but there were not many assets present on either invoice. The Panasonic phone system he saw should have been a V-Tech phone system. He also saw a printer/scanner and a Sanyo cash register. In cross-examination, Mr. Sisak admitted that five items on Schedule "A" matched the Whitehorse invoice and were located at 14 Equator. He referred to the printer/scanner, the Sanyo cash register, the Panasonic telephone, the PC HP pavilion, the 22" LCD monitor and the Epson colour printer. Mr. Sisak didn't check the serial numbers, but there were a lot of items on the Whitehorse invoice that did not have serial numbers.

872 When Mr. Sisak attended at 654 College he told the person there (whom he did not identify) that he was there to see the assets and was told to "go this way" and he was escorted to the basement. He asked whether these were all the assets and he was told "yes". Mr. Sisak did not ask where the rest were. He found nothing from the second Icon invoice there. With respect to the Whitehorse invoice, he only found four items from the invoice.

873 Mr. Sisak provided his written report on the same day. His report sets out the assets he found in each location. He provided a total appraised value for all of the assets at between \$675.00 and \$875.00 and recommended that the Trustee abandon them. Mr. Sisak admitted that after one year, the assets lose significant value. In this case, it wasn't cost effective to liquidate the remaining assets.

874 Based on the evidence of Mr. Sisak, and comparing the pictures he took of Modernito's assets to the pictures of CDI's and Alta's assets, it appears that many of the assets are the same as shown for the other appraisals - it is hard to tell as they were stacked differently when they were moved. Clearly Mr. Salehi knew these were not Modernito's assets and that the appraiser and bank would be deceived. Although there is no direct evidence that all of the equipment that was invoiced was not provided, a reasonable inference is that it was not which is why this "rotating pile of junk" was being shown to the appraisers.

875 Mr. Coristine put to Mr. Tehrani that this was the third time the same "junk" was shown to an appraiser and that he must have known this given these assets were again at one of his

properties. He suggested to him that he conspired with Mr. Salehi to deceive the Modernito appraiser. Mr. Tehrani claimed to have no knowledge of this. I find it very convenient that Mr. Tehrani professed no memory of these assets even though this was the second time that what I have found was a "rotating pile of junk" was at one of his properties to be shown to an appraiser.

876 Mr. Coristine also cross-examined Mr. Tehrani about the fact that on the one hand he was threatening to sue Mr. Salehi by sending the Demand Letter and yet a year later he was doing this favour for him. To this, Mr. Tehrani said that Mr. Salehi was an alcoholic and he wasn't listening to him. He thought his wife was working at Roxy and would see the Demand Letter and help her husband. This evidence did not make any sense and at this point I noted that Mr. Tehrani was very antagonistic towards Mr. Coristine. Mr. Tehrani said that the letter was a threat only and he spoke to Mr. Salehi's wife and they resolved the matter although he didn't remember how. Given the change in Mr. Tehrani's demeanour over this issue and given the obvious inconsistency in his position with Mr. Salehi, I find that the Demand Letter could not have been *bona fide*. It simply makes no sense and Mr. Tehrani did not give any credible evidence that would reconcile his two inconsistent positions with Mr. Salehi.

877 Given that this was now the second time that what I have found was a "rotating pile of junk" was at one of Mr. Tehrani's properties to be shown to an appraiser, I find it highly unlikely that he did not know that these assets were not the assets from either of these businesses. They were in his home and then his business within a matter of a few months. Even if he did not notice that they were, for the most part, the identical assets, he must have realized that some of them at least were much older than when they would have been purchased. Furthermore, he was clearly close to Messrs. Salehi and Tehrani. Given my finding that they each knew that the assets they were showing the appraiser were not the assets from their stores, I find it very difficult to believe that Mr. Tehrani did not know what they were doing.

(e) The Circulation of the SBL Proceeds

878 Mr. Coort analyzed the Modernito business account with the BOM from February 6, 2009, when the account was opened, until October 29, 2010, when the account was closed. In addition to the SBL funds, Modernito received \$25,000 from Comod on March 30, 2009. This was the only deposit of what could be considered start-up capital. This deposit is further confirmation that the Demand Letter was not *bona fide* as it was sent earlier in the same month.

879 Mr. Coort analyzed what Icon did with the money received in March 2009 for payment of its two invoices along with a \$10,000 payment from Mosaic in the same month, totaling \$172,999.50. Given Mr. Levy's position that Icon was Mr. Kazman, and his dim views of Mr. Kazman as a contractor, there does not appear to be any legitimate reason for why Mosaic would be paying money to Icon. In any event, Icon made payments totaling \$82,808.01 to Trust Inc. Realty Corp., GM Realty, Mosaic, MDC Modern Design, and Trust Inc.; all companies owned by Mr. Levy. Mr. Levy explained the payments to Mosaic and MDC Design as subcontracting Mosaic did for Icon and the other payments as money Mr. Kazman owed him.

880 Icon made payments totaling \$43,163.98 to companies owned by Mr. Kazman, namely Cramarossa, which was used to pay his mortgage and car loans, 1040 Holdings, and to Mr.

Kazman personally. In addition, a payment of \$29,695.49 was made to Comod, Mr. Tehrani's company.

881 Mr. Kazman gave his usual evidence that Mr. Levy was the one who controlled the distribution of the funds and only he could say why money was paid and to whom and in what fashion. Mr. Kazman said that there was some money he directed to himself that he was entitled to. This evidence suggested that if he felt he was owed money he just wrote a cheque to himself or for one of his companies. That does not seem like an agreement that Mr. Levy would ever have been comfortable with.

882 Whitehorse used the funds it received in payment of its invoice as well as an unknown deposit of just over \$80,000 to pay \$76,112.26 to Mr. Levy's companies MDC Modern Design, Mosaic, GM Realty and Trust Inc. Mr. Levy testified that the payments to his companies were for subcontracting to Whitehorse. Some of those cheques do refer to deposits and invoice numbers.

883 Whitehorse also paid \$3,810 to Cramarossa, and \$32,000 to Shapiro and Cho, in trust, re: Marshall Kazman. Mr. Kazman admitted that the payment to Shapiro and Cho was to purchase 846 Sheppard. Mr. Shapiro acted on the purchase, which closed May 4, 2009. Mr. Levy identified a cheque from Whitehorse to Trust Inc. in the amount of \$3,165.49 as money Mr. Kazman gave him for 846 Sheppard and the Re: line does refer to Sheppard. This is an example of SBL proceeds being used to purchase another property.

884 Finally, Whitehorse paid a total of \$2,895.91 to Ms. Cohen and Save Energy. Mr. Levy signed the \$2,200 cheque to Ms. Cohen and he testified that Mr. Kazman directed him to sign this cheque.

885 In the period between April 3 and April 7, 2009, MDC Modern Design also paid a total of almost \$40,000 to Meez Ltd., almost \$8,000 to Alta and about \$6,300 to Roxy which Mr. Levy testified were all payments for furniture. He testified however, that he dealt with Mr. Tehrani and made the cheques payable as directed by Mr. Tehrani. As I have already concluded, at this time neither Roxy nor Alta were still open and able to sell furniture and in any event I can think of no legitimate reason why Mr. Tehrani would direct money to companies owned by Mr. Salehi and his brother. In the same timeframe Trust Inc. Realty Corp. paid \$20,737.15 to Meez Ltd. on March 24, 2009.

(f) Findings of Fact

886 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Modernito SBL.

887 I have found that what happened in this case is what happened in the case of Contempo. The Icon invoices presented to the BOM that represented that there was another complete Total Gut Job and Total Rebuild were false - that work was not done. When Mr. Levy, as the landlord, represented to the BOM that all this work was done, he knew that was false and this representation was made knowing that the BOM would rely on that representation and pay out the SBL. He would also have known this as he was the purported contractor. As a result I am

satisfied beyond a reasonable doubt that Mr. Levy is guilty of Count 3 with respect to the Modernito SBL.

888 Mr. Salehi must have known this as well as he would have had to have seen the invoices when he arranged for them to be faxed to the bank. If I find that Mr. Kazman had any control over Icon, he will be implicated in this fraud as well. Although I accept that some limited work was done for Modernito, it would have been minimal given that Modernito was also a furniture store. Accordingly the invoices from Icon that were presented to the BOM misrepresented the leasehold improvements that were done, resulting in the BOM advancing the SBL proceeds in the amount to \$150,000 to Modernito as a result of this fraud.

889 I have also found that Mr. Salehi misrepresented old assets as Modernito's assets to Mr. Sisak, the appraiser for the Trustee in Bankruptcy. This also makes the invoice from Whitehorse to Modernito suspicious, given the fact that very few assets that could be those shown on the Whitehorse invoice were available to be shown to the appraiser. For that reason I find that all of the equipment was not delivered to Modernito either. I have found that Mr. Tehrani's claim to have no knowledge of this very difficult to believe since this was the second time that what I have found was a "rotating pile of junk" was at one of his properties to be shown to an appraiser. That said, his evidence claiming to have no knowledge of this raises a reasonable doubt in my mind.

Kube Home Décor Corp. (KUBE) -- CIBC -- Count # 5

890 Before I review the Kube SBL obtained by Mr. Tehrani, I will review briefly the two SBLs that Mr. Tehrani obtained before Kube; one for Meez Corp. and another for Comod. These SBLs are not covered by the Indictment but evidence concerning these SBLs and these businesses was led by the Crown and Mr. Tehrani and has some relevance to the SBLs obtained by Mr. Tehrani that are part of the Crown's case.

Meez Corp.

(a) The SBL

Meez Corp. (Madjid Vaez Tehrani) was approved for a \$165,240 SBL from the BNS in November 2006. This SBL was paid back in full as of December 21, 2009.

891 Mr. Tehrani testified that in 2006 he wanted to change the whole look of his Meez Ltd. store. His landlord told him he could do what he liked so long as it was not structural. Mr. Tehrani testified that he knew Mr. Levy was in financing and so he went to him for advice. Before talking to Mr. Levy he did his own research on SBLs but when he went to see Mr. Levy he told him that he had no experience with them. Mr. Levy told him not to worry and that he would look after everything. According to Mr. Tehrani, when he told Mr. Levy that he had operated Meez Ltd. for a year, Mr. Levy told him that he would not be able to get approval for Meez Ltd. and that he needed a new business in order to apply for a SBL. Mr. Tehrani said that he also recalled this from the research that he had done. He did not want to go to the expense of changing the name of the company and so Mr. Levy suggested that he simply change Meez

Ltd. to Meez Corp. Mr. Tehrani described Meez Ltd., which continued as an operating company, as the "mother" of his companies.

892 Mr. Tehrani told Mr. Levy that he wanted to apply for a furniture business and he testified that Mr. Levy said he would make a Business Plan at a cost of \$500-700, which he wanted in cash, in advance. Mr. Tehrani said that if he was approved, Mr. Levy was also going to charge him a percentage of the SBL; 7%-9% or "something like that". He testified that Mr. Levy wanted this payment once he was approved. Mr. Tehrani said that this was the case for all three of his SBLs and that he would sometimes pay in cash and sometimes by cheque -- Mr. Levy would tell him who to pay. Mr. Tehrani said the percentage commission he paid Mr. Levy for the loans depended on the amount and he did not know what Mr. Levy's calculation was and that he would "have to check my books" to remember the calculation. He never provided further information from his books, nor did he produce whatever he was referring to. This evidence was denied by Mr. Levy who insisted that he only charged each defendant for the cost of their first Business Plan.

893 Mr. Tehrani incorporated Meez Corp. himself on October 23, 2006 and went back to see Mr. Levy after checking his credit scores, which he said were good. He testified that Mr. Levy told him that he needed information about all of his assets and liabilities, bank statements, and NOAs. Mr. Tehrani produced a piece of paper which has some of his writing in blue pen, setting out his assets and liabilities and I accept his evidence that the writing in black on the front and back of the document is Mr. Levy's. It appears this is what Mr. Levy gave Mr. Tehrani setting out the information that he needed.

894 The assets Mr. Tehrani listed included his home, a RBC GIC for \$75,000, and about \$110,000 in a TD chequing account. His stated liabilities included his mortgage and his TD Visa but did not include the money owing on the loan he got from Mr. Levy that I will come to. Mr. Tehrani testified he prepared everything that Mr. Levy asked for including a piece of paper setting out his education, experience and management background, which he gave to Mr. Levy along with the GIC, and his NOAs for 2004 and 2005.

895 According to Mr. Tehrani, Mr. Levy told him that he needed \$100,000 in capital to start with in a GIC. When Mr. Tehrani told Mr. Levy that he only had \$45,000-\$50,000, Mr. Levy offered to loan him the remainder and so he borrowed \$70,000-\$80,000 from Mr. Levy. He testified that he didn't know where the money that he borrowed from Mr. Levy came from. He paid Mr. Levy back the money he had borrowed one or two months later. Mr. Tehrani was not asked why he needed to borrow this money in light of the RBC GIC he had and the money in his TD account.

896 Mr. Tehrani testified that Mr. Levy prepared the Commercial Offer to Lease that is in the loan file between the numbered company, which was Meez Ltd.'s Ontario number, and Mr. Tehrani for a company to be formed as Meez Corp., for the main floor and lower level of 654 College. It was signed on October 10, 2006 on behalf of the numbered company by Mr. Tehrani's business partner, Mr. Moghaddam. Mr. Tehrani could not explain why Mr. Salehi, who had presumably become a partner in the summer of 2006, did not also have to sign the lease.

897 The Business Plan in the loan file is dated November 1, 2006. Mr. Levy admitted that he

prepared the first Business Plan for Mr. Tehrani but I note that the copy in the loan file does not have a table of contents or page numbers. Several of the pages have the reference to the HP Fax Number with a date of October 24, 2006. Meez Corp. is described as a company that will be engaged in the retail and wholesale of various styles of furniture. In the opening line of the Executive Summary Ms. Barton pointed out that Mr. Tehrani's first name is spelled incorrectly. It is correct elsewhere in the plan. No mention is made of Meez Ltd. in the Business Plan.

898 Mr. Tehrani recalled that one day Mr. Levy called him in to take a look at the Business Plan and he showed it to him on the computer. Mr. Levy had organized how much to ask for, the details of the cost of the renovations, the equipment he would need and put it all together. Mr. Levy reviewed the management section and the projections with him. When Mr. Levy showed him the sales projections, because Mr. Tehrani had retail sales experience, to him the numbers seemed a "bit exaggerated". He raised this with Mr. Levy who said it was an estimate for the future and that it was possible that he could make that kind of money but he would have to promote his business online. Mr. Tehrani was not familiar with internet sales at the time. The Crown has not asserted that the projections in the Business Plans provided to the banks by any of the defendants were improperly inflated. What is significant about this evidence however, is that Mr. Tehrani admits that he had a chance to review the draft Business Plan with Mr. Levy.

899 Mr. Tehrani testified that he wanted to go to the BNS across the street but Mr. Levy told him not and that he knew the manager at the BNS at Steeles and 404. Mr. Levy told him that if he listened to him he could get his loan - it was "his way or no way". Mr. Levy gave him the phone number of the bank manager there named Dwight. Mr. Tehrani denied ever meeting Dwight before he went to the bank. He admitted that Dwight may have been at the BNS branch on College Street but he did not have anything to do with him at that time. Mr. Levy said that if there was any problem the manager would let him know or he would let Mr. Levy know. In cross-examination by Mr. Levy, Mr. Tehrani denied that Mr. Levy suggested he go to the TD for the loan that was across the street. He also denied the suggestion that he asked Mr. Levy if he knew someone at BNS.

900 Once he had an appointment with Dwight, Mr. Tehrani told Mr. Levy and testified that Mr. Levy dropped off a package for him sized bigger than 8" x 11" paper that had "everything inside" - what he described as a yellow envelope. According to Mr. Tehrani, Mr. Levy told him not to open the envelope and to go directly to the BNS and give the envelope to the bank manager. Mr. Tehrani testified that he did not open the package on the way to the bank and that the envelope was all he brought to the bank. He never brought any of the bankers, for his three SBLs, any documents besides the package he got from Mr. Levy.

901 When Mr. Coristine pointed out to Mr. Tehrani that as this was the first time he didn't know Mr. Levy that well, Mr. Tehrani responded that when he chooses an accountant or lawyer he doesn't know them well either. Mr. Coristine repeated that he was being sent into the bank with a sealed envelope. Mr. Tehrani's response to that was that when you open a business you get excited and you're so attached to it, it's like a baby. He trusted Mr. Levy for the first job. He was in business and wanted to open his new business and make money.

902 This explanation for not knowing what was in the envelope did not make any sense to me.

At the outset Mr. Tehrani would not have known that he would have no issues in getting a SBL for Meez Corp. This was the first time he was dealing with Mr. Levy. The instruction to not open the envelope must have made him concerned as there is no obvious reason for that advice and a reasonable person would have been suspicious about such advice and expected to know what he was taking to the bank. This evidence was also inconsistent with his evidence that for the first loan he kept his "eyes open" to see how things worked and that it was for the second SBL for Comod that he trusted Mr. Levy. Mr. Tehrani gave no credible explanation for why he trusted Mr. Levy for this first SBL to the point that he would not double check what he was providing to the bank.

903 Mr. Coristine put to Mr. Tehrani that it made no sense from either his or Mr. Levy's perspective that he was told not to look into the envelope because we now know it contained altered documents. He pointed out that if Mr. Tehrani happened to look at them or if the banker happened to look at them this would have become known. Mr. Tehrani's answer to this question was not responsive. Furthermore, by this time Mr. Tehrani distrusted Mr. Levy enough to retrieve ripped up promissory notes and other business documents.

904 According to Mr. Tehrani, the first time he went to the bank, he went by himself. He told the manager that this was the package from Mr. Levy. He was sitting across from the manager at his desk when the manager opened the package up and the first thing Mr. Tehrani saw was the manager reading the Business Plan. He is sure the manager looked at the other papers too although he said that he did not remember seeing them himself at that time.

905 At this first meeting the manager told Mr. Tehrani that some of the numbers had to be changed and that it was better if he came with Mr. Levy so that he could explain how it had to be done to Mr. Levy. As a result Mr. Tehrani and Mr. Levy went to see the banker together. The Business Plan in the loan file contains the changes that Dwight and Mr. Levy made in handwriting. Sometime later Dwight called Mr. Tehrani to tell him that he'd been approved and to come back to open the account.

906 Ms. Barton reviewed some of the documents from the BNS loan file for Meez Corp. that have the HP Fax Number in the fax header with Mr. Tehrani who testified that 123456789 was not his fax number and that he did not fax these documents. As previously stated this is an issue I will come to.

907 Mr. Tehrani admitted that the Summary of Personal Finances in the loan file is in his handwriting, that he filled it out with the bank manager and that he signed it on October 24, 2006 in front of the banker but he said that he didn't remember filling out forms at the BNS. Under assets it refers to the CIBC and RBC GICs totaling \$155,000. The liabilities do not include the loan from Mr. Levy. According to Mr. Tehrani, Dwight never asked if he had borrowed the money to buy the GIC. As for his gross personal employment income, Mr. Tehrani wrote down \$55,135.23 in addition to rental income from a basement apartment. This amount matches the T1 General and the NOA for 2005 that were altered, which I will deal with when I consider the Kube SBL. Mr. Tehrani testified that he found out documents that the bank had were forgeries here in court.

908 Mr. Tehrani admitted that he cashed the GIC in once the SBL was approved and he used that money to pay his loan back to Mr. Levy. He admitted that he understood that the bank was looking for him to have his own capital to start with. As Mr. Coristine pointed out to Mr. Tehrani, showing the bank a GIC that he intended to cash in to pay back the loan from Mr. Levy was not honest as it was not really start-up capital anymore.

(b) The Purported Renovations to 654 College and Purchase of Equipment, Furniture and Fixtures

909 The only renovation experience Mr. Tehrani had was some small jobs at home. I accept his evidence that he did not have experience in construction and had no knowledge of structural work. Mr. Tehrani testified that as a result, if Mr. Levy said he needed a new air conditioner, he would accept that advice. Mr. Tehrani testified that before he retained Mr. Levy for leasehold improvements, he obtained estimates from other contractors that he knew but they each did individual jobs like floors, ceilings, or windows, etc. He told Mr. Levy that he would like to use these other contractors but Mr. Levy said it would interrupt the job if other people were working inside. As a result he agreed to Mr. Levy doing the renovations for Meez Corp. Mr. Tehrani did not know who the contractors were at the time; he just dealt with Mr. Levy. He said that he did not meet Mr. Kazman. Mr. Tehrani is the only defendant that I heard from who tried to retain third party contractors.

910 Mr. Tehrani did not explain what he wanted Mr. Levy to do to his store in the way of leasehold improvements. He had to close Meez Ltd. while the work was done and he testified that he put most of the inventory from the store at 660R College Street (660 College) which he said was behind his store. Mr. Tehrani testified that he had access to the rear of 660 College as of around 2002 when he started importing Vespas. He paid separately for this space and there was no lease documentation. It was a freestanding space that he used as a warehouse for storing his Vespas and where he made custom-made furniture. This evidence was given during his cross-examination by the Crown in response to questions about where Meez Ltd. kept all of the inventory it supposedly brought in from China. It was not however, evidence that I would have expected Mr. Tehrani to give in his evidence-in-chief and, as I will come to, there is evidence that Meez Ltd. bought a lot of furniture.

911 The BNS was provided with three invoices. Mr. Tehrani is sure Mr. Levy gave him the invoices but he did not remember how the invoices got to the bank although he knows that the bank paid the contractors. One invoice was from a company called Creative Contracting dated September 11, 2006 for the typical Total Gut Job and Total Rebuild. All of this work was done on the interior of the store. This invoice has a fax header with a date of November 9, 2006 and it shows it was from the HP Fax Number. The other two invoices were from Northwood and were for furniture, fixtures and equipment. These two invoices have the same fax header from the HP Fax Number with dates of November 9 and November 14, 2006. The loan file contains what appears to be the fax cover page for a fax that was sent to the bank on November 14, 2006, attaching "final invoices" that refers to both of the Northwood invoices. It purports to be from Mr. Tehrani on behalf of Meez Corp. but does not have his signature. The fax header shows it was from the HP Fax Number. Mr. Tehrani denied faxing these invoices.

912 Mr. Tehrani testified that he was very happy with the job that Mr. Levy did to his store which was very successful once the store opened.

(c) Meez Corp. as a Business

913 Mr. Coort analyzed the BNS account Meez Corp. opened on November 2, 2006 until June 30, 2010. He concluded that it appeared that Meez Corp. had legitimate credit/debit card sales totaling a little over \$508,000. In addition, the company received funds from Alta, As Is, Comod, Kube, Meez Ltd., Uzeem and Mr. Levy's companies MDC Modern Design, Mosaic, Trust Inc. and Trust Inc. Realty Corp.

914 Mr. Cristine took issue with the fact that two separate corporations operated from the same location but I accept Mr. Tehrani's explanation. Given he intended Meez Ltd. to continue as a wholesaler it could operate without a showroom as it was buying the furniture that Meez Corp. was selling retail. Although the business reasons for doing this are not readily apparent, had Mr. Tehrani simply shut Meez Ltd. down I do not see how it would have made a difference to the allegations the Crown makes.

915 There was a fire at Meez Corp. and between November 23 and December 1, 2009 Mr. Tehrani received \$180,000 in insurance proceeds. He testified that he put \$59,000 of this money into As Is and \$68,000 went to the BNS to pay the balance outstanding on the Meez Corp. SBL and this is reflected in the records. Mr. Tehrani testified that he fixed up 2906 Dundas for As Is for \$15-\$20,000 in early 2010. Mr. Tehrani testified that he fixed the damage to Meez Corp. and although the Crown queries how he did it with the relatively little amount of money that remained, nothing flows from this save it is another example of where Mr. Tehrani was able to get a store ready for relatively little money.

916 According to the Coort Analysis, Mr. Salehi appears to have been an employee of the company from November 2006 through March 2008

(d) Meez Ltd. as a Business

917 Mr. Tehrani testified that he converted Meez Ltd. to a wholesaler of furniture and that Mr. Salehi was still a partner in that company, although he did not explain how he arranged this with Mr. Salehi who was not made a partner in Meez Corp. which became Mr. Tehrani's retail store. Both Meez corporations operated from the same location, 654 College. Meez Corp. only had BNS accounts. A Google Street View take of the outside of Mr. Tehrani's store on 654 College in May 2009 shows that the name of the store was just MEEZ with the two E's facing in the wrong direction. Mr. Tehrani testified that if a customer came to the store and bought from Meez Corp. they would see that on the invoice and on his business card.

918 Mr. Tehrani produced copies of a large volume of invoices for purchases of furniture made by Meez Ltd. in the period from about April 2008 to November 2010. Based on his summary Meez Ltd. purchased almost \$94,000 in Canadian dollars and just over \$106,000 in US funds. He also produced invoices from Meez Ltd. to Meez Corp. Mr. Tehrani testified that he could put

this merchandise anywhere he wanted and again made no reference to Mr. Salehi's partnership interest.

Comod Corp. (Comod)

(a) The SBL

919 Mr. Tehrani obtained a SBL for Comod from the BOM but there is very little evidence about this. Mr. Tehrani incorporated Comod on January 15, 2007 with an address of 550 College Street, Toronto (550 College). Mr. Tehrani testified that he wanted a place that he could use for storage because the store that Meez Ltd. had at the time was small. He wanted exposure on the street because most of his inventory was hidden and so the idea was to open another space so he could promote his line of furniture that he was importing from China. He wanted most of his inventory, which Comod bought from Meez Ltd., to be at Comod. The plan was to have Comod close to Meez Corp./Meez Ltd. as he did not want to spend too much time travelling between the two stores and wanted to save money on transportation.

920 Comod entered into a lease with Martin and Isidro Jose dated January 22, 2007 for 550 College consisting of approximately 3,000 SF at \$2,250 per month. The lease in the loan file was unsigned but Mr. Tehrani testified that he believes that he signed the lease.

921 The Business Plan for Comod in the BOM loan file is dated April 1, 2007. The cover page states it is for a company called L'Espace Ltd. Mr. Tehrani said he did not create that Business Plan dated April 1, 2007 and that it was prepared by Mr. Levy. Although I do not believe that this was put to Mr. Levy, I expect he would have denied it. Mr. Tehrani testified that Mr. Levy told him that name L'Espace was too complicated and "too French" and made him change the name to Comod.

922 Mr. Tehrani testified that the process for the loan application was the same as he described for Meez Corp.

(b) The Renovations to 550 College and Purchase of Equipment, Furniture and Fixtures

923 Mr. Tehrani testified that Mr. Levy did the renovations for Comod. One or two different companies were used but he did not remember their names. Mr. Levy gave him invoices but he did not know who got the invoices to the bank or how the bank paid the invoices. Mr. Tehrani testified that he did not meet Mr. Kazman for this job. The invoices are not in evidence.

(c) Comod's Operation as a Business

924 Mr. Tehrani testified that Comod started in 2007 but he did not know if it opened when he opened Kube Home Décor Corp. (Kube), his next SBL. Mr. Coort analyzed Comod's account with the BOM from December 31, 2007 to October 13, 2009. Although it had credit card sales totaling about \$30,400 in that period, a majority of the known deposits to this account came from SBL borrowers Alta and Qua and purported suppliers Icon and Mosaic as well as Mr. Levy's companies MDC Modern Design, Trust Inc. and Trust Inc. Realty Corp.; a total of \$216,954 out of total deposits and credits in the period of just over \$344,000.

925 The question is where did Comod get its inventory? Mr. Tehrani produced an invoice dated April 15, 2007 from Meez Ltd. to Comod for \$26,019.82 for furniture.

926 Mr. Tehrani was not sure if Comod was still open in October 2009. One mystery is the letter on Comod letterhead dated March 5, 2009 that confirmed that Mr. Salehi had been paid back a \$60,000 investment in Comod which showed Comod's address as 654 College, the address for the Meez companies. Mr. Tehrani said he didn't know why this was and said that when he closed Comod the store was at 550 College Street and maybe he had to give it an address.

927 Comod terminated the lease and closed when the landlord had a flood. Mr. Tehrani testified that he also had issues with the landlord going to the shop and leaving the door unlocked. Mr. Tehrani said that he paid off this SBL.

(d) Blue Deer Loan

928 In February 2008, Mr. Tehrani received a \$100,000 loan from Blue Deer. Mr. Kazman signed the \$100,000 cheque from Blue Deer on February 21, 2008 to purchase a draft payable to Mr. Tehrani personally. He said that it could have been Ms. Cohen's money and that she asked him to lend it out. Mr. Tehrani testified that this loan was arranged by Mr. Levy who never told him where the loan money came from and he never asked. Mr. Kazman denied meeting Mr. Tehrani at the time the loan was granted and testified that if it was not his money he would not necessarily have met Mr. Tehrani as he would not have cared. This makes no sense given his relationship with Ms. Cohen. Also I would expect he would know if it was his money or not. Mr. Levy admitted that he had Mr. Tehrani sign the promissory note but he denied Mr. Kazman's evidence that he did not know Mr. Tehrani and he testified that Mr. Kazman would not have lent that much money without knowing the client. Mr. Tehrani, however, also denied meeting Mr. Kazman and it is possible that he was vetted by Mr. Levy and on that basis the money was loaned to him.

929 This loan was secured by a promissory note. There were no interest payments; it was 36% interest per year. Mr. Tehrani testified that he agreed to this high interest rate so he could work with that money at the same time. He was selling the furniture he got from overseas at a profit of 300-400% and so it was worth it to him to do a few things with the money like buy GICs and do business with the money.

930 Mr. Kazman said that this loan was probably secured, possibly on Mr. Tehrani's house. This is suspicious as that would be the only security. Mr. Tehrani testified that he did not know if the Blue Deer loan was registered against his house and in the course of this evidence he emphasized the need to pay this loan back and how important it was to him that his house was safe. I found this evidence important when I considered why he would borrow \$100,000 for start-up capital for his brother when he wanted to obtain a second SBL after he had barely opened Qua.

931 When Mr. Tehrani received a discharge letter dated May 14, 2010, on Blue Deer letterhead, signed by Mr. Kazman, he brought it to his lawyer Gary Steinberg to ensure

everything was fine. Gary Steinberg told him that Mr. Kazman was not a good person to work with. This, of course, is a hearsay statement and it is only relevant to Mr. Tehrani's state of mind. Mr. Kazman admitted that by this time he had at least spoken to Mr. Tehrani by phone as the letter confirming discharge states "As discussed". Later he admitted that he believed he had met Mr. Tehrani by this time.

932 According to the discharge letter Mr. Tehrani paid back almost \$157,000. The Crown accepts that this loan was paid back. He was directed by Mr. Kazman to pay the funds to a company Ms. Cohen and Mr. Kazman had an interest in; 6747841 Canada Inc. Mr. Tehrani said that he did not remember what this company was. Blue Deer had been dissolved under the *CBCA* since August 13, 2007 -- six months earlier - but I accept Mr. Kazman's evidence that he was unaware of this at the time - he would not knowingly have risked the assets of the company escheating to the Crown. He said that the bank account remained and was not shut down by the bank.

933 In answer to the Crown's submission that Mr. Tehrani must have known that the funds he was borrowing were from the alleged fraudulent scheme, Ms. Barton argues that there is no evidence to support this inference. Furthermore, it was never put to Mr. Tehrani that the repayments were not legitimate. She submitted that you don't normally see contracts between fraudsters and here we have promissory notes which she suggests shows it's not a fraudulent scheme.

Kube Home Décor Corp. (Kube)

(a) The SBL

Kube was approved for a SBL from the CIBC on February 10, 2009 in the amount of \$166,500.

934 Mr. Tehrani testified that for Kube his big plan was to order two 53-ft. HC (high cube) containers of furniture from China. The furniture came in pieces like Ikea furniture and had to be assembled. He hired a real estate agent to look for space close to Dufferin and St. Clair. The agent told him that he knew a place on Queen Street, the one Mr. A. Tehrani had leased - 677 Queen. The agent told Mr. Tehrani that they were planning on extending the store at the back to bring it up to 2,000 SF but that the landlord would first have to move a tree and they were waiting for a permit to do the extension. Mr. Tehrani said he wasn't very happy with the size of the unit as it existed. He had seen a place at Dufferin and St. Clair that was between 2,500 and 3,000 SF. Mr. Tehrani testified that he told Mr. Levy he was not moving in unless he had 2,000 SF. Mr. Levy told him that if he went to 677 Queen he would talk to the landlord to reduce the rent. The landlord was Mr. Luska as far as Mr. Tehrani knew. He did not know Mr. Levy's relationship with Mr. Luska except that they knew each other. Mr. Levy however, denied Ms. Barton's suggestion that he recommended 677 Queen to Mr. Tehrani and he denied helping Mr. Tehrani negotiate the terms of the lease. He said that Mr. Tehrani did this on his own.

935 Mr. Tehrani testified that he met the landlord only when he moved in but he also testified that when he went to see the location he met with Mr. Luska. He had been to Qua before

and he wanted to see what the plan was. Mr. Luska told him they were waiting for a permit to remove the tree which would take six months and that as soon as they got the permit the landlord would build the extension at the landlord's expense.

936 I do not accept Mr. Tehrani's evidence on this point. He knew it would take time for an extension to be built once the approval was obtained and he would have no way of knowing that the approval would even come. A reasonable business person in his position would not take a chance on this and face the prospect of uncertainty, the chaos from construction on an addition when he had an alternative place to rent that was the right size.

937 The loan file contains a lease that Mr. Kazman admitted he likely prepared dated January 30, 2009 between 677 Holdings and Kube for approximately 2,000 SF; the main floor and lower level at 677 Queen, commencing February 1, 2009, at a rent of \$2,500 per month plus GST, utilities, property tax, maintenance, etc., that was signed by Mr. Tehrani for Kube and a signature for the landlord that represented it was signed by the president of the company. The signature does not look like Mr. Kazman's; it must have been signed by one of Mr. Kazman's partners; either Mr. Luska or Mr. Jacobsen. Kube was to get possession of the premises on payment of a deposit of the first and last month's rent of \$5,775 which was paid on March 12, 2009.

938 There was no explanation for why the lease would already provide for 2,000 SF. The lease contained a term that the tenant was taking the premises in an "as is" condition and had the right of first refusal to lease "the space planned to be built at the back of the premises". This lease was entered into one year after Mr. A. Tehrani entered a lease for the same premises on behalf of Qua with the same landlord although in that lease the square footage was stated to only be 900 SF at a rent of \$3,500 per month. I also note that it was about this time that Qua vacated the premises.

939 It makes no sense that the lease Mr. Tehrani signed was for less money than the Qua lease when the premises were still only 900 SF. The Kube lease clearly did not include rent for the additional 1,100 SF as it only gave Mr. Tehrani the right of first refusal to lease that space. Mr. Kazman testified that he never spoke to Mr. Tehrani about taking over his brother's premises and that he believes that Mr. Luska let him lease the premises. It was put to him that Mr. A. Tehrani had bailed on a 10-year lease and Mr. Kazman said that his focus was on getting the premises leased and he wouldn't care who the tenant was and that Mr. Luska checked him out.

940 Kube was incorporated on February 18, 2009. Mr. Tehrani testified he gave the same information that he had for Meez Corp. to Mr. Levy and Mr. Levy prepared the package for the bank for him. He testified that he gave Mr. Levy his GIC, NOAs, list of liabilities and assets; he just updated that material he had given Mr. Levy before. He did not see a draft of the Business Plan this time. Mr. Tehrani testified that despite his concern with respect to the projection numbers for Meez Corp., he didn't check the numbers on the projections for this SBL in the Business Plan. Mr. Tehrani testified he was again told by Mr. Levy not to open the package. He trusted him because he did the first job right.

941 Mr. Tehrani testified that he took the package that was prepared by Mr. Levy to the bank.

Mr. Tehrani introduced an envelope into evidence, which he claimed was the actual yellow envelope that Mr. Levy gave him as the package to take to the bank for Kube. It has on its face Kube Home Décor Corp. and at the top left corner it says "From: Mosaic Contracting". When Mr. Levy asked Mr. Tehrani how he got this envelope he responded that the bank manager asked "do you want this?" and he said "OK" and he took it. He said that this was not offered in the case of the other loans. He didn't plan to get the papers back, it just happened. He did not know why the envelope referred to Mosaic. Mr. Levy denied this evidence and said the envelope must have been for an invoice for Kube from Mosaic.

942 I do not believe this evidence from Mr. Tehrani. On this point I agree with Mr. Levy. Even if the banker offered to give Mr. Tehrani the envelope back, which makes little sense, I see no reason why he would keep it and then remember what it contained several years later. At the time there were no issues with respect to Kube; the loan was approved. Furthermore, Mr. Levy's suggestion that this was an envelope that contained a Mosaic invoice makes much more sense. Mr. Levy had a number of different companies and it was his company Fairbank that was advertised as the company that was expert in Business Loans and Mr. Levy testified that this is the company through which he provided this service. I find that this evidence of Mr. Tehrani was given to support his evidence that he was given a sealed envelope to take a package to the bank and that he was not to open it. I find that evidence to be untrue.

943 Mr. Tehrani testified that it depended on when he got the package with the Business Plan if he went to the bank right away. Most of the time Mr. Levy would drop it off at his store. He didn't remember how quickly he went but usually it was the same day. Mr. Chapnick asked him whether he signed any papers with Mr. Levy. Mr. Tehrani said he wrote his background by hand and maybe his wife typed it but he didn't remember writing anything with Mr. Levy.

944 Mr. Tehrani said his plan had been to go back to BNS for this loan but because he had a loan for Meez Corp. he thought that they would not approve his loan "for sure" which is why he didn't disclose his Meez Corp. loan to the CIBC. He said "I know if you have an outstanding loan it has to be paid". His intention was to pay off the Meez Corp. loan and then go back to BNS because he was very comfortable with BNS.

945 Mr. Tehrani went to the CIBC on the advice of Mr. Salehi who told him that he used CIBC for a SBL for his Subway restaurant and that he knew the manager who was excellent. When Mr. Tehrani told Mr. Levy this, according to Mr. Tehrani, Mr. Levy told him it was not important where he went because Mr. Levy knew the underwriters. Mr. Levy denied this evidence. Mr. Tehrani testified that he made an appointment to meet with Tom Horsley, the manager.

946 The CIBC loan file contains a Business Plan dated February 1, 2009 for a business in the name of Home Décor Express Corp., which was the earlier name being considered for the business that became Kube. Mr. Tehrani identified this Business Plan, which he said was for Uzeem Corp. and that the name was changed because Mr. Levy said this name was too long. He testified that a Business Plan dated January 1, 2010 for a company called The Resident Ltd. was for Kube. In answer to questions from Mr. Levy, Mr. Tehrani said that he chose the names Uzeem and Comod but that Mr. Levy told him to change L'Espace to Kube. Mr. Tehrani was clearly mixed up about these Business Plans for Kube and Uzeem. In any event according to

Mr. Tehrani, Mr. Levy prepared both Business Plans whereas Mr. Levy only admitted preparing the first one; presumably the one for Meez Corp. In answer to questions from Mr. Levy, Mr. Tehrani said he had some Business Plans for Home Décor and The Residence and that "I think you give it to me - I got it somehow". This was the first time he mentioned that he had other Business Plans in his possession but this was not pursued.

947 I note that the Table of Contents in the Business Plan for Kube is missing and Mr. Levy testified that it is typed on a background that is not his. He said the background on the management page is the same for Home Décor and The Resident.

948 Mr. Tehrani said that Mr. Horsley was different from the other bank managers in that he used email. Mr. Horsley told him he would email him if he had questions and that if something was needed he could just fax it in. For example, Mr. Horsley sent an email to Mr. Tehrani dated February 2, 2009 asking Mr. Tehrani to update the Business Plan and send in the tax returns for his wife. Mr. Tehrani testified that he mentioned this issue to Mr. Levy and Mr. Levy said "give me one of your fax papers and I will look after that". He is sure he provided a piece of paper to Mr. Levy to fax this back - namely a reference to the fax coversheet. Mr. Tehrani identified a fax coversheet to Mr. Horsley dated February 2009 which he said related to what he believed was an issue with his Business Plan. Mr. Tehrani denied sending his wife's NOA into the bank because he said that Mr. Levy had it. It is surprising that Mr. Horsley would ask for Mr. Tehrani's wife's returns since, as I will come to, the altered T1 Generals that are in the loan file for Mr. Tehrani state his wife is deceased. This was not explored at trial.

949 The loan file contains a NOA for Mr. Tehrani for the 2006 tax year showing a total income of \$58,193 and a NOA for 2007 with a total income of \$59,211. As I will come to these documents were fabricated or altered to increase Mr. Tehrani's income to the bank by about five times. Based on the NOAs from the CRA, Mr. Tehrani's total income for 2006 was reported as \$12,325 and for 2007 as \$10,308. In all but the altered NOA for 2006, Mr. Tehrani's first name has a typo-"Majid" and the NOAs from the CRA also have Mr. Tehrani's address wrong; apparently referring to his father's residence. There was no suggestion that because of these errors that the CRA sent the wrong documents to the Crown. Since they have Mr. Tehrani's correct SIN and date of birth (DOB) I find that these NOAs from the CRA were for him.

950 The loan file also contains what purports to be a copy of Mr. Tehrani's T1 General 2006 and T1 General 2007 and the total income numbers in those returns match the altered NOAs. On both copies there is a typo in his mailing address which reads 245 Keet Street instead of 245 Keele Street. Both also state that Mr. Tehrani's wife died in 2006 which is not true. I note that the top of some of these documents shows part of a fax header indicating that the faxed package was 18 pages but the date of the fax is cut off on all copies and so I cannot conclude that these documents were faxed to the bank and if so, when or by whom.

951 The T1 General in the loan file for Mr. Tehrani's wife for 2008 also states that she died but in 2008. There is also another return that states that she died in 2007. Mr. Tehrani said he never issued paystubs to her. She worked part-time and he paid her by cheque or cash. She received no benefits and paid no CPP. He claimed not to know anything about this document. In other words he is suggesting it was fabricated by Mr. Levy. Mr. Tehrani said the first time that he saw

that his wife was supposedly dead according to the CRA was when Ms. Barton showed him these documents.

952 Mr. Tehrani claimed to have no knowledge of these tax returns and testified that "his accountant" was responsible for the incorrect information in his returns. He did not recall reviewing his tax information with his accountant or signing off on his tax returns for the years 2006-2010. The Crown suggested that Mr. Tehrani would have thought something was odd given the amount of money flowing to his accounts when he knew that he didn't owe any taxes. Mr. Tehrani could not give a clear explanation for why this did not trigger any questions. Mr. Tehrani said he didn't review these documents before he gave them to Mr. Levy and if he had he would have realized he made more money than what was stated in the documents. Mr. Levy denied getting Mr. Tehrani's tax documents or altering them and putting them in a sealed envelope for him.

953 The Crown acknowledges that this case is not about tax fraud but argues that this evidence is relevant to Mr. Tehrani's intent and in particular submits that Mr. Tehrani did not want to declare all of the supposed income from his companies because it was largely derived from fraud. The Crown argues that although the CRA documents for Mr. Tehrani state his reported income for the years 2007-2008 as \$31,125 combined, Meez Corp. alone received approximately \$480,000 in credits for 2007-2008 and Comod received approximately \$250,000 in credits for 2008 alone. These numbers do not factor in the significant payments seen going to "Meez Ltd." during the same period. Although I agree that one possible inference is that Mr. Tehrani did not want to declare all of the supposed income from his companies because it was largely derived from fraud. However, that is not the only reasonable inference to be drawn from this evidence, the other is that Mr. Tehrani was simply avoiding paying tax - an inference I do not take into account in my determinations in this case. Given more than one reasonable inference, I do not accept the Crown's submission on this point.

954 When Mr. Coristine put to Mr. Tehrani that the bank manager would have gone through the documents in his presence and asked him about the NOA he responded "how would he know how much he made?" Mr. Tehrani's explanation for the incorrect income information that he recorded in the bank documents was that he didn't have information with him and the bank manager was telling him the amounts to put down on the form: "Whatever they read I write down. They bombard me with the numbers". Mr. Tehrani testified that if he was asked in 2009 what his income was in 2006, 2007 or 2008 he would have to go based on an "idea" of what he made and that he would have to go back and look it up.

955 I do not accept this evidence. Although I appreciate that Mr. Tehrani would not know the exact numbers surely his "idea" of his income would be in the ballpark and not off by 500%. I found this evidence of Mr. Tehrani incredible. He must have had some idea that his income was not in the range of \$55,000. This was more than three times the amount he reported to the CRA.

956 The loan file contains a TD GIC Statement dated January 28, 2009 which purports to show that Mr. Tehrani had a GIC in the amount of \$45,650 issued on August 28, 2008 to mature one year later. Ms. Mary Jane Gallienne, a senior investigator with the TD bank in the corporate security department, was called by the Crown and she testified that this GIC is not authentic.

She could tell by the way it is formatted and she gave detailed evidence to explain that. This GIC was in fact for only 30 days.

957 This would explain why the purported GIC funds were never deposited in the Kube bank account. The only seed capital came from Mr. Salehi in the amount of \$19,500 on March 5, 2009. That is also strange given that Mr. Tehrani threatened to sue Mr. Salehi four days later on March 9, 2009 when he sent him the Demand Letter.

958 The loan file also contains a CIBC Flexible GIC Statement that confirms an \$80,000 principal amount issued August 24, 2005 to mature one year later. Eva Burton testified that this \$75,000 investment was no longer at RBC at the time and that this document was a forgery. Mr. Tehrani testified that he just found out that this was in the Kube file in court. He no longer had the \$75,000 GIC for Kube.

959 The Loan Registration Form was signed by Mr. Tehrani on March 3, 2009 and he certified compliance with the Loan Limit Clause. I do not know how much was still outstanding on the Meez Corp. and Comod SBLs and so I cannot conclude that this was a misrepresentation.

(b) The Purported Renovations to 677 Queen and Purchase of Equipment, Furniture and Fixtures

960 Mr. Tehrani testified that Mr. Levy arranged everything for the renovation for Kube but that he did not mention the name Mosaic. Mr. Tehrani said that he did not get any other quotes this time because he was happy with what Mr. Levy had done for Meez Corp. Mr. Tehrani said that for the first loan he had kept his "eyes open" to see how things worked and so for this loan he trusted Mr. Levy now.

961 Mr. Levy testified that Mr. Tehrani told him he had two other quotes and that he decided to ask Mr. Levy and Mosaic to do the job because of their past business together. Mr. Levy said that it was a long and expensive job so he did not want to lower his quote.

962 The renovations previously done to 677 Queen by Mr. A. Tehrani are relevant here to the extent Mr. Tehrani was aware of them. When Mr. A. Tehrani was renovating his store Qua, Mr. Tehrani admitted that he went there but he said that it was not that often. Mr. Tehrani admitted that Mr. A. Tehrani talked about what he was doing; he was changing the floor, the drywall, "everything". According to Mr. Tehrani, Mr. A. Tehrani's concern was more with the "look".

963 I do not accept Mr. Tehrani's evidence that he did not speak to his brother about what renovations he had done for Qua when he was considering what to do with Kube. He admitted that his brother said that they had done "everything" and it makes no sense to me that Mr. Tehrani would not have asked his brother what he had done and perhaps asked for copies of the invoices to Qua. When Mr. Coristine put to Mr. Tehrani that he would have talked to his brother about what had been done to 677 Queen when he took over the location, his response was by question: why should he talk to Ali? This response did not make sense and was not responsive to the question. Mr. Coristine pointed out that Mr. A. Tehrani had just spent \$200,000 in renovations to which Mr. Tehrani replied that he wasn't planning to get this location and Mr.

Levy convinced him because it was getting an expansion. He then said that he did talk to his brother, contradicting his earlier evidence. His plan was to move the wall at the back and do his own design. Mr. Tehrani agreed that his brother had not damaged the location and that he did not need to do work because of his brother but he said that he had to change everything for his "taste."

964 Mr. Levy also admitted that he did not talk to Mr. Tehrani about the work he had done for Qua two years earlier; thereby indirectly admitting that he was the one who did whatever work was done for Qua. His explanation was that he does not tell his clients what to do although that begs the question of why he would not at least tell Mr. Tehrani about what had already been done behind the drywall.

965 Mr. Tehrani testified that Mr. Levy told him that because they would be expanding the store to over 2,000 SF he needed to increase the air conditioner for higher BTUs and add one more electrical panel. Mr. Tehrani testified that in talking to Mr. Levy they decided to change everything for the future once the landlord did the extension. He was not asked why he would do this before even seeing the expansion, getting a lease for the extra space or why he did not expect the landlord to do this work as Mr. Luska had told him the landlord would build the extension at the landlord's expense. Again this evidence does not make sense if Mr. Tehrani was trying to be cost effective with the renovations.

966 The CIBC loan file contains a quote from Mosaic dated February 5, 2009 for the equipment, furniture and fixtures, which was signed by Mr. Levy on the same date. The loan file also contains three invoices from Mosaic that total \$205,490.10. These invoices were paid in six payments in March and April 2009, from the SBL funds of \$166,500 and other funds in the Kube account.

967 The first invoice is dated March 4, 2009 in the amount of \$62,606.25 and was for the usual Phase I work- a Total Gut Job including reframing the existing storefront and Phase II for the first part of the usual Total Rebuild, including a new electrical panel. Although this Total Gut Job did not include removal of the existing electrical panel, it did include removal of all electrical wiring.

968 The second invoice is dated March 9, 2009 and was for the usual Phase III completion of the Total Rebuild which included supply and installation of A/C units including all ducts and diffusers in the amount of \$31,132.50.

969 Mr. Levy testified that all of the work listed in the first and second Mosaic invoices was done. The invoices are five days apart and according to Mr. Levy, all the work in the first invoice was done by March 4, 2009 and the work for the second was done in the next five days. Mr. Levy said that he was going to do all of the work in five days but he wanted to protect himself to ensure he got paid so he did the work in stages and was paid when the work was finished. This evidence makes no sense for two reasons. For one, on this issue I prefer the evidence of Mr. Kazman that a gutting and rebuilding of even a small unit would take more than five days and secondly, in connection with the SBLs that I have evidence of, Mr. Levy was only ever paid for

work already done. There would therefore be no reason to break up the work and the invoices this way to ensure payment.

970 I have found that it was Mr. Levy who did whatever renovation work was done but that on his evidence he was only subcontracting because he testified that for Kube he had to redo whatever unprofessional work Mr. Kazman had done. In particular he said that he had to demolish the whole floor which according to the Qua invoice was hardwood, because it was not level and had not been done properly before. He supposedly installed laminate. When Mr. Coristine came back to this issue and put this evidence to Mr. Levy, Mr. Levy did not recall this evidence although he said that he could have said this. This was strange and suggested that when Mr. Levy gave this evidence originally he was making it up. I would think he could remember what he said or at least what happened if he was not making it up. Later Mr. Coristine put to Mr. Levy that he could not have subcontracted for Qua because if he had he would not have needed to fix up the floor for Kube. Mr. Levy had no answer to this and in any event did not give any explanation for why the plumbing and HVAC and storefront needed to be redone.

971 What Mr. Levy did say by way of explanation was that when Qua moved out there was a lot of garbage left, that the fixtures and leaseholds for Kube were different than what was done for Qua and that because Mr. A. Tehrani was using tools and was having a lot of power problems that maybe the electrical panel was not upgraded to a higher voltage for Qua and that Mr. Tehrani told him to do the electrical. Mr. Levy also installed all new doors and did the AC exactly the way Mr. Tehrani asked him to do. Mr. Levy did not give any evidence suggesting that they were building for an expansion that would double the size of the store.

972 When Mr. Tehrani was shown the first Mosaic invoice he admitted that he had discussions with Mr. Levy as to what had to be done and he said that they did discuss the electrical and plumbing. Mr. Tehrani wanted an estimate to see what it would cost and he and Mr. Levy talked about the estimate but it was not in writing. Mr. Tehrani testified that Mr. Levy was supposed to do all the things listed for Phase I. For Phase II, Mr. Tehrani said "honestly I didn't look exactly if the plumbing was done but the [electrical] panel was done".

973 When Mr. Coristine compared the Kube and Qua invoices he asked Mr. Tehrani what was so unique that he would need to tear the walls down and put them back and suggested it was a waste of money. Mr. Tehrani responded that he was "very particular." This evidence did not make sense given how recent the Qua renovations were. When Mr. Tehrani was spending his own money to fix the damage to Meez Ltd. or to get As Is ready, he was able to do so for a fraction of the price he was paying for a smaller space - he was not that particular then. This time he was spending money he had borrowed but he was only responsible for 25% of the loan.

974 I also do not believe Mr. Tehrani's evidence that he accepted advice from Mr. Levy that they would have to build for the future expansion given his evidence that the landlord was paying for the expansion and that he had an alternate location he could have leased. Furthermore, there is nothing in the Mosaic invoices that suggests this was actually done and as I have said, Mr. Levy did not give this evidence.

975 Mr. Kazman's position is that if significant renovations were being done he did not go to

inspect and Mr. Luska did not either. Mr. Kazman said that as the landlord, so long as the tenant was not doing something unlawful or something that would affect the structure of the building, they were "easy" landlords; he queried why do we care if the tenant wants to beautify the building? He was not a big stickler for permits and he testified that he would not complain if money was spent improving the building. Mr. Kazman testified that he had no recall about being approached for permission to do significant renovation work on the property but said that Mr. Luska might have been.

976 Mr. Kazman testified that he did not know if the property was gutted for Qua and Kube and said he had no discussion with Mr. Luska about this. Mr. Kazman maintained that he was not involved in the construction or purchase of assets for this location. He did not arrange or supervise any work and insisted that that would have been done by Mr. Levy. Mr. Kazman did not recall meeting Mr. Tehrani as a tenant but admitted that he might have. He testified that Mr. Tehrani would have no reason to know he was involved in the property as all his dealings were with Mr. Luska.

977 Mr. Mizrahi went to 677 Queen to appraise the assets of Qua and as I have stated, he noted that there were renovations underway, which must be work that was being done for Kube. Mr. Mizrahi did not remember if he went into the building or simply knocked on the door and spoke to people. He thought that they were putting drywall up. His memory was refreshed by his statement to Cpl. Thompson and Mr. Mizrahi confirmed that he saw walls going up and workers doing flooring and that workers who could not speak English, were renovating the unit. In cross-examination Mr. Mizrahi admitted that in his statement to Cpl. Thompson he had said that they were "gutting the place". This evidence is relevant to what leasehold improvements were done for Kube.

978 Mr. Tehrani introduced photos of the interior of Kube. He pointed out inserts built into the walls and the slat wall units that were added to the walls to avoid having to use nails to hang inventory such as mirrors. He testified that he also changed the floor; referencing a bamboo floor and installed a drop ceiling with a blue light and put up track lighting and installed a washroom in the basement. Apart from the washroom, his photos corroborate this evidence.

979 Considering the first Mosaic invoice to Kube and the first Oakwood invoice to Qua issued 11 months earlier, this was now the second time that all partitions and existing walls, existing plumbing and fixtures, existing electrical wiring and fixtures and flooring was supposedly removed and replaced. Furthermore, for Qua, the then existing storefront was removed and a new all glass storefront with a glass entrance door was purportedly installed begging the question of why it would need repair and reframing only 11 months later.

980 The work purportedly done for Qua included the installation of new hardwood flooring, which begs the question of why would it be ripped out and replaced with laminate flooring. Given that I have found that it was in fact Mr. Levy doing the renovations for Qua, I do not accept that this was necessary because of alleged shoddy work by Mr. Kazman's contractors. Finally, the first invoice to Qua included the supply and installation of an air conditioning system. The invoice to Kube does not say that this was removed but in Phase III A/C units were installed including all ducts and diffusers. On the evidence of Mr. Tehrani these were presumably for the

expansion. Setting aside the question of why more than one additional unit was needed before the expansion was actually built, clearly before the expansion was built it would not be possible to do the ductwork. That is a matter of common sense that does not require expert evidence. In short, a significant amount of the work that was done for Qua was now purportedly done again, 11 months later.

981 I accept, based on the evidence of Mr. Mizrahi and Mr. Tehrani, that some renovations were done to 677 Queen for Kube. In particular, I accept that he installed some inserts into the walls and slat wall units and that changes were made to the ceiling, the lighting and other cosmetic renovations and that the unit was repainted. I also accept that a new electrical panel was added but I do not accept that the unit was totally gutted and that all of the existing plumbing and fixtures, electrical wiring and the existing storefront was removed and replaced.

982 I have considered whether or not Mr. Levy did this work twice, even though he knew it was not necessary. I find that is not what happened. Mr. Levy was motivated by profit and he testified that he did not make more than 10-15% profit typically. He was able to make a much bigger profit by simply making cosmetic changes from the drywall out and for the most part leaving what was behind the walls in terms of electrical and plumbing in place either because Mr. Tehrani was not paying any attention to what was behind the drywall or he knew that the work was not being done. Although based on the evidence with respect to this SBL only, I accept that Mr. Tehrani may not have been aware of this overbilling, I fail to see how he could have missed the fact that a second new storefront was not in fact installed and that he was charged for this.

983 As for Mr. Kazman, I have found that he, Mr. Levy and Ms. Cohen controlled Oakwood, the purported contractor for Qua.

984 The third invoice, dated March 18, 2009 for \$111,751.38 was for furniture, fixtures, equipment and tools. Mr. Levy said that all items on the invoice were purchased by Mosaic and were provided to Kube by March 18th. Mr. Tehrani testified that he discussed these items with Mr. Levy and that he received all the items on invoice.

985 This third Mosaic invoice was faxed to the bank from # 1234567, the same number I have found was attached to a Qua fax machine. Mr. Tehrani testified that it was not his fax coversheet and that he didn't send this fax or authorize anyone else to do so. I don't know what to make of this.

986 As the Crown points out, given that Kube at this time was only a space of 900 SF, the amount of furniture on this invoice seems very excessive. With two workstations, a meeting table with chairs, a conference table with chairs, two office desks, six filing cabinets, a coffee table with more chairs and a reception lounge sofa, even with some room in the basement for storage and office space, the sheer volume of office furniture on this invoice does not seem to make sense. One has to wonder where any inventory would go. The pictures of the interior of Kube show that it was overflowing with inventory and there are no pictures of what appears to be any of this furniture. For example, a picture that shows the front entrance shows inventory not a reception lounge sofa. I do not believe that all of this furniture was actually delivered to Kube.

(c) Did Kube Operate as a Business?

987 Based on the Mosaic invoices I find that Kube likely opened around the end of March 2009. According to the Coort Analysis, in the period April 1, 2009 to February 28, 2010 Kube received 188 direct deposits and credit/debit card sales totaling \$82,220.71. Kube also received \$14,687.59 from MDC Modern Design on April 13, 2009. By February 28, 2010 however, the Kube account only had a balance of just over \$100.

988 Kube reported sales and other revenue to the CRA for the period from February to December 31, 2009 as \$56,813, January 1 to March 31, 2010 as \$22,505 and for the period April to June 30, 2010 as \$0. No corporate tax returns were filed.

989 Kube made seven payroll payments to Mario David Guitierrez. Kube also paid the first and last month's rent by cheque for \$5,775 on March 12, 2009 and then the rent monthly from April 2009 to November 2009. Kube also made loan and interest payments for the period April 2009 to January 2010.

990 I find based on this evidence and the evidence of Mr. Tehrani that Kube was an operating business.

991 As I will come to, Mr. Tehrani blames the closure of Kube on the fact that the BNS told him they no longer wanted his business in connection with Uzeem.

992 Mr. Tehrani testified that when he closed Kube, he took as much as he could to a storage unit on Vine Street. When shown the third Mosaic invoice he could not remember what he moved into storage. With respect to the Kube inventory, Mr. Tehrani testified that he sold some to customers but he did not remember to whom. He did not remember if any of it went two doors over to Uzeem.

(d) The Appraisal of Kube's Assets

993 According to Industry Canada documentation, the Kube SBL went into default as of February 15, 2010.

994 Mr. Mizrahi was retained by Gowlings by email on June 9, 2010 to do the appraisal of Kube's assets on a forced liquidation basis. He was to contact Mr. Tehrani and was given a phone number and was asked to go to the leased premises. He was not given the Mosaic invoices. No comments were made about suspected fraud.

995 When Mr. Mizrahi spoke to Mr. Tehrani he was told that the business didn't do well and closed down and that the assets were put in storage. His impression was that the business no longer functioned.

996 Mr. Mizrahi testified that he met Mr. Tehrani at the Vine Storage Place on June 25, 2010. Mr. Tehrani testified that they recognized each other as Mr. Tehrani had dated Mr. Mizrahi's

sister a long time ago. Mr. Mizrahi also testified that when he met Mr. Tehrani he realized that he had known him from the past from school although he did not know him by his first name.

997 Mr. Tehrani testified that Mr. Mizrahi saw everything and told him not to worry about anything. He did not take the assets out to inspect them. Mr. Tehrani said that they were chatting a lot and he told Mr. Mizrahi to go inside and take more pictures. Mr. Mizrahi testified that he only took pictures, from outside the storage unit from two different angles, of what he could see. He said that he normally does ask the debtor if they sold the assets and because he did not mention it in his report it means the answer was "no". He gave the assets that he listed in his report, which he said represented 80% of the assets in the unit, a liquidation value of \$975. When Mr. Mizrahi realized that the value of the assets, after considering the cost to liquidate them, would be a negative, he admitted that he did not spend too much time as he charges by the hour. Mr. Tehrani testified that the small items like the camera were in the white box that is visible on the floor of the unit. He admitted that the basket shown in the photos is at the end of the storage unit so it does appear to be a fairly small unit.

998 Mr. Mizrahi was shown the third Mosaic invoice for furniture, fixtures and equipment at trial. Mr. Mizrahi noted that the invoice is vague and he testified that the only items that he saw in storage that could be on this invoice are the Brother fax/copier machine, which on the Mosaic invoice is simply listed as a "Printer Copy and Fax Machine" and some of the furniture, as he saw a desk, a conference table, chairs, two cabinets and one filing cabinet. He also testified that he saw a fan and a bar fridge that are not listed on this invoice. He did not see any tools. I note Mr. Mizrahi's list includes five PCs with LCD monitors which do not match any item on the Mosaic invoice.

(e) The Circulation of the SBL Proceeds

999 Kube paid the Mosaic invoices from the SBL proceeds, \$19,500 received from Mr. Salehi and a \$1,000 cash deposit.

1000 In the period March 9 to May 14, 2009, Mosaic received \$205,490.10 from Kube in payment of its invoices as well as money from Mr. Levy's company MGM which I take no issue with. Mosaic also received payments from Icon, Whitehorse and Bridgecon¹⁰.

1001 In the same period Mosaic paid a significant amount to companies owned by Mr. Levy; 1322637 Ontario Ltd., Trust Inc. MGM, GM Realty, MDC Modern Design and Mr. Levy personally. Mr. Levy testified that these types of payments were intercompany transfers for various reasons and there is no evidence to suggest they were improper in any way.

1002 In the same period Mosaic also paid three cheques to Morningstar totaling \$20,000, which Mr. Levy testified were for the roofs on 344 Wilson and 617 College. One of the Morningstar cheques does refer to 344 Wilson but the others just refer to draws on account. In any event these payments were not for work done at Kube.

1003 In March and April 2009 Mosaic also paid \$48,492.56 to companies owned by Mr. Kazman; Cramarossa and 274 Holdings owned by Mr. Kazman and Ms. Cohen. Of this amount,

\$40,000 was paid to 274 Holdings, which Mr. Levy said was for a loan to Mr. Kazman. Mr. Levy said that two of the cheques to Cramarossa that refer to invoice numbers were to pay Mr. Kazman back for supplies Cramarossa bought from Costco since Mosaic did not have an account with Costco. For the third Cramarossa cheque in the amount of \$5,207.56, which has a Re: "on Account for (M)," Mr. Levy testified this was a loan to Mr. Kazman but I find that incredible as it contradicts his own evidence that loans would not be in uneven amounts. In the same period \$10,000 was paid to Icon, which Mr. Levy said was also a loan to Mr. Kazman. Mr. Levy was not asked to explain why Mosaic made a \$50,000 loan to Mr. Kazman in two payments, both dated the same day, to two different companies. Mr. Kazman of course denies that he was in control of Icon.

1004 In the same period Mosaic paid \$16,985.49 to CDI and \$8,764.51 to Roxy by drafts, which Mr. Levy said was for furniture and accessories he purchased. Mr. Levy testified that the payment to Roxy was for accessories. It is unclear why a construction company would need to purchase the kind of accessories sold by Roxy which I understand were things like purses, jewellery and hats. What we do know is that Roxy never had a credit or debit card sale higher than \$458.31 (July 23, 2008). The majority of third party merchant transactions appear to be in the range of \$50-\$100. It is odd, to say the least, that Mosaic would make a single purchase of accessories from Roxy of over \$8,700.

1005 The Crown submits that the payments on the same day to CDI and Roxy total of \$25,750 and that the "more logical inference is that those payments constitute Mr. Salehi's cut of the fraud." I am not able to draw that inference on this evidence alone but certainly for the reasons given I do not accept Mr. Levy's evidence that this payment by Mosaic to Roxy was for accessories.

1006 In this period Mosaic also paid Mr. Levy's brother Dov Levy \$7,500 personally and \$25,000 to Blue Beach Resorts, a company Mr. A. Levy and Dov Levy owned, which Mr. Levy said were both loans. There is no evidence to contradict this.

1007 In the period March/April 2009 Trust Inc. received over \$181,000 from Mosaic, MGM and GM Realty as well as Bridgecon, Whitehorse and Icon. Subject to one cheque from Bridgecon in the amount of \$2,356.75 RE: "on Acct re Ins," which Mr. Levy said must have been reimbursement for home insurance he paid for Mr. Kazman and a cheque from Whitehorse in the amount of \$3,165.49 RE: on Account for (Sheppard Avenue) which Mr. Levy said was to reimburse him for expenses he paid for Sheppard, he attributed all of the other payments as Mr. Kazman paying loans back. The difficulty with this position is that all of the payments were uneven numbers amounts and none refer to loans. The largest payment is a draft from Bridgecon to Trust Inc. in the amount of \$49,995.68. There is also the issue, of course, as to who controlled Bridgecon, Whitehorse and Icon.

1008 In the same period Trust Inc. paid out money to Mr. Levy personally and his companies MDC Modern Design and 1322637 Ontario Inc. in addition to \$3,000 to Blue Glass, Mr. Kazman's company, which Mr. Levy testified was for water he purchased. He testified that there would have been an invoice but the RE: line states "on account".

1009 On March 26, 2009, Trust Inc. paid \$9,845.69 to Meez Ltd. and on March 30, 2009, \$7,865.49 to Meez Corp. On March 30, 2009 Trust Inc. also paid \$6,795.52 to Roxy. Mr. Levy said the payments to the Meez companies were for furniture and that he would have received an invoice from Mr. Tehrani. Mr. Levy said that the payment to Roxy was mostly for accessories. All three cheques however, make no reference to an invoice number and the Re: on each simply states "on Account".

1010 With respect to the payments to Meez Corp. and Meez Ltd., I do not know why these companies would both be selling furniture to Mr. Levy at the same time, given that Meez Ltd. was the wholesale company. As for the payment to Roxy I have the same concern that I already expressed with respect to the supposed purchase of a large quantity of accessories from Roxy by Mosaic. The Crown submits that these payments were Mr. Levy paying Mr. Tehrani for his large role in the fraud scheme. Based on the evidence related to Kube alone I could not come to that conclusion but I will consider this submission when I consider the similar fact evidence.

(f) Summary of Findings of Fact

1011 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Kube SBL.

1012 For the reasons set out I have not accepted Mr. Tehrani's evidence on why he decided to lease 677 Queen.

1013 I have also not accepted Mr. Tehrani's evidence that the yellow envelope he introduced into evidence was the sealed envelope that Mr. Levy gave him to take to the bank. I have found that this false evidence was given to support Mr. Tehrani's evidence that he was given a sealed envelope to take a package to the bank and that he was not to open it.

1014 I have found, based on Mr. Tehrani's admission, that he went to a new bank; the CIBC, because he knew that given he had outstanding SBL, he would not get another loan. This is why he did not disclose his outstanding SBLs for Meez Corp. and Comod to the CIBC.

1015 I have found that the 2006 and 2007 NOAs for Mr. Tehrani found in the loan file were fabricated or altered to increase Mr. Tehrani's income to the bank by about five times. I have found the same with respect to his T1 General 2006 and T1 General 2007 where the total income numbers were altered to match the altered NOAs.

1016 I have rejected Mr. Tehrani's explanation for why he wrote these inflated income numbers down on the application.

1017 I have found that the loan file contains a fraudulent TD GIC Statement in the amount of \$45,650 and a fraudulent \$80,000 CIBC Flexible GIC Statement. I am unable to conclude as between Mr. Levy or Mr. Tehrani, who provided these to the bank.

1018 I have not accepted Mr. Tehrani's evidence that he did not speak to his brother about

what renovations he had done for Qua when he was considering what to do with Kube. Furthermore, I have found his evidence to lease 677 Queen, given it was too small and then doing leasehold improvements assuming that there would be an expansion of the premises, does not make sense if Mr. Tehrani was trying to be cost effective with the renovations and he had to rely on the landlord expanding the premises. I also do not believe Mr. Tehrani's evidence that he accepted advice from Mr. Levy that they would have to build for the future expansion given his evidence that the landlord was paying for the expansion and that he had an alternate location he could have leased. Furthermore, there is nothing in the Mosaic invoices that suggests this was actually done and, as I have said, Mr. Levy did not give this evidence.

1019 Although I have found, based on the evidence of Mr. Mizrahi and Mr. Tehrani, that some renovations were done to 677 Queen for Kube, I have found that the unit was not totally gutted again. In particular I have found that Mr. Levy was able to maximize his profits by simply making cosmetic changes from the drywall out and for the most part leaving what was behind the walls in terms of electrical and plumbing in place either because Mr. Tehrani was not paying any attention to what was behind the drywall or he knew that the work was not being done.

1020 I have also found that the third Mosaic invoice for furniture, fixtures, equipment and tools seems very excessive and provided my reasons for why I do not believe that all of this furniture was actually delivered to Kube. Although Mr. Mizrahi may have missed some assets when he did the appraisal for the bank, this would explain why he saw so little of what was purportedly provided by Mosaic to Kube. I find it likely that Mr. Tehrani deceived Mr. Mizrahi with dated assets that were clearly not provided by Mosaic according to the invoices.

1021 I find it difficult to believe, considering Kube alone, that Mr. Tehrani would not have realized that he was being charged for a lot of work that was not done. I find this is especially so since he took over a property that had been gutted less than one year earlier by his brother for Qua. It is difficult to believe his evidence that he made no attempt to ascertain what work had already been done for his brother. He spent almost \$94,000 to renovate a very small 900 SF unit that had been his brother's furniture store and spent almost another \$112,000 on furniture, fixtures and equipment. It certainly seems excessive. Although based on the evidence with respect to this SBL only, I accept that Mr. Tehrani may not have been aware of this overbilling, I fail to see how he could have missed the fact that a second new storefront was not in fact installed and that he was charged for this. Nevertheless, based on the evidence for Kube alone, however, I could not conclude, beyond a reasonable doubt, that Mr. Tehrani was aware of the fraudulent nature of these invoices.

1022 Finally I am not in a position to determine if Mr. Kazman must have known of the fraudulent invoices from Mosaic given that he knew that his property had originally been renovated by himself and Mr. Luska as this depends in part on whether he was in control of Oakwood. As for Mr. Levy, I have found that Mosaic did not perform a significant amount of the work that it purported to do that is set out in the invoices provided to the bank. Mr. Levy was aware of this and aware that these invoices would be submitted to the BOM in order to obtain the release of SBL funds and his company received full payment of these invoices. As a result I find that he is guilty of Count #5.

Homelife Forest Hill Realty Inc. (Homelife) -- BNS -- Count # 1(a) The Homelife SBL

Homelife (Ghatan) was approved for a SBL from the BNS on July 2, 2009 in the amount of \$204,000.

1023 Mr. Ghatan explained why he decided to start Homelife. In summary, he met Armand Levy, and possibly Dov Levy, in the early summer of 2008 and learned about their vision to develop a project at Wasaga Beach. He explained how attractive this was to him as a real estate agent and why he told Mr. A. Levy that he wanted to be involved. In answer to questions from Mr. A. Levy, Mr. Ghatan said that they had no business dealings between them. He just introduced a client to Mr. A. Levy and does not know what happened. Mr. A. Levy did, however, suggest he meet his brother, Mr. Levy, who could help him with a SBL after Mr. Ghatan told Mr. A. Levy that he wanted to open a brokerage and needed financing.

1024 Mr. Ghatan testified that when he met with Mr. Levy, Mr. Levy told him that he was one of the owners of the Wasaga Beach project. Mr. Levy denied this but I prefer Mr. Ghatan's evidence on this point. Even if Mr. Levy had actually given up his interest in the project as he testified to, based on what I heard in evidence and what I saw while he was on the stand, he is a person who likes to brag. Mr. Ghatan testified that he told Mr. Levy that he wanted to open a brokerage and get involved in the Wasaga Beach project. He also said that a huge factor was the possibility of doing business with Mr. Levy on a \$1.5 billion project.

1025 At his second meeting with Mr. Levy, Mr. Ghatan testified that Mr. Levy told him how SBLs work, that he would be responsible for 25% of the loan and that he had done a lot of SBLs and would be able to help him with the process. Mr. Ghatan testified that he told Levy that he wanted to have everything ready - a turnkey operation. This was very important to him because, as a real estate agent, his time was valuable. He also wanted it done fast as Mr. Ghatan, contrary to the prevailing view, was of the opinion that the Toronto real estate market was going to jump up in value.

1026 Mr. Levy admitted that he could have had a second meeting with Mr. Ghatan but he denied encouraging Mr. Ghatan to get a SBL and explaining to him how to do it. Mr. Levy said that Mr. Ghatan came to him and said he needed money to do a renovation and that it was Mr. Ghatan who suggested a SBL. At this point in his evidence Mr. Levy suddenly remembered the second meeting and said that at this second meeting Mr. Ghatan had come to see the location. Mr. Levy said that Mr. Ghatan was going to occupy two levels at 1040 Eglinton and when he realized the amount of work involved he said he did not have the money.

1027 On this issue I also prefer the evidence of Mr. Ghatan that it was Mr. A. Levy who told him that his brother Mr. Levy could help him with a SBL and that this is what Mr. Levy did when he met with him. The fact that Mr. Levy wanted to distance himself from encouraging Mr. Ghatan to obtain a SBL seems to me to be defensive and to distance himself from the fraudulent documents found in the loan file that I will come to.

1028 In terms of a location for his brokerage, Mr. Levy admitted that he mentioned 1040 Eglinton. When Mr. Ghatan went to look at this location, he saw that there was a leather store at the premises which would have been Western Leather. For Mr. Ghatan, 1040 Eglinton was one of the best locations for a real estate office. It is on the north side of Eglinton facing Forest Hill. It borders the CO4 area, which is considered high-end. Mr. Ghatan told Mr. Levy that the real estate market was ready to jump and it would be the best year to open a brokerage and that the sooner he had a place the better. He said he wanted to "grab opportunity as it comes" and this was a great opportunity to make money. Mr. Ghatan testified that Wasaga Beach was not part of the reason why he took 1040 Eglinton and that may be but it is clear that it was certainly another positive factor.

1029 Mr. Kazman testified that Mr. Levy would have told him that he found a tenant for the first floor of the property and that he was paying a good rent and he would have responded: "great". He professed to have no knowledge of the actual rent cheques despite his disputed claim to an interest in the property.

1030 Mr. Ghatan knew that Mr. Levy owned the building and a construction company. This didn't raise a concern in his mind in terms of having Mr. Levy do the renovations. He didn't see anything wrong with Mr. Levy as his landlord, contractor and as I will come to, future partner. He said if you see a business opportunity you grab it.

1031 Mr. Ghatan's then girlfriend, now wife, was taking an architectural design course at the time and she went with him the next time he went to the premises. Mr. Ghatan testified that he told his girlfriend how he wanted the main floor and basement to be look and she designed it. He wanted a "triple A Versace looking office" and had already discussed the cost with Mr. Levy before he went to the premises with her. He told her that he would have to spend about \$200,000; a number he got from Mr. Levy and she said it was a good price. This is hearsay but it goes to Mr. Ghatan's state of mind.

1032 The BNS loan file has a copy of an Agreement to Lease (it has a distinctive cover page) for 2,000 SF on the main and lower level of 1040 Eglinton dated May 26, 2009 between Mr. Ghatan for a company to be formed and MGM Inc., Mr. Levy's company, for ten years starting June 1, 2009 at a rent of \$3,500 per month plus GST and utilities and all expenses. Mr. Ghatan and Mr. Levy signed the lease on June 1, 2009.

1033 Mr. Levy said that he prepared a quote for Mr. Ghatan for the work to be done, which Mr. Ghatan accepted and Mr. Ghatan told Mr. Levy he liked the location and that he wanted to proceed with the SBL and have Mr. Levy start the leasehold improvements. Mr. Ghatan gave Castlerock Design Corp. (Castlerock); the company owned by Mr. Levy and his wife, a refundable deposit in the amount of \$25,000 by draft dated June 18, 2009, which Mr. Levy told him would be given back to him once he got the loan. Mr. Ghatan understood that Mr. Levy would prepare a Business Plan, gather all the information and get him the loan. Mr. Ghatan testified that Mr. Levy told him that he knew a lady at the BNS; Shelley Johnstone, who had done work for one of his clients, Warren Goldberg, who was an accountant, that she was there for professionals and he should see her. Mr. Levy denied this and testified that he did not know

Shelley Johnstone and that he did not send Mr. Ghatan to her. In any event there is no dispute that it was Ms. Johnstone that Mr. Ghatan saw.

1034 Mr. Levy incorporated Homelife for Mr. Ghatan on June 22, 2009 and Mr. Ghatan opened four banks accounts, as needed to run a brokerage, at the BNS.

1035 Mr. Ghatan testified that Mr. Levy told him he needed a \$100,000 GIC for the SBL application. Mr. Levy denied this at first but a few minutes later in his evidence he said that it could have been discussed. Mr. Ghatan didn't have \$100,000 liquid although he testified that he had \$30,000 at the TD, a TD line of credit of \$25,000, and a CIBC line of credit of \$40,000. He decided to borrow \$75,000 from Mr. Levy.

1036 Mr. Ghatan signed a promissory note on June 16, 2009 in favour of Mr. Levy's company 1421627 Ontario Limited for \$75,000 at 2% per week/24% per year. The note also set out his agreement that his two properties were collateral security. Mr. Ghatan testified that he did not remember the numbered company on the promissory note. Mr. Levy told him that there was a Korean lady who was lending the money so clearly Mr. Ghatan believed it was not Mr. Levy loaning the money. The evidence is that this lady was Mrs. Bankay. Mr. Ghatan testified that he got the loan because he thought it would be short-term. Otherwise he could have gotten a second mortgage on one of his properties. He admitted he wasn't forced by Mr. Levy to take the loan and that it helped him get the SBL.

1037 At the time, this numbered company owned by Mr. Levy owned a house that had been in the name of the Bankays. There is a dispute in the evidence between Mr. Levy and Mr. Kazman but in summary apparently the Bankays could not get a line of credit themselves and so the title to their home was put in Mr. Levy's company's name and he was able to get a line of credit for them. It was money from this line of credit that was loaned out to Mr. Ghatan, and according to Mr. Levy, to Mr. Kazman personally. According to Mr. Levy, Mr. Bankay agreed to the short-term loan to Mr. Ghatan.

1038 This is another example of some unusual financing arrangements involving Mr. Levy and possibly Mr. Kazman. Mr. Fox cross-examined Mr. Levy suggesting that if Mr. Ghatan had not repaid this loan the Bankays would have had no recourse. Mr. Levy denied this and gave a number of explanations that did not make any sense. That said, this issue is quite unclear and I have not been able to come to any conclusions about what happened such that I could use this as evidence of prior discreditable conduct if so requested by any of the defendants.

1039 Mr. Ghatan paid back this loan in full on December 10, 2009 and Mr. Levy admitted that he signed the confirmation of this repayment but he denied making any money or charging a fee on this loan. He said that he was happy to get the contracting. On this issue I prefer the evidence of Mr. Ghatan.

1040 Mr. Ghatan used this loan money and his own \$25,000 to purchase a \$100,000 GIC for a 30-day term from HSBC. He testified that he went to HSBC for the GIC because he had his mortgage with them. When he told Mr. Levy this, Mr. Levy told him that it had to be a one-year GIC and that he needed to change it. Mr. Ghatan testified that he felt this would kill him given

the interest rate on the loan but he thought he might be able to get Mr. Levy the money sooner. He went back to HSBC and changed the 30-day term to one year and the new GIC was issued June 18, 2009. Mr. Levy denied all of this evidence.

1041 Mr. Ghatan did not produce the original GIC but rather a photocopy of this GIC as the one he gave to Mr. Levy. When asked about that by Ms. Brun, he said he had the original but it was not with him in the courtroom. No one challenged the authenticity of the photocopy. Mr. Levy denied all of Mr. Ghatan's evidence about the GIC and he denied ever seeing the one Mr. Ghatan said he gave to him or having anything to do with a GIC.

1042 Mr. Levy did admit preparing the Business Plan dated July 1, 2009 for Homelife that was in the loan file. Although it has a table of contents it does not have page numbers. Mr. Levy said his assistant forgot to put them in and agreed that the presence of page numbers was not as significant as he thought. Mr. Levy then said it was this way because it was a franchise and he sometimes asked the client if he wanted page numbers and that sometimes the client would say no. He agreed he was guessing about this. This evidence made no sense and was obviously false. There is no point to a table of contents without page numbers.

1043 After an exchange with Mr. Fox, who was pressing Mr. Levy as to whether or not he had an actual memory of Mr. Ghatan asking him to do his Business Plan, Mr. Levy said he remembered Mr. Ghatan asking him to do it but when asked where they were he said that it "would" have been on Eglinton. To explain that answer Mr. Levy said that it would only have happened on Eglinton. In this exchange it was clear that Mr. Levy would not necessarily answer questions based on what he actually remembered but also based on what made sense to him. Although witnesses often do this, Mr. Levy was not making that distinction clear, unless he was pressed in cross-examination. This goes to the reliability of his evidence.

1044 Mr. Ghatan said he never saw the Business Plan before court but he testified that the numbers in the projected income statement in the Business Plan are not exaggerated. He never saw a cash flow summary for year one and would not know how to read it. He left everything up to Mr. Levy. Mr. Ghatan agreed that he knew the bank would rely on the Business Plan but he had no reason to suspect there were any issues. The Business Plan represented that he would invest \$100,000 of his own equity.

1045 According to Mr. Ghatan, Mr. Levy never talked about charging him anything for the Business Plan. Mr. Ghatan believed that Mr. Levy had an interest in the Wasaga property because he kept saying he was one of the owners of the project. Mr. Levy told him that he had a lot of clients he would refer to him. The idea was that if Mr. Ghatan sold a property for one of Mr. Levy's clients, he would get a commission and give Mr. Levy some referral fee afterwards.

1046 On June 16, 2009 Mr. Ghatan contacted Ms. Johnstone using the phone number he got from Mr. Levy. He introduced himself over the phone and then he went to Mr. Levy's office and picked up the package. Mr. Ghatan testified that Mr. Levy gave him a yellow envelope but he did not remember if it was closed or open. Mr. Levy didn't tell him what was in the package nor did he ask. He didn't open the package or review the contents. He assumed he just had to give it to Ms. Johnstone.

1047 Ms. Brun cross-examined Mr. Ghatan on various provisions of the Code of Ethics in the Realtor Code of Ethics. Mr. Ghatan agreed that it was important that paperwork he showed the client was accurate. He agreed that as a real estate agent he was held to a particular standard of care and had to be "reasonably careful". When asked whether he thought it was prudent to be reasonably careful with the documents given to Mr. Levy he said that all he was thinking about was opening his brokerage ASAP, that he trusted Mr. Levy, that he had great income and that there was no reason for Mr. Levy to do anything to his documents. Mr. Ghatan testified that there was no reason to doubt the contents of the envelope as Mr. Levy presented as a religious man and he considered this a strong indicator of trustworthiness.

1048 The Crown submits as a licensed realtor and then broker, Mr. Ghatan had extensive knowledge of the importance of thoroughly reviewing documents and complicated agreements and that he had a duty as a realtor to ensure that his clients understood critical aspects of the contracts they signed. The Crown submits that in light of Mr. Ghatan's professional experience, he would never have blindly signed or given critical documents to the bank.

1049 I agree with the Crown that it seems unlikely that Mr. Ghatan would not at least have insisted on seeing the Business Plan Mr. Levy prepared. However on this point, I am not able to conclude that he did in fact look at the documents in the package before he met with Ms. Johnstone. I did not find this line of questioning of assistance as Mr. Ghatan was dealing with a personal matter, not a client matter. As Mr. Fox submitted this argument brings to mind the axiom well known to lawyers: "whoever acts for himself, has a fool for a client". Mr. Ghatan explained why he concluded that Mr. Levy was a religious man and his evidence on this issue could be true.

1050 Mr. Ghatan drove to the branch in Richmond Hill the following day, June 17th, to meet with Ms. Johnstone. He met her at a counter and testified that he did not go to her office. He assumed that all the documents he had given to Mr. Levy were in the package-he had not added anything to the package. Ms. Johnstone took the package from him and according to Mr. Ghatan, she didn't open the package when he was there. Mr. Ghatan testified that at this meeting Ms. Johnstone asked him about his business and talked to him about a colleague of hers who did mortgage work. She thought that if he had clients who purchased property and needed financing he could send them to her colleague. Mr. Ghatan testified that Ms. Johnstone told him what he needed in terms of documentation. He had to bring his MPAC assessments to the bank and understood that the bank wanted peace of mind that he had enough liquidity.

1051 The loan file contains a copy of a GIC from HSBC in the amount of \$101,202 that was purportedly issued on June 18, 2008 to mature a year later on June 18, 2009, which is clearly different than the GIC Mr. Ghatan testified he gave to Mr. Levy, which was issued June 18, 2009 to mature a year later. Ms. Lisa Pantaleo, a witness called by the Crown, also gave evidence about this GIC. She was asked to verify the GIC that was in the Homelife loan file. She pulled up the account information on the network and was able to verify authenticity that way. Ms. Pantaleo testified that the issue date and the maturity date shown are not valid for HSBC. She determined that the first 30-day GIC in the amount of \$100,000 was purchased on June 17, 2009 to mature a month later; July 17, 2009. It was redeemed the next day and a new \$100,000

GIC was purchased on June 18, 2009 to mature on June 18, 2010. This corroborates Mr. Ghatan's evidence. Ms. Pantaleo couldn't say if the certificate was completely fabricated or was an altered original.

1052 I accept Ms. Pantaleo's evidence, which was not challenged, that someone fabricated the GIC in the bank loan file or altered the issue date and maturity date from the original before it got to the bank. I also accept her evidence that there was nothing glaring on the GIC to show it had been forged or altered.

1053 Mr. Ghatan testified that he did not know anything about any alteration of the GIC and he said that he did not provide this GIC to Mr. Levy. He initially said he wasn't saying that Mr. Levy altered the GIC but he later said that Mr. Levy was the only one who could have done so. Mr. Ghatan denied Mr. Levy mentioning anything to him about backdating the GIC and there is no evidence that an older issue date or different maturity date would be important to a bank. Mr. Levy denied changing the issue date on this GIC and putting it into the package for Mr. Ghatan. Mr. Levy said that there was nothing wrong with a GIC dated the same day as the loan application.

1054 On this issue I prefer the evidence of Mr. Ghatan. He had complied with the advice from Mr. Levy in terms of buying a GIC to give to the bank. I do not believe that Mr. Ghatan would have considered issue dates to be important and so he would have had no reason to believe that the GIC he gave to Mr. Levy for presentation to the bank would not be satisfactory and would have to be altered. I find that it was Mr. Levy who altered the GIC and that he gave it to Mr. Ghatan to give to the bank. Although there is no evidence that the BNS actually cared about the issue date, that must have been something that he considered, as the SBL expert, to be important.

1055 The more difficult question is whether or not Mr. Ghatan was aware of the forged GIC in the package for the bank. I have already set out my finding that I do not accept Mr. Ghatan's evidence that he was not aware of the contents of the package. However the alterations to the GIC were subtle and I accept that he might not have noticed them. I also find that it is reasonably possible that Mr. Ghatan did not notice the alteration and was totally unaware of this.

1056 Mr. Ghatan identified the NOA for 2006 that he gave to Mr. Levy, which shows his total income as \$40,791. He testified that this is what he got from the government. He also produced his T1 General for 2006, which he testified he gave to Mr. Levy, which shows total income of \$40,792. Mr. Ghatan received a Notice of Reassessment in 2006 but he doesn't remember if he gave that to Mr. Levy. The NOA in the bank loan file for Mr. Ghatan for 2006 shows his total income as \$135,630, which overstated his income for 2006 by more than three times. This copy of the NOA must be a forgery or a document that was altered from the CRA copy.

1057 Mr. Ghatan testified that he also gave Mr. Levy his NOA and T1 General for 2007, which shows his total income as \$31,498. However the NOA in the loan file states his total income as \$123,860, which overstated his income for 2007 by almost four times. The Crown also introduced Mr. Ghatan's NOA and his T1 General for 2008 from the CRA that stated his total income at \$45,922. I don't believe that any tax documents for 2008 were provided to the bank.

1058 Mr. Levy denied the suggestion from Mr. Fox that he falsified the NOAs and included them in a package with a Business Plan for Mr. Ghatan to take to the bank and he denied knowing of these fraudulent documents. Mr. Ghatan also denied any knowledge of these forged or altered documents. He assumed that what he provided to Mr. Levy was in the package he gave to the bank.

1059 The first question is who altered the tax documents in the loan file. On the evidence it had to be Mr. Levy or Mr. Ghatan. As between them, considering their evidence alone, I am not able to come to a conclusion. I will revisit this issue when I consider the similar fact evidence. I have considered however, if Mr. Ghatan did not do the alterations whether or not he must have come to be aware of them at the time. I have not been able to conclude that he looked inside the package before giving it to the bank. Even if he did, it may be that he would not have carefully checked the tax documents. Assuming that he gave unaltered documents to Mr. Levy, given that he trusted him, there would have been no need for him to have looked them over carefully. Furthermore, the evidence of why he wanted to do the deal does not prove that Mr. Ghatan had an incentive to deceive the bank. As I will come to, it is possible that Mr. Ghatan did not become aware of the alterations in his meetings with Ms. Johnstone when he was filling out forms that required his income information.

(b) Bank Reliance Evidence

1060 Mr. Levy called Ms. Johnstone, as a witness. She had retired from her position as a loan manager at the BNS. She testified that she never met Mr. Levy and then Mr. Levy turned her over for cross-examination. Ms. Johnstone said that she never met Mr. Kazman and had no email or telephone communication with Ms. Coutts from the RBC.

1061 Ms. Johnstone was the loan officer for Mr. Ghatan's Homelife SBL. She corroborated his evidence that he called her on June 16, 2009 and that she met with him the next day. Based on a search she found that Mr. Ghatan had an existing profile at another branch and she asked him why he had chosen her branch. Ms. Johnstone did not recall the name Warren Goldberg but did say that she was involved in a lot of professional loans for doctors and lawyers and that her branch specialized in professionals.

1062 At the first meeting Mr. Ghatan told her he was going to set up a real estate office and that he needed a loan for leaseholds, furniture and equipment. She understood it was a franchise. She told him what documentation he needed at that meeting. On his second visit on June 23rd Mr. Ghatan came with all the documentation that she required. She did not recall if the documents were in a sealed envelope or not. In answer to questions from Mr. Coristine, Ms. Johnstone testified that she would have reviewed all of the documentation Mr. Ghatan brought with him. Ms. Johnstone did not have an independent recollection of what she did with Mr. Ghatan, but was rather testifying as to her practice, which in the circumstances is to be expected. She was not asked what she meant by "review".

1063 When Mr. Coristine put to Mr. Ghatan that Ms. Johnstone testified that if she was given a sealed envelope she would open it and go through the documents with the client, Mr. Ghatan

said that he never got to her office. When she came out to greet him at the bank counter he gave her the envelope and said "this is the documentation" and she took it. He stayed at the counter and did not go to her office. While he was sitting at the counter she helped him with the forms. She seemed more focused on connecting him with her other colleague than anything else. I do not know that by using the word "review", Ms. Johnstone meant that she would have gone through, for example, the issue date of the GIC or the actual numbers on the tax documentation with Mr. Ghatan. She would have reasonably assumed the original documents were authentic. As previously stated, in all cases the documents were forged in a professional manner. I cannot conclude on this evidence that Mr. Ghatan would have become aware of the fraudulent documents as a result of such a "review".

1064 I note that Mr. Ghatan's evidence was that he brought the envelope to his first meeting with Ms. Johnstone whereas her evidence is that he brought the documents for the second meeting. Nothing turns on this; Mr. Ghatan didn't remember if he gave documents to Mr. Levy before or after his meeting with Ms. Johnstone. It appears based on the dates of documents signed at the bank that there was at least a meeting on June 23rd.

1065 When Mr. Ghatan met with Ms. Johnstone on June 23rd he filled out and signed the Summary of Personal Finances form (Summary) found in the loan file. He testified that Ms. Johnstone helped him with the form. I note that the altered NOAs for 2006 and 2007 are stamped indicating that Ms. Johnstone saw the originals on that date. The same is true for the Agreement to Lease. This suggests that at least some documents were brought to Ms. Johnstone on this date.

1066 For his assets Mr. Ghatan stated he had \$131,000 in a HSBC and TD GIC. He testified that no one suggested that the GIC couldn't be borrowed money. He also listed both properties and what their value was. Ms. Johnstone crossed out his numbers and wrote in the total equity of both as she said he had to make a reference to the equity.

1067 Mr. Ghatan admitted that he did not include his loan from Mr. Levy as a liability. He referred to that section of the form which is headed "Please tell us about your PERSONAL assets and liabilities" and underneath it states in much smaller print: "Your main financial institution (names and address)" where he wrote in "HSBC, TD Bank, CIBC, SCOTIA BANK". Underneath this there are two columns, one headed "Your assets" and the other "Your liabilities". Mr. Ghatan testified that his understanding was that by this reference to financial institutions, that what was needed on the form was any liability he had *to those institutions*. Mr. Ghatan did not include Mr. Levy's loan because Mr. Levy was not a financial institution. It was just a personal loan from Mr. Levy. He did break down on the form his liabilities which included amounts outstanding on credit cards, vehicle loans and "Amount of other personal loans" under which Mr. Ghatan wrote "TD LOC, CIBC LOC"; a reference to his lines of credit.

1068 I find this evidence very difficult to believe. Mr. Ghatan is educated and based on his evidence he read the form carefully. His interpretation seems to be an after-the-fact justification for not being forthright about the loan from Mr. Levy. Furthermore, I wonder why Mr. Ghatan did not ask Ms. Johnstone for guidance if he actually wondered about this. However, I accept it is possible that Mr. Ghatan is telling the truth on this issue.

1069 As for his income, Ms. Johnstone had the package and he presumed she had his tax information that he had given to Mr. Levy. Mr. Ghatan testified that he did not remember what his gross personal income was but he knew he made between \$115,000 and \$120,000. He asked Ms. Johnstone if he should just put in approximate income on the Summary and she said "no", that she would get it. She then looked at the package he had given her and gave him the numbers that he wrote down on the form. Mr. Ghatan wrote down \$123,360 where the form asks for his "Gross Personal employment income (before tax)". Mr. Ghatan also wrote down rental income of \$30,000. The amounts total \$153,360. Above Mr. Ghatan's signature the form states that his signature certifies the information in the form as accurate and complete.

1070 Mr. Ghatan testified that he had no intention to rip the bank off. He was not scared about borrowing \$200,000 and had enough liquidity to back that up. Mr. Ghatan testified that he wouldn't have jeopardized his real estate licence for a \$200,000 loan. The Crown argues that Mr. Ghatan knew the documents given to Ms. Johnstone were altered. The Crown takes the position that Mr. Ghatan would have known at the time that despite his impressive sales record his net income for the relevant time period would have placed his ability to qualify for such a large loan in jeopardy. To support these submissions, the Crown relies on Mr. Ghatan's evidence that he needed to "grab" the upcoming opportunity in the real estate market and "use it to make money" and that Mr. Levy with his "expertise" in obtaining SBLs in conjunction with the Levy brothers' blossoming Wasaga Beach opportunities offered the fastest and easiest route for Mr. Ghatan to make a lot of money. Mr. Ghatan argues however that he would have had no reason to alter his NOAs as the bank looked to his gross income to determine his ability to qualify for the SBL. I accept that is what was asked for on the Summary and the Statement About You that he signed but I do not believe Mr. Ghatan would have known this before he gave the package to Ms. Johnstone.

1071 On the question of income, the Crown argues that Mr. Ghatan's net income was low but the Summary form clearly asks for gross personal employment income before tax. When it was suggested to Ms. Johnstone by Mr. Fox that it could be gross income before expenses she said that that was correct as the form states "gross". Based on Mr. Ghatan's real T1 General for 2006 his gross rental and commission income totaled \$83,975 and for 2007 it totalled \$111,250. Although Mr. Ghatan did not provide Mr. Levy with his NOA and Tax Return for 2008, his gross rental and commission income for 2008 totaled \$141,860. Mr. Ghatan's income was not from employment but there is no place on the form for self-employed income. On its face there was no material misrepresentation by Mr. Ghatan as to his gross income.

1072 There are two additional documents Mr. Ghatan signed on July 2, 2009; a Statement -- About the Business and a Statement -- About You where Mr. Ghatan's "Gross Annual Income" was typed in as \$142,400. Again this number is reasonably close to what Mr. Ghatan actually grossed in 2009 and so there was no material misrepresentation.

1073 Ms. Johnstone testified that the fact that Mr. Ghatan had 11 years of solid employment gave the bank some comfort. Ms. Johnstone confirmed that if she knew that Mr. Ghatan only made \$40,000 net she would have been quite concerned and probably would have cancelled the loan application on the spot. Although Ms. Johnstone confirmed that she did not make

lending decisions and that her role was to collect documentation and pass it on the bank's underwriters, she said that she could refuse to pass an application along to the underwriters. She did not testify that she asked for this information however, and as already stated, that is not what is requested on the bank forms. It is not clear then what Ms. Johnstone would have done and, as Mr. Fox argued, the underwriting department seemed most interested in Mr. Ghatan's real estate assets as they asked for his MPAC assessments. In any event it does not assist the Crown to rely on information that the bank did not ask for. The form clearly called for gross income numbers.

1074 I accept Mr. Ghatan's evidence that he asked Ms. Johnstone if he needed to be precise or not and that she gave him the numbers that he filled in. Those numbers are not far off his actual gross commission and rental income. Given the bank asked for gross and not net income, I find that Mr. Ghatan made no material misrepresentation with respect to his income.

1075 Ms. Johnstone also confirmed that if Mr. Ghatan presented that he had a \$100,000 GIC and it was long gone before she gave him the loan proceeds, that that would have defaulted the loan. She agreed that would be a "pretty big lie".

1076 At this time however, Mr. Ghatan still had the \$100,000 GIC. He did not cash it in until December 2009 to pay his loan to Mr. Levy back. Furthermore, I am puzzled why Ms. Johnstone would not have been concerned about the fact that the HSBC GIC in the loan file had supposedly already matured on June 18, 2009.

1077 On the evidence related to Homelife alone I find that it was more likely Mr. Levy who forged or altered the GIC. Certainly Mr. Ghatan's evidence that he did not alter the original GIC raises a reasonable doubt. I make this finding principally relying on the fact that he would have had no reason to know why it might be important to show that the GIC had been purchased a year earlier than it had been. I find that therefore this GIC had to have been altered by Mr. Levy. However I do not find any reliance by the bank to its detriment on this altered document. Mr. Ghatan redeemed the GIC on July 3, 2009 and the money was deposited into Homelife's account on that day as start-up capital. This money was used as working capital for Homelife.

1078 The loan file also contains the Loan Registration form that Mr. Ghatan signed on July 2, 2009. He admitted his initials and signature were on the form but he was not sure if he was the one that checked off the boxes. He said that the rest of the document is in Ms. Johnstone's handwriting and she admitted this.

1079 Mr. Ghatan insisted that Ms. Johnstone did not go through anything on the form with him before he signed and that there was no discussion about arm's length. He said that he didn't know what that term meant until it was explained to him by his lawyer. Ms. Johnstone testified that she went through the acknowledgment on the back of the form with Mr. Ghatan and that they did discuss arm's length and that Mr. Ghatan initialled the box, but she fairly acknowledged that she had no independent recollection of this. I find that she was relying on what her practice was, not specifically her meeting with Mr. Ghatan.

1080 With respect to the legal definition of "arm's length" Ms. Johnstone agreed that if the

borrower is a corporation and the landlord is a corporation and the person behind the borrower corporation has no interest in the landlord's corporation, that that is arm's length. Ms. Johnstone testified that she would not consider parties to be arm's length if the person behind the landlord corporation and contractor corporation was the same person. I appreciate why she would say this but that was not how the term was defined at that time. The Loan Registration form asked whether the borrower and the landlord were related, not whether the landlord and the contractor were.

1081 Ms. Johnstone also testified that if Mr. Ghatan was a business partner with the landlord that would not be arm's length. I will come to the evidence about this and my reasons for finding that Mr. Ghatan and Mr. Levy were not business partners at the time he applied for the SBL. They had only discussed splitting commissions on customers Mr. Levy referred to Mr. Ghatan.

1082 It is the Crown's position that when Mr. Ghatan declared his relationship to the landlord as "arm's length" that was an obvious misrepresentation, regardless of the lack of personal relationship because he knew Mr. Levy would benefit significantly from the loan as his contractor and potential business partner. The Crown argues that Mr. Ghatan's evidence that he did not think this was a problem is patently unbelievable given his knowledge of the real estate business and its associated Code of Ethics.

1083 I repeat that the Crown's submission is at odds with the legal definition of arm's length at the time. The fact Mr. Levy was his landlord and was to be his contractor and possibly a business partner of some sort did not fall within the definition at the time. Although I realize that the bank would have been concerned about these facts had the bank known, there is no place in any of the forms where this type of information is sought. Furthermore, I do not find on the evidence related to this Homelife SBL, that Mr. Ghatan had reason to believe at the time that Mr. Levy would take advantage of him as a contractor. His evidence that he discussed the price with his wife and that the price seemed reasonable was not challenged. From Mr. Ghatan's perspective, he testified that he believed that the money he was going to spend on the renovations was reasonable and so that can explain his evidence that he did not see this relationship as a problem.

1084 As Mr. Fox submits, at the time the SBL was being registered their relationship was only that of tenant and landlord. There was no: common mind bargaining for both of them and neither Mr. Ghatan nor Mr. Levy had any *de facto* control over each other or their respective corporations. At all times Mr. Ghatan was the only shareholder and director of Homelife and Mr. Levy was the only shareholder and director of MGM. For these reasons I agree with Mr. Fox that at the time of the SBL application and when it was registered, Mr. Ghatan and Mr. Levy and their respective corporations were at arm's length. It is therefore not necessary to decide as between Ms. Johnstone and Mr. Ghatan if the issue of "arm's length" was discussed, as at the time I find that Mr. Ghatan/Homelife was arm's length to Mr. Levy/MGM and if Mr. Kazman had an interest in the property at the time, with him as well. There was no misrepresentation by Mr. Ghatan on this issue.

1085 Finally in cross-examination by the Crown, Ms. Johnstone agreed with the Crown's accumulative assertions that if she knew of the fraudulent NOAs, the altered GIC, the property

renovation history of 1040 Eglinton, and the eventual business partnership between Mr. Ghatan and Mr. Levy, that the loan application would have been rejected.

1086 Assuming that once I consider the similar fact evidence I conclude that it was Mr. Levy who altered the tax documents, I find that the Crown has not proven that Mr. Ghatan was aware of this. He would have no reason to believe that Mr. Levy was going to alter the documents and as such no reason to check them over before giving them to the bank. Furthermore, as I will come to, he had no firm partnership agreement with Mr. Levy and no obligation to disclose the possibility of one. Finally, as I will come to, he did not know the property history of 1040 Eglinton.

1087 I therefore find that Mr. Ghatan did not make any misrepresentations to the bank during the SBL application process.

(c) Potential Partnership between Messrs. Ghatan and Levy

1088 Mr. Ghatan testified that he believed that what he discussed with Mr. Levy was that when Mr. Levy brought him the resale or assignment of a Wasaga Beach property that Mr. Levy would get 50% of the commission. It is not clear when this discussion took place. Mr. Ghatan admitted that he signed a document headed Declaration of Trust and Partnership Agreement on August 10, 2009 between himself personally as Trustee and Homelife and Mag Holdings Corp., (Mag) one of Mr. Levy's companies as the Beneficiary.

1089 Mr. Ghatan testified that when Mr. Levy brought this document to him he was in his office and he had only been open for business a few days. According to Mr. Ghatan, Mr. Levy told him that he would like to have something on paper to confirm he would get 50% back. Mr. Ghatan testified that he did not read the document and did not pay attention to what he signed. He testified that when he signed this agreement he trusted Mr. Levy who was very helpful at the time and he thought Mr. Levy would bring him business. When he read the agreement afterwards he realized that it meant Mr. Levy would get 50% of everything that he made.

1090 Mr. Levy's version of this agreement is that he asked Mr. Ghatan to bring him in as a partner with Mag and they would each hold 50%. Mr. Levy would bring all his deals to Mr. Ghatan and he would get 50% of the commissions. Mr. Levy also agreed that it would have been useful to him to have a partnership relationship with a real estate agent since he was not a broker. If he had the opportunity he would not have turned it down.

1091 I note that the title to this agreement is the same as the agreements Mr. Kazman prepared for Whitehorse and M&M although I presume in this case Mr. Levy used those as a template. In any event the agreement is as Mr. Ghatan understood it once he read it. He held all of the shares of Homelife and agreed to hold 50% in trust for Mag. This would mean that he and Mr. Levy were equal partners in Homelife. The last paragraph of the agreement provided that Homelife still had to pay rent for 1040 Eglinton at \$3,500 per month and that Mr. Ghatan was responsible for all of the renovation costs.

1092 This was clearly a one-sided deal that favoured Mr. Levy's interests. I accept Mr. Ghatan's

evidence that he did not appreciate what he was signing when he signed this agreement. He would have no reason to continue to pay rent, pay for all renovations and split his commissions for all of his clients that his brokerage obtained without the help of Mr. Levy. In fact I would say that no thinking business person in Mr. Ghatan's shoes would knowingly sign such an agreement. This gives some support to Mr. Ghatan's lack of attention in his dealings with Mr. Levy.

1093 Mr. Ghatan did not testify about what he would have done about the fact he signed this agreement and it is not clear that he even became aware of its true import before the criminal proceedings. Mr. Levy testified that he did not receive any money from Mag pursuant to this agreement, which would have become moot fairly quickly when Homelife shut down.

1094 In any event, when Mr. Ghatan was signing the necessary documentation with the BNS in June and July 2009, there is no evidence of a binding partnership agreement between him and Mr. Levy at that time.

(d) The Purported Renovations to 1040 Eglinton and Purchase of Equipment, Furniture and Fixtures

1095 I have already reviewed the property history of 1040 Eglinton in Appendix "N" and the evidence I have of renovations purportedly done to the property for other companies that obtained SBLs including Accessories & More Ltd. in the fall of 2007 for the main floor, Dufferin Paralegal in the spring of 2008 for the second floor, and Western in the fall of 2008 for the main floor. For the reasons set out there I have concluded that the building had been subject to a Total Gut Job and Total Rebuild twice. In my view it is obvious that there would be no need to gut the property yet again about one and one half years later to replace the electrical panel, the wiring, the plumbing, and the HVAC. Furthermore there would be no need to replace the storefront since that was purportedly done for Western.

1096 Mr. Ghatan testified that he did not speak to previous tenants about the renovations that had been done before him. He gave Mr. Levy exactly what he wanted through floor plan drawings that his wife prepared. These drawings only set out the floor plan for both levels and where the various walls would go for offices and other rooms and where a counter and fridge would go in a room in the basement. It is significant that these drawings make no mention of any renovations behind the drywall for electrical, plumbing or HVAC and do not include plans for electrical/lighting or the finishes to the walls, ceiling and floor. Contrary to the evidence of Mr. Levy, I find that Karen Levy did not prepare these drawings.

1097 These drawings confirm Mr. Ghatan's evidence that he wanted an office, a meeting room and a lot of stations for agents where they could search for properties and use computers. The basement was going to be an open concept with a kitchen and a room filled with computer stations. What was underneath the walls was not his concern. His office was to be like a "presidential office". Mr. Ghatan explained that his clientele would be coming from Forest Hill where they owned \$4-\$5 million properties. He wanted them to walk in and feel confident to list with him. He thought the price for the renovations was fair. He was focusing on doing real estate as he'd make ten times that amount at that than what he would spend. Given Mr. Ghatan's

commissions in the couple of months that Homelife was open, that I will come to, I accept that Mr. Ghatan was more focused on getting his business open and was prepared to pay a premium for a turn-key operation.

1098 The Crown argues that Mr. Ghatan knew of the property history but there is absolutely no evidence that supports this, save possibly for the fact that there was already a new storefront. The Crown argues in the alternative that Mr. Ghatan was reckless and/or willfully blind for not attempting to gauge what work was needed at the premises. The Crown argues that this is especially true in light of Mr. Ghatan's knowledge that Mr. Levy doctored financial information to assist Mr. Ghatan. I have not found that Mr. Ghatan was aware of this however, and although I would have expected him to query the need for items such as a new HVAC, that in my view is an insufficient basis to find that he was willfully blind, particularly given his evidence of relying on advice from his wife, which evidence was not challenged.

1099 Mr. Levy admits that his company Castlerock, which he owned with his wife, was the contractor for this job. Mr. Levy said he gave Mr. Ghatan a quote although that is not in evidence.

1100 The BNS received three invoices from Castlerock, which Mr. Levy admitted his wife prepared. He also admitted that Mr. Kazman was not involved in these invoices.

1101 The first invoice was dated July 3, 2009 in the amount of \$107,562.50 net of a \$25,000 deposit and was for the usual Phase I Total Gut Job including "Replace all aluminum anodize [sic] Store Front including new Tempered Glass" and the usual Phase II for a Total Rebuild including supplying and installing a new HVAC system including new ducts, grill diffusers and exhaust fans.

1102 Mr. Fox argued that Mr. Levy further victimized Mr. Ghatan by demanding the \$25,000 deposit, which in turn forced Mr. Ghatan to borrow \$75,000 from Mr. Levy at a criminal interest rate. There is no evidence to support this submission.

1103 Mr. Levy testified that he did a "turnkey" operation for Mr. Ghatan although significantly when he was later asked about a turnkey operation he pretended not to know what that term meant and he denied that he offered Mr. Ghatan a turnkey operation. Mr. Levy did testify that he did a gut job of the main and lower level and that everything was new. Mr. Levy said that they did four offices on the main floor and offices in the basement. He acknowledged that the unit had been renovated before but said that that was not for a real estate office. Mr. Levy testified that 1040 Eglinton had two HVAC units; one on the main floor that was replaced by Mr. Ghatan and one on the second floor that was replaced by Mr. Kazman. Mr. Levy said he did the whole renovation and that it was a beautiful business and that Mr. Ghatan put up a lot of his own money. According to Mr. Levy he did not make that much money on the job because there was not enough room for him to make a profit.

1104 I do not accept Mr. Levy's evidence that it was necessary to gut the premises yet again. The fact it had previously been a leather store would not mean that it was necessary to replace the HVAC or that all of the existing wiring and plumbing would have to be removed or that the

storefront would have to be changed. I appreciate that with the computer stations that Mr. Ghatan wanted that there would be a need for more wiring and that the plumbing would change but some of the purported renovations seem unnecessary and Mr. Levy would have known that. The interesting question is whether he actually did all of the work stated on the Castlerock invoices.

1105 Mr. Kazman also testified that Mr. Ghatan fixed up the main floor and basement beautifully. Mr. Kazman said that he saw employees, TVs on the wall, computers and that it was a 100% legitimate *bona fide* business. There were two ways to the upstairs-at the back and the front. Mr. Kazman said that on occasion he went through the basement and saw how it was equipped and fixtured. He saw expensive furniture-cherry with glass. However he could not comment on the invoices as he was not involved. He insists that he did not meet Mr. Ghatan until Mr. Ghatan leased the premises and he testified that he was not involved in the renovations. He queried how he would know what was done to which Mr. Coristine responded that he claimed he had an ownership interest in the building. To this Mr. Kazman responded that his business Dufferin Paralegal was upstairs and unless they used sledge hammers that he was sure he would have seen the work.

1106 The second invoice dated July 14, 2009 in the amount of \$62,065.25 was for furniture and fixtures and the third invoice dated July 22, 2009 in the amount of \$50,002.50 was for computers and equipment. Mr. Levy testified that Mr. Ghatan gave him instructions of exactly what he wanted and he supplied and installed it.

1107 Mr. Ghatan testified that he received these invoices from Castlerock and provided them to Ms. Johnstone although he only had a specific recall of this for the first invoice. He then obtained the advances of his SBL. The BNS advanced the SBL of \$204,000 to Homelife in three payments on July 6, 16 and 23, 2009. Mr. Ghatan also deposited start-up capital of \$185,000 in three payments in the same month although \$90,000 was paid back to him on July 3, 2009. Accordingly Mr. Ghatan's start-up capital was \$95,000. Mr. Ghatan paid all three invoices in full to Castlerock. It is significant however that only \$107,562.50 was paid towards Castlerock's first invoice, not the amount of the invoice before credit for the \$25,000 deposit of \$126,250. I will come back to the significance of this.

1108 Ms. Johnstone testified that she did a site visit before any funds were advanced on July 6, 2009. She had the first Castlerock invoice and she checked off various items and she made a note stating "all of the above seen during pre-site visit conducted by Shelley Johnstone July 6/09". At the time of this site visit Ms. Johnstone believes work was done on the floor area and the counters and "that type of thing" but she couldn't recall the details save that the work had commenced.

1109 Ms. Johnstone testified that when she was away on holiday Josh Hickey would do the site visits. If they received an invoice related to a loan they had to do one because they could not advance the money without a site visit. Mr. Hickey conducted a site visit on July 16, 2009 when the second advance was made. Ms. Johnstone believes that Mr. Hickey also went for the site visit with respect to the third invoice for equipment and furniture. Ms. Johnstone also did a surprise site visit. The office was open and it appeared to be a fully functioning business. After

the surprise site visit she told her manager that from what she could tell what they financed was there although she qualified this by saying that she didn't really analyze the invoices.

1110 At some point in July 2009, the BNS received two third party invoices and Future Shop receipts that Mr. Levy testified set out the equipment that was supplied by Castlerock to Homelife. Mr. Levy testified that Castlerock paid these invoices and receipts and the Coort Analysis confirms this.

1111 One is an invoice from AChen Enterprises Inc. to Castlerock totaling \$19,866.26 for a network printer, telephone system, computer systems and a scanner/copier, which states delivery was made on July 20, 2009. Mr. Ghatan testified that AChen was introduced to him by the head office of Homelife who told him that they used this company for most of their computer equipment. As a result Mr. Ghatan told Mr. Levy that he wanted to use this company. According to Mr. Ghatan, AChen did all the work listed on this invoice. The other invoice was from Computronet Inc., another company Mr. Ghatan directed Mr. Levy to use, dated July 21, 2009 for a 67-inch plasma LCD TV and satellite installation, etc. in the amount of \$3,150. The invoices went to Mr. Levy and Mr. Ghatan testified that Mr. Levy gave him a copy. With respect to the invoices he doesn't remember if he went line by line however he testified that whatever was there was exactly what he wanted.

1112 The receipt from Future Shop dated July 16, 2009 for \$5,749.25 was purportedly for equipment provided to Homelife, the bulk of which appears to have been four televisions, which was paid by Mr. Levy's personal VISA card. Mr. Ghatan believes that he had four TVs but couldn't remember the number of computers. The Computronet invoice refers to the installation of a number of TVs and the AChen invoices refer to installation of at least eight computer systems.

1113 The Crown argues that these invoices/receipts are suspicious. Mr. Coristine asked Mr. Levy why none of the third party invoices refer to Homelife or 1040 Eglinton to which Mr. Levy responded that he had to be able to claim his HST. This evidence makes no sense. When Mr. Coristine pointed out that the third party invoices reference more equipment like TVs than Castlerock charged for, Mr. Levy said there must have been another invoice after this. There is absolutely no evidence of that however. I have doubts that all of the televisions on the Future Shop receipts were delivered to Homelife but given the evidence of Ms. Johnstone who did site visits to see if what the bank financed was there and considering the evidence of Mr. Ghatan and the pictures that he took of the renovations, it is clear that renovations were done and I cannot conclude that certain equipment was not present and installed.

1114 The third party invoices add up to roughly a \$20,000 markup over actual cost. The Crown concedes that these third parties may be legitimate but submits that Mr. Ghatan willingly let Castlerock upcharge the bank by \$20,000 and then paid the bill out of his loan money and that this implicates him in the alleged conspiracy. I do not accept that submission. Not only was this not pursued with Mr. Ghatan, Ms. Johnstone was not asked about this. There is no evidence that given Mr. Ghatan's desire for a turnkey operation that he could not have agreed to pay a premium to have Castlerock obtain these items. It may be that Mr. Ghatan was taken advantage

of and charged more of a premium than he ever expected but that does not implicate him in the alleged conspiracy.

1115 For these reasons I find that the Crown has not proven that any of the items billed by Castlerock for furniture, fixtures or equipment was not supplied to Homelife.

(e) Did Homelife Operate as a Business?

1116 Mr. Ghatan testified that the renovations were completed by the beginning of August and that he opened his brokerage office and became a Homelife Platinum broker of record on August 8, 2009. He hired two employees and one agent. Ms. Johnstone's evidence that I have already referred to also confirms that Homelife was open for business.

1117 Mr. Coort analyzed Homelife's general account from the time the account was opened on July 3, 2009 until February 12, 2010 when it was closed. Mr. Ghatan testified that he made close to \$100,000 in commissions from the first week of August to the end of October and that Mr. Coort's number for commissions of \$75,860 did not include a commission that he received through a lawyer's trust account. He produced documentation to support this which was not challenged. I accept Mr. Ghatan's evidence on this point.

1118 Homelife paid rent for the months of July to October and money was also withdrawn for payroll for one employee in September 2009 and for two employees for the period October to December 2009. In addition, loan payments were made from August to November 2009.

1119 I accept on the evidence that Homelife opened and operated as a real estate office and that Mr. Ghatan intended to operate it as a Homelife brokerage. He was clearly successful in the short period of time he was open. I also accept that he appreciated that if his business was successful that he would have to pay the full amount of the SBL back to the BNS.

1120 Mr. Ghatan testified that he had to close Homelife at the end of October 2009 because he received a letter from the Real Estate Council of Ontario suspending his licence. I do not know the reason for this letter nor would the reason be relevant to my decision. Mr. Ghatan testified that he couldn't sell his business, as no one would buy a realty company that had only been open for two months. I accept that evidence. He did not willingly shut his business down.

1121 Mr. Ghatan testified that when he left the property he used a small truck and took as much as he could to his friend's warehouse. He went back and forth three times and then when he got back there was a piece of paper over the door and he was not allowed back in. Mr. Ghatan said that Mr. Levy told him he was going to seize his assets because he owed him money; \$24,000 in rent arrears. Mr. Levy denied kicking Mr. Ghatan out. Although he seemed to have the reason wrong he acknowledged that Mr. Ghatan had no choice but to vacate the premises. Mr. Levy said that Mr. Ghatan took most of the assets and there was not much left in the unit. He did not recall if he seized any assets.

(f) The Appraisal of Homelife's Assets

1122 The BNS declared the Homelife SBL to be in default as of December 15, 2009.

1123 Mr. Feferman was assigned to appraise the assets of Homelife by the Lipman firm by letter dated January 19, 2010. The instructions included a letter from Mr. Ghatan dated January 14, 2010 stating that the business was no longer in operation and that some of the assets of Homelife had been seized by the landlord and some were in storage. Mr. Feferman made a note to himself on the file that states: "where are rest of assets?" which he said was a question he wanted to ask.

1124 Mr. Feferman had no independent recollection of his attendance and appraisal and so his reporting letter to Mr. Lipman dated February 8, 2010 was admitted on the basis of past recollection recorded. Mr. Feferman had no independent recollection so he could not say that Mr. Ghatan showed the assets to him.

1125 In his reporting letter Mr. Feferman stated that he was attaching his partial appraisal of the assets that he was able to view at the warehouse belonging to Mr. Ghatan's friend. Mr. Feferman listed the assets and opined that the distress value, if sold on site by auction, was approximately \$514.00. These assets consisted of a wood table, five faux leather chairs and three single pedestal desks as well as a Samsung printer, three Acer LCD monitors, five no name CPUs, two old CPUs with missing parts, nine keyboards, one HP LaserJet printer, two Nortel telephones, one CPU speaker and one mouse.

1126 Mr. Feferman went on to say that he was trying to get a positive response from "Mr. Gaddy of Trust Inc." to gain access and appraise the remaining assets but due to rent arrears "Mr. Gaddy would not allow us access under any circumstances to the premises to complete our appraisal."

1127 Mr. Ghatan did not remember if he met Mr. Feferman and he testified that he could not comment on what Mr. Feferman saw and that he did not know if the list of assets Mr. Feferman prepared is what he took to the warehouse. I did not accept this evidence, as I would have expected him to have some memory of this. I believe Mr. Ghatan recognized that he would not be able to explain, given his evidence of what he took into storage, why these assets were what Mr. Feferman saw. The televisions and computers should have been fairly portable and given the amount of equipment I do not know why he would have even brought items such as old CPUs with missing parts into storage.

1128 Mr. Levy on behalf of MGM sent Mr. Lipman a letter dated March 4, 2010 with respect to Homelife stating:

Some of the assets remaining on the property had little or no realizable value and were disposed of. The balance of the assets remaining were sold for a total of \$5,500 cash. The cost to dispose of and clean up the premises was \$4,500 leaving a difference of \$1,000.

However, the tenant still owes approximately \$24,000 for arrears of rent, and utilities.

1129 It is significant that the fax header on this letter is the HP fax number with a fax date of

March 4, 2010 as this is one of the faxes that I rely upon in coming to my conclusion that documents faxed with this fax header were faxed by Mr. Levy or someone on his behalf.

1130 Based on the evidence from the Coort Analysis, Mr. Ghatan's evidence that he paid the rent for August to October 2009 inclusive is correct. I also accept that there was an agreement that he would not start paying rent until he opened which was early August. As a result, Homelife owed rent for at most five months - \$17,500 plus utilities and expenses. Accordingly I believe Mr. Ghatan is correct that he did not owe \$24,000 in rent. However I have no evidence as to the cost of utilities and other expenses. I cannot say the position Mr. Levy took on the outstanding rent was unreasonable assuming he did not have a new tenant by then.

1131 I find that the list of assets in the appraisal report of Mr. Feferman is accurate and based on that there are substantial discrepancies between the assets shown to appraiser Ted Feferman and the third party invoices given to BNS. This may be why Mr. Ghatan professed not remembering meeting Mr. Feferman and as a result could not comment on what Mr. Feferman saw.

(g) Payments back to Mr. Ghatan

1132 The Crown alleges that Mr. Ghatan received three significant "kickbacks" totaling \$40,000 as part of the fraud scheme.

(i) *Rent*

1133 The Agreement to Lease states that rent was to start for the month of June and that Mr. Ghatan had paid \$8,400 to MGM Inc. for the first and last month's rent plus GST. This payment was by draft dated June 18, 2009 from Mr. Ghatan's personal account. Also on that date Mr. Levy signed a cheque from MGM to Trust Inc. for \$8,425 with a RE: "on account 1st and last month return to kamyar" which cleared the account on June 23, 2009. On June 22 and 23, 2009, Trust Inc. gave two cheques to Mr. Ghatan in the amounts of \$4,985.68 and \$3,414.32 that totaled \$8,400. Mr. Ghatan deposited these cheques into two separate personal accounts.

1134 Mr. Ghatan's explanation for these payments was that on June 1st¹¹ the renovations were not done and that after a discussion with Mr. Levy, Mr. Levy gave him the first and last months' rent that he had paid back. He has no idea why he got two cheques back from Mr. Levy. In cross-examination by the Crown, Mr. Ghatan could offer no explanation as to why he received a return on the last month's rent nor could he explain why the cheques were for two separate dates and in such odd amounts. He wasn't suspicious about this at the time and explained that people have different corporations and take different cheques from one.

1135 Mr. Levy's explanation for these payments was different. He testified that it was a "mistake" to collect the first and last months' rent from Mr. Ghatan, which is why he paid it back to him. Mr. Levy said Mr. Ghatan had paid it from his personal account, which I assume is the mistake and that he wanted to pay the rent from his business account. Although that evidence makes sense it does not accord with the facts either, as according to the Coort Analysis, Mr. Ghatan never actually paid rent for the months of June and July even though the lease does not

refer to any rent-free periods nor is there any evidence he replaced the cheque for the last month's rent.

1136 This evidence also does not explain why the rent was paid back from two companies in uneven amounts and Mr. Levy could not explain this either. He queried why it was such a big deal given the amount of money and then said that he was "ordered" to split the amount into two cheques, which evidence was also clearly false as Mr. Ghatan would have no authority or reason to "order" this.

1137 When Mr. Fox put to Mr. Levy that he had already given evidence that Trust Inc. repaid Mr. Ghatan the first and last months' rent in two cheques for a total of \$8,400 and arranged for him to pay rent monthly, like many occasions Mr. Levy would not admit that this is what he had testified to and simply said that it "could" be his evidence.

1138 There are four questions that arise from this evidence: 1) Why did Mr. Ghatan pay the rent deposit on June 18, 2009 in the first place given Mr. Levy decided to pay him this amount back on the same day? 2) Why did MGM pay the rent deposit to Trust Inc.? 3) Why did Trust Inc. pay the rent deposit back to Mr. Ghatan in two odd amounts by separate cheques? and 4) Why did Mr. Levy pay back the last month's rent to Mr. Ghatan which was essentially a deposit.

1139 The first question of the timing of this payment suggests that the evidence Mr. Ghatan and Mr. Levy gave about this payment must be false. I do not accept Mr. Ghatan's evidence for why he was being paid back the rent as it does not at all fit the timing of known events. The lease was signed on June 1, 2009 and so it would have been obvious that the renovations had not even started and more significantly it was on June 18, 2009 that Mr. Ghatan paid the first and last months' rent, the same date that Mr. Levy signed cheques to return the rent. Although Mr. Ghatan did not get those cheques until a few days later clearly he and Mr. Levy had agreed to the return of the rent on the same day it was paid. This makes no sense. Furthermore, if the rent payment was a mistake, as suggested by Mr. Levy, he could simply have returned the cheques or ripped them up as he received them on the same day that he signed the repayment cheques.

1140 Turning to the second and third questions, although I accept Mr. Ghatan's evidence that he might not question getting back two cheques in odd amounts, the fact that the cheques were from the same company should at least have struck him as odd although I accept that perhaps he did not pay any attention to this at the time. Finally there is no explanation for why Mr. Levy paid the rent deposit to Trust Inc. rather than deposit the cheque to MGM and have it return the money. It also makes no sense that Mr. Levy would return the last month's rent as that was always intended as a deposit and was not related to when the renovations were done.

1141 The difficulties with the evidence of Mr. Ghatan and Mr. Levy are obviously of concern with respect to their credibility as witnesses. I recognize that Homelife did not open until August 2009, but if this return of rent was in part to allow Mr. Ghatan to have two months rent free, it was certainly done in a way to obfuscate what was happening and neither Mr. Ghatan nor Mr. Levy could explain it. No agreement amending the lease to provide for this rent-free period was entered in to. However, I am not prepared to find that it was a kickback to Mr. Ghatan for his

alleged involvement in a fraudulent scheme given the possibility that it was in fact to permit him two months free rent while the renovations were underway.

(ii) The \$25,000 Deposit

1142 As already stated, on June 19, 2009, Mr. Ghatan paid a \$25,000 draft to Castlerock that was marked "deposit" and it was also referenced as a deposit on the first Castlerock invoice for leasehold improvements. As I understand it this deposit came from Mr. Ghatan's personal account since Homelife had not opened a business account. As already stated, when this Castlerock invoice was paid, it was paid the amount of the invoice less this deposit.

1143 Between July 13 and 16, 2009, Trust Inc. received approximately \$28,000 in total from Castlerock, Mosaic and Mr. Levy. Mr. Ghatan then received three payments totaling almost \$25,000; *i.e.*, \$24,990, from Trust Inc. about a month later, \$8,725.66 and \$9,325.69 on July 15th and \$6,948.65 on July 17th, 2009. The Crown established that Mr. Ghatan never deposited this money from Trust Inc. back into any of his Homelife accounts. That makes some sense since he paid the deposit originally from his personal account. It is the Crown's position that this was repayment of the deposit to Mr. Ghatan, which if true, would mean that the Castlerock invoices were underpaid by \$25,000.

1144 Mr. Levy's evidence on these payments was internally inconsistent. He testified that these payments to Mr. Ghatan were loans although in chief he did not say for what. In cross-examination Mr. Fox put to Mr. Levy that he loaned Mr. Ghatan money for his franchise fee in three cheques; I presume a reference to these three cheques. Mr. Levy did not disagree with Mr. Fox but said he would like to see his cheques. In questions from the Crown, Mr. Levy said that Mr. Ghatan gave him a \$25,000 deposit and had paid back the \$75,000 he had borrowed and that Mr. Ghatan then told him that he had a franchise fee to pay of \$20-25,000 and so he loaned him money, which Mr. Ghatan also paid back. Mr. Levy said that the bank did not loan money for a franchise fee, that Mr. Levy could not pay the franchise fee directly and that he was "ordered" by Mr. Ghatan to do it this way. Mr. Levy also said that Mr. Ghatan borrowed \$25,000 and that this was "not a big deal."

1145 It is the Crown's position that it makes no sense that the contractor (and landlord) would be lending the tenant money for his business expenses; his franchise fee. Even if that were not the case, the fact is that Mr. Ghatan only paid \$19,425 in "Homelife Fee" payments using three personal cheques of \$6,475 to Homelife Realty Service Inc. for his franchise fee on June 7, August 7 and October 9, 2009. There is a receipt from Homelife in the loan file confirming that these cheques are for payment of the initial franchise fee of \$18,500 plus GST.

1146 Mr. Ghatan did testify that this \$25,000 was the return of his deposit on the Castlerock invoice. Ms. Brun put to him that the Castlerock invoice already reflected a discount of \$25,000 and that therefore the \$25,000 paid back by Trust Inc. would indicate a \$25,000 windfall to him. Mr. Ghatan initially maintained his position testifying that he "did not understand" this and Mr. Fox argues it was not a windfall as Mr. Ghatan was simply paid back the amount of the deposit he had paid and therefore made no money. That ignores the fact that as a result Castlerock was

out the \$25,000 and that Homelife, which was wholly-owned by Mr. Ghatan, received a \$25,000 discount on the first invoice. In that sense it was a windfall in my view.

1147 When Mr. Ghatan was challenged by Ms. Brun on whether this payment was a windfall, he then changed his evidence and testified that these payments could have been for reimbursement of his franchise fees. As already stated the franchise fee was \$19,425 so this explanation does not make sense. When asked by the Crown why Mr. Levy as his landlord and contractor would be covering his franchise fee Mr. Ghatan said that Mr. Levy was supposed to pay his franchise fee because it was a turnkey operation and that because he had to pay the fee to Homelife from his own account Mr. Levy gave him his money back to do so. He denied it was a loan for the franchise fee. He had no explanation for why Mr. Levy paid him \$25,000 as opposed to the franchise fee of \$19,425 and he denied that this was a kickback.

1148 Again Mr. Ghatan's difficulty in explaining these payments causes concern with respect to his credibility. Mr. Fox argues that as part of the turnkey agreement Mr. Levy was to pay the franchise fee and that this is reflected in the Business Plan. I do not read the Business Plan that way. In the financing section the Franchise Fee is stated as a \$20,000 expense and part of the \$300,000 start-up costs. I see no evidence that it was to be paid for by Mr. Levy or one of his companies. In any event, Mr. Fox did not suggest this \$25,000 was payment for the franchise fee.

1149 The only reasonable inference to draw from these payments is that Mr. Ghatan was receiving a kickback of \$25,000 from Mr. Levy's company Trust Inc. On the evidence however, on this issue alone I could not conclude that this meant that Mr. Ghatan was aware of any fraudulent scheme that Mr. Levy was involved with and that those funds represent Mr. Ghatan's "cut" for taking part in the scheme. I also cannot conclude that it was a fraud on the BNS as the bank was not asked to pay this \$25,000. Furthermore there was no adverse impact on the BNS as it was presented with an invoice showing the deposit. There could have been other reasons for this kickback including the fact that Mr. Levy wanted Mr. Ghatan to lease the premises, wanted to become Mr. Ghatan's partner or as Mr. Fox submitted, by demanding the refundable deposit in the first place Mr. Levy was able to force Mr. Ghatan to borrow \$75,000 at an extremely high interest rate.

(iii) \$6,500 Payment

1150 The final payment the Crown alleges was a "kickback" was a \$6,500 payment from Trust Inc. to Mr. Ghatan on October 7, 2009. Mr. Levy said this payment was possibly a loan or that perhaps he did not complete the whole job and he was giving Mr. Ghatan a credit. Mr. Coristine submitted that this money went to Mr. Ghatan personally and did not show up in the Homelife accounts.

1151 According to Mr. Fox, this was the final installment of three payments from Mr. Levy to reimburse Mr. Ghatan for paying the franchise fee, since he had to pay it personally.

(h) The Circulation of the SBL Proceeds

1152 After Homelife received \$204,000 in SBL funds and Mr. Ghatan's start-up capital of

\$95,000, it used these funds to pay the three invoices from Castlerock that totaled, after credit for the deposit, \$219,630.25 in full.

1153 With respect to Castlerock, in the period June 19 to October 31, 2009, in addition to these payments from Homelife, Castlerock received Mr. Ghatan's deposit of \$25,000 towards Castlerock's first invoice; paid from his personal account and well as \$25,000 in three payments all on August 11, 2009 from Beachfront Developments Inc. (Beachfront); Mr. A. Levy's company and \$7,411.17 from Mr. Levy's company 1322637 Ontario Inc. Mr. Levy testified that the money from Beachfront was repayment of a loan. There is no evidence to contradict this.

1154 In this period, from these funds, Castlerock paid out \$119,974.75 to companies owned by Mr. Levy; Mosaic, 1322637 Ontario Inc., MGM, Trust Inc., MDC Modern Design, and \$7,351.73 to Mr. Levy and his wife personally, which Mr. Levy identified as draws. Mr. Levy said Mosaic must have done some part of the work for Castlerock for Homelife; it had an account with Home Depot where he purchased a lot of supplies and he said that some of the payments from Castlerock to Mosaic were for tiles Castlerock purchased from Mosaic. He also testified that MDC Modern Design also subcontracted to Castlerock for some of the design and the contracting. A number of the cheques were identified by Mr. Levy as inter-company loans; although some were in uneven amounts and if there was a reference, it was to "on account".

1155 Mr. Kazman's company M&M 155 received \$1,025.49 on August 24, 2009.

1156 Without going into all the circulation phases, it is clear that Mr. Levy received more than \$225,000 directly from Homelife, in addition to Mr. Ghatan's \$25,000 deposit. While some money is paid to third party business entities, there is little evidence to suggest those payments are related to work for Homelife.

1157 Castlerock paid a total of \$70,000 to Beachfront and Mr. A. Levy between July 15 and August 7, 2009, which Mr. Levy said was a loan. I note that Beachfront paid \$25,000 back to Castlerock on August 11, 2009. Although the timing of these payments is suspicious there is no evidence to contradict Mr. Levy's evidence that these payments back and forth were part of a loan to his brother and his company Beachfront.

1158 In addition to the payments Castlerock made of the invoices from AChen and Computronet, Castlerock paid \$22,242.28 to Flexmart Office Interiors, which Mr. Levy said was for all the office furniture purchased for Homelife. He testified that the Castlerock cheque to High Print Company Inc. for \$6,407.25 was probably for a sign.

1159 Turning to Mosaic, in the period from June 25 to August 24, 2009, Mosaic received just over \$72,000 from Castlerock, about \$6,000 from Trust Inc., just over \$6,800 from Whitehorse which included a cheque to Mosaic dated August 13, 2009 for \$3,050 with a RE: that states: "on Account for (MK & GL cover)" and \$6,000 from Morningstar (which Mr. Levy said was a return of money for a job not completed) and an unknown deposit for \$12,000. Mr. Levy testified that the payment from Whitehorse referring to him and Mr. Kazman was for work he and Mr. Kazman did but this makes no sense as there is no dispute that Mr. Kazman never had an interest in Mosaic. This evidence does suggest that he and Mr. Kazman were both involved in Whitehorse.

1160 Mosaic used these funds to pay Trust Inc. just over \$24,000, various payments to Home Depot and the like totaling \$31,264, \$5,845 to 846 Realty in two cheques; \$3,795 and \$2,050; which Mr. Levy said was a loan to Mr. Kazman and just over \$24,000 to the Ron Kalifer Family Trust which Mr. Levy said was a repayment of a loan.

(i) Summary of Findings of Fact

1161 Based on the totality of the evidence I accept, I have made the following findings of fact with respect to the Homelife SBL.

1162 I have accepted the evidence of Mr. Ghatan that he did not do the alterations to the GIC that was provided to the bank. I find that it was Mr. Levy who altered the GIC and that he gave it to Mr. Ghatan to give to the bank.

1163 Although I found that I did not accept Mr. Ghatan's evidence that he was not aware of the contents of the package Mr. Levy gave him for the bank, the alterations to the GIC were subtle and I accept that Mr. Ghatan might not have noticed them.

1164 With respect to the altered tax documents in the loan file, on the evidence it had to be Mr. Levy or Mr. Ghatan who prepared these. As between them, considering their evidence alone, I am not able to come to a conclusion although I find that it was more likely Mr. Levy who forged or altered the GIC. Certainly Mr. Ghatan's evidence that he did not alter the original GIC raises a reasonable doubt. I make this finding principally relying on the fact that he would have had no reason to know why it might be important to show that the GIC had been purchased a year earlier than it had been. I find that therefore this GIC had to have been altered by Mr. Levy. However I do not find any reliance by the bank to its detriment on this altered document. Mr. Ghatan redeemed the GIC on July 3, 3009 and the money was deposited into Homelife's account on that day as start-up capital. This money was used as working capital for Homelife.

1165 I will revisit this issue when I consider the similar fact evidence as it relates to Mr. Levy. I have considered however, assuming that Mr. Ghatan did not do the alterations whether or not he must have come to be aware of them at the time. I have not been able to conclude that he looked inside the package before giving it to the bank. Even if he did, it may be that he would not have carefully checked the tax documents. Assuming that he gave unaltered documents to Mr. Levy, given that he trusted him, there would have been no need for him to have looked them over carefully. The evidence of why he wanted to do the deal does not prove that Mr. Ghatan had an incentive to deceive the bank. Furthermore I have found that is possible that Mr. Ghatan did not become aware of the alterations in his meetings with Ms. Johnstone when he was filling out forms that required his income information.

1166 With respect to the Summary that Mr. Ghatan completed I have found that it is possible that Mr. Ghatan is telling the truth about why he did not list his loan from Mr. Levy as a liability. His evidence raised a reasonable doubt as to whether or not he had the necessary *mens rea*. I have also accepted Mr. Ghatan's evidence that he asked Ms. Johnstone if he needed to be precise or not and that she gave him the numbers that he filled in. Those numbers are not far off

his actual gross commission and rental income. Given the bank asked for gross and not net income, I find that Mr. Ghatan made no material misrepresentation with respect to his income.

1167 I have given reasons for why I have found that there was no material misrepresentation by Mr. Ghatan to the BNS with respect to his gross income which is the information that the Summary form asked for. Similarly I have found no misrepresentation as to his Gross Annual Income in the Statement About You.

1168 I have found that because Mr. Ghatan still had the \$100,000 GIC at the time he applied for the SBL there was no misrepresentation.

1169 The loan file also contains the Loan Registration Form that Mr. Ghatan signed on July 2, 2009. He admitted his initials and signature were on the form but he was not sure if he was the one that checked off the boxes. He said that the rest of the document is in Ms. Johnstone's handwriting and she admitted this.

1170 With respect to the legal definition of "arm's length" I have already set out the evidence of Ms. Johnstone in connection with World. As I stated there, her evidence does not accord with the legal definition of "arm's length".

1171 I have found that Mr. Ghatan did not make a misrepresentation when he confirmed that the borrower and the landlord were at arm's length. I have found that at the time of the SBL application and when it was registered, Mr. Ghatan and Mr. Levy and their respective corporations were at arm's length.

1172 Assuming that once I consider the similar fact evidence I conclude that it was Mr. Levy who altered the tax documents, I find that the Crown has not proven that Mr. Ghatan was aware of this. He would have no reason to believe that Mr. Levy was going to alter the documents and as such no reason to check them over before giving them to the bank. Furthermore, as I will come to he had no firm partnership agreement with Mr. Levy and no obligation to disclose the possibility of one.

1173 Finally as I will come to I found that Mr. Ghatan did not know the property history of 1040 Eglinton. I find that Mr. Levy took advantage of that and charged him for improvements that had been done before. I have already given my reasons for why I have found in these types of cases that Mr. Levy would misrepresent the work actually done. In this case I accept that Mr. Ghatan would not necessarily have been aware of what was on the invoice but had not in fact been done. He wanted a turnkey operation and he was busy getting ready to open a brokerage. I therefore find that Mr. Ghatan was not aware of the fact that the first Castlerock invoice was inflated.

1174 As for the second invoice for furniture and fixtures and the third invoice for computers and equipment I am not satisfied that any of these items were not in fact delivered to Homelife. The fact there were at least two site visits from the bank corroborates this.

1175 Similarly I have found that there is no evidence that given Mr. Ghatan's desire for a

turnkey operation that he would not have agreed to pay a premium to have Castlerock obtain these items from third parties and pay a premium for that. If the premium was too high, that does not implicate him in the alleged fraudulent scheme.

1176 I have found that Homelife did open and operate-it was intended to be a legitimate business.

1177 When Homelife closed, I do have a concern about what happened to the assets that Mr. Ghatan took and put into storage and later showed the bank's appraiser. His situation is different from Mr. A. Tehrani whom I have found was knowingly showing the "rotating pile of junk". I am not satisfied beyond a reasonable doubt that what occurred here amounts to fraud such that Mr. Ghatan should be found guilty of Count 1 on this basis alone.

1178 In reviewing the alleged "kickbacks" to Mr. Ghatan, that the Crown alleges total \$40,000, I have given reasons for why I am not prepared to find that the repayment of the rent cheques was a kickback given the possibility that it was in fact to permit him two months free rent while the renovations were underway.

1179 With respect to the \$25,000 deposit however I have found that Mr. Ghatan received a kickback of \$25,000 from Mr. Levy's company Trust Inc. On the evidence however, on this issue alone I could not conclude that this meant that Mr. Ghatan was aware of any fraudulent scheme that Mr. Levy was involved with and that those funds represent Mr. Ghatan's "cut" for taking part in the scheme. I also cannot conclude that it was a fraud on the BNS as the bank was not asked to pay this \$25,000. Furthermore there was no adverse impact on the BNS as it was presented with an invoice showing the deposit. There could have been other reasons for this kickback including the fact that Mr. Levy wanted Mr. Ghatan to lease the premises, wanted to become Mr. Ghatan's partner or as Mr. Fox submitted, by demanding the refundable deposit in the first place Mr. Levy was able to force Mr. Ghatan to borrow \$75,000 at an extremely high interest rate.

1180 Finally with respect to the \$6,500 payment it is possible that this payment related to Mr. Levy reimbursing Mr. Ghatan for part of his franchise fees. In any event whatever it was for I could not find that it implicates Mr. Ghatan in the alleged fraudulent scheme. I have found that from his perspective he got the leasehold improvements, furniture, fixtures and equipment that he paid for.

1181 In coming to these conclusions on these alleged kickbacks, I have considered the Crown's submission that there do not need to be evidence of what the arrangement and motive was. Motive is not required. That said, I do not agree that the Crown has proven its case merely because as it alleges "there is evidence of suspicious money being paid back, for example, with respect to Mr. Ghatan." [Emphasis added] Something more is needed beyond suspicion to meet the high onus on the Crown.

1182 For these reasons I find Mr. Ghatan not guilty of Count 1. This means that he must also be found not guilty of Count 7.

Exclusive Accessories Inc. (Exclusive) -- RBC -- Count # 4

(a) The Exclusive SBL

Exclusive (Chapkina) was approved for a SBL from the RBC on July 22, 2009 in the amount of \$138,720.

1183 I have already set out Ms. Chapkina's evidence about why she decided to get a second SBL for a second store so soon after obtaining the SBL for World and my concerns about that evidence and my findings. I do not agree with the Crown that Ms. Chapkina opened Exclusive "in order to make back some of the money she lost. I do not believe she ever said that. She seemingly had been convinced by Messrs. Kazman and Levy that she should do this so she would have her own store and that the BNS was at fault and she would not be liable on that SBL. Naively, she believed them.

1184 The loan file contains an Agreement to Lease dated June 9, 2009 between Ms. Chapkina in trust for a company to be incorporated and 846 Realty for 2,000 SF retail store of accessories and home accents on the main floor of 846 Sheppard for ten years to commence July 1, 2009 at the rate of \$2,500 plus GST per month plus all utilities and expenses. This copy of the Agreement to Lease is not signed by the tenant and although Ms. Chapkina admitted her initials were on the lease she testified that it is not the lease she signed. She thought it might have been by mistake that Mr. Levy put a working copy into the package he prepared for her. I therefore have no evidence of when the lease was signed although clearly by June 9th it was being negotiated.

1185 According to Ms. Chapkina, the actual lease she entered into was for less square footage and less money in that she was not responsible for utilities since they were not separated out between her unit and the rest of the building. Ms. Chapkina believed the lease started August 1st.

1186 It is significant that Mr. Kazman admitted that he signed the lease as Stephen M. Kazman and that he initialled the lease as SK instead of MK. According to Ms. Chapkina, Mr. Kazman told her there was a mix up on the sale; I presume a reference to the purchase of the property. When it was put to Mr. Kazman that he had to come up with a whole new signature Mr. Kazman said that he signed this way to be in accordance with the Articles of Incorporation of 846 Realty. He denied that he did this to avoid being associated with the property and to avoid detection because he knew people -- especially the RBC, who "were on to him". He denied any fraudulent intent. He also pointed out that his last name is quite unique.

1187 I do not accept this evidence. It is true that Mr. Kazman's last name is unique but having been a lawyer he would have signed his name thousands of times. Although I accept that the form of his signature might change over time I do not accept that he would reverse his first and middle name accidentally and then continue to sign that way on a number of documents. If the articles were in error this could have easily been rectified. The only reasonable inference in my view, from this evidence, is that Mr. Kazman did this to avoid being associated with this property and the Exclusive SBL.

1188 Mr. Kazman did not have any recollection of drafting this lease but he said that he or Mr.

Levy negotiated the terms as Mr. Levy was a partner in 846 Realty. Mr. Levy testified that he did not prepare the lease and he was not aware of it at the time. Although he was a 50% owner of the property, Mr. Kazman's company was on title. Ms. Chapkina testified that Mr. Kazman gave her the lease.

1189 This property was purchased by 846 Realty on May 4, 2009 for \$380,000 and was transferred less than a year later to Mr. Levy's company, GMS Realty Inc. (GMS) on March 9, 2010 for \$839,000. When 846 Realty Corp. was incorporated on March 31, 2009, Stephen M. Kazman (admitted to be the Defendant Marshall Kazman) was shown as the first director. I presume from Mr. Kazman's evidence that the Articles of Incorporation also stated his name as Stephen M. Kazman.

1190 Mr. Kazman testified that he did not know how Ms. Chapkina became aware of this property although he admitted that he may have told her that he bought the property or that she approached him about it. The Crown argues that Ms. Chapkina would have known that Mr. Kazman and Mr. Levy co-owned 846 Sheppard but I don't believe she was asked about this and so I do not know how she would know. As Mr. Chapnick asserts, she was not part of Mr. Kazman's or Mr. Levy's "inner circle".

1191 It seems to be quite a fortunate coincidence however for Messrs. Kazman and Levy that Ms. Chapkina jumped into a second SBL for a property they had just purchased as if the loan was approved Ms. Chapkina would obtain a SBL that would permit for leasehold improvements of the nature that were purportedly done that would clearly benefit the owners of the property. That is evident in the jump in price when the property was sold to Mr. Levy's company ten months later.

1192 Ms. Chapkina testified that Mr. Levy prepared the package for Exclusive for the bank including a Business Plan. It was the same procedure as before; she went to his office or he came to Mr. Kazman's. Mr. Levy denied preparing the Business Plan or the package for the bank. Ms. Chapkina also testified that she thought Mr. Levy asked her to get a blank Personal Statement of Affairs form from the RBC, which she did and then filled out with Mr. Levy. He told her what she should put down and he was aware of everything she was filling out. Mr. Levy also denied this. According to Mr. Chapnick while giving evidence Mr. Levy admitted providing two business plans to Ms. Chapkina but he later retracted this and said he only provided one plan. I do not recall this but have not considered this to be an admission. Given the similarity in the appearance and content of the business plans Mr. Levy was sometimes confused if he was in fact looking at a plan that he would admit he prepared.

1193 Ms. Chapkina signed the Personal Statement of Affairs in the loan file on July 7, 2009. The format is different but essentially this form required the same information that the BNS sought for the World SBL. In terms of her assets, Ms. Chapkina listed the CIBC GIC for \$66,000 that she had already cashed in both as an asset and as a CIBC Cashable GIC for \$60,000 under the heading of marketable securities. She also listed the Bochner Condo as an asset and as a source of rental income.

1194 In terms of her liabilities, Ms. Chapkina admits that she didn't tell RBC about the

guarantee she had signed for World. Her explanation was that she was under the impression she wasn't liable for it as Mr. Levy told her this and she believed him. It seemed logical to her since in her view it was the BNS's fault that World did not open. The Crown asserts that this was a failure of disclosing a loan but the loan was to World, not Ms. Chapkina personally. The guarantee was a contingent liability in the event World did not pay back its loan. As Mr. Chapnick submits, no evidence was presented that the bank requested information with respect to contingent liabilities.

1195 In terms of her annual income, Ms. Chapkina wrote down \$55,845 plus the purported rental income of \$18,000 for a total of \$73,000. She listed her employer for the prior three years as Accessories & Design where she represented that she had been the manager.

1196 I make the same findings with respect to Ms. Chapkina filling out this form with the incorrect income information as to income and the inclusion of the Bochner Condo and that GIC as I did for the World SBL save that it is more concerning that Ms. Chapkina agreed to do this a second time.

1197 After filling out this form Ms. Chapkina testified that Mr. Levy gave her a folder with the papers, which she thought contained copies of everything she'd given to him. She went to the bank right after they filled out the application form; I presume a reference to the Personal Statement of Affairs. Ms. Chapkina testified that she didn't review the papers although she may have briefly reviewed the Business Plan. She was not as panicked about the Business Plan as she had been when she applied for the World SBL, because she now realized, after her meeting with the BNS, that she wouldn't be asked questions about it.

1198 When Ms. Chapkina went to the RBC she had the \$60,000 GIC statement with her that she had purchased and held for four days. When Mr. Coristine put to her that it was "long gone" she denied this and said the money was just sitting in her savings account. I have difficulty with Ms. Chapkina's evidence on this point. I have already given my reasons for this in connection with World.

1199 According to Ms. Chapkina, Mr. Levy referred her to the particular RBC branch she attended. She had had no dealings with RBC at the time. She met with the account manager; Alex and the appointment was very short, probably 10-15 minutes. She met with Alex once or twice more to open the business account and sign the approval papers. She described Alex as very friendly and testified that he did not go through the Business Plan or the NOAs with her.

1200 The CIBC flexible GIC in the RBC loan file was not altered. It correctly shows an issue date of March 26, 2009 and a maturity date one year later. It is in the amount of \$65,000 and as already stated, was redeemed on March 30, 2009. Ms. Chapkina did not testify that Alex had asked her for this and so I assume it was in the package she brought to the bank. Mr. Levy denied Mr. Coristine's suggestion that he forgot to alter this copy of GIC.

1201 The RBC loan file also contains the same altered NOAs for Ms. Chapkina for 2006 and 2007 that were found in the BNS loan file for World. As already stated they were altered to significantly increase Ms. Chapkina's income from what was in fact on her NOA as issued by the

CRA for 2006. In fact Ms. Chapkina's total income as reported to the CRA for 2006 was only \$9,035 and the CRA records show that Ms. Chapkina did not file a tax return for 2007. For 2007 she did not file a tax return. Again both Ms. Chapkina and Mr. Levy denied knowing of these false tax documents or that they were provided to the bank.

1202 The day after the Exclusive SBL was approved, Ms. Chapkina, with the help of a legal assistant in Mr. Kazman's office, incorporated Exclusive with an address of 846 Sheppard.

1203 The RBC loan file contains Recap Notes which are internal entries entered by RBC employees. Ms. Chapkina was asked about some of the entries. They were admitted into evidence on the same basis as the BNS internal notes. The first entry of July 21, 2009 states that Ms. Chapkina has an "investment property with strong equity which is cash flow positive". Ms. Chapkina testified that she might have said this and added that the property was in her name and she was receiving money. Mr. Coristine submitted that at the bottom of the form it states all transactions are arm's length and so she must have discussed this with the manager. Ms. Chapkina said she wasn't sure and didn't remember and was not sure what arm's length meant.

1204 Ms. Chapkina signed the Loan Registration Form on August 6, 2009. She represented that the total amount of the proposed loan and the principal outstanding on any other SBLs related to Exclusive within the meaning of the Regulations for the purchase of leaseholds and equipment did not exceed \$350,000. This was not false even if I consider the amount approved for World.

1205 Ms. Chapkina also represented that Exclusive and the landlord were at arm's length. The Crown takes issue with this and argues that the relationship between Exclusive and the Landlord was not arm's length since Ms. Chapkina's landlord was Mr. Kazman. Mr. Chapnick argues that the Crown ought to have called the loan officer for Exclusive to give evidence about what was discussed during the application process.

1206 I agree with Mr. Chapnick that the Crown ought to have called the person who met with Ms. Chapkina when she signed the Loan Registration form. Based on the evidence of the other bankers that I have heard, I doubt I would have heard a reliable answer about the meaning of "arm's length". It is clear from the evidence that it was not well understood by the bankers. They readily agreed to suggestions put to them by Mr. Coristine that a transaction was not arm's length without regard to the legal meaning of the term. That is what happened when Mr. Coristine questioned Mr. Ruivo, as I will come to.

1207 Given the definition of "arm's length" which I discuss in Appendix "K", in my view Exclusive and 846 Realty were not related. There was no common control. I therefore find that there was no misrepresentation by Ms. Chapkina that Exclusive and the landlord were at arm's length.

(b) RBC Reliance Evidence

1208 Mr. Ruivo from RBC, who testified in connection with Ms. Cohen's LSC loan, was asked if

a borrower told him that his boss, who he still worked for, was also going to be his landlord and contractor whether that would be a problem. Mr. Ruivo said that would be an immediate red flag and he would never recommend a loan to that person. In his view if the person who owns the property is the one signing off on the work to be done there would be a pretty good chance that the bank would get bilked. The landlord and contractor could make up their own invoices and cheat the bank. Although I agree that this evidence makes sense, this was not how arm's length was defined at the time and so I find Ms. Chapkina had no obligation to disclose this information.

(c) The Purported Renovations to 846 Sheppard and Purchase of Equipment, Furniture and Fixtures

1209 According to Ms. Chapkina, the renovations for Exclusive began in August 2009. She testified that she used the same contractors; Mr. Levy's and some of Mr. Kazman's, but Mr. Levy was in charge of the whole process. The loan file contains five invoices from A&P, the purported contractor and supplier. Ms. Chapkina admitted that she gave these invoices to the RBC and that she signed the invoice direction payment form for each of these invoices confirming that she had received all of the services and merchandise described in the invoice referred to.

1210 Mr. Levy testified that he believes that A&P/Mr. Kazman started the job for Exclusive but he could not finish it and so he gave the job to Mr. Levy. In answer to questions from Mr. Kazman, Mr. Levy said that he did not do any renovations for Ms. Chapkina; I presume he was being technical, as he did say he did the work for A&P/Mr. Kazman. This is a concern, however, about how he approached his evidence generally.

1211 As the Crown submits it makes absolutely no sense that Ms. Chapkina would hire A&P given the problems she had with its invoice or invoices with the BNS. She was at a different bank but there would have been no reason for her to think that she might not run into issues again. However I have already dealt with this allegation in connection with World and have concluded that it reflects her reliance on Mr. Kazman. I do not see it as evidence that she was aware of any fraudulent scheme.

1212 The first A&P invoice is dated September 8, 2009 in the amount of \$41,438.25 and was for "Initial Work Completed, Part 1" and was for the usual Total Gut Job including removal of an old oil tank, oil furnace and the existing boiler, radiators and old air conditioners as well as the supply and installation of new plumbing and plumbing fixtures, new electrical panels and wiring and sound-proofing a sub-ceiling and installing a drop ceiling.

1213 The second A&P invoice is dated September 21, 2009 in the amount of \$36,471.75 and was for "Completion of Work, Part 2" and included the rest of the usual Total Rebuild including a new HVAC system including metal ducts, grills and diffusers.

1214 The third A&P invoice is dated November 10, 2009 in the amount of \$41,414.50 and was for furniture, fixtures and equipment including custom made furniture, a reception counter and display cases as well as a copier/fax/scanner, phone system, Acer computer, shredder, electronic cash register, Lexmark copier/fax, Danby refrigerator, Danby microwave, Nescafe coffee maker and a toaster.

1215 The fourth A&P invoice is dated November 19, 2009 in the amount of \$29,323.50 and was for more custom made display cases, shelving and mirrors, a Panasonic television, a DVD player, a Dell laptop, a Dell computer including monitor and keyboard and a heavy duty colour copier/fax/printer.

1216 The equipment purportedly supplied to Exclusive seems excessive. There is also evidence that it was not all supplied, which is of concern. Ms. Chapkina admitted that she did not buy three fax machines as shown on the invoices - she said she only remembered two - a small one and a bigger one. It is also puzzling that when Ms. Chapkina did send faxes she went to a post office or to Staples. She said maybe the fax machines were not set up and she found it difficult to do that. According to Ms. Chapkina eventually everything was set up. Furthermore, when asked why she needed the three computers shown on the invoices, Ms. Chapkina said she only had a laptop and one computer. It seems then that to this extent these invoice misrepresented to the bank what had in fact been purchased for Exclusive. I would have expected Ms. Chapkina to have reviewed the invoices before signing the directions for payment but accept that she may not have done that carefully enough to determine if there were missing pieces.

1217 It is equally strange that Ms. Chapkina bought a cash register and yet was doing her invoices manually. When asked about this Ms. Chapkina said that she was having difficulty with this in the beginning and it was not necessary to set up the merchant machine as she was operating all in cash in the beginning. I found this evidence incredible and consistent with my overall impressions that Ms. Chapkina was not very interested in actually operating this store. If the cash register was supplied it would seem, based on the appraisal photos, that it was kept in its packaging.

1218 The third and fourth invoices dated November 10 and 19, 2009 are virtually identical to the A&P invoice to World dated July 17, 2009 for furniture, fixtures and equipment including the detailed description for each item. The only difference is that the invoice to World included the supply and installation of blinds in the amount of \$1,975 and the November 10, 2009 invoice to Exclusive included four extra custom pieces of furniture, and the Lexmark copier/fax, the coffee maker and the toaster. The difference in total price is \$18,737.66. Unlike the invoice to World, the A&P invoices to Exclusive do not break down the cost per item and so it is not possible to tell what this additional cost was comprised of.

1219 The fifth A&P invoice is dated November 30, 2009 in the amount of \$12,718.15 and was for a Raffaello cappuccino/ espresso machine and a custom steel bar table for cappuccino service as well as a Habco fridge. Ms. Chapkina testified that the espresso machine was Mr. Levy's idea and she thought it was a good one. As for why she needed two fridges she said one was a bar fridge in the office and one was a little glass fridge for milk for the espresso machine. When asked why she would pay someone to buy a microwave, toaster and computers, she said she was "not good at this", didn't know how to set things up and it was part of the process. I find that for an accessories store, an expensive espresso machine is an odd purchase.

1220 There are a number of other differences in the formatting of these A&P invoices. The A&P

invoices to World have four digit numbers and the Exclusive invoices have five digits. Furthermore, items are no longer presented in a table with grid lines and the invoices to Exclusive now have a footer at the bottom with the company name and GST number. I am not sure what turns on this.

1221 Ms. Chapkina testified that although she did not go very often during the renovations she was satisfied all the renovation work on the invoices was done, to the best of her knowledge. She knew that Ms. Cohen supplied lighting to both of her businesses and the washroom was all brand new. Ms. Chapkina reviewed a number of photos of 846 Sheppard that show the exterior of the store as well as the inside both before and after the renovations. Some of the pictures show the store with its inventory set up. I find that the pictures show that Exclusive was in fact set up as a functional accessories store.

1222 Mr. Kazman testified that the premises for Exclusive were gutted and rebuilt after Ms. Chapkina's loan was approved apart from the stucco work although he then testified that the work may have started early. I assume he was referring to the exterior stucco work which was not charged to Exclusive.

1223 Mr. Coristine challenged Mr. Kazman's evidence that certain work was done in the summer based on some fall colours on the trees in some of the photos and in his written submissions he also queried if the RBC advanced funds on the first A&P invoice before the leasehold improvements were done. I do not find any of this relevant. Based on the photos introduced into evidence the store was clearly extensively renovated. I could not conclude that the first and/or second A&P invoices were inflated. As with World, this property had just been purchased and Messrs. Levy and Kazman were able to use Ms. Chapkina's SBL proceeds to renovate their own property.

1224 As for the other invoices for furniture, fixtures and equipment, I do have some concerns that I have already identified but there is insufficient evidence to conclude that they are fraudulent.

(d) Did Exclusive Operate as a Business?

1225 Based on the invoices, it would seem that Exclusive was ready to open at the very end of November 2009. There are also photographs the appraiser, Mr. Burnett, took of Exclusive when he attended the store in March 2009 that show it set up with inventory and ready for operation.

1226 Ms. Chapkina testified that Ms. Henry worked at Exclusive with her and that she depended on Ms. Henry for help with the store as she was still working for Mr. Kazman at Blue Glass. Ms. Henry's hours varied and were flexible but she quit the week before March Break, after she met with Cpl. Thompson and gave her a witness statement.

1227 There is a question, however, as to how serious Ms. Chapkina was about operating the store as I have already mentioned. Although I understand that she wanted to take March Break off to be with her daughter that does not explain why Mr. Burnett found the store still closed on the Monday and Tuesday after March Break. Furthermore, Ms. Chapkina continued to work for

Mr. Kazman throughout. Mr. Kazman denied that Ms. Chapkina was a phantom tenant and he testified that he saw her there.

1228 Ms. Chapkina put up a sign in the window for March Break, which said "by appointment". She put up the sign "by appointment" at some point when Maxine stopped working for her and she was busy with her daughter. As to why she changed the sign during March Break she said that she was there at some point.

1229 Ms. Chapkina provided all of her original sales receipts for Exclusive. They start November 29, 2009. There were no sales December 4, 8, 14, 17, 24, 25, 2009; January 1-5, 11, 13, 25, February 3, 4, 8, 14, 15 and March 1, 2010. The invoices stop March 7, 2010. They were all manually prepared despite the fact she had purportedly purchased a Casio electronic cash register.

1230 Corporate income tax returns were filed by Exclusive for the period July 23 to December 31, 2009 and for the 2010 calendar year. Exclusive reported sales for 2009 in the amount of \$3,048 and \$3,197 for 2010.

1231 Ms. Chapkina paid six loan payments, which I believe took her from October 2009 to March/April 2010. I did not see any payroll payments presumably because Ms. Chapkina testified that she paid Ms. Henry in cash. Although she had a Panasonic phone system there is no record of any payments for a phone service.

1232 Ms. Chapkina testified that rent was paid in cash monthly, but there were no withdrawals from her bank accounts (business or personal) to support payments made by cash in the amount of \$2,600. The financial records show that for the first six months Ms. Chapkina did not pay any rent to 846 Realty. Ms. Chapkina testified that her landlord was Mr. Kazman and that he was also supposed to pay her for her work, which she had to chase him for. The implication was that they just set these amounts off although she did not use that term and Mr. Kazman was not asked about this.

1233 Ms. Chapkina testified that she decided to close Exclusive down because of all the issues with the bank, the fact Ms. Henry had stopped working for her and the fact the business was not making any money. She did not have much discussion with Mr. Kazman or Mr. Levy about this, as they were not talking much at this point. Ms. Chapkina testified that she took her inventory home and left the shelving and fixtures in the premises, as it was not hers. She said that Mr. Levy just took over the property; by March 9, 2010, his company GMS Realty had purchased the property.

1234 Ms. Chapkina admitted telling the CRA that she was not aware of the distribution of the assets and that she had been "locked out for nonpayment of rent". She tried to explain this statement by testifying at trial that she was "kind of locked out although not 'locked out locked out'." Her statement to the CRA was false.

1235 Mr. Levy testified that he did not dispose of any of Exclusive's assets and that he has no knowledge of what happened to them.

1236 Mr. Levy testified that he knew that Ms. Chapkina could not pay the rent but when Mr. Coristine put to him that there were no rent payments at all from Exclusive to 846 Realty or GMS Realty. Mr. Levy had no explanation for this except that Mr. Kazman was the landlord. He just said that the bank defaulted her for no reason.

1237 There are also no bank records indicating payment for inventory or cash withdrawals to support inventory purchases.

1238 Ms. Chapkina was asked about the Crown theory that she opened and closed the store to make money. She said it wasn't true. She contributed her own money from savings and at some point the money from the sale of her mother's property, to both businesses and her position is that she lost her investment. There is no evidence of any kickbacks to Ms. Chapkina. Ms. Chapkina maintains that in addition to the contributions of her own money, no money came back to her and she was not promised any money for obtaining this loan. There is no evidence to the contrary.

(e) The Appraisal of Exclusive's Assets

1239 RBC declared the Exclusive loan in default as of April 30, 2010.

1240 Before that date, Ms. Coutts, on behalf of the RBC, retained Mr. Tony Burnett to appraise the assets of Exclusive by email dated March 16, 2010. She instructed him to take lots of pictures and tell Ms. Chapkina, if she asked questions, to say he was doing a "routine check".

1241 Mr. Burnett testified that he probably attended at Ms. Chapkina's store 15 times and it was never open. He said that he passed it on the way back to his office and he did not charge if he only looked to see whether the store was open. He gave the details of several attendances beginning Tuesday March 16th, which were mostly at times one would expect such a store to be open. He was able to make contact with Ms. Chapkina by leaving his business card through the mail slot. Ms. Chapkina confirmed that her store was closed the week of March 15, 2010 and she told him that she had closed the store for the March Break to take time off to be with her daughter.

1242 Mr. Burnett finally spoke to Ms. Chapkina on Monday March 22nd. He told her that he had left his business card because it was the bank's policy to periodically attend to see if a business was operating and the assets were there. Ms. Chapkina told him the business was real and was a little indignant, as she had not been told about this by her account manager. Mr. Burnett testified that he responded that no doubt the business was real, but until he got access he couldn't assure the bank of that, especially given the attendances he had made on the store.

1243 Mr. Burnett was surprised when Ms. Chapkina asked him to get a letter from the Senior Account Manager instructing him to attend at her store but he did obtain such a letter later that day authorizing him to "complete a business check on Exclusive ... This is part of a routine check on businesses which have lending services with RBC to ensure the business continues to be in good standing." He called Ms. Chapkina and told her that he had the letter and could bring

it when he re-attended. Ms. Chapkina said that she had to leave at 5:00/5:30 p.m. to pick up her daughter and so he attended at 2:00 p.m. but the store was closed. By email dated Monday, March 22, 2010, Ms. Chapkina asked Mr. Burnett to email a letter from the bank to her. Mr. Burnett went back to the office, after attending the store, and e-mailed a letter to Ms. Chapkina stating that she had not been present earlier and asking to meet. He included the authorization letter.

1244 On Tuesday March 23rd, Mr. Burnett received an e-mail from Ms. Chapkina advising that she didn't think it was necessary for them to meet. Nevertheless he went to the store at 1:00 p.m. on that day to talk to her face to face, but again the store was closed. He never got into the store as a result and never met with Ms. Chapkina.

1245 Ms. Chapkina testified that when she spoke to Mr. Burnett she was at Mr. Kazman's Whitehorse office and Ms. Cohen happened to be there. She knew Ms. Cohen as Mr. Kazman's business partner. Ms. Cohen told her not to deal with him and that she should not let him in the store. Mr. Kazman supported her on this. Mr. Kazman confirmed this and testified that if he gave Ms. Chapkina any advice about Mr. Burnett it would have been to stay away from him and that he could not be trusted. Mr. Kazman thought Mr. Burnett had a hidden agenda. He admitted that demanding a letter of authorization may have been his idea. He denied that he was worried that Mr. Burnett was sniffing around a bogus loan although I see no other reason for why he would give this advice.

1246 On March 24, 2010, Mr. Burnett emailed a letter to Ms. Coutts attaching his appraisal report. He confirmed his attendances at 846 Sheppard to "spot check and conduct an inventory appraisal of the assets and leaseholds belonging to the Company". In that letter he advised her that he attended on March 16, 17, 18, 19 and 22, 2010.

1247 Mr. Burnett made a list of the assets and inventory that he could see through the front window. His report states that he did not have the ability to physically examine the equipment. He admitted he did not know what was past the door or in the basement of the premises although I note that Ms. Chapkina testified she did not rent the basement. He said in his opinion, it did imply that something was amiss when Ms. Chapkina would not let him in the store.

1248 In his letter to Ms. Coutts, Mr. Burnett stated that he was able to clearly see through the front window of the store most if not all of the assets inside the store excluding inventory and that he listed those in appraisal form. He gave the assets a distress value of \$1,815. Mr. Burnett sent an email report to Ms. Coutts on Wednesday, March 24, 2010 attaching his interim report, appraisal, photographs and invoice.

1249 Photos that Mr. Burnett took of 846 Sheppard that were taken in March 2010 show the interior of the store taken through the windows and through the letter slot. There was recent flooring, although he could not tell if it was slate. The lights were fairly new, there were display cases and there was a TV mounted on the wall. There was what appeared to be fresh paint.

1250 When Mr. Kazman asked Mr. Burnett whether or not he was told that the RBC intended to shut down the business of Exclusive, his reaction was one of surprise. He said that Ms. Coutts

did not ask him to do this and there was no mention of shutting anyone down. He added that he never intimated that he would seize the assets. Mr. Burnett did not find it amiss that Ms. Chapkina had two stores. In my view whatever Ms. Chapkina and Mr. Kazman thought, Mr. Burnett did not understand that he had been sent in to shut Ms. Chapkina down.

1251 In answer to questions from Mr. Chapnick, Mr. Burnett testified that he was not under the impression that Ms. Chapkina was associated in some way with Ms. Cohen and was surprised to hear that. He denied thinking that Ms. Chapkina had defaulted on her loan when he went to the store although he knew there was a problem because Ms. Coutts was involved.

1252 He got this file twice. Once from Ms. Coutts and the second time from the "REPO highway". He wasn't sure which came first. A file from the REPO highway he would assume was a delinquent file.

(f) The Circulation of the SBL Proceeds

1253 Mr. Coort analyzed the RBC account for Exclusive from July 27, 2009 when it opened to December 2, 2009, which was the last statement he was provided with. Ms. Chapkina introduced into evidence RBC statements for Exclusive from the opening balance on August 3, 2009 to May 3, 2010.

1254 Ms. Chapkina accepts Mr. Coort's numbers for deposits and withdrawals from Exclusive in the period July 27 to December 2, 2009. In that period, in addition to the SBL proceeds of \$138,720 paid to Exclusive between September 10 and December 9, 2009, Ms. Chapkina deposited \$31,200 as start-up capital into the business. From these funds, the amount \$161,366.15 was paid to A&P between September 10 and December 2, 2009 in full payment of the five invoices.

1255 In the period September 10 to November 9, 2009, in addition to the funds A&P received from Exclusive in payment of its invoices, it received \$62,000.34 from World, an unknown cash deposit of \$2,000 and another deposit in the same amount from 1322637 Ontario Inc., Mr. Levy's company. According to the Coort Analysis, overall, from the money A&P received in payment of its invoices, all of the money was distributed to companies owned by Mr. Levy, Mr. Kazman and Ms. Cohen and third party suppliers save for \$20,544.36.

1256 In the period from September 15 to December 15, 2009, A&P distributed \$16,150.49 to Mr. Kazman's companies 846 Realty, 1040 Holdings, Cramarossa and M&M. The payment to Cramarossa referred to an invoice number but the rest simply stated "on account".

1257 In addition, \$27,548.28 was paid by A&P to SAVE ENERGY "on account"; Ms. Cohen's company. I accept that at least some of this money was used for lighting for Exclusive. There were also payments made to companies and trades people for supplies and work including HVAC for Life, Tydell Disposal, Rolltec Rolling Systems and Mike Mueller, the electrician. There were also some payments Mr. Coort was not able to identify.

1258 Finally \$144,790.86 was distributed by A&P to companies owned by Mr. Levy: MDC

Modern Design, Trust Inc. and Mosaic. Some of the payments to these companies referred to invoice numbers and others simply stated "on account" or were in the form of drafts. Of the \$52,540.72 paid by A&P to Trust Inc., Trust Inc. paid about half; \$25,975.49, in three cheques dated September 18, September 21, and October 9, 2009 to Eastern Contracting that each refer to different invoice numbers. I note as well that in the period November 13 to December 18, 2009 Trust Inc. paid \$50,159.27 to Eastern Contracting in eight cheques. Six of the cheques refer to invoice numbers and Mr. Levy testified that Eastern Contracting must have paid for supplies used for this or another job that he was responsible for. Two of the cheques simply state "on account" which Mr. Levy testified were loans. I do not accept that evidence as it contradicts his overall evidence that only even amounts were loans since one of the cheques was for \$9,968.45 and the other for \$4,995.28. From a common sense perspective, these are strange amounts for a loan.

1259 In the period between November 16 and December 15, 2009, A&P paid a total of \$88,565.14 to Mosaic. In addition Mosaic received \$2,000 from an individual and \$50,000 from an unknown source on December 17, 2009. Mr. Levy said this could have been a loan from his brother; I presume on the evidence his brother, Mr. A. Levy. The Crown relies on the fact that between December 17 and 18, 2009, Mosaic paid \$40,000 to Beachfront and \$42,400 to Mr. A. Levy personally. This, however, could be for loans as Mr. Levy testified to. Put in proper sequence, it could be that Mosaic loaned Beachfront \$40,000 and that Beachfront then paid \$50,000 back on December 17, 2009. At the same time it appears Mr. A. Levy needed money personally as some of the money paid to him personally went to pay off two MasterCard bills.

(g) Findings of Fact

1260 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Exclusive SBL.

1261 I have found that Ms. Chapkina did not decide to apply for a second SBL so quickly for any fraudulent purpose.

1262 I have found that Ms. Chapkina made the same misrepresentations to the bank as she did with respect to World. In my opinion the Crown has failed to prove that any of the misrepresentations were relied upon by the RBC in deciding to submit Ms. Chapkina's application to the underwriters.

1263 Ms. Chapkina also represented that Exclusive and the landlord were at arm's length. I agree with Mr. Chapnick that the Crown ought to have called the person who met with Ms. Chapkina when she signed the Loan Registration Form. In any event, given the definition of "arm's length" which I discuss in Appendix "K", in my view Exclusive and 846 Realty were not related. There was no common control. I therefore find that there was no misrepresentation by Ms. Chapkina that Exclusive and the landlord were arm's length.

1264 As the Crown submits, it makes absolutely no sense that Ms. Chapkina would hire A&P given the problems she had with its invoice or invoices with the BNS. She was at a different bank but there would have been no reason for her to think that she might not run into issues

again. However, I have already dealt with this allegation in connection with World and have concluded that it reflects her reliance on Mr. Kazman. I do not see it as evidence that she was aware of any fraudulent scheme.

1265 I have found that the equipment purportedly supplied to Exclusive seems excessive. There is also evidence that it was not all supplied, which is of concern, which I have already referred to. I have found that to some extent the invoices misrepresented to the bank what had in fact been purchased for Exclusive. I would have expected Ms. Chapkina to have reviewed the invoices before signing the directions for payment but I have insufficient evidence to find that she did and knew she had been shortchanged or that she knew the invoices were inflated when she presented them to the bank. As for the other invoices for furniture, fixtures and equipment, I do have some concerns that I have already identified but there is insufficient evidence to conclude that they are fraudulent.

1266 I have found that there is a question as to how serious Ms. Chapkina was about operating the store but she contributed her own money from savings and, at some point, the money from the sale of her mother's property to both businesses and her position is that she lost her investment. There is no evidence of any kickbacks to Ms. Chapkina. Ms. Chapkina maintains that in addition to the contributions of her own money, no money came back to her and she was not promised any money for obtaining this loan. There is no evidence to the contrary.

1267 For these reasons I find that the Crown has not proven beyond a reasonable doubt that Ms. Chapkina is guilty of Count 4 as it relates to the RBC.

World of Accessories Ltd. (World) -- BNS -- Count # 1

(a) The World SBL

World (Chapkina) was approved for a SBL from the BNS on April 14, 2009 in the amount of \$137,700. Only \$86,679.50 was advanced.

1268 Ms. Chapkina testified that she really liked her work for Blue Glass, Mr. Kazman's water company, and that she wanted to open her own business; she just didn't know how to go about it. She mentioned this to Mr. Kazman a couple of times and they had a few discussions in the office over a number of months. She didn't know much and trusted Mr. Kazman and was counting on his help. Mr. Kazman didn't tell her anything about his knowledge of SBLs and she was not aware that Dufferin Paralegal had obtained a SBL. Mr. Kazman just recommended that she speak to Mr. Levy who he said was a specialist in financing and business loans. Ms. Chapkina had seen Mr. Levy and his wife a number of times in the office but she had not spoken to him very much as he came in to speak to Mr. Kazman.

1269 Mr. Kazman arranged her meeting with Mr. Levy and he was in the office when she met with Mr. Levy but he was running around and she was not sure if he was paying much attention to their meeting. Mr. Levy told her that she could apply for a SBL and he described the application process, how the loan was funded and that she would be responsible for 25% of the loan if something went wrong. According to Ms. Chapkina, Mr. Levy told her that most likely it

would be fine, that he would help her all the way from preparing her application and a business plan to helping her with the application process and the contracting, that he was a specialist, had good experience and that he knew everything about this including how the banks worked. He hinted that he had some acquaintances in the banks and that he knew someone in the underwriting department but she had no recollection of Mr. Levy saying that he gave cash to his contacts. She agreed with Mr. Kazman that Mr. Levy "guaranteed" results to her and told her to expect the SBL. Ms. Chapkina testified that after giving the matter some thought she decided to apply for a SBL. She testified that this was her first serious experience with banks.

1270 Ms. Chapkina testified that Mr. Levy asked her about some financial information like her credit standing and she assembled all the documents he requested and provided them to him. In particular she gave Mr. Levy her information including her 2006 T1 General and her NOA for 2006. She did not have a return for 2007 because she was behind in her taxes. According to Ms. Chapkina, Mr. Levy told her that she would need to file her taxes for 2007 and he offered to have his accountant prepare her return. As I will come to there was a 2007 tax return for Ms. Chapkina in the loan file but Mr. Levy vigorously denied that his accountant prepared this document.

1271 Mr. Levy admitted that he met with Ms. Chapkina with Mr. Kazman at Mr. Kazman's office after Mr. Kazman told him that she wanted to talk to him. He testified that Ms. Chapkina told him she wanted to open an accessories store. He told her to get him the details and gave her the cost of a business plan. They met again at Mr. Kazman's office and she gave him the information that he needed.

1272 Ms. Chapkina testified that Mr. Levy charged 10% of the loan for the package for the bank. She said she didn't pay Mr. Levy and later discovered it was somehow incorporated in the contracting fees although she did not explain how. Ms. Chapkina also testified that she had to pay Mr. Levy's accountant \$250 in cash for the 2007 income tax return he prepared. She never met him and assumed that Mr. Levy talked to the accountant about her income. Ms. Chapkina said that Mr. Levy gave her her tax return that his accountant had prepared and told her to tell the bank that it had just been filed and that a NOA would come shortly. She denied preparing her own 2007 tax return and putting it in the package. Mr. Levy denied all of this evidence.

1273 In terms of a location for her store, Ms. Chapkina testified that Mr. Levy suggested 344 Wilson, which his company GM Realty had purchased at the end of November 2008 for \$420,000. Gary Shapiro from Shapiro and Cho LLP acted for Mr. Levy on the purchase and based on the Coort Analysis I find that Mr. Levy used at least \$16,124.20 in Alta SBL proceeds towards the purchase. Mr. Kazman claimed that he still had an interest in this property at the time, which Mr. Levy denied. Ms. Chapkina described this unit as being in a strip plaza and said that the space was nice, bright and large. It was a very good location in her opinion, near the off-ramp for the 401 across from the ramp on Wilson.

1274 The BNS was given a copy of the Agreement to Lease dated April 1, 2009 between Ms. Chapkina for a company to be incorporated and GM Realty for 2,000 SF on the main and lower floors of 344 Wilson for a retail store of accessories and home accents for ten years to start May

1, 2009, at a rent of \$2,500 per month plus GST and all utilities and expenses, that was signed by Ms. Chapkina and Mr. Levy on April 5, 2009

1275 Mr. Kazman testified that he did not recall if he or Mr. Levy prepared the Agreement to Lease. Ms. Chapkina testified that she believed Mr. Levy gave her the lease and so she assumed he prepared it. Mr. Levy did not testify about this but he did admit that he gave the lease to Ms. Chapkina.

1276 Ms. Chapkina testified that Mr. Levy told her that she needed a GIC for \$60,000 at a minimum. She had been left property by her mother a year and a half earlier and her brother was in the process of selling it so she didn't have the funds yet. She trusted that Mr. Levy had done the financial calculation for what she needed for her business start-up. As a result, she borrowed a total of \$100,000 from Mr. Levy; \$60,000 for the GIC and \$35,000 for her start-up capital. She did not know about any guarantee of the loan by Mr. Kazman. She added that Mr. Levy wanted to charge her 2% a month, which Mr. Kazman negotiated down to 1% a month.

1277 Ms. Chapkina testified that she did not sign a promissory note but did sign a note written by Mr. Kazman or Mr. Levy on the bottom of the bank draft when asked to do so by Mr. Kazman. She does not have a copy of this. Mr. Levy testified that a promissory note must have been prepared but that it would not have been signed by Ms. Chapkina, but rather Mr. Kazman. On this point I prefer the evidence of Ms. Chapkina. No one disputed that monies were advanced to her. According to the Coort Analysis these funds came from the Modernito SBL but there is no evidence that suggests that Ms. Chapkina was or should have been aware of this.

1278 When Mr. Levy asked Ms. Chapkina whether Mr. Kazman was the one who loaned her money, she testified that it was her impression that the loan was from Mr. Levy. Mr. Levy denied lending Ms. Chapkina money. He said that he was "ordered" by Mr. Kazman to give money to her. Mr. Levy testified that if Mr. Kazman directed him to pay money to someone else he was OK with that because Mr. Kazman said he would guarantee the loan. This was March 2009 and Mr. Levy testified that at this time, even though Mr. Kazman still owed him money, they were still on OK terms. Although I accept that Mr. Levy and Mr. Kazman were still on reasonably good terms at this point, the rest of Mr. Levy's evidence is incredible as it makes absolutely no sense that Mr. Levy would look to Mr. Kazman to guarantee a loan, given his evidence that he was always owed money by Mr. Kazman. I believe that Mr. Levy agreed to this loan to Ms. Chapkina because of the high interest rate he was able to earn. In any event, with this explanation Mr. Levy admitted that he loaned \$100,000; (two drafts; one for \$35,000 and the other for \$65,000) to Mr. Kazman who directed him to pay it to Ms. Chapkina. When Mr. Chapnick put to Mr. Levy that he had testified that \$80,000 had been paid back, Mr. Levy responded "show me" and said that if the money came back it must have come back from Mr. Kazman's account. He also testified that this loan was paid back by Mr. Kazman through Ms. Chapkina.

1279 Ms. Chapkina testified that her banker, who I presume was the banker for her personal account and not someone at the BNS, told her that she would get more interest in her savings account rather than having her money in a GIC but when she told Mr. Levy this he told her to listen to him. I therefore presume these conversations were before she purchased the \$60,000 GIC.

1280 Ms. Chapkina testified that she repaid \$85,000 of the loan to Mr. Levy by August 2009; \$20,000 through World and \$65,000 that she wired to his account. Ms. Chapkina testified that Mr. Levy gave her an account number to wire the money to and that Mr. Kazman was not involved in this. She still owed 15% plus interest, which she paid over the course of several months. Ms. Chapkina later testified that of the money owing to Mr. Levy she paid \$10,000 to A&P Design Build Contracting Services Inc. (A&P), which she said was how Mr. Levy advised her to do it. She agreed with Mr. Coristine that because she believed that A&P was Mr. Kazman's company and Mr. Kazman's bank account that she would have cleared this with Mr. Kazman first. She testified that both Mr. Levy and Mr. Kazman were aware of this payment. This shows both Messrs. Levy's and Kazman's connection to the company even though Mr. Kazman is the one who is on the bank account. Mr. Kazman, however, said he had no discussion with Ms. Chapkina about the \$100,000 she received from Trust Inc. Realty Corp.

1281 Ms. Chapkina incorporated World on April 16, 2009.

1282 According to Ms. Chapkina, Mr. Levy prepared the package with whatever was required for the SBL. Mr. Levy admits that he prepared Ms. Chapkina's first Business Plan and he identified the Business Plan in the BNS loan file for World as the one he prepared. This Business Plan has a table of contents and page numbers. The Business Plan stated Ms. Chapkina was prepared to invest \$85,000 of her own equity. Ms. Chapkina was not asked about this but presumably would have said she did not see this. The Business Plan does refer to her work for Dufferin Paralegal and Eastern Contracting in addition to the fact that she was supposedly working as a manager for Accessories and Design, which, as I will come to, was false.

1283 It is Ms. Chapkina's evidence that Mr. Levy told her to apply to her own bank branch in Richmond Hill which she had told him was the BNS. He suggested she make an appointment with the account manager. When she had arranged that meeting she told Mr. Levy and they met about an hour and a half before the meeting at Mr. Kazman's office.

1284 Ms. Chapkina testified that Mr. Levy took care of the application package and guided her through the process. He showed her the Business Plan but he only reviewed the financial projections with her. Ms. Chapkina wanted Mr. Levy to explain the financials because she thought it would be like an exam and she would be asked questions at the bank about them. She was worried most about this because she has no accounting background. When Mr. Levy showed her the financial pages she didn't understand them. Mr. Levy told her not to worry about the numbers - they were just for the bank - a requirement to have.

1285 According to Ms. Chapkina, Mr. Levy also brought the Summary of Personal Finances document (Summary) that is in the loan file to their meeting and they filled it out together. She admitted that she is the one who actually filled the form in and she signed it on April 7, 2008. Her signature was not witnessed. The other documents Ms. Chapkina signed at the bank after her loan was approved are dated May 8, 2009 and this corroborates her evidence. Mr. Levy denied providing a blank Personal Finance Statement from the BNS when he met with her but on this point I prefer Ms. Chapkina's evidence.

1286 On the Summary for her employment history Ms. Chapkina wrote down that she had been the manager of Accessories and Design for six years. On her subsequent "Personal Statement of Affairs" for Exclusive Accessories Inc. (Exclusive), which I will come, she listed the address for "Accessories and Design" as 508 Bloor -- the address for Roxy. Ms. Chapkina admitted that this information was not true and that she did not work for Accessories and Design. She admitted that this was done to show the bank she had some retail experience although she did not. She testified that Mr. Levy said that he had a tenant for this property that would confirm her employment.

1287 Ms. Chapkina also stated on the Summary that her previous employers were Eastern Contracting, and then Dufferin Paralegal, which was also misleading as she was clearly still working for Mr. Kazman at the time. Furthermore, for some reason Ms. Chapkina could not explain, Mr. Levy didn't want to refer to Blue Glass.

1288 In the assets section of the form Ms. Chapkina testified that Mr. Levy dictated what she should put down and so she wrote down that she was the owner of a condominium, unit # 527 at 1121 Steeles Avenue West, Toronto ("the Bochner Condo") and that she was receiving \$1,500 per month as rental income. Ms. Chapkina testified that she did not know what the Bochner Condo was worth and that Mr. Levy told her to put down \$385,000, which was an increase from the purchase price of \$278,000. In answer to follow up questions by Mr. Levy, Ms. Chapkina said that he insisted that she write certain things down. When asked how Mr. Levy knew about putting down something for rental income Ms. Chapkina said that he knew about the condo from the beginning and was the one who suggested his own mortgage broker for the transaction.

1289 I have set out in Appendix "P" a summary of the evidence concerning the Bochner Condo and my findings of fact. These facts are relevant to whether or not Ms. Chapkina properly represented the facts concerning the Bochner Condo to the bank. They are also relevant to the credibility of Mr. Kazman as I found that he was not truthful about aspects of this transaction, which supports my general conclusion that he was not a credible witness.

1290 Technically it was correct that Ms. Chapkina held the title to this condo at the time she applied for the World SBL, although as I have found, she knew that it was not really hers and that she was really holding it in trust for the Bochners. Furthermore, there could have been no doubt in her mind that she was not receiving rent; rather she was being paid the amount needed to make the monthly payments on the mortgage that was in her name and other expenses related to the condo.

1291 Mr. Chapnick submits that it can be argued that listing the Bochner Condo added negatively to Ms. Chapkina's application. He submits that it can be argued that a lender should consider the borrower's ability to service her debt in light of her application to assume more debt and that the ability to service debt is a factor that may be at the forefront of lending, even superseding property equity. This argument however, is just that - it was not put to any of the bank witnesses and so it would be speculation to consider this submission. That said, the Crown did not present any evidence that the Bochner Condo enhanced Ms. Chapkina's applications for SBLs.

1292 Mr. Chapnick put to Mr. Levy that he filled out the Summary with Ms. Chapkina on April 7, 2009, that Ms. Chapkina wrote down she owned the Bochner Condo because Mr. Levy told her to and that he told her it would help her get the loan. All of this is denied by Mr. Levy but I accept Ms. Chapkina's evidence that he was familiar with the transaction concerning the Bochner Condo and told her what to write down. That, however, does not explain why she went along with what she had to have known was not a fair representation of the facts.

1293 David Bochner, who was called by the Crown, was quite upset with Mr. Kazman for charging a lot of money to discharge a mortgage on the Bochner Condo. The position of the Crown is that Mr. Kazman received \$60,000 by inflating the sale price of the condo to pocket extra funds, thereby committing mortgage fraud. It was also asserted that this conveyance to Ms. Chapkina was conveniently timed to assist her in using the property as an asset on her SBL application. Mr. Kazman vigorously denied this.

1294 I have not considered whether or not Mr. Kazman acted improperly with respect to this transaction, as the Crown did not seek to introduce this evidence as prior discreditable conduct. Although it could be relied upon by the other defendants I do not have enough evidence to conclude that there was a fraud although it certainly seems to have been a very unusual transaction for a lawyer to become involved in. As for the other argument advanced by the Crown, as I will come to, the transfer of the Bochner Condo occurred a year before Ms. Chapkina applied for the World SBL. Ms. Chapkina denied doing this deal with Mr. Bochner because she was anticipating a fraud later. She hadn't even heard about SBLs at the time. I accept that evidence.

1295 Ms. Chapkina also listed on the Summary, as part of her assets, \$35,000 in her BNS account and a CIBC GIC in the amount of \$65,000, which represented the money Ms. Chapkina had borrowed from Mr. Levy. Ms. Chapkina, however, did not put the \$100,000 that she borrowed from Mr. Levy as a liability and so her net worth was inflated by \$100,000. When asked about this Ms. Chapkina testified that she didn't think of this; she just filled out what Mr. Levy told her to. I find it hard to believe, given the interest rate she was paying, that she would not think about this loan when she considered what her liabilities were.

1296 There is no dispute that the CIBC GIC statement in the BNS loan file was either entirely fabricated or at least altered from the original. The GIC in the bank file is in the amount of \$65,000 and states it was issued on March 26, 2008 and would mature March 26, 2009. Sandra Sgro, a certified fraud examiner and investigator for the CIBC, testified for the Crown. She said Ms. Chapkina's \$65,000 GIC was in fact not issued until March 26, 2009 and that it was to mature March 26, 2010 but was redeemed on March 30, 2009, which is before Ms. Chapkina filled in and signed the Summary.

1297 Ms. Chapkina responded to this evidence by saying that the GIC was not redeemed but rather just transferred to her savings account and that to "to me it was pretty much the same thing". Ms. Chapkina said that once she purchased the GIC her bank manager called her again about putting the money in her savings account and Ms. Chapkina instructed her to do so. Ms. Chapkina testified that as a result she kept the money from the GIC in her personal savings

account. She requested her records from CIBC to prove this but only got one statement. Once she realized she needed more she was told they only keep the statements for three years after the account is closed. The statement that she did produce shows that she transferred the GIC money to the savings account on March 30, 2009. Ms. Chapkina testified that she kept this \$65,000 in her savings account until August 2009 when she wired it to an account number given to her by Mr. Levy to repay part of her loan.

1298 Although I accept Ms. Chapkina's evidence that she had this money in her personal account I do not accept her evidence that she thought this was the same as having a GIC. When Ms. Chapkina told Mr. Levy about what the manger had said about keeping the money in her savings account he specifically told her she needed a GIC, which she then bought. Ms. Chapkina admitted that Mr. Levy made it clear that it was important to get the GIC. She knew it had been cashed in before she filled in the Summary and yet she wrote down that she still had it. She testified repeatedly that she was just doing what Mr. Levy told her to do and so on this point I do not believe that she decided not to follow his advice when she knew that his advice was that it was important to have the GIC and she did purchase it. Furthermore, by bringing a copy of the GIC statement to the bank, Ms. Chapkina implicitly acknowledged her belief that it was an important document for her application. Had she truly believed it was enough that she had the money in her personal account I would have expected her to bring a copy of her bank statement showing this instead.

1299 Ms. Chapkina recorded her gross personal employment income on the Summary as \$55,845. This was close to her total income reported on her NOA for 2006 that is in the loan file which reports her total income as \$47,590 and the T1 General in the file for the same year which shows her employment income at \$42,600 plus her rental income at \$4,990. The NOA for 2007 in the loan file reports her total income as \$55,845 and the T1 General reports her employment income as \$49,000 plus her rental income as \$6,345.

1300 In fact Ms. Chapkina's total income as reported to the CRA for 2006 was only \$9,035 and the CRA records show that Ms. Chapkina did not file a tax return for 2007. This means that the tax return for 2007 in the loan file was totally fabricated and that the other tax documents were altered or fabricated and in any event were grossly misleading. Both Ms. Chapkina and Mr. Levy denied knowing of these false tax documents or that they were provided to the bank. Mr. Levy testified that neither he nor his accountant altered Ms. Chapkina's NOA for 2006 and he denied that they prepared any of the other tax documentation found in the loan file.

1301 The fraudulent tax documents in Ms. Chapkina's loan file could only have come from her or Mr. Levy or someone on Mr. Levy's behalf. Ms. Chapkina's position is that these documents were prepared by or on Mr. Levy's behalf and were in the package he gave her for the banks. Ms. Chapkina took the package to the bank and presented it. She testified that she was not aware that documentation provided to her was either fabricated or forged and that she would not have had any reason to suspect that her retained specialist, Mr. Levy, would be engaging in such deception.

1302 Mr. Chapnick argues that the creation of a fraudulent NOA is a more sophisticated endeavor than simply changing an "8" to a "9" on a GIC. I agree. I also agree that it is more

likely that Mr. Levy, or someone on his behalf, had the means to create a professional looking but fraudulent NOA.

1303 Although Ms. Chapkina admits bringing the documents to the bank she testified that she did not look at them once they were in the package Mr. Levy prepared.

1304 The Crown submits that Ms. Chapkina must at least have seen the forged NOA but Ms. Chapkina denied this and testified that she relied on Mr. Levy's T1 General numbers. She testified that she was not an employee of Mr. Kazman's but rather earned self-employment income. Although it may be that Ms. Chapkina did not see the fabricated or altered tax documents that were in the package she provided to the bank, I find that she must have known that she was grossly over-reporting her income when she filled it in on the Summary.

1305 I am not able to make any firm finding, however, based on the evidence with respect to World alone but I will reconsider this issue when I consider the similar fact evidence.

1306 Finally it is significant that above Ms. Chapkina's signature on the Summary there is a paragraph which states in part as follows: "Your signature below certified that the information about you in this Summary of Personal Finances is accurate and complete ..."

1307 Mr. Kazman said he had no involvement with Ms. Chapkina's Summary and neither Ms. Chapkina nor Mr. Levy suggested otherwise. I accept that evidence.

1308 Ms. Chapkina testified that she requested a copy of the package for the bank but Mr. Levy said he didn't have time and that she had to go to the bank. He promised it for her later but she never got it. She assumed that he didn't want her to have the Business Plan because she worked for Mr. Kazman and speculated that maybe he did not want Mr. Kazman to see it. Mr. Levy seemed protective of it for whatever reason. Mr. Levy denied that this was what happened.

1309 In any event Ms. Chapkina testified that she went straight to the bank after her meeting with Mr. Levy to meet with the account manager, Pui Hsu. She took the documents with her which she said were in a very nice, expensive looking coloured file folder which was all organized, not in a sealed envelope. She recalled looking at the documents on the way when she was stopped at a red light.

1310 This was the first time that Ms. Chapkina met with Ms. Hsu and she said that they met for maybe half an hour. Ms. Hsu took her to her office and they sat down and talked about the kind of business Ms. Chapkina wanted to open and where. Ms. Hsu flipped through the documents in the package but according to Ms. Chapkina she did not review them with her. Ms. Hsu was impressed and asked Ms. Chapkina who had helped her. Mr. Levy had told her to say that she was helped by a bookkeeper so this is how she responded.

1311 Ms. Chapkina testified she told Ms. Hsu that she had the original GIC in her pocket if the bank needed to see it. She thinks Ms. Hsu then check-marked something. She said that she did not show her the original GIC. However in answer to questions from Mr. Levy, Ms. Chapkina

said that she gave the original GIC that she had with her to the banker and that Ms. Hsu looked at it but she didn't copy it.

1312 When Mr. Coristine asked if Ms. Chapkina if it was her evidence that she had the GIC at this point she said "of course". I find she did not in fact believe this for the reasons already stated. Ms. Chapkina admitted that there was probably a copy of this GIC in the package for the bank but both she and Mr. Levy denied altering the document. Again, as between Ms. Chapkina and Mr. Levy, I would not be able to decide who provided the fraudulent GIC to the bank but I will reconsider this issue in the context of the similar fact evidence.

1313 Ms. Chapkina did not think that she had to give Ms. Hsu anything else after their initial meeting but the loan file contains an email from Ms. Chapkina to Ms. Hsu sent April 14, 2009 in response to a request for certain information. Ms. Hsu had asked if Ms. Chapkina intended to continue in her current employment with current salary and if that was the case what her income would be. According to Ms. Chapkina, Mr. Levy told her to tell Ms. Hsu that she wasn't going to continue working for Accessories and Design and so Ms. Chapkina emailed Ms. Hsu on the same day to clarify that she would be quitting her part-time job at "Accessories and Design" to run World. She failed to mention that she would still be working part-time for Mr. Kazman. Clearly the bank was relying on the representations as to employment and income in order to decide whether or not to approve the loan although as Mr. Coristine put to Ms. Chapkina this was probably because she had part-time employment and no one to help her at the new store.

1314 Ms. Chapkina testified that she also told Ms. Hsu that she would be managing World and would hire two part-time employees. Ms. Chapkina did not take any steps to hire anyone although she claims that she intended to. She continued working for Mr. Kazman and explained that she had to pay bills and if she'd interrupted her employment she wouldn't have had sufficient income.

1315 Ms. Chapkina heard from the bank once she was approved and was asked to come in to open a business account and sign papers. It was not a long meeting. She signed the papers, opened the account and got insurance. These additional documents were all signed on May 8, 2009 and I presume this is when Ms. Chapkina met with Ms. Hsu again.

1316 One of the documents Ms. Chapkina signed at the bank was a Statement -- About You and it contains typed information that states her gross annual income as \$48,000. No explanation was given in evidence for this number, which is at odds with the Summary. It is still, however, significantly more than Ms. Chapkina's income actually was at the time. Again I find that Ms. Chapkina must have known that this was a significant misrepresentation of her income.

1317 Ms. Chapkina also signed the Loan Registration form which states the business is retail of accessories; *i.e.*, jewelry and apparel items. Compliance with the Arm's Length Clause was checked off and Ms. Hsu witnessed Ms. Chapkina's signature on the form.

1318 The Crown submits Ms. Chapkina would have known that Mr. Kazman and Mr. Levy co-owned 344 Wilson due to her close association with Mr. Kazman and that as they were both going to be involved in the renovations that it should have been plain to Ms. Chapkina that she

was not at "arm's length" with Mr. Levy or Mr. Kazman. Ms. Chapkina didn't recall a discussion about arm's length at the bank. She knew the money was going to Mr. Kazman and Mr. Levy for the contracting work and she testified that she believed that Mr. Levy owned the property.

1319 I do not accept the Crown's submissions that Ms. Chapkina would necessarily have known that Mr. Kazman also had an interest in the property particularly given that his interest was in dispute. I accept her evidence on this point. There is an issue as to whether or not Mr. Kazman had an interest in 344 Wilson and Mr. Levy's company was on title. There is no evidence of anything that would have come to Ms. Chapkina's attention in her capacity as an assistant to Mr. Kazman that would have made her aware that he was claiming an interest in the property. Ms. Chapkina testified that she did not think there was conflict although she acknowledged that looking back it's easy to think that way. At the time she didn't suspect Messrs. Levy and Kazman and she was not asked about a relationship to her contractor. Whatever questions the bank had she explained. Although I agree that the bank would have been interested in this information, given the legal definition of arm's length, even if discussed, it did not include any relationship to the contractor.

(b) BNS Reliance Evidence

1320 The Crown called Adrian Mak who has worked for the BNS since December 2008. He spent the first six months or so training as an account manager for small businesses and then became an account manager in his own right. For the next three years, as an account manager for SBLs, he testified that he worked on easily over 20 SBLs. He was not qualified as an expert but there was no objection to him testifying about his experience and the practice of the BNS with respect to the procedure followed by the BNS for SBLs.

1321 As I will come to, Mr. Mak took over from Ms. Hsu in the fall of 2009 when she retired.

1322 Mr. Mak was shown the Summary that Ms. Chapkina completed for her World SBL. He testified that he commonly sees these forms and that the purpose of this form is to find out the personal net worth of the applicant. Mr. Mak was not the one that authorized the World SBL but he testified that the bank would rely on information in the Summary about the applicant's personal net worth in determining whether or not to grant the loan. It was important that the borrower demonstrate having some assets because it would go to show that they could manage their own finances and had the ability to repay the loan.

1323 According to Mr. Mak, a Business Plan was required and the bank would look especially at the history of the owner to see if they had experience in what the business was going to be doing, who the suppliers were and who the customers would be as well as the projections. In a case where Mr. Mak did not think the Business Plan was viable, it would be his job to write up the application with the applicant and submit it to the credit department where a decision would be made whether or not to fund the loan. If they decided that there were items lacking in the application, it would go back to the client.

1324 Mr. Mak testified that if he found out that a client misrepresented information on a T1 General he would probably decline the application or demand repayment of the loan depending

on when he found out or he would not submit the application. If a borrower had significantly lied in an application about their income there wouldn't be a debate and he would decline the loan altogether.

1325 Mr. Mak testified that the GIC statements would typically be required especially if listed as an asset. The bank would want to know the borrower has equity to put in as their portion of the loan and the means to fund the business if it doesn't work out. If he found out that the GIC in the World file did not exist he would have declined the loan, which I took to mean he would not have submitted the application. He was not asked about what he would do if the cash was in the borrower's personal bank account.

1326 Mr. Mak said there is no "black and white" that a borrower can't borrow start-up capital. Whether to fund the loan would be up to the credit department. Based on his current knowledge he knows that they would consider the debt-service ratio and see whether or not the client met the minimum. If not, the loan would be declined because the bank would have no recourse if the business was not going well. I took from this evidence that a borrower could borrow start-up capital and still obtain a SBL and it would be up to the credit department to decide that. That presumes, however, that the borrower disclosed not only the existence of the start-up capital but also the debt behind it.

1327 The Loan Registration form is filled out by the account manager and the client and is submitted to Industry Canada. Mr. Mak testified that the Loan Registration form is not given to the client to fill out. The bank manager would fill out most of it, manually or by computer, and would then go over the questions with the client.

1328 Mr. Mak testified that clause 1(f) -- "arm's length" means the tenant and the landlord must be independent of each other. This is to ensure there is no collusion between the two. He depends on the accuracy of the information provided. In general he could not say that it is prohibited if they are related and I take it that the credit department would consider that information.

1329 The money the bank loans is for start-up of that business and the funds have to go for their stated purpose. The bank advances funds based on an invoice and if the money went to another party they would be very concerned. Mr. Mak said that under the bank's rules the bank funds 90% of the invoices and the client has to fund the other 10%.

(c) The Purported Renovations to 344 Wilson and Purchase of Equipment, Furniture and Fixtures

1330 Ms. Chapkina testified that Mr. Levy told her to hire Whitehorse for the renovations. She said that she thought she knew that Maxine Henry registered Whitehorse for Mr. Kazman and Mr. Levy. She was not sure who controlled the company but the people she saw connected to that company were Maxine Henry, Mr. Kazman and Mr. Levy. She had no discussion with Mr. Kazman about Whitehorse. When asked why she didn't ask Mr. Kazman if she could get a better deal with Eastern she simply said she didn't. Mr. Chapnick submitted that it is clear from all the testimony heard and all other evidence presented that Ms. Chapkina was nothing more than a

nominee for Eastern and that the Crown cannot attribute knowledge to Ms. Chapkina concerning Eastern. I accept that submission but nevertheless, unless she believed Eastern to be a sham company I would at least have expected her to ask about it. Ms. Chapkina testified that she trusted Mr. Kazman and Mr. Levy as reasonable and helpful and so she did not get other estimates. She had also testified however, that she knew Mr. Levy was a very "controlling person".

1331 Ms. Chapkina testified that Mr. Levy did not take her on a walkthrough of the unit to discuss what work needed to be done. She had no renovation experience and he told her what was wrong and what had to be done. They just had general discussions and she didn't see any drawings. Ms. Chapkina said there were no discussions about lighting or flooring as these were not her areas of expertise. Later she told Mr. Levy about the displays that she wanted. She believes Mr. Levy made the decisions for her; he told her he'd take care of the renovations. When asked if she thought it was unfair that Mr. Kazman and Mr. Levy shared an interest in the property and they were getting her to pay for renovations she said that it was because it was for her store. She didn't consult anyone with respect to the lease or the invoices. Mr. Levy denied telling Ms. Chapkina that he would give her a "turnkey operation" and when Mr. Chapnick put this to him he professed to not even know what that term means even though he used the term in his own evidence in connection with Mr. Ghatan and Homelife, a SBL I will come to. When Mr. Chapnick pointed this out to him, he denied using the term when he gave evidence about Homelife. Mr. Levy testified that he did not give people turnkey operations. This evidence is clearly false and I prefer Mr. Levy's own evidence when he testified about Homelife.

1332 Ms. Chapkina testified that when she saw 344 Wilson at the beginning of 2009 the exterior had been stuccoed and only the interior, which was old, was left to do. There is evidence of work done to at least the exterior of this property after GM Realty purchased it in late November 2008. In particular there are cheques from Mosaic payable to Morningstar totaling \$46,124.20 that refer to 344 Wilson in the period November 26, 2008 to February 23, 2009. There may have been more money spent as there are other cheques to Morningstar in this timeframe that do not refer to a particular property. Mr. Levy testified that all of the work done by Morningstar was to the exterior of the property and in particular exterior stucco/mouldings, a concrete ramp, fixing a roof leak by changing the whole roof and putting in a brand new roof and some landscaping. There is a cheque from Morningstar to Mosaic for \$6,000 dated July 4, 2009 with a Re: "Payment of the job not finiche finished] on 344 Wilson". Mr. Levy testified that Morningstar returned money because he did not finish the job but he was not sure why. Mr. Kazman also testified that Morningstar did the stucco for 344 Wilson in January and February 2009.

1333 The Crown submits that Mosaic used some money it had received from Alta and Icon to make four payments in November and December 2008 to Morningstar totaling \$16,076.50. The Crown takes the position that some of these funds were used to renovate 344 Wilson. The Crown submits that Mr. Levy, Mr. Kazman and Ms. Chapkina can be disbelieved in relation to Morningstar because it makes no sense that Mr. Levy would buy an old property and do all of the exterior stucco in the dead of winter, leaving all of the interior "gutting" for several months later. There was no urgency to do the stucco and the Crown submits that it would have been risky and dirty to have all of the machinery, debris, and equipment going in and out of 344

Wilson with a freshly done exterior. It is the Crown's submission that Mr. Levy denies that any interior work was done by Morningstar because if Morningstar did do interior work it significantly undermines the work supposedly done months later for Ms. Chapkina with the World SBL.

1334 Mr. Kazman called Mr. Jaoa Martins, the owner of Morningstar, as a witness. Mr. Martins confirmed that Mr. Levy hired him and that he did the stucco work on the front of 344 Wilson; he did not say when he did that job. He did not remember if he did the back of the building but said that a friend installed new doors and windows for the unit; although again he did not say when. Mr. Martins was not too sure if he did inside work at 344 Wilson. Mr. Levy testified Morningstar only did exterior work such as stucco, and never did interior work. However, Mr. Martins testified that he did interior work for Mr. Kazman at 3042 Keele St.

1335 The Crown submits that: "It was never put to Mr. Martins that he was an "exterior stucco specialist". However Mr. Martins was a defence witness and the Crown had ample opportunity to ask that question in cross-examination. Similarly the Crown could have asked Mr. Martins about whether or not he would stucco in the winter. Furthermore, the Crown never put to Mr. Martins that he was an "exterior stucco specialist" and even if stucco was his specialty, on his evidence, which I accept, he did not do interior renovations as well.

1336 Given Mr. Martins' evidence I cannot conclude that Morningstar did any interior work at 344 Wilson before the World SBL despite the Crown's submissions. Mr. Levy obviously intended to rent out the property and in Ms. Chapkina he found someone who was willing to use a significant amount of her own SBL proceeds to improve his property.

1337 Ms. Chapkina testified that she had early possession of 344 Wilson and was allowed to enter in April for doing the renovations. She went there every few days and saw people working there. Ms. Chapkina confirmed that when they started the renovation, they gutted the place. She testified that the job was done by mid-May. According to Ms. Chapkina, they did all the work and it was done beautifully.

1338 In terms of who actually did the work, in answer to a question from Mr. Kazman, Ms. Chapkina testified that "both of you did the contracting" and that there were "some from your side" referring to Mr. Kazman and some from Mr. Levy's side. She knew Mr. Mueller who was an electrical contractor and he did work on the site and she knew Ms. Cohen supplied lighting to the business. Ms. Chapkina also confirmed that Mr. Kazman had conversations with her about the work being done by "his construction companies." Mr. Kazman of course denied any involvement with Whitehorse but said that because he knew Ms. Chapkina he supervised the work a little bit. Mr. Kazman denied doing any of the work at 344 Wilson, but nonetheless testified that Ms. Chapkina renovated the place and he said that the setup was beautiful and it was an operating business.

1339 Ms. Chapkina also testified that she saw Mr. Levy's subcontractors at 344 Wilson. She didn't remember all the names but did meet Danil. She was not aware of the companies they worked for. She explained that the whole point was that she didn't have to worry about this.

1340 Mr. Levy testified that Mr. Kazman and Whitehorse was the main contractor but when Mr.

Kazman couldn't complete the work he hired Mr. Levy to finish it. In other words it is Mr. Levy's position that he subcontracted to Whitehorse. Mr. Levy testified that he also supplied fixtures and some of the equipment. Mr. Levy testified his subcontracting job with Mr. Kazman was done but that he did not have any involvement with Ms. Chapkina - she dealt with Mr. Kazman. Mr. Levy testified that he did most of the whole job and that he did a beautiful job. However at another point in his evidence, when Mr. Levy was asked what part of the job he did, he said that since it goes back to 2010 he would only be able to say if he was shown an invoice. This is another of the many examples where Mr. Levy would testify to one thing and then later profess not to recall the answer or have an answer. This was particularly telling in this case, as he owned this building.

1341 Mr. Chapnick submits that there is no indication that Ms. Chapkina was aware of the "problems" between Messrs. Kazman and Levy. Her evidence was that she employed contractors and that the work was completed as per invoice. Discrepancies in the testimony of Mr. Kazman and Mr. Levy with respect to who did the work are of no consequence to Ms. Chapkina. I agree with that submission. The issue is was the work done?

1342 Mr. Coristine put to Ms. Chapkina that she could see where Whitehorse was not spending money in that they were not paying suppliers. To this Ms. Chapkina said she knew Mr. Levy paid his contractors through his companies and Mr. Kazman paid his contractors through his.

1343 The loan file contains two invoices from Whitehorse. It also contains an invoice from A&P that was to replace the second Whitehorse invoice. Ms. Chapkina testified that she faxed each invoice to Ms. Hsu and would then arrange to pick up a draft payable to the contractor in question. Mr. Levy testified that he had no involvement in preparing the Whitehorse or A&P invoices. According to Ms. Chapkina, however, it was Mr. Levy who gave the invoices to her to give to the bank, including the A&P invoice, not Alfredo Paulo; he was just the contractor -- I presume a reference to A&P. When she was asked if she knew that Mr. Levy was doing the "subcontracting" she asked what was meant by that term; which I took as no or that she did not know.

1344 The first Whitehorse invoice is dated May 14, 2009 in the amount of \$77,962.50 and was for the usual Part I Total Gut Job and Part II the Total Rebuild including replacing the existing storefront with a tempered glass storefront and a new HVAC system. World paid this invoice in full on May 15, 2009. The Crown argues that this work must have been done in two weeks given the start date of the lease but both Mr. Levy and Ms. Chapkina testified that there was a rent-free period that allowed Ms. Chapkina entry to the building one month earlier. As the Crown points out there is no reference to this in the Agreement to Lease. Mr. Levy testified that if we had the complete lease; a reference to what he called an Executive lease, it would say something about a rent-free period. He said he was sure that the bank received this but it was not in the loan file and Ms. Chapkina was not asked about this.

1345 The Agreement to Lease was signed April 5, 2009 and it may be, given that the building was empty anyway, that Ms. Chapkina was able to start the renovations right away. Her landlord was her main contractor and it does not sound like a lot of time was taken to decide what to do to the premises.

1346 Ms. Chapkina testified that she assumed all of the work on the first Whitehorse invoice was done by the date of the invoice; May 14, 2009, but she admitted that she would not know whether they really did a gut job and that it was possible that Mr. Levy only put on new paint and new floors. Ms. Chapkina paid this invoice in full on May 15, 2009 from her own funds and \$41,950 from the BNS SBL she received on that date.

1347 Given the state of the building, I accept the evidence that Mr. Levy gutted the building. This was the first renovation to an old building he had purchased and he had an opportunity to do a full renovation at Ms. Chapkina's expense by using part of her World SBL.

1348 The second Whitehorse invoice dated May 28, 2009 was in the amount of \$71,472.50 and was for equipment, furniture and fixtures. Ms. Chapkina testified that all of the items of equipment were provided and she paid \$10,000 towards this invoice.

1349 The BNS Intralink notes, which are notes entered in the bank's computer system for this loan by various employees, are part of the loan file. I ruled that as part of the bank's business records I would rely on these notes if they state that a site visit was done or another event occurred but I would not rely on observations or notes of conversations set out in those notes unless the person with personal knowledge testified. The Crown did not call Ms. Hsu but Mr. Mak who took over the file in September 2009 was asked about them.

1350 According to Ms. Chapkina, Ms. Hsu was at the site almost every day but the Intralink notes do not support that. The information I have gleaned from the Intralink notes is as follows. The notes refer to a site visit on May 13, 2009, prior to the first advance. The first Whitehorse invoice was paid the next day and so presumably whatever Ms. Hsu saw on the 13th satisfied her with respect to that invoice. I also presume at this stage however, the premises were virtually finished; in others words she would not have seen the premises while gutted.

1351 The next site visit was on June 3, 2009 and by then the bank had received the second Whitehorse invoice for equipment, furniture and fixtures. This is when Ms. Chapkina started to run into problems with the BNS. At this time she was asked to provide detailed billings for each item listed on the invoice, which is noted in Ms. Hsu's Intralink note of June 5, 2009. Ms. Chapkina confirmed this and testified that Ms. Hsu was not happy with the second invoice from Whitehorse and requested a detailed invoice. The BNS added a request for the actual receipts soon after.

1352 When Ms. Chapkina spoke to Mr. Levy about this she testified that he became very upset and started yelling and screaming that the rookie; a reference to Ms. Hsu, didn't know what she was doing and that she did not know how it was done. Mr. Levy would not give Ms. Chapkina a detailed invoice. Ms. Chapkina testified that she told Mr. Kazman about this too and that she asked both him and Mr. Levy for a more detailed invoice and receipts. It appears Ms. Chapkina understood Whitehorse to be Mr. Levy's company because she believed Ms. Henry to be a nominee, which is how she thought of herself as the incorporator of Eastern. She didn't think of asking Ms. Henry to influence Mr. Kazman or Mr. Levy. She added that it's hard to believe that

Mr. Levy could be influenced; she had previously described him in her evidence as a "control freak".

1353 Ms. Chapkina testified that when the BNS refused to fund the rest of the loan for World that she asked Mr. Levy if she could go to another bank and borrow the money. Mr. Levy told her another bank would not lend money to her to complete the job. He also told her that she did not need to worry because it was the bank's fault and she did everything she could so she would not be liable on the first loan. According to Ms. Chapkina, Mr. Levy suggested that she should get a second SBL for a new location. Mr. Levy denied all of this and testified that he did not know of the issue of Ms. Chapkina not getting paid although he said that after he finished the job Mr. Kazman told him he was not getting paid and Mr. Levy would have to wait. He also claimed not to know about the invoice/receipt issue but he also testified that Mr. Kazman gave her all of the receipts and he was not involved in that.

1354 Ms. Chapkina testified that Mr. Kazman suggested she sue the bank. However, Mr. Kazman denied knowing that the second Whitehorse invoice was rejected by the BNS for lack of receipts. However, when Mr. Coristine put to Mr. Kazman that he was hung up on receipts and queried why he was not able to provide them, Mr. Kazman said it was not the bank's business to ask for them, that "it's the principle" and that this was contrary to the terms of the SBL, which certainly corroborates Ms. Chapkina's evidence.

1355 When Ms. Chapkina was unable to get a more detailed invoice and receipts from Whitehorse, she testified that she told Ms. Hsu this and Ms. Hsu suggested that she should change contractors. Based on the Intralink notes this was around June 19, 2009. As a result Ms. Chapkina testified that she hired A&P, which I note was incorporated April 17, 2009; about the time Ms. Chapkina started the process of applying for this SBL. Ms. Chapkina also said that when Mr. Kazman and Mr. Levy calmed down they abided by the bank's request but through an A&P invoice. Mr. Coristine put to her that she didn't really hire a new company. She said they put her up to hiring another company and gave her another invoice. When asked who suggested A&P she said it was probably Mr. Levy or Mr. Kazman but she couldn't recall.

1356 When Mr. Coristine put it to Ms. Chapkina that it didn't make sense that she then hired Mr. Kazman after the problems she had, she answered "well who was I supposed to hire?" When it was pointed out by Mr. Coristine that the invoice was all for shopping and asked her why she didn't shop herself, she said she wasn't a contractor and didn't think she could get these things herself.

1357 When Ms. Chapkina was asked what happened to the Whitehorse equipment that was in her unit and not paid for she testified that "they reinviced from A&P"; clearly a reference to Messrs. Kazman and Levy. At first Ms. Chapkina testified that she remembered "them" collecting the merchandise but that she wasn't sure and then she said that one company bought the equipment from the other as there would be no point in Mr. Levy packing items up because A&P was providing the same items; in other words A&P simply gave the BNS a new invoice for the products on the Whitehorse invoice. This is clear evidence of collaboration between Whitehorse and A&P.

1358 Mr. Coristine argues that Ms. Chapkina's evidence with respect to A&P was extensive but she made no mention of Alfredo Paulo. That is not quite accurate but it is clear from her evidence that she believed A&P was Mr. Kazman's company.

1359 Mr. Coristine asked Mr. Kazman how it worked that Whitehorse supplied and installed things, did not get paid and then Ms. Chapkina hired A&P and it supplied and installed the same things. Mr. Kazman said that he was just a signatory on the account and so he could not answer that question. Mr. Levy said he did not know that after Whitehorse Ms. Chapkina hired another Kazman company; A&P because it had nothing to do with him. The Crown's position is that A&P was Mr. Kazman's company and that he had to know that she got a SBL and that he was getting a cut of her loan as the money went through A&P. I will deal with this when I make my findings about the Disputed Construction Companies.

1360 In any event, the A&P invoice was dated July 17, 2009 in the amount of \$52,000.34 and Ms. Chapkina faxed it to the bank the same day. When it was pointed out to Ms. Chapkina that the A&P invoice was \$20,000 cheaper than the Whitehorse invoice it replaced, Ms. Chapkina said they probably returned some things suggesting it was for less equipment. It is difficult to compare the Whitehorse and A&P invoices as the descriptions and order of items are different. However, World paid \$10,000 to Whitehorse on June 5, 2009 in addition to paying its first invoice and paid an additional \$10,000 to A&P on November 9, 2009 after paying its invoice in full on September 10, 2009. Ms. Chapkina testified that both of these \$10,000 payments were paid as directed by Mr. Levy and were for repayment of the rest of her loan from him. This means that for the A&P invoice in fact \$62,000.34 was paid to A&P; \$10,000 more than the invoice.

1361 Ms. Chapkina testified that this invoice from A&P did not satisfy Ms. Hsu. On July 22, 2009 Ms. Chapkina sent an email to Marcia Tarder, the branch manager of this BNS branch, in which she complained about Ms. Hsu asking for supplier invoices and she asked for a change of account manager. Ms. Chapkina testified that she didn't expect the BNS to respond to this email; she figured "that's it". Ms. Chapkina said that since no one had responded from the BNS for three months since the first funding she decided to sign with the RBC for a SBL at the beginning of August to open Exclusive Accessories Inc. (Exclusive) at 846 Sheppard.

1362 One of the problems with this evidence is that it is not accurate. It had been more than three months since she had been approved for the BNS SBL but the first advance was not until May 15, 2009. Furthermore, Ms. Chapkina had only provided the A&P invoice to the bank seven days before she incorporated Exclusive and begun the application process for a second SBL. She must have gone to the RBC before she sent the email to Ms. Tarder because the RBC approved Ms. Chapkina on July 22, 2009 for the SBL for Exclusive although I recognize she did not sign the loan agreement until August 6, 2009. She was also negotiating a 10-year lease for Exclusive with 846 Realty at least by June 9, 2009; the date of the lease, which was less than two weeks after the date of the second Whitehorse invoice.

1363 Ms. Chapkina also testified that she only signed the Exclusive loan once she was sure the BNS was not responding but it had only been about two weeks since her email to Ms. Tarder

when she signed for the Exclusive SBL and as I will come to, in the meantime, Ms. Hsu made two site visits. Furthermore, as the Crown asserts, Ms. Chapkina did not tell the BNS that she was abandoning the loan and until early November 2009 she was still trying to comply with their requests for receipts.

1364 I do not believe the evidence of Ms. Chapkina as to why she took steps to get a second SBL and open Exclusive. She only wanted one store and at the time she incorporated Exclusive and took steps to apply for a second SBL there was no reason for her to assume that she was not going to be funded by the BNS. I appreciate her evidence that she was getting some "advice" from Messrs. Kazman and Levy but she struck me as an intelligent woman. She was still working for Mr. Kazman so what was the rush to abort World? I also find it very difficult to believe that at this stage she would have believed any advice she received from Messrs. Levy and Kazman that it was the bank's fault and she was not liable. If that was a good argument in November, 2009, it was not one in June 2009. That said, as will be seen when I get to Exclusive, Messrs. Levy and Kazman had a strong motive to convince Ms. Chapkina to open another store as Mr. Kazman had recently purchased by 846 Sheppard and another SBL for Ms. Chapkina would allow him to renovate the property at her expense as she had done for World. There is certainly no evidence of any financial reward to Ms. Chapkina to suggest why she might have agreed to do this. I find that once again she was influenced by Mr. Kazman who took advantage of her trust in him.

1365 Meanwhile the BNS was continuing to consider further funding in that Ms. Hsu made a site visit on August 12th and then again on August 13th, 2009. Ms. Chapkina was advised in late August that Adrian Mak was taking over her file and she emailed him on August 31, 2009, requesting a draft for her contractor. Mr. Mak attended at the premises for the first time on September 2, 2009. He confirmed the entry in the Intralink notes that: "all items on invoice accounted for" was accurate and correct. There was still no signage. Mr. Mak spoke to Mr. Levy on September 9, 2009 and he testified that Mr. Levy told him that everything was OK and rent cheques were coming from Ms. Chapkina's personal account.

1366 Mr. Mak authorized a further advance to World in the amount of \$44,729.50 on September 9, 2009 and Ms. Chapkina paid the full amount of the A&P invoice on September 10, 2009. This brought the total amount advanced pursuant to the SBL to \$86,679.50, still significantly less than the amount approved of \$137,700. Ms. Chapkina testified that this cheque from the BNS was out of the blue; she thought it was sorted out in July that the bank wouldn't pay although I note she was requesting payment in her email to Mr. Mak of August 31st.

1367 The first Whitehorse invoice and the A&P invoice totaled \$129,962.84. Ms. Chapkina paid those invoices in full and in fact she overpaid. As I have already reviewed, she paid Whitehorse \$10,000 on its second invoice which had been effectively cancelled and she paid A&P \$10,000 more than its invoice. These however, were how she was directed by Mr. Levy to repay the balance outstanding on the loan she obtained from or through him.

1368 Mr. Mak testified that he believed that there was a second invoice from A&P and he gave evidence about further steps he took to determine if there would be more funding. There were only two invoices from Whitehorse and one A&P invoice in the loan file and it was the second

invoice from Whitehorse that was not paid as it was replaced by the A&P invoice. Ms. Chapkina also testified that there was another A&P invoice for fixtures, shelves, some display cabinets and other equipment which she thought was in the range of \$55-\$57,000. If there was such an invoice there is no doubt that it was not funded by the bank. Neither Mr. Kazman nor Mr. Levy testified that such an invoice existed.

1369 On October 19, 2009 Mr. Mak testified that he did a site visit for World and completed a site visit checklist to ensure items were there and to see how the business was doing. It had not yet opened at this time. Mr. Mak determined that all items on the A&P invoice were present but a lot were not operational and the items didn't seem brand new although he did not believe he expressed concern about the wear and tear he saw. Ms. Chapkina disagrees that some of the equipment looked worn.

1370 According to Mr. Mak, equipment and furnishings were in the basement and he recalled that it looked like an unfinished basement with furniture; although he also said that he did not recall if the basement was renovated. He saw display cases and cabinets but he did not see any custom shelving or custom units physically built into the store. The display cabinets were freestanding and could be moved out of the store. He also saw a desktop computer, two laptops and a couple of printers including a commercial printer still in a box and he wondered why a commercial printer was needed. He went to look at the printer to see the label in order to see who it was addressed to, but as he bent over Ms. Chapkina came over to him and tore it off and so he was not able to see who had shipped it to her. He didn't investigate it further or look in the box. That was the only box he remembered. Mr. Mak also saw a commercial grade espresso maker but there were no hookups for water and it was not plugged in and was not operational -- it seemed out of place. Mr. Mak believed it must have been on an invoice that he was asked to fund. It is not on the A&P invoice in the loan file.

1371 I note the espresso machine was not on the A&P invoice and so I do not know who supposedly supplied this machine. This could suggest a second A&P invoice. Mr. Mak said in his opinion all the equipment there seemed excessive. He had no recall if there was a second washroom or if there was warehouse space. Mr. Mak recalled that on the upper level there were display cases and merchandise. He saw a back door but did not see a storage room or a back office. For certain he did not see the awning with the store name outside.

1372 Based on the site visit, speaking to Ms. Chapkina and observing the premises, Mr. Mak testified that it seemed that equipment had just been "planted for the bank's benefit" and that it "just didn't feel right" and that's why he asked for an updated invoice to show pricing and receipts from the suppliers for the electronics for further funding.

1373 Following his visit to 344 Wilson there was an exchange of emails between Mr. Mak and Ms. Chapkina about her supplying the receipts he had requested. Ms. Chapkina testified that again she went to A&P and asked for receipts. She brought receipts of some sort that she got from Mr. Kazman or Mr. Levy to Mr. Mak. When it was put to her that Mr. Kazman and Mr. Levy were not helping her she responded that it was the bank that left her out to dry. She did say, however, that Mr. Kazman was helping her with the exchange of emails with Mr. Mak. Ms.

Chapkina testified that she complied with what the bank wanted and believes that the bank was unreasonable. She agrees that BNS never told her that she was not liable for the SBL.

1374 I must say I find Ms. Chapkina's loyalty to Mr. Kazman here surprising because in my view it should not have been a big deal in the circumstances for her to receive receipts from Whitehorse and A&P if the purchases had in fact been made and were legitimate. The analogy made by the defence to asking Canadian Tire for receipts to prove the cost of merchandise supplied to them is not the right analogy. Ms. Chapkina was simply asking Mr. Levy and Mr. Kazman to provide the receipts for the equipment, furniture and fixtures set out in the A&P invoice. Mr. Levy provided this kind of information to Mr. Ghatan for Homelife as I will come to. The fact that receipts were not provided in my mind must have been because they were not available or would have shown that some or most of the equipment, furniture and fixtures had not been bought for World; supporting Mr. Mak's suspicion that it had been "planted" to satisfy the bank. I find it surprising that Ms. Chapkina would not have felt the same way. For these reasons, I do not accept the suggestion Mr. Chapnick made on behalf of Ms. Chapkina that World was unfairly shut down by the BNS.

1375 Ms. Chapkina sent Mr. Mak an email with a picture of the storefront with the sign on the awning on October 30, 2009 and dropped off some receipts later the same day. Mr. Mak responded by email the same day and advised her that what she had brought were not "true copies of the receipts" and that the information provided as a receipt was printed from an email. He requested the actual receipt for each item from where it was purchased.

1376 In this email Mr. Mak also stated: "This is a requirement by the government and my responsibility to keep your file in perfect order." Mr. Mak didn't know who advised him it was government policy or if he just made this up. He was clearly mistaken about this but in my view the bank had the right to ask for receipts given Mr. Mak's concerns. It was up to the bank whether or not to advance the funds.

1377 Mr. Mak also suggested that the equipment, furniture and fixtures be appraised to ensure there was not a 200% markup to safeguard the bank's interests. Ms. Chapkina advised him by email of November 3, 2009 that she should not have to do this and in any event she was not prepared to pay for this. In that email Ms. Chapkina advised that her contractor had advised that if he was not in receipt of funds by the end of that week "he will be removing his assets and suing me for the shortfall." Ms. Chapkina testified that Mr. Levy probably told her that she would have to return everything if she didn't pay. This seems strange as the first Whitehorse and the A&P invoices had been more than fully paid. Again, however, there may have been a second A&P invoice.

1378 In early November 2009, Mr. Mak received a voicemail message from someone called Alfredo and in that message Alfredo stated that he did not want to provide Mr. Mak with receipts. When Mr. Mak returned the call on November 3, 2009 at the number stated on the A&P invoice, the person who answered said that he had the wrong number and did not know of a company called A&P. Mr. Mak testified that he checked Canada 411 and the number he called was the same number as on the invoice. On a question from the Court, Mr. Mak was taken to the November 3, 2009 entry in the Intralink notes, which he said was accurate. He said he probably

looked at the number in the call display on his phone and the number on the invoice and they matched up. I think an error by Mr. Mak is unlikely and this evidence is relevant to whether or not A&P was a sham corporation; an issue I will come to.

1379 On November 6th Ms. Chapkina provided Visa statements to Mr. Mak that were not acceptable because they did not tell him anything other than the amount billed and the date. As well there was no name on the statement. He testified that he did not think it was too much to ask Ms. Chapkina to get the original invoices especially because the contractor had given her his Visa statement. When Mr. Kazman asked under what authority Ms. Chapkina would have been able to get the receipts Mr. Mak responded that he assumed she hired the contractor and would have the right to them. This seems reasonable from his perspective especially if the invoice is vague. He said Ms. Chapkina was asking the bank to fund certain items and he wanted to see what was purchased and from who.

1380 On November 11, 2009 Mr. Mak told Ms. Chapkina that the bank still needed receipts. Ms. Chapkina told him there would be no more receipts and that she was fine with the pricing. In Mr. Mak's last email to Ms. Chapkina on November 23, 2009 he was still looking for receipts and told her that he needed them to fund her loan. Ms. Chapkina responded advising that the contractor would not provide them to her, that if the BNS did not fund the loan she would probably be forced out of business and that she would sue Mr. Mak and the BNS. Ms. Chapkina testified that this was Mr. Kazman's suggestion. However, she never followed through. Ms. Chapkina agreed that she only learned she was not getting all the BNS SBL money at this time. She also agreed that she never told the BNS that she had Exclusive.

1381 Mr. Levy testified that he finished the job but did not get paid because the bank did not finance the rest of the loan and there was no money left. He said Mr. Kazman told him he was not getting paid either and that Mr. Levy would have to wait.

(d) Did World Operate as a Business?

1382 Ms. Chapkina testified that when Mr. Mak got back to her, at first she thought she'd walk away from World but when she spoke to Mr. Kazman and Mr. Levy she found out that Maxine Henry wanted to help her run both businesses and she thought she could do it as they were minutes apart from each other. Accordingly that is what she decided to do.

1383 Based on the photos and the email evidence I have referred to it appears that the awning with the World store name was not installed until late October. A photograph that shows the awning shows some inventory in the window. Ms. Chapkina testified that she did not get inventory for the store until September and that World had an open house for several days while all the equipment was present.

1384 Ms. Chapkina testified that after the open house that the contractor took whatever was not paid for. She was not there when the contractor came and she assumed it was A&P that took the assets back as she had not paid for them. This could only have been assets on a second A&P invoice that is not in evidence. However since the Whitehorse and first A&P invoices had been paid, the Crown has a good point that if Ms. Chapkina had *bona fide* intention to operate

World, I would have expected her to be able to use all of her start-up capital to make a serious attempt to operate the store with the furniture, fixtures and equipment that she had paid for. That equipment included display cabinets, office and computer equipment. Ms. Chapkina's position was that the money from the GIC was in her savings account not her business account and that it wasn't enough and "he [I presume Levy] never offered this". I presume this means that she was not prepared to pay the high interest rate for any longer.

1385 To that issue it is relevant that Ms. Chapkina never stopped working for Mr. Kazman in this period of time. Even with the help of Ms. Henry, given she never made any attempt to hire anyone else, her evidence that she would operate two stores is incredible.

1386 According to the Coort Analysis in the period from April 20, 2009 to February 28, 2010, he did not see any third party deposits that could be considered revenue. Corporate income tax returns were filed only for the periods April 16 to December 31, 2009 and January 1 to December 31, 2010. Sales and other revenue for both was reported as \$0.

1387 World paid a deposit for rent out of Ms. Chapkina's personal account in the amount of \$5,775, being the first and last month's rent plus GST, to GM Realty. This was the only cheque from Ms. Chapkina/World for rent. Ms. Chapkina admitted that the rent was to be \$2,500 per month and that she was to pay all of the utilities and that she was never registered to pay them; she said "never got to that point". Ms. Chapkina testified that she didn't think about registering for the utilities and phone line and she was told not to bother as she had power. She thought Mr. Levy should have reminded her. Ms. Chapkina testified that she told Mr. Levy that the bank had stopped financing her and that she had to walk away and that Mr. Levy told her that she had no choice but to walk away and that he wouldn't charge her rent. Mr. Levy testified that all he could say was that because of what happened she did not pay any more rent. That supposed generosity did not seem consistent with Mr. Levy's experience or attitude as a businessman.

1388 Ms. Chapkina testified that it was ultimately her decision to walk away when the bank capped the loan and refused to fund the balance. According to Ms. Chapkina, Mr. Kazman found the current tenant who took over the unit right away.

1389 Ms. Chapkina testified that when she walked away from 344 Wilson Mr. Levy said he might give her some money for the leasehold improvements but that never happened. According to Mr. Levy, when Ms. Chapkina left she took everything with her.

(e) The Appraisal of World's Assets

1390 According to Industry Canada documents World's SBL went into default as of December 14, 2009.

1391 Mr. Tony Burnett was instructed by letter from the Lipman firm dated April 5, 2010 to attend at 344 Wilson to inspect and appraise the assets. The letter stated that the author had been advised that the store had closed and that it was possible the assets had been removed. Mr. Burnett testified that he went to 344 Wilson and there was a sign for World above the store but the store was closed and vacant and he was not able to gain access. He tried to contact Ms.

Chapkina by leaving his business card either through the letterbox or tucked into the door. He never heard from her.

1392 As it happened, Mr. Burnett was working on the Exclusive file given to him by the RBC where the debtor was also Ms. Chapkina. He reported this information by letter dated April 9, 2010 to the Lipman firm and advised that he had attended Exclusive over a dozen times during the prior three weeks and that he had not observed that store to be open, that Ms. Chapkina was under investigation and was related in business to two other persons who were also under investigation who had been involved in numerous SBLs.

1393 Mr. Burnett testified that he contacted the landlord of World; "Gaddy Levy". He did not recall the conversation but testified that he would have asked if any of the assets were remaining but did not recall his answer.

1394 Mr. Burnett testified that because he was not able to gain access to 344 Wilson, he did a sight unseen appraisal. He was given the A&P invoice dated July 17, 2009 and he valued the assets at a distress value, if sold on site, at approximately \$8,275 as set out in his report to the Lipman firm dated April 22, 2010.

1395 Mr. Burnett denied that this information about Ms. Chapkina being under investigation tainted his appraisal. I find that given that his appraisal is completely in line with the other appraisals I have evidence about, and if anything is higher, that this is true.

(f) The Circulation of the SBL Proceeds

1396 Mr. Coort analyzed World's business account from April 29, 2009, when it opened, until February 28, 2010. In the period April 29, 2009 until November 9, 2009, in addition to the SBL proceeds of \$86,679.50, Ms. Chapkina paid \$70,100 into World's account. In the same period World paid the first Whitehorse invoice in full and \$10,000 towards the second Whitehorse invoice and paid A&P's first invoice in full and the additional \$10,000 which I have referred to.

1397 Whitehorse had only \$1,378 in its account as at May 15, 2009. In addition to the \$87,962.50 paid by World to Whitehorse, in the period of May 15, 2009 to June 8, 2009, Whitehorse received almost \$144,000 from Western City Inc., which was a company that received a SBL in May 2009. The principal of this company was Ron Kalifer who was also the principal of Western Leather.

1398 From these funds, in the one month period May 22 to June 23, 2009, Whitehorse paid \$75,599.28 to companies owned by Mr. Kazman; M&M, 1040 Holdings and Cramarossa, and \$103,091.34 to companies owned by Mr. Levy; Mosaic, GM Realty, Trust Inc., 1322637 Ontario Ltd., MGM Inc., MDC Modern Design and Fairbank and \$71,750 to Save Energy, Ms. Cohen's company and \$1,600 to Ms. Cohen personally. Payments totaling \$21,155.79 were also made to Eastern.

1399 Mr. Levy testified that the payments to Mosaic were for the subcontracting work he did for Whitehorse. However the payments to Mosaic in this period only total \$4,561 so that does not

make sense. The payments to Trust Inc. however total \$73,616.12. Some of those cheques refer to an invoice number and another refers to Danil who Mr. Levy said did work for him. Mr. Levy tried to explain these payments by saying that Trust Inc. had purchased supplies for Whitehorse. There is no evidence that Trust Inc. ever did any construction work. The other Trust Inc. cheques simply state "on account" and because there was no invoice reference Mr. Levy said they were repayment of loans. Many of these cheques were for uneven amounts however so I do not believe that given the other evidence from Mr. Levy. For one payment to MDC Modern Design, Mr. Levy testified that he directed Mr. Kazman to pay this company. Mr. Levy testified that the Whitehorse payments to Fairbank were in payment of accounting work he did for Mr. Kazman.

1400 The only payments that Whitehorse made to what could be third party suppliers were three cheques to Active Temp Control Inc. totaling \$11,445. One cheque for \$2,520 had a Re: of "344 Wilson A/C" which is consistent with World receiving an invoice from Whitehorse that included a new HVAC system. Another cheque for the same amount on the same day refers to a deposit on an invoice, which Mr. Levy testified related to the HVAC at either 344 Wilson or 846 Sheppard. There was also a Whitehorse cheque to Bentos General Services dated June 10, 2009 which based on the Re: line appears to have been for painting, although there is no property reference stated and there was a payment of almost \$2,000 to what appears to be a sign company but again no reference to which property.

1401 Mr. Levy testified that he was signing these Whitehorse cheques because he was "ordered" to do so by Mr. Kazman. He said if he had something to do with the company he would have signed all the cheques. According to Mr. Levy, Mr. Kazman had the cheques and the bank statements for Whitehorse went to Mr. Kazman's address.

1402 The balance of A&P's account as at September 2, 2009 was also very low; \$128.66. From September 10 to December 15, 2009, in addition to the payment from World for A&P's invoice of \$52,000.34 and the \$10,000 payment Ms. Chapkina testified was to go to Mr. Levy, A&P received \$161,366.15 from Exclusive, the next SBL Ms. Chapkina obtained. A&P also received a cash payment of \$2,500 from an unknown source and the same amount from Mr. Levy's company 1322637 Ontario Ltd.

1403 In the same period A&P paid out \$16,150.49 to companies owned by Mr. Kazman; 846 Realty, 1040 Holdings, Cramarossa and M&M 155 and \$144,790.86 to Mr. Levy's companies MDC Modern Design, Trust Inc., and Mosaic. \$27,548.28 was paid to Save Energy.

1404 In this same period there are definitely some payments by A&P to contractors and/or subcontractor entities such as Mike Mueller, an electrician, Rolltec Rolling Systems, HVAC for Life, and Tydell Disposal. The problem is that because A&P had funds from two SBLs and in the absence of references to an address on the cheques, I have no evidence as to what any of those companies did, or for whom. I expect however that these payments were on behalf of Exclusive, possibly with the exception of Rolltec, as there were no references to these items/services on A&P's invoice to World except for a complete set of blinds.

(g) Summary of Findings of Fact

1405 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the World SBL.

1406 Ms. Chapkina made a number of misrepresentations to the BNS when she completed her Summary. Although I accept her evidence that she completed the form with Mr. Levy and was following his instructions, in my view that does not necessarily excuse her actions. Her misrepresentations included the following:

- a) For her employment history Ms. Chapkina wrote down that she had been the manager of Accessories and Design for six years. On her subsequent "Personal Statement of Affairs" for Exclusive Accessories Inc. (Exclusive), which I will come, she listed the address for "Accessories and Design" as 508 Bloor -- the address for Roxy. Ms. Chapkina admitted that this information was not true and that she did not work for Accessories and Design. She admitted that this was done to show the bank she had some retail experience although she did not. She testified that Mr. Levy said that he had a tenant for this property that would confirm her employment.
- b) For her previous employers, she stated these were Eastern Contracting, and then Dufferin Paralegal, which was also misleading as she was clearly still working for Mr. Kazman at the time.
- c) In the assets section of the form Ms. Chapkina testified that Mr. Levy dictated what she should put down and so she wrote down that she was the owner of the Bochner Condo and that she was receiving \$1,500 per month as rental income. Ms. Chapkina testified that she did not know what the Bochner Condo was worth and that Mr. Levy told her to put down \$385,000, which was an increase from the purchase price of \$278,000.
- d) As part of her assets, Ms. Chapkina listed a CIBC GIC in the amount of \$65,000, which represented the money Ms. Chapkina had borrowed from Mr. Levy even though she had redeemed this GIC before she signed the Summary.
- e) As part of her liabilities Ms. Chapkina did not list the \$100,000 that she borrowed from Mr. Levy and so her net worth was inflated by \$100,000.
- f) For her gross personal employment income Ms. Chapkina wrote down \$55,845 which was the same as the fraudulent T1 General and NOA for 2007 in the loan file and grossly inflated her actual income as reported to the CRA..

1407 Ms. Chapkina fairly admitted that she knew that each of these representations was false save for the information she wrote down for the Bochner Condo, the GIC and her income.

1408 With respect to the Bochner Condo, in my view even though it was technically correct that Ms. Chapkina held the title to this condo at the time she applied for the World SBL, she knew that it was not really hers, that she was really holding it in trust for the Bochners. Furthermore, there could have been no doubt in her mind that she was not receiving rent; rather she was

being paid the amount needed to make the monthly payments on the mortgage that was in her name and other expenses related to the condo.

1409 I therefore find that listing the Bochner Condo in this way was a deliberate misrepresentation.

1410 With respect to the GIC I have accepted Ms. Chapkina's evidence that she had this money in her personal account after she redeemed the GIC but I do not accept her evidence that she thought this was the same as having a GIC. I therefore find that this was an intentional misrepresentation.

1411 With respect to the failure to list her loan from Mr. Levy as a liability I have found that I do not accept Ms. Chapkina's evidence that she forgot about it. This was an intentional omission of a material fact.

1412 With respect to her income, I have found that even if Ms. Chapkina did not see the fabricated or altered tax documents that were in the package she provided to the bank, she must have known that she was grossly over-reporting her income when she filled in a number on the Summary that grossly overstated her income.

1413 There is also the fact that there is no dispute that the \$65,000 CIBC GIC statement in the BNS loan file was either entirely fabricated or at least altered from the original. Furthermore, the loan file contained fraudulent NOAs for Ms. Chapkina for 2006 and 2007 and a fraudulent TI General for 2007.

1414 The fraudulent tax documents in Ms. Chapkina's loan file could only have come from her or Mr. Levy or someone on Mr. Levy's behalf. I have found that I am not able to make any firm finding based on the evidence with respect to World alone but I will reconsider this issue when I consider the similar fact evidence.

1415 The key issue with what I have found to be intentional misrepresentations in the Summary provided to the BNS and the other fraudulent document is whether or not the Crown has proven beyond a reasonable doubt that the BNS relied on the misrepresentation in deciding to approve the World SBL.

1416 One of Mr. Chapnick's arguments was that the Crown Attorneys were aware of and in fact placed under subpoena Ms. Hsu, Ms. Chapkina's original account manager for the World SBL and for reasons of their own chose not to call her as a witness in this trial. The Crown does not address the issue of reliance in their written submissions save to say at para. 281(d) that:

In the end Chapkina misses the point that all of these borrowing companies made representation[s] to the bank with respect to arm's length relationships, financial independence and *bona fide* intentions. The bank would never have approved the loan if Chapkina advised them she was still working for her landlord and contractor, and that she would be writing the cheques for all companies.

1417 A footnote to this passage states: "We can glean this from the evidence of all loan

managers who identified misrepresentations as a deal breaker in the loan process-particularly Adrian Mak, Josie Alulio, and Shelley Johnston[e]". These were all witnesses from the BNS.

1418 Mr. Chapnick submits that the question of reliance by the BNS is not appropriate for "inferences" where "best evidence" is available by the conscious actions of the Crown in not calling Ms. Hsu who was the actual bank loan account manager that was subpoenaed to court to give evidence about what actually happened during her meeting with Ms. Chapkina. Furthermore, Mr. Chapnick submits that Mr. DeFranco testified that each bank makes its own lending rules.

1419 In my view there is a great deal of merit to Mr. Chapnick's submission. It is true that Mr. Mak testified that if he became aware that there were certain misrepresentations in a loan application that he would decline to submit the application and Ms. Alulio and Ms. Johnstone gave evidence to the same effect. However what these witnesses did not say was what it was that they particularly relied upon in deciding whether or not to submit an application to the underwriters. There is, for example, no evidence that a particular level of income is required or that a GIC is necessary. In my view, given my analysis of the law, it is not enough for the Crown to prove that the World SBL would not have been submitted if Ms. Hsu learned that certain misrepresentations had been made.

1420 In my opinion the Crown has failed to prove that any of the misrepresentations were relied upon by Ms. Hsu in deciding to submit Ms. Chapkina's application to the underwriters.

1421 Dealing with one additional argument Mr. Chapnick made, he submitted that it can be argued that listing the Bochner Condo added negatively to Ms. Chapkina's application. He submits that it can be argued that a lender should consider the borrower's ability to service her debt in light of her application to assume more debt and that the ability to service debt is a factor that may be at the forefront of lending, even superseding property equity. This argument however is just that-it was not put to any of the bank witnesses and so it would be speculation to consider this submission. That said, the Crown did not present any evidence that the Bochner Condo enhanced Ms. Chapkina's applications for SBLs.

1422 Turning to the other facts that I have found, as I will come to Ms. Chapkina's evidence that Mr. Levy and Mr. Kazman did the contracting for World is important to my determination of who was in control of the Disputed Construction Companies.

1423 I have found that Mr. Levy gutted the building and there is no basis to find that he did not do all of the work set out on the first Whitehorse invoice save for the absence of payments to third party suppliers. The Crown argues that any work done at 344 Wilson had long been completed by Morningstar by the time World took over the premises and that the BNS paid the bill for leasehold improvements under false pretenses. I find that the Crown has not proven this allegation beyond a reasonable doubt. This was the first renovation to an old building Mr. Levy had purchased and he had an opportunity to do a full renovation at Ms. Chapkina's expense by using part of her World SBL.

1424 Despite the problems Ms. Chapkina ran into with Ms. Hsu and Mr. Mak, given the

confusion about whether or not there was a second A&P invoice, the Crown has not proven that the items in the second Whitehorse invoice for equipment, furniture and fixtures were not delivered. However the fact that Mr. Levy and Mr. Kazman would not provide receipts suggests that Whitehorse could not back up its invoice. I do not accept that Mr. Mak could not ask for those receipts and reject the argument that Ms. Chapkina would not have been entitled to them. In Homelife for example, Mr. Levy apparently had no difficulty in providing the actual third party invoices to Mr. Ghatan for the computer and other equipment he supplied. The fact that this was resisted by Whitehorse implicates Mr. Levy and/or Mr. Kazman depending on my finding of who was in control of Whitehorse.

1425 I agree with the Crown that it does not make a lot of sense that Ms. Chapkina hired A&P whom she understood was Mr. Kazman, given the problems that she had already experienced. I have found it should not have been a big deal in the circumstances for Ms. Chapkina to receive receipts from Whitehorse and A&P if the purchases had in fact been made and were legitimate and so Ms. Chapkina's loyalty to Mr. Kazman is surprising., However, I accept, given the evidence I heard about her past relationship with Mr. Kazman, that she still trusted him.

1426 I have also found that there is clear evidence of collaboration between Whitehorse and A&P given Ms. Chapkina's evidence about what happened to the Whitehorse equipment that was in her unit. In essence A&P simply gave the BNS a new invoice for the products on the Whitehorse invoice.

1427 I have set out my reasons for why I do not believe the evidence of Ms. Chapkina as to why she took steps to get a second SBL and open Exclusive. I have also explained why I do not accept the suggestion Mr. Chapnick made on behalf of Ms. Chapkina that World was unfairly shut down by the BNS. That said, I find that the Crown has not proven that Ms. Chapkina took steps to open Exclusive as part of a fraudulent scheme. Messrs. Levy and Kazman had a strong motive to convince Ms. Chapkina to open another store as Mr. Kazman had recently purchased by 846 Sheppard and another SBL for Ms. Chapkina would allow him to renovate the property at her expense as she had done for World. There is certainly no evidence of any financial reward to Ms. Chapkina to suggest why she might have agreed to do this. I find that once again she was influenced by Mr. Kazman who took advantage of her trust in him.

1428 The evidence is clear that from Ms. Chapkina's perspective she lost all the money that she invested in these businesses and there is no evidence that she received any kickbacks or other financial rewards. The Crown in their submissions concede that she lost money on both loans and, as Mr. Chapnick submits, sets out a number of events that show how Mr. Kazman drew Ms. Chapkina "into his predatory, criminal scheme".

1429 The Crown goes on to assert however, that Ms. Chapkina was not an innocent victim and that she "had ample warning to cease complying with Levy and Kaman's criminal requests." I do not accept this submission. There is no reason for me to find that the way in which Ms. Chapkina was duped into following the advice of Messrs. Kazman and Levy in connection with World was any different than what she did for Mr. Kazman in connection with the Bochner Condo.

1430 For these reasons I find that Ms. Chapkina is not guilty of Count 1 in connection with the World SBL.

Uzeem Corp. (Uzeem) -- BNS -- Count # 1

(a) The Uzeem SBL

Uzeem (Tehrani) was approved for a SBL from the BNS on January 29, 2010 in the amount of \$229,500, which was subsequently reduced to \$217,591.10.

1431 Mr. Tehrani testified that the two containers of furniture he had purchased from China were sitting in outdoor storage on an unoccupied lot he rented from Mr. Parise on September 17, 2009 because the promised extension of the Kube store had not been done. Mr. Luska kept giving him excuses and winter was coming. The containers were worth \$100,000 and since the furniture was all wood Mr. Tehrani was worried it would crack and he would lose everything. He decided he had to do something and this is why he decided to open Uzeem.

1432 Kube and Uzeem were only two doors apart. The loan file contains a lease dated December 8, 2009 between Julina and Edward Wong and Mr. Tehrani on behalf of an Ontario company to be incorporated (Uzeem) for 685 Queen Street West (685 Queen), main floor and garage in the rear of the property, the East Store (of the two stores owned by the Wongs); of approximately 2,800 SF (this is what the handwriting looks like but Mr. Wong testified that it was 1,800 SF) to commence January 1, 2010 at \$5,500 per month. Mr. Tehrani testified that in the garage at the back of the property he sanded, stained, changed legs and made furniture custom. This property had been owned by the Wongs since March 4, 2009.

1433 Mr. Tehrani signed the lease. The Crown called Mr. Jackson Wong who testified that he signed the lease on behalf of his wife Julina and his son Edward who owned the property at the time. He said that he was the one who made decisions with respect to the property at the time. There is no dispute that neither Mr. Kazman nor Mr. Levy had any involvement in Mr. Tehrani renting this property.

1434 According to Mr. Wong, he did not have a sign that the property was for rent. Mr. Tehrani came to the store when Mr. Wong's contractors were working on renovations.

1435 Mr. Tehrani incorporated Uzeem on January 22, 2010 and opened an account for Uzeem with the BNS. He gave the BNS a personal guarantee for 25% of the SBL that had the standard language I have already referred to.

1436 The loan file contains a Business Plan dated January 1, 2010 for a company called the Resident Ltd., a home furnishings, accessories and lighting company. As already stated, Mr. Tehrani was mixed up about the Business Plans for Kube and Uzeem. He did testify that he chose the name Uzeem. According to Mr. Tehrani, Mr. Levy prepared this Business Plan which Mr. Levy denied.

1437 The copy of the Resident Business Plan in the loan file has a Table of Contents but no page numbers. "Madjid" is spelled wrong again in the first line of the Executive Summary but is spelled correctly elsewhere. The plan describes Uzeem as selling "Retail and Wholesale Modern Furniture, Contemporary Furniture, Eclectic Design and Antique Design Furniture."

1438 Mr. Tehrani testified that the same process he used with Mr. Levy for his two prior SBLs was used for Uzeem. As before he provided the GIC, his NOAs, his liabilities including the outstanding balance on his credit card and his assets to Mr. Levy. He did not see the Business Plan in advance. When he got the package from Mr. Levy it was sealed and he did not look inside. Mr. Levy denied all of this evidence. Mr. Tehrani testified he never received a copy of the package and never asked to review the documents contained in the package because he trusted Mr. Levy.

1439 Mr. Tehrani testified that after he paid off the Meez Corp. SBL with the BNS, a new manager from BNS named Rafik came to see him to see if he still wanted to do business with the bank. For Uzeem, Mr. Levy told him that since he'd paid off his loan it was better that he go back to BNS and as a result Mr. Tehrani went back to BNS for the Uzeem SBL. The fact that Mr. Tehrani had clearly a completely legitimate SBL for Meez Corp., which he paid off, is strongly suggestive that he was not inclined to misuse this program.

1440 Mr. Tehrani met with Rafik and was invited into his office. He gave Rafik the package. In addition to the lease and Business Plan, the loan file contains NOAs for Mr. Tehrani's 2007 tax year with total income of \$59,211 and his 2008 tax year with total income of \$62,731. These were forged as according to the CRA, Mr. Tehrani's NOA for 2007 in fact stated his total income at \$10,308 and for 2008 at \$19,125. Both Mr. Tehrani and Mr. Levy denied having any knowledge of these forged documents.

1441 The loan file also contains a TD GIC statement dated December 29, 2009 in the amount of \$140,000 issued December 29, 2009 to mature December 29, 2010. The GIC statement is confusing because only \$100,000 was actually deposited into the Uzeem account. Mr. Tehrani could not recall what happened to the rest of the money. More than \$90,000 of the \$100,000 was used to pay the balance of the Mosaic invoices to As Is, and two months of rent.

1442 The Summary of Personal Finances (Summary) form in the loan file is in Mr. Tehrani's handwriting and he admitted that he signed it on December 29, 2009. He listed his current employer as Meez Corp. for his previous employer he referred to Bizarre and Home Decor. Mr. Tehrani did not refer to Kube, Meez Ltd., Comod Corp. or As Is.

1443 For his liabilities Mr. Tehrani listed his letter of credit and credit cards but made no reference to the Kube loan or the guarantee he signed for that SBL. Ms. Barton asked Mr. Tehrani why he did not list this loan and he responded because he paid his Meez Corp. loan by the time that he applied for the Uzeem loan the Kube loan was "not in my mind". He didn't see any reason to refer to it. In answer to a question that I asked Mr. Tehrani admitted that he realized if he told the bank about the outstanding Kube loan that he would not get the loan for Uzeem. This is consistent with his evidence as to why he did not tell the CIBC when he applied

for the Kube loan about the outstanding SBL for Meez Corp. I note he also did not refer to the outstanding SBL for Comod. I appreciate however, that Mr. Tehrani was only a guarantor of those loans, and as I have said there does not appear to be an obligation to disclose contingent liabilities. He also did not list any of the large, high-interest loans he obtained with the assistance of Mr. Levy. I agree with the Crown that it appears that Mr. Tehrani did not want the bank looking into his existing SBLs for Kube and Comod and that is consistent with his evidence as to why he did not go to the BNS for the Kube loan.

1444 As for his annual personal income, Mr. Tehrani stated his gross personal employment income to be \$62,731. That matches exactly line 150 of the forged 2008 NOA supposedly provided in the sealed envelope to BNS. The Crown argues that Mr. Tehrani had to have seen the fraudulent NOA if he was filling out the same information on his loan application. In cross-examination by the Crown, Mr. Tehrani explained he was "bombarded with numbers" on the application, suggesting that the numbers were being dictated to him. He testified that he never saw the forged NOA. I accept that it is possible that the numbers from the NOA were being dictated to Mr. Tehrani and that he did not see the fraudulent NOA. However, even if he did not know his exact income, he must have known that his actual income was a fraction of what he was writing down. He had to know that he was exaggerating his income.

1445 The Loan Registration Form signed by Mr. Tehrani on February 3, 2010 confirmed that the outstanding SBLs for Uzeem and other borrowers related to Uzeem did not exceed \$300,000 which was false as Mr. Tehrani did not disclose the Kube and Comod loans. In addition, Mr. Tehrani confirmed that Uzeem was at arm's length from the landlord. Mr. Tehrani testified that Rafik did not tell him what "arm's length" meant and he did not ask if he had another SBL. There is no issue, however, as that representation was true.

(b) The Purported Renovations to 1-685 Queen Street and Purchase of Equipment, Furniture and Fixtures

1446 Mr. Levy testified that Mr. Tehrani retained him to do the renovations at 685 Queen because he was happy with the work he had done for Kube. Mr. Levy's company Mosaic was the contractor/supplier of Uzeem. Mr. Levy testified that they went to the location and talked about the job. According to Mr. Levy, he gave Mr. Tehrani a quote that he liked and signed. Mr. Tehrani confirmed this. According to Mr. Tehrani, he got a discount from Mr. Levy for the work for Uzeem of \$20,000. Mr. Levy gave no evidence about this.

1447 Once Mr. Tehrani was approved for his SBL, Mr. Levy became involved in the renovations and the construction started after the New Year. Mr. Tehrani testified that he had in mind to make it "look good"; his concern was cosmetic things like colour. Mr. Tehrani said he ultimately left the renovations up to Mr. Levy because Mr. Levy was the contractor. In other words, as with Kube, Mr. Tehrani was remarkably detached from the spending of his loan money. With respect to the HVAC, Mr. Tehrani testified that he was sure that they talked about it but he didn't understand much about it save that Mr. Levy said they needed a new system. Mr. Tehrani did not see a new electrical panel. Mr. Tehrani produced a sketch; a schematic for the wiring that was needed that he said shows where to put in the cash register, the speakers, the TV, etc. He believed that his employee Mario helped him with this. Mr. Levy admitted he gave Mr. Tehrani

his opinion but denied that Mr. Tehrani usually accepted it or that that he was able to do what he wanted. He said that they went back and forth and this is how you make a deal. I do not accept that evidence. On this point I prefer the evidence of Mr. Tehrani. I find that he accepted Mr. Levy's advice, save for the schematic he provided to him.

1448 The loan file contains two invoices from Mosaic; the first dated February 8, 2010 in the amount of \$132,956.25 and the second dated March 2, 2010 in the amount of \$115,514.25 for a total of \$248,470.50. These invoices were paid in full using funds from the SBL of \$217,825.20 and the balance from Uzeem.

1449 The first Mosaic invoice was for the usual Phase I Total Gut Job including removing the existing storefront and entrance, and Phase II for the usual Total Rebuild which included installing three new rear metal doors, designing and building a rear mezzanine and loading dock, HVAC and signage.

1450 The second Mosaic invoice was for furniture, fixtures, office equipment, tools and machinery. Mr. Levy testified that all the work was done and that all of the items on the second invoice were supplied and installed. With respect to this Mosaic invoice, Mr. Tehrani said that as he was going to be in China for business he asked his employee Mario to look after the delivery of these items to Uzeem and make sure that he received all the items on the Mosaic invoice. Mario reported to him what was received. Mr. Tehrani said he checked the list himself. It is significant, however, that Mr. Tehrani was not buying his own furniture for his store to use in place of what Mosaic was supplying.

1451 Mr. Wong described 685 Queen using a photograph. There are two stores; a west store and the east store leased by Uzeem. There is a separate entrance leading to a second floor unit.

1452 Mr. Wong testified that there was a fire in the east store in April 2009 that caused smoke and water damage but did not cause any structural damage. When Mr. Wong received \$100,000 from his insurance company, he testified that he had alterations and repairs done to the east store using this money and that all of this work was done before Mr. Tehrani took possession of the store.

1453 Mr. Wong produced documents with respect to his evidence about the construction work that he did in the east store. He identified a document that he said he typed dated September 3, 2009 headed "685 Queen Street West, Toronto, Ontario - East Store Construction and Others". Mr. Wong called this document an invoice but I would characterize it as a contract for the work that was involved given the second page of this document was signed by both Julina Wong and someone on behalf of Wing Fat Construction Company, the contractor Mr. Wong testified that he hired for this work. The list of work to be done to the east store has a total price of \$60,000 handwritten in and what appears to be a schedule of payments.

1454 This list of work included removing the existing wiring and electrical panel and replacing with new, new plumbing rough-in, a new three-piece washroom at the back, new porcelain tile on the floor, new drywall, removal of the existing door and installing a new glass door and a new

HVAC. Mr. Wong admitted that he never got an invoice from the contractor but he was 100% sure that this work was all done by November 21, 2009.

1455 Mr. Wong testified about a hand drawing that he made showing the east door and west door of 685 Queen. It set out dimensions for a new entranceway for each store and they appear to be identical. An entrance between the stores in the middle led to the second floor. Mr. Wong testified that he prepared this drawing for a window company that he hired to construct a new storefront with two new doors for both stores. It clearly shows an indented entrance for each store that is identical to what we later see for Uzeem's store in the photographs. He produced a copy of an invoice dated November 7, 2009 from Winners Mirror & Glass Co. that totals \$18,375 for what he testified was for the installation of the two front doors for both the east and west store which he replaced in November 2009 and in fact this invoice shows the same sketch. He testified that he paid this invoice and that this work was done before Mr. Tehrani took possession of the store.

1456 Mr. Wong also produced an order from Air System Heating & Cooling Ltd. dated August 27, 2009, which was for the installation of two new HVAC units. Mr. Wong testified that he only had one unit installed, that being for the east store and that this work was done and that he paid for it. Mr. Wong testified that the ceilings on the main floor are 12 feet high and so there was a gas unit which is like a furnace below the ceiling.

1457 Mr. Wong testified that when Mr. Tehrani took over, all of this work had been completed in the east store prior to signing the lease with Mr. Tehrani. According to Mr. Wong, he gave Mr. Tehrani a "turnkey" operation when Uzeem took over the property. Mr. Wong did not have any pictures of the work that he did but he did have an inspection report from hydro.

1458 Mr. Wong was shown the first Mosaic invoice and he testified that none of the work was done by the tenant and he repeated that he did the work.

1459 Mr. Wong testified that he had to give written approval for any alterations to the store and Mr. Tehrani never came afterwards with any alteration proposals or a plan. Mr. Tehrani testified that Mr. Wong gave him one month rent free to do renovations. Mr. Tehrani testified that he moved in before the end of December and so that is possible-the lease was to commence January 1, 2010 and did not provide for a rent free period. According to Mr. Wong, for about two months after Mr. Tehrani took over the store in January 2010, the windows were papered up. There was no sign outside. Mr. Wong testified that he never saw anybody going in and out or any contracting companies making major alterations to the store. Nobody appeared to be at the property. He never heard of Mr. Levy. Mr. Wong said that Mr. Tehrani put wall shelving up and other than that, he was not sure of what he did.

1460 Mr. Wong was shown the second Mosaic invoice. He conceded that Uzeem had added some shelving on the walls, but was unaware of any other furniture and fixtures referenced on Mosaic invoice #031159. He testified that he did not see the furniture and fixtures which were all removable. Mr. Wong said that it not his job to see what they have inside but that he never saw office equipment, tools or machinery.

1461 Both Mr. Tehrani and Mr. Levy disputed Mr. Wong's evidence and his assertion that he did a new storefront entrance. They both testified that it was Mr. Levy that replaced the storefront. Mr. Tehrani said that Mr. Wong "is a crook" and that was all he knew. Mr. Tehrani said Mr. Wong just did cosmetic things and had only primed the walls. Mr. Tehrani testified that the door to his unit did not look like that when he moved in. Mr. Tehrani did not recognize the sketch prepared by Mr. Wong for the front door entrances and he said that Mr. Wong did the other store and not his. He said maybe Mr. Wong wanted to get money from the insurance. As to why he said Mr. Wong was a crook Mr. Tehrani suggested he was selling drugs upstairs -- there is absolutely no evidence of this. Mr. Tehrani said he had store number one but he admitted that his was on the east side.

1462 Mr. Levy denied the unit had already been demolished. He said the store was empty; there were no partitions and he gutted everything including the plumbing and electrical. He repaired the concrete base at the base of the storefront using Morningstar. Mr. Levy said that he could tell that the existing electrical panel was damaged from the fire. He tried to repair it but couldn't so he replaced it. Mr. Levy also denied that Mr. Wong replaced the HVAC and testified that he must have replaced the HVAC and done the work for the other store and that he was confused.

1463 Mr. Levy was also more direct to suggest that Mr. Wong was deliberately being untruthful. He testified that we "know for sure Wong is wrong" because he made his own quote and there is no invoice; anybody can make a quote and a diagram and that Mr. Wong cannot prove that he did these renovations. Mr. Levy testified that he never saw Mr. Wong at the location although he then said Mr. Wong came once or twice and he did not know who he was until Mr. Tehrani told him he was the landlord. Later Mr. Levy speculated that Mr. Tehrani must have had trouble with Mr. Wong suggesting Mr. Wong would have a motive to lie but there was no evidence of this. Mr. Levy's evidence was his typical reaction as he took issue with all of the third party witnesses.

1464 I find that Mr. Wong was being truthful. He had absolutely no motive to lie, his sketch confirmed that he intended to do both entrances the same way and the invoice and photos he produced support this. He replaced both store entrances which necessarily means that Mr. Levy did not and Mr. Tehrani knew it. I also find Mr. Wong replaced the HVAC as he said and I reject the suggestion he was confused. He was very clear on that in my view.

1465 The evidence of Mr. Lacy and Mr. Tehrani does not raise a reasonable doubt in my mind. As a result I find that the first Mosaic invoice was grossly inflated by referring to installation of a new storefront and HVAC. I find that Mr. Levy was obviously aware of this and given Mr. Tehrani's evidence about the work Mr. Wong said he did, which I have rejected, that he must have known as well.

(c) Did Uzeem Operate as a Business?

1466 According to Mr. Wong, the store opened at least two months after the lease was signed on December 8, 2009. Based on the Mosaic invoices, Uzeem would not have opened until the end of March 2010.

1467 Based on the Coort Analysis, in the period from March 24 to 30, 2010, Uzeem received \$7,094.92 in Visa, MasterCard and debit card deposits from sales. Mr. Tehrani also produced cheque stubs and sales records.

1468 The GST/HST returns with the CRA report show \$0 in sales and other revenue until the period from February 2 to April 30, 2010 when sales were reported at \$13,081 and for the period from May 1 to July 31, 2010 at \$28,564. No corporate income tax returns were filed.

1469 Mr. Tehrani testified that Uzeem was starting to get well-known and then one day Rafik from the BNS called him and said that the bank didn't need his business anymore. He was given a month to change banks for his accounts at BNS for Uzeem and Meez Corp. Rafik did not know what happened. Mr. Tehrani did not know the reason the bank had for closing him down. He was shocked when Rafik called and said he still remembered that day. He seemed quite sincere when he gave this evidence. He didn't know what was wrong. Mr. Tehrani received formal notice of this by letter dated August 25, 2010 advising that his Meez Corp. and Uzeem accounts were terminated and that he would have to transfer his accounts to another financial institution. The bank did not report him to the police or threaten any lawsuits but Mr. Tehrani testified that he was too shocked to actually do anything and so he did not consider simply changing banks to keep his businesses going. Mr. Tehrani didn't want to close the business so he used the merchant machine for Visa from his As Is store to keep things going. This way the money just went into a different account. Uzeem was still operating in December 2010 without a bank account and As Is was paying its bills.

1470 Mr. Coristine pointed out that Uzeem had only \$38,000 in sales and that Mr. Tehrani did not try to go to another bank when the bank closed his account. Mr. Tehrani said that he was in shock and trying to figure out what was happening. To this, Mr. Coristine said that the shock wore off as he started getting rid of Uzeem's money by giving a \$9,000 loan to As Is on September 13, 2010 and taking \$70,000 out of the company.

1471 Mr. Tehrani said he found someone to replace him on the lease named "Victor", an employee of Uzeem, from Zum Living. He testified that he removed all the equipment and took it to storage and just left inventory on consignment which he said that he sold cheap. December 30, 2010 was his last day. When Zum was moving in he grabbed as much as he could. He said he left nothing behind for Zum. Before leaving the premises, Mr. Tehrani says he "took whatever assets he could to storage." The storage unit was located at 36 Vine Avenue in Toronto.

1472 Mr. Tehrani produced an invoice dated January 10, 2011, that evidences a further \$90,934.03 in sales from As Is less than \$10,000, beginning in August 2011.

1473 On December 8, 2009 a cheque for \$6,615 was made payable to Julina Wong for the last month's rent and on February 1, 2010 a payment for \$5,775 was made to Julina Wong for the first month's rent. Both of these cheques came from the business account of Meez Corp. When asked why Meez Corp. was paying the rent Mr. Tehrani said that Uzeem did not exist yet and therefore did not have a bank account. Mr. Wong admitted the rent was paid.

1474 According to Mr. Wong, Uzeem was there for about one year and Mr. Tehrani approached him and said someone wanted to take over the business and had an interest in buying his store. Zum carried on as a furniture store after Mr. Tehrani left the store. Mr. Wong's impression was that there was no change to the business.

1475 Mr. Wong did not go into the property after Mr. Tehrani left and before the new tenant arrived but he did see it from the outside.

(d) The Appraisal of Uzeem's Assets

1476 According to Industry Canada documentation, Uzeem's SBL went into default as of September 25, 2010.

1477 Adam Burnett was instructed by the Lipman firm to appraise the assets of Uzeem. His letter of instructions included a copy of a letter sent to them by Mr. Tehrani. In that letter Mr. Tehrani said the premises had been abandoned and the assets were in storage. Mr. Burnett was asked to attend the business address and see who was there and what had happened to the assets. Mr. Burnett did not receive any invoices and had nothing to compare except the loan amount that he had been given.

1478 Mr. Burnett went to 685 Queen on February 7, 2011. He found Uzeem was not located there but a company operating as Zum was. Mr. Burnett spoke to the landlord and was told that the premises had been abandoned on December 10, 2010, that the business had operated for less than a year and that they took everything. This is hearsay evidence but is consistent with the evidence of Mr. Wong.

1479 Mr. Burnett contacted Mr. Tehrani and they met at a self-storage unit on Vine Avenue at Keele and Dundas, Unit # 1109, on February 10, 2011. Mr. Burnett testified that the storage unit was five feet by ten feet and it was "packed in" but he was able to see the majority of the assets and ascertain what was there. Mr. Burnett was confident that he was able to see everything in the storage unit in order to appraise it. If he had not been able to, he testified that he would have pulled the item out to see it.

1480 According to Mr. Burnett the quality of the assets was "generic" office equipment. There was office furniture and a bit of inventory left from the store. Most of it was damaged by scratches or scuffs. Mr. Burnett testified that he asked Mr. Tehrani if there were any assets anywhere else and he said "no". If there had been any he would have done an appraisal of those too.

1481 In cross-examination Mr. Burnett admitted that at first glance he knew that the assets would be a write-off for the bank. He insisted, however, that he was thorough regardless and that if he couldn't see something he would have pulled it out. He did not recall if the light was on a timer. He went in, did his job and left. When it was suggested to him that there were more tools he said that he probably would have seen them but he did not deny that there might have been more tools there.

1482 Mr. Tehrani recalled meeting Mr. Burnett at the storage unit. He said that it was really cold so Mr. Burnett hurried and did not move anything around. Mr. Tehrani thought that what Mr. Burnett wrote down was what he saw from outside the storage unit. The light was going on and off because it was a motion detector light.

1483 Mr. Burnett prepared an appraisal report dated February 10, 2011. The last page of his report is a list of assets he found in the storage unit. He gave the assets a total liquidation value of between \$1,205 and \$1,455. After he sent the report to the law firm, he was asked to close the file.

1484 When Mr. Tehrani was cross-examined about vacating 685 Queen and the appraisal, he got very animated and testified that the appraiser didn't do his job right because it was cold and that he doesn't want to pay for other people's mistakes and for other people being lazy. He said for sure he took the office equipment and said that the Mac computer was also in storage.

1485 The Crown alleges that Mr. Tehrani deliberately deceived the appraiser but I find that has not been proven beyond a reasonable doubt.

(e) The Circulation of the SBL Proceeds

1486 Mr. Coort analyzed Uzeem's account at the BNS from the time it opened on January 26, to July 31, 2010. Mr. Coort did not know if the business continued after this date.

1487 In the period from January 26 to March 31, 2010, Mr. Tehrani deposited just over \$200,000 into the Uzeem account. \$100,000 of this amount was from a GIC he had purchased on January 29, 2010 which he redeemed on February 3, 2010. He withdrew \$100,000 in the same period so his net start-up capital was \$100,000. In addition, he deposited \$7,094.92 in sales from Visa, MasterCard, and debit card deposits.

1488 In the same period Mr. Tehrani paid a total of \$30,645.30 to Mosaic, a cheque to Julina Wong for rent; presumably for March, and \$45,000 to As Is.

1489 In the period from April 1 to July 31, 2010, Uzeem received \$31,348.81 in debit and credit card transactions for sales. It also received a draft in the amount of \$39,965.69 from Bonded Contracting and \$39,681.34 from Trust Inc. In that period, Uzeem paid out loan payments of \$2,593.16 rent to Mrs. Wong, and \$73,000 to Mr. Tehrani. .

1490 When Mr. Tehrani withdrew \$70,000 from Uzeem on June 25, 2010, he didn't have a lot of money left. Based on the records, Mr. Levy gave him more money. Mr. Coristine pointed out that payments from Mr. Levy were significantly higher than any other sales. After he took this money out, he couldn't pay off the loan. In response to this Mr. Tehrani said "I'm damned if I do and damned if I don't - you come up with all these excuses and just want to accuse a person without knowing".

1491 In the period February 25 to March 12, 2010, Mosaic received \$45,000 from Simon

Bensimon, which Mr. Levy said was repayment of a loan, \$248,470.50 in payment of its invoices to Uzeem, and \$10,831.74 from Whitehorse.

1492 In the same period, Mosaic paid \$50,000 to Just Little Holdings Inc., a company related to Warren Goldberg. Mr. Levy testified that he had borrowed money from Mr. Goldberg which he was now paying back. There were a number of other payments to companies owned by Mr. Levy; namely, Trust Inc., MDC Modern Design, GM Realty, and a payment of \$203,353.75 by draft dated March 8, 2010 to Shapiro & Cho in trust. On the back of this draft is the notation "GMS Realty Inc." and on March 9, 2010 GMS Realty purchased 846 Sheppard from 846 Realty Corp. Mr. Levy admitted that this payment was for the down payment, land transfer tax and lawyers' fees for the purchase of this property. He had to put his own money in as the bank only financed 65% of the value of the property. There was also a payment of a little over \$6,000 payable to Simple Fusion Inc. which Mr. Levy said was another of his companies, that it was in the retail leather and clothing business and that it had obtained two SBLs from the CIBC.

1493 Of the money Trust Inc. received, it paid \$16,945.88 on March 4, 2010 to Mr. Tehrani's company As Is, from its CIBC account and \$29,945.80 by draft dated March 5, 2010 from its BOM account. Trust Inc. also paid Meez Ltd. a total of \$13,427.88 in two payments on March 1 and March 4, 2010. Mr. Levy testified that these payments were for furniture and home décor. There is no note on the draft but the other payments were by cheques and they do refer to invoice numbers.

1494 Mosaic also paid Mr. A. Levy in two payments totaling \$6,500, "on account". Mr. Levy testified that these payments were both loans to his brother and there is no evidence to the contrary.

1495 No payments were made to Mr. Kazman or Ms. Cohen personally or any companies owned by them.

1496 When Mr. Coristine put to Mr. Levy that no payments were for any trades or buying supplies Mr. Levy responded that if Mr. Coort had seen all the accounts of Mosaic he would have seen trades paid and supplies bought.

1497 Mr. Tehrani said he had no knowledge of payments from Uzeem to Mosaic and no knowledge of payments Mosaic made after Uzeem paid Mosaic. He did not direct Mr. Levy to make payments on his behalf. Mr. Tehrani had previously described As Is as selling liquidation furniture, whereas Uzeem's business plan describes Uzeem as selling "Retail and Wholesale Modern Furniture, Contemporary Furniture, Eclectic Design and Antique Design Furniture." It is unclear why Uzeem would be purchasing from As Is.

(f) Summary of Findings of Fact

1498 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Uzeem SBL.

1499 I have found that the package Mr. Tehrani gave the BNS included fraudulent NOAs for his 2007 and 2008 tax years inflating his income.

1500 I have found that the Summary form that Mr. Tehrani filled in and signed on December 29, 2009 listed his letter of credit and credit cards but made no reference to the Kube or Comod loans or the guarantee he signed for those SBLs. Mr. Tehrani admitted that he realized if he told the bank about the outstanding Kube loan that he would not get the loan for Uzeem. I appreciate that Mr. Tehrani was only a guarantor of those loans, and as I have said, there does not appear to be an obligation to disclose contingent liabilities but he also did not list any of the loans he obtained through Mr. Levy.

1501 As for his annual personal income, I have found that Mr. Tehrani must have known that his actual income was a fraction of what he was writing down on the Summary and that he was exaggerating his income.

1502 Finally by confirming compliance with the Loan Limit Clause, Mr. Tehrani made a false representation to the bank as the outstanding SBLs for Uzeem and other borrowers related to Uzeem exceeded \$300,000 since Mr. Tehrani did not disclose the Kube and Comod loans.

1503 Much more significant than the misrepresentation of income and these other matters that Mr. Tehrani failed to disclose, I have found that Mr. Levy and Mr. Tehrani presented a grossly inflated Mosaic invoice to the BNS that represented that a new store entrance had been installed and a new HVAC system had been installed when in fact that work had been done by Mr. Wong at his expense before Mr. Tehrani took possession of the premises. The fraudulent invoice resulted in the BNS advancing the Uzeem SBL in the amount of \$217,591.10.

1504 For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. Levy and Mr. Tehrani are guilty of Count 1 as it relates to Uzeem.

1505 The Crown concedes there is no connection to Mr. Kazman with respect to this SBL including the disbursement of funds either. I believe that that is likely because Mr. Kazman's and Mr. Levy's relationship had broken down by then. For that reason I find Mr. Kazman not guilty of Count 1 as it relates to Uzeem.

Bluerock Construction Inc. (Bluerock) -- CIBC -- Count # 5

(a) The Bluerock SBL

Bluerock (Levy) was approved for two SBLs from the CIBC on March 15, 2010 in the total amount of \$349,999.95; five cents below the allowable maximum at the time.

1506 One SBL was for \$195,000 for leasehold improvements and the other for \$155,000 for equipment. Mr. Levy gave the CIBC a personal guarantee in the amount of \$87,500. From the signature witnessing Mr. Levy's, it appears that he dealt with Andrew Sharpe from CIBC. Mr.

Sharpe was not called as a witness but as I will come to, photographs he took were obtained from him and entered into evidence.

1507 Mr. Levy testified that he negotiated two leases with Mr. Kazman; one for 3042 Keele Street West (3042 Keele) and the other for 846 Sheppard, and that Mr. Kazman prepared both leases. This was denied by Mr. Kazman who took the position that Mr. Levy never legally leased either location, that the leases are frauds, that he did not sign either lease and that Mr. Levy had no right to go onto either property when he obtained the Bluerock SBL. Mr. Kazman testified that he had nothing to do with Bluerock whatsoever and that Mr. Levy did this SBL behind his back. He testified that he only realized what Mr. Levy had done when he saw a letter to Mr. Levy from Gowlings which referred to the \$350,000 SBL.

1508 3042 Keele was purchased by 3042 Realty Corp., a company controlled by Mr. Kazman, on October 22, 2009, and it owned this property at all material times. As already stated in connection with Exclusive, the Sheppard location was owned by 846 Realty Corp., a company that Mr. Kazman was a part owner of, from May 4, 2009 until the property was transferred to Mr. Levy's company, GMS Realty Inc. on March 9, 2010, just a few days before the Bluerock SBL was approved.

1509 The loan file contains an Agreement to Lease dated January 15, 2010 between Mr. Levy for a company to be formed as Bluerock and 3042 Holdings Inc. [as opposed to 3042 Realty Inc.], for 3042 Keele for approximately 3,000 SF on the main and lower level, to commence on February 1, 2010 for ten years, at \$3,500 per month plus all utilities and expenses. This Agreement to Lease is signed by Mr. Levy on January 18, 2010 and there is a signature that could be Mr. Kazman's dated January 18, 2010. It does not look like his usual signature although the initials for the landlord on each page are "MK". The first and last months' rent plus GST in the amount of \$8,400 was due on signing. Mr. Levy testified that this was to be the warehouse location for Bluerock. There was no evidence as to why this lease was signed so far in advance of Bluerock obtaining the SBL.

1510 Mr. Levy testified that he did not know who the owner of 3042 Keele was when he rented this location but this evidence is at odds with his testimony that he believes the lease was signed by Mr. Kazman or someone on his behalf. He also admitted that he knew Mr. Kazman had two other partners in 3042 Holdings. When it was pointed out to Mr. Levy that the property was in fact owned by 3042 Realty Inc. and not 3042 Holdings Inc., Mr. Levy testified that this was the same pattern as other leases like TCM Management which had a lease with ELFI. Cpl. Thompson did some corporate searches and was not able to find a company incorporated as 3042 Holdings.

1511 The loan file also contains a ten-year Commercial Lease between 846 Realty Corp. and Bluerock for 846 Sheppard dated January 1, 2010 for approximately 2,000 SF on the lower and upper level, plus two parking spaces, to commence on February 1, 2010 at \$2,500 per month, with the tenant responsible for paying all utilities and expenses. Mr. Levy testified that this was the showroom location for Bluerock. Bluerock had not even been incorporated by this time. Furthermore, one of the many problems with his evidence on this property is that it was still under lease to Exclusive and based on Ms. Chapkina's sales records, Exclusive operated until

sometime in March 2010 and Mr. Levy admitted that he subcontracted to A&P to do renovations to the main floor of this property.

1512 The Crown concedes, and Mr. Levy agreed, that the signature of the landlord on this lease does not look like Mr. Kazman's signature. I would say it is nothing like it although there are initials for the landlord on each page that look like "MK". Mr. Levy testified that Mr. Kazman gave him the lease with a signature for 846 Realty already on it and he did not notice the different signature for Mr. Kazman at the time. He does not know who Mr. Kazman "made" sign the lease. There is no date or witness for these signatures but at the time the lease was made, 846 Realty Corp. did own the property.

1513 Mr. Levy admitted that Bluerock did not pay the first and last months' rent and testified that this was because Mr. Kazman owed him a lot of money. Mr. Kazman denied this and pointed out that rent would be owed to the company and he had partners. In response to that Mr. Levy agreed that Mr. Kazman's partners would not have been happy with Mr. Kazman giving him free rent but Mr. Kazman told him not to worry about the rent, that he would deal with his partners and that it was fine so long as Ms. Cohen did not know about it. Mr. Levy added that Mr. Kazman was on title and had the keys to the property. Mr. Levy admitted that Bluerock did not pay the utilities it was supposed to but he testified that was because Mr. Kazman never gave him the bills. This was also denied by Mr. Kazman.

1514 For reasons I will come to I find that the leases Mr. Levy presented to the bank are frauds and were not signed by Mr. Kazman or anyone on his behalf at his direction. These leases were prepared by Mr. Levy for the CIBC to justify the SBL. As I will explain, I am satisfied beyond a reasonable doubt that this was an elaborate fraud perpetrated on the CIBC by Mr. Levy with the assistance of Mr. Benlezzrah.

1515 Bluerock was incorporated on March 24, 2010 by Mr. Levy with a stated address of 3042 Keele. On the same day, Mr. Levy registered a business name for the company; Bluerock Construction Tiles and Stucco Import. Mr. Levy said he waited to incorporate the company until after the SBL was approved because if he had not been approved there would have been no point in incorporating the company. The Articles of Incorporation in the loan file also show 3042 Keele as the address of the corporation. Mr. Levy represented that he was the 100% shareholder of the corporation to the CRA. He opened a business account for Bluerock at the CIBC and was the sole signatory at the bank.

1516 Mr. Levy admitted that he prepared the Business Plan for Bluerock dated November 1, 2009 found in the loan file. I note that this plan has a table of contents but no page numbers. This predated the incorporation of the company by almost five months. Mr. Levy represented that the corporation would be in the business of general contracting, tiles import and custom stucco. One location in the area of Sheppard and Allen Road would be used primarily for a showroom facility and the second, in the area of Keele Street, would be used for warehousing and a depot location. Mr. Levy represented that he was prepared to invest \$200,000 of his own equity.

1517 On the Loan Registration forms that Mr. Levy signed on April 16, 2010 for each SBL, he

represented that the borrower and the landlord were not at arm's length. Mr. Levy testified that he told Mr. Sharpe that he had an ownership interest in 846 Sheppard and Mr. Sharpe told him that if he was not on title it was OK. Presumably on this basis Mr. Levy testified that they were not related but I note that Mr. Sharpe ticked off the box that they were. Mr. Levy admitted he initialed this but he gave no explanation for this.

1518 Mosaic paid \$200,000 to Bluerock in two drafts dated March 29, 2010 and May 26, 2010 which Mr. Levy said was his contribution to the business. Mr. Levy denies this money came from loan proceeds and said that it came from all different accounts he had and that he did not need to borrow money. However the Coort Analysis shows that this money came to Mosaic from Castlerock and Trust Inc., Mr. Levy's companies and A&P and 6747841 Canada Inc., a company controlled by Mr. Kazman. Mr. Levy testified that the funds from A&P were final payments for work Mosaic did for Exclusive. The funds from 6747841 were from a draft from an unknown TD account with a notation "Blue Deer Holdings Inc. Loan." There is also a deposit of over \$119,000 from an unknown source on March 17, 2010.

(b) The Purported Renovations to 3042 Keele and 846 Sheppard and Purchase of Equipment, Furniture and Fixtures

1519 Mr. Levy testified that Mr. Sharpe told him that the bank would not permit him to do his own contracting and that the contractor could not be related to him. Mr. Levy said that he did not want to use Mr. Kazman because he usually did not complete his jobs and he could not rely on him.

1520 Instead, Mr. Levy testified that he hired Armando Benlezrah from Bonded Contracting & Design Inc., a company incorporated on March 25, 2010, which I note is the day after Mr. Levy incorporated Bluerock; quite a coincidence given Mr. Benlezrah said it was his idea to incorporate the company.

1521 Mr. Levy testified that he met Mr. Benlezrah in the community and knew that his brother was in construction. Mr. Benlezrah had been in the jewelry business for 15 years and at some point had asked Mr. Levy about a SBL for his business but that never proceeded. He testified that after some robberies he decided to change business and start doing construction. In the synagogue during Kiddush when they all get together to chat, he talked to Mr. Levy about opening a company. Mr. Levy told him that he could give him a lot of work. Mr. Levy testified that Mr. Benlezrah wanted to get involved in construction. In answer to questions from Mr. Chapnick, Mr. Levy denied that Mr. Benlezrah was an amateur and claimed that he had experience working with his brother in construction and that he wanted to do the job.

1522 This evidence was not credible. If Mr. Levy was serious about using a legitimate contractor to do renovation work for Bluerock and supply equipment to him, he would not have hired a contractor who had just been incorporated and had spent his working life as a jeweler. My conclusion is reinforced by the fact that, as I will come to, Mr. Benlezrah's evidence was totally incredible.

1523 Four invoices from Bonded Contracting & Design Inc. (Bonded) to Bluerock were found in

the CIBC loan file that total \$417,045.10. These invoices were paid in full by Bluerock. The invoices show both locations but there is no way of determining from the invoices what work was purportedly done where or what fixtures, furniture, equipment purportedly went to each location.

1524 Many questions that Mr. Benlezrah was asked, he deferred to his accountant. He testified that he had a full-time accountant from Global Business Accounting named Albert Arush, although when he was re-examined by Mr. Kazman, he could not give the name of his accountant. Mr. Arush was also Mr. Levy's accountant and I will come back to the significance of this. According to Mr. Benlezrah, Mr. Arush prepared all four invoices. Mr. Levy denied preparing them. Although the invoices are set up a little differently than some of the invoices from Mr. Levy's companies, their content is very similar.

1525 The first invoice, dated May 25, 2010, in the amount of \$154,297.50 [before a \$30,000 deposit] was for both locations and was for the usual Part 1 Total Gut Job including removing and replacing the glass entrance door, storefront and rear entrances and the HVAC and Part II the Total Rebuild including two new storefronts.

1526 The second invoice, dated June 15, 2010, for \$108,790.7; the third, dated June 29, 2010 for \$97,462.50 and the fourth, dated July 16, 2010 for \$56,494.35 were for furniture, fixtures and equipment. This included office furniture, office equipment and various tools including power washers, a trailer, heavy duty cement mixer, and scaffolding.

1527 Both Mr. Benlezrah and Mr. Levy testified that all the renovations listed on these invoices were done by Bonded at Bluerock's two locations and that all of the furniture, fixtures and equipment were provided to Bluerock.

1528 I have a lot of evidence from witnesses called by Mr. Kazman whose position is that the renovations done to these two properties were done by him and not Mr. Levy. Before I come to that evidence, on this point, I found the most compelling evidence to come from Ms. Chapkina. She testified that when she moved into 846 Sheppard, Mr. Goldberg was a tenant on the second floor. While she was there, Mr. Levy did not do any renovations at this location and in fact she didn't see any renovations going on there.

1529 Mr. Levy admitted that Mr. Goldberg was a tenant at 344 Wilson and the second floor of 846 Sheppard but he testified that Mr. Goldberg was no longer there by the time he got this loan and the second floor was not leased to anyone. When I asked about renovations done for Mr. Goldberg, Mr. Levy said initially that Mr. Goldberg did his own renovations but he said they were not the same as the renovations he did for Bluerock. He denied the suggestion from Mr. Kazman that Mr. Goldberg used proceeds from a SBL for extensive renovations and that Bonded did not do them again a few months later. Mr. Levy disagreed with this.

1530 Mr. Sharpe provided photographs that I find he took on May 11, 2010,¹² when Mr. Levy brought him to the Keele Street property for a site visit. They include pictures of an office with a distinctive round window which Mr. Levy testified Bluerock constructed. This evidence was contradicted by Ms. Chapkina who testified that this round window was part of Mr. Goldberg's office when he was a tenant in the building. This is corroborated by what clearly appear to be

legal texts on the shelves in this office. Mr. Levy admitted that the books on the shelves that can be seen in the photo include O'Brien's Court Forms and a Construction Lien Manual and that they did not belong to him and he did not own any law books but he said that he did have accounting books and journals and insisted that this was his office. According to Mr. Levy, these books belonged to an accounting friend; Mr. Goldberg, although incredibly he still maintained that the office in the picture was never Mr. Goldberg's office.

1531 On this point I prefer the evidence of Ms. Chapkina. Although I appreciate she might have a motive to hurt Mr. Levy's interests, given I have found Mr. Benlezrah was not truthful and given the detailed evidence called by Mr. Kazman, her evidence is amply supported.

1532 Mr. Levy says the bank did three site visits and he denied sneaking people into the building and denied Mr. Kazman's suggestion that he did not do any work. He said the bank would not have proceeded to fund the SBL without coming twice to inspect everything. Mr. Levy testified that the people Mr. Kazman called fabricated their evidence and denied that the Bonded invoice included work that they did.

(c) Evidence of Armando Benlezrah

1533 I have set out my reasons in Appendix "I" for concluding that Mr. Benlezrah was not an honest witness. I have reviewed his evidence carefully and my conclusion remains the same as it was while he was testifying - I find that I cannot rely on his evidence to find that Bonded did any work at either of Bluerock's purported locations. As I will explain, I find that Mr. Benlezrah was like other people that Mr. Levy and Mr. Kazman arranged to incorporate construction companies that they could manipulate, although in his case I do not find Mr. Kazman was involved.

1534 Mr. Benlezrah denied opening Bonded at Mr. Levy's request. He denied that Mr. Levy controlled the company from the beginning including the bank account. Mr. Benlezrah testified that he operated Bonded for about a year and this is consistent with the corporate records which show that Mr. Levy took over as the director on February 10, 2011. Mr. Benlezrah said that he gave the company to Mr. Levy although Mr. Levy promised to pay him for the name at some point which he said has never happened. Mr. Levy's explanation for taking over the company was that he loved the name.

1535 Mr. Benlezrah said that he opened up the bank account for Bonded with the Bank of Montreal. In his statement he said "he wanted to be the signature", clearly a reference to Mr. Levy. Mr. Benlezrah said he meant by that that Mr. Levy loved the name and that's why he said it that way. He then said he didn't remember why he said this. He also testified that he "guesses" that he went to the bank himself and that he was the only person allowed to sign cheques until Mr. Levy took the company over but he also said that he didn't recall if Mr. Levy went along with him to the bank. Mr. Benlezrah denied the suggestion that Mr. Levy asked him to sign blank cheques, however, he also said that he did leave one or two blank cheques with his accountant, but not often.

1536 Early in his evidence Mr. Benlezrah stated that he did do work on the Keele Street and

Sheppard properties. It was pointed out to him that in his statement to Cpl. Thompson, he told her that he did not know the Keele Street or Sheppard address. To that, Mr. Benlezhrah said that he remembered money coming into his account and he didn't know why he said "no".

1537 Furthermore, when Cpl. Thompson showed Mr. Benlezhrah the four Bonded invoices that were issued to Bluerock, he expressed surprise and told her that he had never seen them before. At trial, however, he resiled from that position and gave vague evidence about the invoices and the leasehold improvements Bonded purportedly did at the Keele Street and Sheppard Avenue properties and the equipment it purportedly supplied. Although Mr. Benlezhrah told Cpl. Thompson that he did not receive any advances from the bank for the four invoices, at trial he testified that he was paid for all of the work.

1538 Mr. Benlezhrah testified that he renovated the second and third floors of the Keele Street property but that he did not do any work in the basement. Later when he was asked about the Sharpe photos, Mr. Benlezhrah testified that he did the first floor and second floor of this property. I will assume he was referring to the main and second floor of the property as there is no third floor. Mr. Benlezhrah testified that they were at the property for two weeks and that he had a lot of people there. They even worked at night. He said a side door to the property was always open and he didn't have a key. Mr. Benlezhrah claimed that they did a "lot of things" but his evidence of what work he claimed he did was very vague. According to Mr. Benlezhrah, he installed drywall, hardwood floors and potlights. He testified that he "bought" the potlights from his brother but that his brother would give him a "lot of things for free". They did all the wiring and a Spanish guy did the plumbing. He bartered for the hardwood from a friend of his. They did a few washrooms but he couldn't remember the number. He didn't recall the windows but then said he bartered with another friend who he gave jewelry to. He also bought a lot of things from Home Depot. According to Mr. Benlezhrah they even did the stucco outside but there is no dispute that that was done by Mr. Kazman using Morningstar. Mr. Benlezhrah didn't recall if he got a permit or if there was a city inspection.

1539 With respect to the Sheppard property, Mr. Benlezhrah testified that they put in a kitchen on the second floor that was beige or brown. There was a window on the second floor; I presume a reference to the round window in Mr. Goldberg's office, and they did stairs. They did the whole second floor in laminate and he thought he did the stucco. He also said, however, that he didn't really recall. When Mr. Levy showed him the Sharpe photos of a washroom at the Sheppard property he didn't remember it but he then said "now I recall" and testified that he did the washroom, toilet and "everything". He said he did all the work there including the flooring, the desk, and the printer. "I did all that". Mr. Benlezhrah's evidence about the Sharpe photos was incredible-he even claimed to recognize the picture with a non-descript garbage can which he said belonged to him.

1540 Mr. Benlezhrah testified that he did other work for his brother and many of his friends in their houses. He didn't invoice for this work but said that he bartered for items like televisions, sofas, and paintings. Mr. Benlezhrah said that he used to do a lot of bartering. He also testified that he did favours sometimes and that he did not believe that he sent out invoices except for the Bonded invoices for Bluerock/Keele Street. Later, when he was being cross-examined by

Ms. Brun, Mr. Benlezrah testified that he did work for other people that he invoiced and he denied that he had said earlier that Bluerock was the only job that he invoiced.

1541 At trial, when shown one of the Bonded invoices, Mr. Benlezrah claimed that he did the work or supplied the equipment. For example, when Mr. Benlezrah was shown the third Bonded invoice dated June 29, 2010 for equipment and tools, he testified that when it says Keele and Sheppard "I remember" and that he hired people whom the company paid, to go and buy these items and that he supplied everything in the invoice. He said that he would do a whole office from "A to Z". He would charge what he paid and he would buy the items at Best Buy, Home Depot, Staples. Sometimes he would get a deal from a friend and he acknowledged that he would have to pay these friends.

1542 This and his other evidence that he did the work and supplied the equipment set out in the invoices was a complete flip flop from what he told Cpl. Thompson. When she showed the invoices to him he told her that he had never seen them before, that he had no recall of the two addresses on the invoices of 3042 Keele and 846 Sheppard and that all he knew was his home address which is shown on the invoices. He gave this answer consistently with respect to all of the invoices and told Cpl. Thompson that they did not mean anything to him and that it was all a surprise to him.

1543 When Mr. Kazman pointed out to Mr. Benlezrah that when Cpl. Thompson showed the invoice to him he said it didn't mean anything to him, Mr. Benlezrah said that his accountant took care of all of his things so he wasn't sure when Cpl. Thompson showed him papers but that he now vaguely recalls the invoice and then said changed his evidence to state that he is sure that remembers it. In answer to questions from Ms. Brun, he said he recalled the four invoices "vaguely" because even though he went through them he only perused them and passed them on to his accountant who he said was the person who prepared the invoices.

1544 When Ms. Barton pointed out to Mr. Benlezrah that he told Cpl. Thompson that he had never seen the first Bonded invoice to Bluerock that she showed him, he told her that Cpl. Thompson was not asking if he did the work there and that maybe he didn't see the invoice before. He testified that he is saying now that he didn't know the specific address and he only knew his residence address which appears on the invoice. Mr. Benlezrah also said he didn't want to tell Cpl. Thompson what the invoice really was because he does barter and work differently.

1545 When Ms. Barton referred Mr. Benlezrah to another one of the Bonded invoices he told Cpl. Thompson that he was not familiar with, at trial he said that he had knowledge of the invoices but he was not sure "what she [Cpl. Thompson] wanted me to say" and he was "not sure how to answer her". He said he'd seen the invoices before but he wasn't sure which one. Mr. Benlezrah said that he didn't go through every invoice and so he wasn't sure and did not know and so he said "no, no, no". When Ms. Brun put to Mr. Benlezrah that he had no idea what he was looking at when Cpl. Thompson showed him the invoices he responded that he had a clue but it was vague. He did know but he didn't want to discuss it with Cpl. Thompson.

1546 None of these attempts by Mr. Benlezrah to explain why he told Cpl. Thompson that he

was not familiar with the Bonded invoices when he was interviewed by her in January 2013 and yet at trial was vaguely familiar with them, made any sense or were credible.

1547 It is significant that the Sharpe photos were taken on May 11, 2010 which is about five weeks before Mr. Levy received the advances from the CIBC. Given I have rejected the evidence of Mr. Benlezhrah, accepted the evidence of Ms. Chapkina and have found that Mr. Benlezhrah did not do any leasehold improvements in either location, I find that the pictures Mr. Sharpe took are of work that had been done by Mr. Kazman.

1548 The only funds deposited to the Bonded account, apart from the \$417,045 paid by Bluerock, came from Castlerock (\$1,095), Mosaic (\$19,486), Trust Inc. (\$30,000) and some miscellaneous returns of merchandise and an unknown deposit totaling less than \$2,000. Mr. Benlezhrah told Cpl. Thompson that he did not know these companies owned by Mr. Levy but at trial he said that his accountant would know the company. At trial Mr. Benlezhrah even claimed that he did not know the company Bluerock and said that he was working for Mr. Levy who was the client. He was shown the invoice which has the name Bluerock by Ms. Brun and he still denied knowing the company name. Mr. Benlezhrah testified that maybe he did something with one of these companies and just didn't remember. He knew that Mr. Levy had a lot of companies but he didn't know all the names. Mr. Benlezhrah was not able to explain what the payment by Mosaic to Bonded was for and did not recall if he'd seen this cheque before. He did not recall the \$30,000 draft dated April 1, 2010 from Trust Inc. although he admitted that his handwriting was on the deposit slip. He said it was for work but added that you would have to ask his accountant because he really didn't know. Mr. Levy explained these payments as work done by Bonded for one of his companies.

1549 Mr. Kazman took Mr. Benlezhrah through all of the bank statements for Bonded starting on March 31, 2010. Like the rest of his evidence, his answers were vague, incredible or simply that only the accountant would know. When asked if there were payments to workers or suppliers, Mr. Benlezhrah said that he used to pay his people in different ways. He would withdraw money and pay them slowly - he used to drag the payments. He then pointed to all the cash withdrawals for that statement which total about \$500. He also testified that he paid by cheque. Mr. Benlezhrah said he also got a lot of great deals when it came to materials from his brother. He also said that he would barter for goods and a lot of things would not show up in his statements.

1550 The Coort Analysis shows that the only payments out of the Bonded account from the time it was opened until December 31, 2010 that could have been for third party contractors were payments to A. Alert Drain Limited (\$3,164) and Bento's General Service (\$1,500). In addition Bonded paid Mr. Tehrani's companies As Is \$90,173.65 and Uzeem \$39,965.69.

1551 In questions from Ms. Barton, Mr. Benlezhrah said he didn't recognize Mr. Tehrani and he testified that he had never done business with him. He didn't recall the name Uzeem or the draft payable to Uzeem. He did recall the name As Is Home Décor but he didn't know from where and could not explain the payment to As Is from Bonded. He even asked Ms. Barton if As Is Home Décor is a furniture store! He said he purchased furniture as part of his contracting business but he didn't recall specific places he bought it from. Mr. Benlezhrah testified that he would show Mr.

Levy different things and Mr. Levy would approve what he should buy. He was sure the payments to Uzeem and As Is were for something that he bought but he said he would be guessing if he said they were for furniture. Mr. Levy said that he directed Benlezhrah to As Is Home Décor for fixtures and furniture.

1552 Mr. Benlezhrah testified that the furniture he bought was to fill the order for Bluerock. Ms. Brun showed Mr. Benlezhrah the payments from Bonded to Uzeem and As Is and she asked him whether or not he bought about \$130,000 worth of furniture for Bluerock. He said he did. Ms. Brun then showed him the only invoice that relates to furniture which totals \$108,000. She pointed out to Mr. Benlezhrah that there was \$24,000 missing in fulfilling the order for furniture. Mr. Benlezhrah then fell back on his usual statement that he didn't know and would have to ask his accountant who helped him a lot and who he depended on a lot. He didn't check or monitor what his accountant was doing.

1553 A number of significant payments were made by Bonded to companies owned in whole or in part by Mr. Levy including \$52,510 to 1418319 Ontario Ltd. (Trendwear), 1421627 Ontario Ltd. (\$25,000), GMS Realty (\$5,250), Leading Edge Accounting (\$30,000), MDC Modern Design (\$9,365) and Mosaic (\$75,735). Ms. Brun asked Mr. Benlezhrah about the payment to Mosaic he said he couldn't explain it and really didn't know and would have to ask his accountant because "if he made me do it it was for a reason". In this regard it is significant that he testified that he was using Mr. Levy's accountant. Mr. Benlezhrah also suggested that he maybe paid Mosaic for the "work" which made no sense as he was supposed to be doing the construction. Mr. Benlezhrah could not explain any of the payments to Mr. Levy's companies. When had no recall about the cheque payable to Trendwear, and when he was asked why he would be paying money to Mr. Levy's company, again, he said you would have to ask his accountant although he also said that he owed money to Mr. Levy. That also made no sense as on another occasion he said that Mr. Levy never loaned any money to him.

1554 Mr. Levy explained these payments in various ways, testifying that Mr. Benlezhrah did subcontracting work for one of his companies, that the payment to Trendwear was for home décor and that the payments to Mosaic were for Mr. Benlezhrah's share of the cost of a container of tiles. Mr. Levy later did admit in answer to questions from Mr. Kazman that MDC Contracting and Tiles could have done subcontracting work on Keele Street but he also said he was not sure and that he did not recall in the same breath. A few minutes later he said that none of his companies did any work for Bonded at Keele or Sheppard and that any work done was for other locations.

1555 When asked about a \$36,750 draft payable to Debbie Bendavid from Bonded, Mr. Benlezhrah said that he didn't recall what it was for and that his accountant did everything for him, although he did say it was something to do with her husband and that she was in big trouble.

1556 A lot of the other smaller payments out of the Bonded account are clearly for personal items and could have nothing to do with the operation of a legitimate construction company. By way of example these payments include payments to restaurants, Canada's Wonderland, Famous Players, grocery stores, ice cream shops, car expenses and Victoria Secrets.

1557 Mr. Levy denied Mr. Kazman's suggestion that Bonded was his company and that Mr. Benlezrah was a front and that Mr. Levy got most of the money from that company. He gave his typical response "you are 100% wrong". However, in my view that is exactly what happened. Mr. Levy said that Mr. Kazman gave him the keys to both Keele and Sheppard and so he would have had access to the properties. He was able to satisfy the bank by taking Mr. Sharpe through the premises that had been renovated by Mr. Kazman. The Sharpe photos prove that the renovations had been done by May 2010.

(d) Evidence of the Contractors Called by Mr. Kazman

1558 Mr. Kazman called a number of contractors in order to establish that he arranged to have the work at 3042 Keele and 846 Sheppard done, for the benefit of him and his partners. This took up a considerable amount of trial time as Mr. Kazman did not have all the necessary paperwork and although the contractors generally recalled doing some work they were often unclear on what was done when.

1559 I do not need to review all of this evidence. I would not rely on Mr. Benlezrah's evidence to conclude that his company Bonded did any work at either property. I am satisfied that whatever work that was done to these two properties, it was not done by Bonded or Mr. Benlezrah. I find that Mr. Levy did not do any renovation work under any company name at either of these locations for Bluerock. The renovations that were done that Mr. Sharpe took pictures of were done for Mr. Goldberg or in the work that Mr. Kazman arranged.

(e) Did Bluerock Operate as a Business?

1560 In the period from March 25, 2010 to July 31, 2011, although Bluerock made loan payments throughout the period, Mr. Coort did not see any payments for rent to the landlords of the two locations. Furthermore, he did not see any significant deposits from third parties that could be considered revenues from sales. Most of the deposits in the period from September 14, 2010 to May 31, 2011 were from Mr. Levy personally. There was a deposit of close to \$40,000 from Print Three Franchise Corporation on May 11, 2010 but that appears to relate to Edwin Cheng's two franchises. In the months of June and July 2011 there was very little activity in the account. By July 31, 2010 the account had an overdrawn balance of \$13,640.45.

1561 The only corporate tax return filed by Bluerock was for the fiscal period ending December 31, 2010. The income statement for Bluerock Construction Inc. for the period December 31, 2010 shows zero revenue.

1562 Mr. Levy testified that he did not pay rent for either location because Mr. Kazman owed him money. He was supposed to pay utilities but Mr. Kazman never gave him the gas or hydro bills.

1563 Mr. Levy testified that he had his office at 846 Sheppard and said that he used the second floor of Keele Street as his warehouse. Mr. Levy said he needed Sheppard for offices even though Keele was huge. He said he could not put his offices at the Keele property because he could not have clients do their contract in the middle of buckets. He explained that clients would

come to Keele to see the stucco and then go the Sheppard to do the contract. Later in answer to questions from Mr. Coristine, Mr. Levy said that there was one office at Keele for the salesmen to show the samples which contradicted this evidence to some extent. Furthermore, there is no dispute that on the second floor of the Keele Street property, there were three offices; one with the circle window which Mr. Levy maintained was his office, a kitchen and a bathroom with bathtub because the second floor had been apartments. Initially Mr. Levy said that his office was at 846 Sheppard and that Keele Street was his showroom and warehouse.

1564 Questions were asked of Mr. Levy about why and how he would use Keele Street with its new floors as a warehouse. His evidence in response made no sense. In answer to questions from Mr. Chapnick, Mr. Levy said he bought 1 1/2 containers of stucco that were 20 feet long. He kept one full container at Keele and 1/2 at Sheppard. The stucco comes in plastic pails. There is no loading dock or elevator at Keele Street and according to Mr. Levy they carried the pails up one at a time. He then said that there could be a loading dock but that the pails are "very delicate" even though they come from Brazil and if dropped could open and the stucco would stick to the floor. Mr. Levy maintained that he stored 1/2 a container of stucco on the second floor of Keele on the newly finished floors. He initially maintained that the pails were not stored in the offices but then admitted they were but he denied that the pails would damage the new floors because he put down skids first and then the pails. He said that "everyone" would put hardwood down on a "nice warehouse" floor and that he did this so he could show he had inventory. From a common sense perspective this evidence did not make sense. On the evidence Keele Street was not renovated to be a warehouse. It was renovated to be a store on the main level and offices on the second floor.

1565 Furthermore, Mr. Levy's evidence on this issue was internally inconsistent in many respects. Later in answer to questions from Mr. Chapnick, he said that his samples were on the second floor and that the buckets of stucco were on the first level and that the pails had been carried upstairs to the main level. He maintained this even when he was shown a picture of the front of the building which shows windows going down to the ground. There are in fact no stairs to the first level from the front door. In response to this Mr. Levy suggested Mr. Chapnick was trying to confuse and trick him which in my view was not the case. His evidence was inconsistent and I think this was because he was making all of this evidence up. As Mr. Levy was pointing to stairs on floorplans of the three levels of the Keele Street building it seemed he did not know how to read the plans although he may have been hesitating because he realized, as he then admitted, that there were no stairs at the main entrance or to the main level. He then said that he brought the stucco up the stairs and that there was a showroom at the back of the second floor.

1566 Mr. Levy admitted Bluerock did not do a lot of business although he testified that it did about \$750,000 of business and that this can be seen in the bank statements. Presumably he was referring to statements Mr. Coort did not see. I reject all of Mr. Levy's evidence on this point and it does not raise a reasonable doubt in my mind. I find that Bluerock was a company on paper only and never did any business.

(f) The Appraisal of Bluerock's Assets

1567 According to Industry Canada documentation this loan went in to default as of August 1, 2011. CIBC did not make a claim to Industry Canada for this loan. Mr. Levy testified that he and Bluerock were going to sue the CIBC and after negotiations the bank released him personally and never asked for the assets and did not pursue him on his guarantee. He claimed this was because the bank realized that it had made a big mistake by getting information from a disbarred lawyer-namely Mr. Kazman. This was all hearsay and I did not consider this evidence. This issue is not relevant at this time in any event.

1568 Mr. Levy testified that the assets Bonded provided were kept at the Keele Street location for seven to eight months although he also testified that he kept the heavy equipment in storage. Mr. Levy said that when the CIBC gave him 30 days to pay his loan he put the assets in storage in storage facilities on Chesswood in Toronto and in Barrie because it was cheaper. Mr. Levy said that the assets were in storage for one year and he paid for the first three months. When he failed to pay for the storage fees, the storage facilities disposed of the assets. Mr. Levy was not able to give the names of these storage facilities. Mr. Levy sold the assets for close to \$70,000 and he kept the money for himself.

1569 Mr. Levy was asked a lot of questions by Mr. Kazman and Mr. Coristine about why he did not get all of his records from 1048 Eglinton where his main office was and put those records in storage. Like other aspects of his evidence his answers were not consistent, however, as he had no onus to preserve these records I do not draw any adverse inference from his failure to do so.

1570 Mr. Mizrahi was instructed by Gowlings to do an appraisal of Bluerock's assets. He was told the loan was not in default but that he should do an inspection. In his report to Gowlings dated August 8, 2011, Mr. Mizrahi stated that on August 5, 2011 he attended at 846 Sheppard and found the windows completely covered and that it was being offered for rent by Trust Inc. Realty. He saw that the upper unit, 846A, was occupied by Passion Spa which was closed. Unit 846B was for rent. He didn't talk to anyone at the Sheppard location and he was not told that Bluerock was not in business.

1571 Mr. Mizrahi then went to 3042 Keele and found a sign stating the building was occupied by Mueller Electrical Services and Traffic Tickets Legal Consultations. The sign on the door indicated a company called Target Paralegal Services on the first floor. Mr. Mizrahi spoke to a young lady at reception who advised that everyone had abandoned the building except Mueller Electrical who was now the sole tenant.

(g) The Circulation of the SBL Proceeds

1572 Mr. Coort analyzed Bluerock's CIBC account from the date it opened; March 25, 2010 to July 29, 2011.

1573 Bluerock received the SBL proceeds from CIBC in five payments totaling \$350,000 between June 17 and August 3, 2010. In addition, Mosaic made two \$100,000 payments to

Bluerock, one on March 25 and the second on May 27, 2010 as well as a payment of \$10,365.49 on August 12, 2010. In addition, Trust Inc. deposited \$9,928.28 into the account.

1574 According to the Coort Analysis, the source of the funds from Mosaic included Mr. Levy's companies Castlerock and Trust Inc. and Mr. Kazman's company 647841 Canada Inc. and A&P. Mr. Levy testified that the payments to Mosaic from Castlerock were to pay two different invoices as noted on the Re line and that those invoices had nothing to do with Bluerock. He believed it was work Mosaic did for Castlerock and the supply of tiles concerning the Kidshill SBL. He said that the payments from A&P were final payments for work Mosaic did on the Exclusive SBL. As for Trust Inc., the money it paid to Mosaic was used in part for the start-up capital for Bluerock which Mosaic later paid back to Trust Inc. According to Mr. Levy, Mr. Kazman owed him about \$50,000 from Exclusive which he had him pay to Mosaic.

1575 647841 Canada Inc. paid a total of \$125,690.87 in two payments, both on May 27, 2010; part directly to Mosaic and the other part via Trust Inc. which was then paid to Mosaic on the same day. The source of these funds was a payment of \$156,590.19 to 647841 Canada Inc. Re: "Blue Deer Holdings Loan" on the day before; May 26, 2010. That money came from Mr. Tehrani, repaying the loan he obtained from Blue Deer. There is no evidence why Mr. Kazman then paid that money to Mr. Levy's companies.

1576 In the period from March 25, 2010 to September 3, 2010, Bluerock used the money it received from CIBC and Mosaic to pay Bonded the full amount of its invoices of \$417,045.10 in five payments between May 25 and July 29, 2010.

1577 Bluerock also paid \$100,000 on August 12, 2010, to Toledo Estates for a deposit on a condominium. That money was then paid back to Trust Inc. and Mosaic in two payments on August 17, 2010. On the same day, two payments were then made by Trust Inc. and Mosaic to Armando Benlezrah. Mr. Levy testified that this was a loan to Mr. Benlezrah to buy a condominium.

1578 In addition to other withdrawals by Mr. Levy and loan payments in this period, by September 3, 2010 the Bluerock account had a balance of \$9.92.

1579 In the period September 14, 2010 to May 31, 2011, \$95,269.42 was deposited to Bluerock by Castlerock, \$39,550 from Print Three Franchise Corporation and other amounts from Mr. Levy personally for a total of just over \$176,000. In the same period Bluerock made loan payments, various payments to Mr. Levy and credit cards and \$85,026.27 to Edwin Cheng. The balance in the account by May 31, 2011 was \$2.93.

1580 In the months of June and July there was very little activity in the account other than loan payments and by July 31, 2011 the account was overdrawn by \$13,640.45.

1581 In addition to the fact that no rent was paid, which Mr. Levy had an explanation for, Mr. Coort found that there did not appear to be any payments in the period of his analysis from third parties that could be considered revenues from sales. There also do not appear to be any payments for payroll.

1582 Mr. Coort analyzed what Bonded did with the money that it received in the period from April 1 to July 30, 2010. The \$417,045.10 Bonded received from Bluerock represented 97.2% of the money deposited into its account during this period. Bonded also received relatively small amounts from Castlerock and Mosaic and some miscellaneous credits for returned merchandise at Shoppers Drug Mart, Winners, Lululemon and 2001 Stereo, which do not appear to be business related. Mr. Levy testified that the payments from Castlerock and Mosaic to Bonded which are "on account" were for work done by Bonded for Castlerock and Mosaic.

1583 In the same period \$115,350.41 was paid out by Bonded to GMS Realty, Mosaic, MDC and 1421627 Ontario Ltd., all companies owned by Mr. Levy. The \$22,795.26 payment to Mosaic on June 29, 2010 was by draft and was issued on the same day that \$97,462.50 was paid to Bonded by Bluerock. Mosaic then paid \$11,245.69 to Mr. Levy and, according to the Coort Analysis, he used this money to make a principal payment on a SBL that his company MDC Contracting had. In other words, funds from the Bluerock SBL were used, in part, to pay the SBL Mr. Levy had for MDC Contracting.

1584 Mr. Levy testified that the payment to GMS was a credit back to him for some equipment that Mr. Benlezzrah could not get for him and the payments to Mosaic were for the cost of half a container of tile that Mr. Benlezzrah purchased from Mosaic and that he directed Mr. Benlezzrah to pay some of this purchase price to his company 1421627 Ontario Ltd. which owed money on a mortgage. With respect to the cheques payable from Bonded to Mosaic, Mr. Levy said he could not say what the invoice references were for, but he said it had nothing to do with the Keele or Sheppard properties. He said it was work done for Mr. Benlezzrah at another location but he could not say where. His usual response was that he needed to see the invoice. Mr. Levy was asked why Bonded gave \$75,000 to Mosaic in a series of cheques. Mr. Levy said this could have been for work done if there is an invoice number or for the container of tiles. As for the payment to MDC, Mr. Levy said that MDC must have done some subcontracting for Bonded although he said that this was not in relation to Bluerock. He also said that cheques could have been loans to Mr. Benlezzrah or his payment for tiles. Mr. Levy also said that Bonded did work for him but he could not give any particulars.

1585 In this period Bonded also paid three payments totaling \$90,173.65 to Mr. Tehrani's company As Is and \$39,965.69 to Uzeem, also Mr. Tehrani's company. According to Mr. Levy, for the payment to As Is, he had told Mr. Benlezzrah what he wanted and so this payment would be for furniture but he could not say that it was all for Bluerock. I found these payments very significant in terms of the Crown's allegations against Mr. Tehrani. As I have already stated, I do not believe that Mr. Levy and his companies had any reason to purchase the kind of furniture that Mr. Tehrani sold and certainly not in large quantities. With respect to Bluerock, however, this argument is even more forceful. I have no doubt that Bluerock only existed on paper. The Bluerock SBL was a total fraud. There would be no reason for Bonded to actually buy furniture for a sham corporation that did not exist. Therefore the only inference to be drawn is that Bonded was making these payments at the direction of Mr. Levy either to provide monies owed to Mr. Tehrani for his role in the fraudulent scheme or as part of the money laundering.

1586 Bonded paid \$7,000 to Mr. A. Levy "on account". Mr. Levy testified that he was not aware

what this was for. Mr. Levy said that Mr. A. Levy knew Mr. Benlezrah but did not do work for Bonded. He could not explain what a \$3,500 cheque from Bonded to Mr. A. Levy was for.

1587 Finally there was a payment of \$36,750.49 to Debbie Bendavid personally. Mr. Levy denied knowing about this Bonded cheque.

1588 In the period from May 31 to July 13, 2010 a lot of payments were made by Mosaic to Mr. Levy's various companies including MGM, Trust Inc. Realty Corp., GM Realty, Trust Inc., MDC, GMS Realty and Mr. Levy personally. Almost \$4,000 was paid to Morningstar on June 4, 2010 and on June 15, 2010 \$3,000 was paid to Armand Levy which Mr. Levy said was a loan. There is no evidence to the contrary.

1589 The Coort Analysis shows that in four month period from April 1 to July 31, 2010, Uzeem received \$147,691.33. Although a little over \$31,000 was from sales, the bulk of this money can be traced back to Bonded and the money it received from the Bluerock SBL proceeds. Almost \$40,000 was paid directly from Bonded to Uzeem on June 18, 2010. An amount a little under \$76,000 was paid by Bonded to Mosaic but then about half of that amount; about \$34,000, was paid by Mosaic to Trust Inc. and on the same day Trust Inc. paid almost \$34,000 to Uzeem. Uzeem then used these funds to make some loan and rent payments but \$73,000 was paid to Mr. Tehrani personally in the seven-day period June 25 to July 2, 2010; he withdrew \$70,000 of that amount on June 25, 2010.

(h) Findings of Fact

1590 Based on the totality of the evidence I accept, I make the following findings of fact with respect to the Bluerock SBL.

1591 Based on my finding that the Bluerock SBL was a complete fraud, I find that the Crown has proven beyond a reasonable doubt that Mr. Levy is guilty of Count 5 with respect to Bluerock.

1592 No funds from the Bluerock SBL were traced to Mr. Kazman or any of his companies. That is consistent with his evidence that Mr. Levy obtained this SBL behind his back.

1593 I find for this reason that the Crown has not proven Mr. Kazman guilty of Count 5 as it relates to Bluerock.

Additional Findings of Fact

1594 Based on the totality of the evidence I accept, I make the following additional findings of fact that are relevant to my consideration of the charges.

Finding as to Who Prepared All of the Business Plans for the 16 SBLs

1595 For those defendants, and Ms. Cohen, who obtained more than one SBL, Mr. Levy testified that he only prepared the first one. He said he gave everyone a hard copy only for their

own use and one for the bank. Mr. Levy's evidence was that further Business Plans used by Ms. Cohen and the defendants were copied by them. He acknowledged that these further Business Plans were virtually identical but testified that it would be easy to scan them and then change them as required.

1596 I do not accept that evidence for a number of reasons:

- a) Having examined all of the Business Plans in evidence, the changes that were made to the original are seamless. There is no hint that any alteration was made to an original. In my view it would take considerable technical skill to make these changes even if what Mr. Levy said is true. From what I learned of how the Tehranis and Ms. Chapkina ran their businesses, I do not believe they would have had this type of skill.
- b) The amount asked for from the bank varied which required changes to the projections. That is not something the Tehranis or Ms. Chapkina were capable of doing.
- c) Furthermore, if it was so easy to copy a Business Plan to avoid paying the \$2,500, there is no reason why Mr. A. Tehrani would not have simply copied his brother's Business Plan for Meez Corp. and yet Mr. Levy admitted to preparing Mr. A. Tehrani's first plan.
- d) As Mr. Kazman submitted, if the defendants copied the first Business Plan Mr. Levy prepared for their other SBLs why then did they use his companies for the leasehold improvements of their second/third SBL? They all testified that they gave this work to Mr. Levy.
- e) Mr. Levy had an incentive to prepare each Business Plan and get the loan approved because he owned the premises in many cases and in most cases he admitted that his construction companies did most of the construction, albeit as subcontractors to Mr. Kazman.
- f) It seems to be too much of a coincidence that the Tehranis and Ms. Chapkina would give identical evidence on this point where there is no evidence of collusion.
- g) Having found that the HP Fax Number belongs to Mr. Levy's fax machine, given that documents related to the SBL applications for ELI, LSC and Contempo were faxed to the bank by Mr. Levy or someone on his behalf, it would make no sense that he did not also prepare the Business Plan for these loans.
- h) Finally I have considered the fact that I have found that Mr. Levy attempted to interfere with the evidence of Mr. Tehrani by asking him to tell the Court that he, Mr. Levy, just did his first Business Plan and that he, Mr. Tehrani, copied the rest. Clearly for Mr. Levy to resort to this conduct to interfere with the evidence, he must have been very concerned about a finding that he prepared all of the Business Plans. As the Crown has not asserted much in the way of any material misrepresentations in those plans, that could only have been for the purpose of distancing himself from the fraudulent documents found in most of the loan files.

1597 In summary, as submitted by the Crown, it is difficult to ignore the fact that so many witnesses who did not know each other before the trial gave similar evidence that Mr. Levy prepared loan packages consisting of documents that were then presented to the banks to secure loans. It is also difficult to ignore that the loan applicants presented altered GICs and fraudulent NOAs. The nature of alterations demonstrated a sophistication not shown by any accused in their testimony save and except that of Mr. Levy.

1598 For all of these reasons I prefer the evidence of the Tehranis and Ms. Chapkina and I reject Mr. Levy's evidence that he only prepared one Business Plan for each defendant. I believe he lied about this to distance himself from at least some of the SBL applications because of the fraudulent documents provided to the banks; the fraudulent documents each defendant testified could only have come from him.

1599 The significance of this conclusion is that for each loan Mr. Levy was involved in preparation of the documents provided to the bank. I find that he lied about his preparation of all of the Business Plans so that he could distance himself from the altered tax and GIC documents provided to the banks for these defendants.

Findings of Fact with Respect to Who Altered Certain Documents Provided to the Banks

1600 The fact that in some cases the bank received documents that had been altered or entirely forged, including GICs NOAs and T1 Generals was not really contested. Save for one of Mr. A. Tehrani's GICs where the Crown was not able to call the witness from the bank who could attest to this, the alterations to the GICs were proven by bank witnesses. With respect to the GICs, I have already given my reasons for concluding that it was Mr. Levy who did the alteration in question in the case of each fraudulent GIC. Looking at the evidence as a whole reinforces my conclusion. None of the defendants had any experience with SBLs unless it was their second or third SBL. Although they might have realized that income was important to the bank, there is no reason why they would know that they would need a GIC and they certainly would not have known that it was important for the GIC to look as if it had been issued well before the loan application date. This is something only Mr. Levy would consider important.

1601 The evidence is also clear, and it was confirmed by several of the bank witnesses that the fraudulent GICs and tax documents look authentic and the alterations were professionally done in the sense that they would not be obvious to someone looking at the document. In the case of the GICs, someone who did not have specialized knowledge would not know that they had been altered. None of the alterations were spotted by bank representatives at the time the fraudulent documents were provided to the banks. The bank representatives who testified to the altered GICs all agreed that the alterations were done professionally.

1602 As for the fraudulent NOAs and T1 Generals, they were compared to copies of the originals provided by the CRA and that is how the Crown has proven they are fraudulent documents. I have described those alterations in the case of each of the applicable SBLs. There is no suggestion in the evidence that any bank employee altered these tax documents and I find

that they were altered by someone before they were received by the bank in question. Who altered the tax documents is very much in dispute.

1603 With respect to the altered NOAs and T1 Generals, in all cases the Total Income amount was increased significantly from the actual income. Setting aside whether or not any of the defendants in question either knew or were willfully blind to the fact that alterations had been made to their documents, if I consider all of the evidence as a whole, rather than the evidence for each of the SBLs, the inescapable conclusion is that Mr. Levy made these alterations to these documents. I come to this decision for a number of reasons:

- a) Mr. Levy or someone on his behalf faxed the fraudulent NOA for Ms. Cohen for 2006 to the TD bank for the ELI SBL and the fraudulent HSBC GIC to RBC in connection with the LSC SBL.
- b) The types of alterations are the same. Although that could be explained by the fact the Tehranis are brothers and Mr. Salehi was a friend of Mr. Tehrani's, that does not explain why persons they did not know at the time; Ms. Chapkina and Mr. Ghatan would make the same type of alterations to their documents. That seems to be too much of a coincidence.
- c) Skill was required to make changes to these documents in a manner that would not be noticed by bank personnel. One would need to be able to do the kind of scanning and altering that Mr. Levy suggested the defendants did to his original Business Plans to accomplish these types of changes.
- d) Mr. Levy had an in-house accountant who would have been familiar with these tax forms and could have assisted him in changing the numbers in a way that did not make the alterations obvious. It is unlikely that any "normal" borrower would know how to create a NOA let alone a fraudulent one. All evidence points to the fact that there was only one creator of the fraudulent documents, Mr. Levy or someone under his instruction.
- e) Mr. Levy had a motive in altering these documents as in his mind it would help the borrower obtain the SBL. Although Mr. Levy protested at being referred to as a SBL specialist, that is clearly how he portrayed himself. The success of his business depended on the SBLs being approved so that he could maintain his reputation as the specialist. This in turn gave him the opportunity of doing the renovations that would be necessary before the new business opened. Although it was not always one of his companies that was chosen as the contractor, the Coort Analysis shows that his companies received most of the proceeds from the SBLs, which Mr. Levy said was as a result of his company being the contractor/supplier or sub-contractor to one of what he alleged were Mr. Kazman's companies. In short, Mr. Levy had a financial incentive in the borrower obtaining the SBL beyond his fee for preparing the Business Plan. I appreciate each borrower would also have the same motive.

1604 I should add that although I have granted the Crown's Similar Fact application for reasons set out in Appendix "F", coming to this conclusion is based on all of the evidence but does not engage in propensity reasoning. Without comparing all the altered documents together, it would

have been impossible to come to the conclusion that they were all prepared or altered by the same person. Similarly, my conclusion that that person must have been Mr. Levy, does not engage propensity reasoning, but rather considers other evidence that points to him as the only one person who had the opportunity to alter all of these documents in a similar manner.

Findings with Respect to Mr. Levy's Subcontracting Defence

1605 As I have reviewed, with the exception of the Cohen Loans, in cases where one of Mr. Levy's companies, such as Mosaic, was not the purported contractor/supplier providing the invoices, he justified payments made by a Disputed Construction Company as payment by Mr. Kazman to him for coming in as a subcontractor to finish the job Mr. Kazman could not complete. This was disputed by Mr. Kazman who testified that these companies were all controlled by Mr. Levy. I will come to my determination of that issue.

1606 Mr. Levy was firm that he did not do any subcontracting for any of the Cohen Loans. The Crown suggested to Mr. Levy that he wanted nothing to do with the Cohen Loans because they were obvious shams, and clearly not operational businesses. Mr. Levy disputed that suggestion, pointing to the fact that Ms. Cohen's companies were all registered and each had a bank account.

1607 Mr. Kazman also gave an innocent explanation in his written submissions about the practice of "brokering" but there was no evidence to support this submission.

1608 I have found that in fact no leasehold improvements were done by any company for the Cohen Loans. However, Mr. Levy was clearly not telling the truth about his professed lack of knowledge in connection with the Cohen Loans because I have found that he, or someone on his behalf, used his HP fax machine to send Northwood invoices to the bank for ELFI and LFC.

1609 As for the other SBL, in general where a Disputed Construction Company was sending out the invoices, Mr. Levy's position was that Mr. Kazman had to retain him because he could not finish the job because Mr. Kazman was "sloppy" or his trades walked off the job because he did not pay them.

1610 I reject this evidence for a number of reasons:

- a) In each case, save for Ms. Chapkina, the defendants have said that they dealt with Mr. Levy from the outset. They did not know Mr. Kazman was involved. It goes without saying that as far as they knew they did not hire Mr. Kazman and then end up with a company owned by Mr. Levy.
- b) As I have reviewed, in many cases the purported leasehold improvements were completed very quickly; within mere weeks of the start of the lease with the borrowers. There would be no time for one company to start, run into trouble and then retain one of Mr. Levy's companies.
- c) Mr. Levy testified that there were no quotes or invoices between the Disputed Construction Companies he alleged were owned by Mr. Kazman and his

companies. He said that he and Mr. Kazman just worked it out and he got his money. I agree with the Crown that it makes no sense that Mr. Levy would risk his financial interest going blind into any job and work for Mr. Kazman and spend a lot of money without some documentation.

- d) Although it may be that a contractor might not be able to finish the odd job, or would need to bring in someone else to help, it makes no sense that this would happen in the case of all of the SBLs I have reviewed, save for those where one of Mr. Levy's companies was the original purported contractor/ supplier.
- e) As the Crown submits, the subcontracting defence only makes sense for the "construction" phase of the project. Accepting that a borrower might pay a general construction company to buy items such as laptops, televisions, microwaves, desks and coffee makers, in order to have a turnkey operation, it makes no sense that that general contractor would outsource this shopping to another general contractor.
- f) The Disputed Construction Companies are general contractors that, according to both Mr. Kazman and Mr. Levy, purportedly outsourced to other trades and suppliers to complete jobs. In a situation where a Disputed Construction Company subcontracts to one of Mr. Levy's companies, a bizarre business model is created with multiple markups to general contractors before anyone actually pays for labour or materials.
- g) None of the Disputed Construction Companies made any payments to tradespeople or suppliers, other than the odd cheque or payment. In all cases, the vast majority of first payments out by these companies were always to Mr. Levy, Mr. Kazman, Ms. Cohen, and/ or Mr. Tehrani. I would have expected that if these companies started the project there would be some such payments before the alleged subcontracting to a company owned by Mr. Levy.
- h) As the Crown summarized in a chart in their written submission, from ELFI to Contempo, with the exception of Qua, payments from the Disputed Construction Company in question to Mr. Levy's company far exceed the purported cost of the Total Gut Job and Total Rebuild. This means that in each case the Disputed Construction Company was operating at a significant loss, which makes no sense for six jobs in a short timeframe.

Findings with Respect to Payments to Mr. Tehrani's Companies purporting to be for Furniture for Mr. Levy's Companies

1611 I accept that Mr. Levy, through one of his companies, could buy furniture from one of Mr. Tehrani's companies and that when he did so Mr. Tehrani would not necessarily know what Mr. Levy intended to do with the furniture. I also agree with Ms. Barton that if there was a *quid pro quo* between Mr. Tehrani and Mr. Levy, that Mr. Levy would do the contracting and buy Mr. Tehrani's furniture, there is nothing wrong with that.

1612 However, for reasons I have given in connection with Bluerock, since that entire SBL was fraudulent, I do not believe that Mr. Benlezrah/Bonded actually bought furniture from Mr. Tehrani

for Bluerock. This implicates not only Mr. Benlezrah but also Mr. Tehrani. The only conclusion I can come to is that the payments by Bonded to As Is and Uzeem totaling just over \$130,000 were not for furniture and neither As Is nor Uzeem actually provided furniture to Bonded for Bluerock.

1613 Furthermore, it is significant that all of Mr. Tehrani's companies sold furniture for homes, not what could be considered typical office furniture. Furthermore, Mr. Tehrani sold furniture from China, not custom made display cabinets and items of that nature. This is presumably why, when Mr. Tehrani was finishing his new stores Kube and Uzeem, he purchased the furniture and fixtures from one of Mr. Levy's companies, not one of his own.

1614 This conclusion makes all of the supposed sales by one of Mr. Tehrani's companies to one of Mr. Levy's companies suspect. The evidence is that Mr. Levy's companies Mosaic, MDC Modern Design, Trust Inc., and Trust Inc. Realty Corp. purportedly bought a total of approximately \$557,000 from Mr. Tehrani's companies Meez Corp., Meez Ltd., Comod, Kube, Uzeem and As Is in the period from November 2006 to December 2010.

1615 Mr. Levy said that he bought most of the furniture he needed for his companies from Mr. Tehrani. It is true that some of the cheques from one of his companies to one of Mr. Tehrani's companies refer to an invoice number. Furthermore, there is no doubt that Mr. Tehrani was purchasing and selling furniture. However, I do not accept Mr. Levy's evidence that he was buying this quantity of furniture from Mr. Tehrani for his companies. Unlike Mr. Salehi and Mr. A. Tehrani, Mr. Levy did not own any furniture stores that would require inventory of the type sold by Mr. Tehrani. Furthermore, even if some of his companies needed some of the type of furniture sold by Mr. Tehrani, it is impossible to believe that it would amount to over half a million dollars in four years.

1616 The only reasonable inference on the evidence is that most if not all of the \$557,000 paid by Mr. Levy's companies to Mr. Tehrani's companies was paid as part of a fraudulent scheme with respect to the SBLs that involved both Mr. Levy and Mr. Tehrani. Given my finding that Mr. Tehrani assisted Mr. Levy in laundering the SBL proceeds in Bluerock and that at a minimum his Uzeem SBL was a fraud, I expect that these payments were money for his participating in the fraudulent scheme.

Findings with Respect to the Disputed Construction Companies

1617 The ownership and control of six purported construction companies is in issue as between Mr. Kazman and Mr. Levy. The position of the Crown is that these companies were owned and controlled by Mr. Kazman and that they are all sham corporations. The Crown does not allege that Mr. Levy was associated with any of them but does assert that they were part of the fraudulent scheme to help shield Mr. Levy's companies from scrutiny by the banks.

1618 The six Disputed Construction Companies, in order of their incorporation date, are as follows:

- 1) Northwood, incorporated August 5, 2005;

- 2) Eastern, incorporated April 24, 2007;
- 3) Oakwood, incorporated October 3, 2007;
- 4) Icon, incorporated June 10, 2008;
- 5) Whitehorse, incorporated on November 7, 2008, and
- 6) A&P, incorporated April 17, 2009.

1619 I also heard some evidence about a construction company called Bridgecon that Mr. Kazman testified he incorporated and he put this company in with the list of companies that he was signing officer for that he said Mr. Levy controlled. There are payments to and from Bridgecon in the Coort Analysis but there was not enough evidence about this corporation to come to any conclusions.

1620 The details of the incorporation of these companies and other relevant evidence are set out in Appendix "E".

1621 With the exception of Whitehorse, Mr. Kazman was a signing officer at the bank for these corporations and in some cases a director as well. He was not an officer of any of these corporations. Mr. Kazman argues that the fact he was not an officer of any of these corporations supports his evidence that he was not the owner of any of these corporations. However, with the exception of Whitehorse, Mr. Levy was not an officer, director or signing officer of any of these corporations either.

1622 A determination of who in fact was the owner and controlling mind of each of these corporations is critical to my analysis because these corporations were ostensibly the contracting companies for many of the borrowers of SBLs in issue, where I have found either that no leasehold improvements were done and no equipment was provided and that the loan was entirely a fraud, or at least that all that was purportedly done for leasehold improvements and equipment according to the invoices provided to the bank was not in fact done or supplied. As such, when the invoices were paid, the owner or owners of these construction companies received SBL funds that they obtained from the banks by fraud.

1623 Mr. Kazman admitted when he testified that he incorporated the six Disputed Construction Companies and save for Oakwood, he said that he did so at the request of Mr. Levy. Mr. Kazman testified that he did this for the payment of legal fees. Oakwood was Ms. Cohen's company and I will deal with it separately.

1624 According to Mr. Kazman, Mr. Levy was the directing mind of each of these corporations. He testified that in the case of each company (with the exception of Oakwood and Whitehorse) Mr. Levy asked him if he knew of anyone who needed money and would put a company in their name and open a bank account for the company. When he asked Mr. Levy why, Mr. Kazman testified that Mr. Levy told him that he didn't like to use the same company all the time because he believed for tax purposes the bank liked to see different companies. Mr. Kazman said that it seemed to make sense to him at the time and Mr. Levy assured him that it was all proper. He thought Mr. Levy was a friend. Later Mr. Kazman changed his evidence of Mr. Levy's

explanation to him when he testified that Mr. Levy said that the reason he was asking Mr. Kazman to do this was that if the bank saw a small construction company over and over they would over-scrutinize the invoices and that it was preferable that different companies be used. According to Mr. Kazman, Mr. Levy assured him that everything was done by the book and that all the work and equipment was completed, in a good and workmanlike manner. This became the main reason he gave to the extent he repeated this evidence.

1625 With respect to each company, with the exception of Whitehorse and Oakwood, Mr. Kazman testified that at Mr. Levy's request, he asked someone he knew to incorporate the company and open a bank account for the company and become the signing officer for the company in exchange for \$300. Mr. Kazman would then be added as a signing officer shortly thereafter at the request of Mr. Levy and in most cases the original person would come off but that was only reflected in some of the corporate records. Mr. Kazman testified that he would become the signing authority on the bank account because he was "trustworthy" and "not the type to steal money."

1626 Mr. Kazman testified that once he was the signing officer for these companies, he pre-signed blank cheques and gave them to Mr. Levy. Alternatively he would sign and complete a cheque at the direction of Mr. Levy who directed him who to make the cheque payable to and in what amount. He also received the cheques and drafts coming in to these companies and would deposit the funds as directed by Mr. Levy. Mr. Kazman submits that Mr. Levy had the cheque books and when he, Mr. Kazman, received bank statements, they were given to Mr. Levy. Mr. Kazman said that he had first-hand knowledge of money coming in but would only know what he was told or what was written on the cheque. He said that he would not ask any questions of Mr. Levy about where he was being directed to send funds or about funds being paid to the corporations and insisted that there was nothing on the face of the cheques and drafts that would have alerted him to the fact these funds may have come from SBLs. At one point Mr. Kazman said that Mr. Levy was the "puppeteer" and that he was "the puppet".

1627 Mr. Kazman testified that Mr. Levy would meet with the person without him and decide, based on their credit rating and whether they owed debts, whether they were suitable for this purpose. However, this evidence was not confirmed by any of those individuals who testified who all said that they dealt only with Mr. Kazman and so I find that this is not true.

1628 Mr. Kazman submits that in hindsight Mr. Levy did not need him for these companies save to shelter him, Mr. Levy, from appearing to be directly involved in these companies. He suggests that it was worth it to Mr. Levy to pay out some money in order to shield himself from scrutiny. I note that these submissions could apply equally to Mr. Kazman.

1629 The evidence in this regard with respect to each of the companies in summary is as follows:

a) Northwood

1630 Mark Vatch testified that he was paid \$300 to act as incorporator of Northwood and to open a bank account for the corporation, all at the request of Mr. Kazman. Mr. Vatch testified

that he had no other involvement with any corporations, loans or other activities of any party to this proceeding. Mr. Kazman admitted this. Mr. Kazman also testified that Mr. Levy asked him to get Mr. Vatch to sign cheques in blank. Mr. Kazman testified that he told Mr. Vatch that his friend "Gad" did not want the company in his name but Mr. Vatch did not recall this or meeting with Mr. Levy. Mr. Kazman testified that Mr. Levy asked him to go as the signing officer for the company as well because he didn't know Mr. Vatch. The Northwood bank documents show Mr. Vatch as director on the account opening documents and then he resigns. Mr. Kazman then takes over and signs on as president and secretary and becomes the face of Northwood. The corporate profile does not change.

1631 In connection with a Northwood invoice, Mr. Kazman testified that it is possible that he typed it up but if he did so it was as a secretary doing dictation because he could type but it was Mr. Levy's invoice. When I asked about this he said he could only recall it happening "maybe" once and that his recollection was that Mr. Levy or his wife typed the invoices. He did not explain how he would know this since he said he had nothing to do with Northwood save for signing cheques and depositing money. In his closing submissions Mr. Kazman testified that he believed he corrected this evidence later. I appreciate that witnesses may make mistakes sometimes when giving evidence but there were a few of these types of slips that Mr. Kazman made and they all support the conclusion that I have come to that he was actually in control of these companies along with Mr. Levy.

1632 There is some independent evidence that Mr. Levy had some control over Northwood given he faxed Northwood invoices for ELFI, LHC, and Contempo to the banks. Furthermore, Mosaic used Northwood for its SBL which it would not do unless Mr. Levy had some control over Northwood given Mr. Levy's dim view of Mr. Kazman as a contractor.

b) Eastern

1633 Ms. Chapkina incorporated and opened a bank account in the name of Eastern. When asked why she did this she indicated that everyone in the office did this for Mr. Kazman and she didn't think anything was wrong with doing this. Ms. Chapkina made no inquiry as to why this was necessary as it was not "her business". I agree with Mr. Chapnick that her position was no different than Mr. Vatch. Ms. Chapkina said that she was paid \$300 for this and she denied that it was Mr. Levy who asked her to do this.

c) Oakwood

1634 Oakwood is different from the other Disputed Construction Companies in that this company was originally owned by Ms. Cohen. Mr. Kazman testified that this was Ms. Cohen's company and that he only went on as a bank signatory because Ms. Cohen needed to give up her interest in the company to get her SBL for LHC. Mr. Kazman testified that both Ms. Cohen and Mr. Levy wanted to put the company in his name. He knew her and Mr. Levy and so he agreed.

1635 Mr. Kazman submitted that this company was controlled by Ms. Cohen or Ms. Cohen and Mr. Levy and that he had no control over the company even though he was a signing officer. I did not hear from Ms. Cohen and I am not able to draw any conclusion about whether or not Mr.

Levy had any interest in Oakwood. However, given that Mr. Kazman became a signing officer, and given his relationship with Ms. Cohen, both personal and business, I find that Mr. Kazman at least likely had an interest, along with Ms. Cohen, in Oakwood.

d) Icon

1636 Mr. Kazman asked Johnathan Bochner to incorporate Icon and his evidence about why and how is the same as for the other Disputed Construction Companies. Mr. Bochner was a signing officer for Icon but at some point when HSBC didn't want him to continue because of his credit rating, Mr. Kazman went on as a signing officer.

e) Whitehorse

1637 Whitehorse also requires its own analysis. Mr. Levy testified that Whitehorse was Mr. Kazman's company and that he was put on as a signing officer at the bank because Mr. Kazman did not trust his wife; Maxine Henry, who at some point he separated from. In addition, Mr. Kazman did not want to be on his own on the Whitehorse account as he already had an account for Icon at the HSBC. According to Mr. Levy, this is why Mr. Kazman simply didn't go on the account with his wife.

1638 Mr. Levy produced a document which he put to Mr. Kazman during the course of his cross-examination entitled Whitehorse Declaration of Trust and Partnership Agreement ("Whitehorse Declaration of Trust"), dated December 17, 2008, which he said was prepared by Mr. Kazman. Mr. Levy said Mr. Kazman made him sign the document because he wanted Mr. Levy to have control over the funds since he didn't trust his wife and that he signed it "blind". However, the document is only signed by Mr. Kazman as "50% Beneficial Owner" and Maxine Henry on behalf of Whitehorse. According to Mr. Levy, he had no interest in Whitehorse and he was only on the bank account as a bare trustee for Mr. Kazman.

1639 Mr. Kazman admitted that he probably prepared the Whitehorse Declaration of Trust but testified that he did not recall it. He admitted that it looks like his initials on the document and that it appears to be his wife's signature. Importantly he admitted that it is his signature on the document. On this evidence I find that this document was prepared by Mr. Kazman and was signed by him and his ex-wife. This is not the kind of document Mr. Levy could have prepared in my view and significantly it is in a form similar to the Declaration of Trust for M&M, which is a company that held title to Mr. Kazman's home and he admitted was prepared by him.

1640 The parties to the Whitehorse Declaration of Trust are Maxine Henry as Trustee, and Mr. Kazman as beneficiary. The recitals stated that Ms. Henry is the incorporator and first director of Whitehorse and that she has agreed to hold 50% of all of the issued and outstanding shares in Whitehorse "solely as bare Trustee, for and on behalf of the Marshall, who is the sole beneficial owner thereof". This is repeated at para. 1 and at para. 2, the Trustee acknowledges and agrees that she has no financial interest in Whitehorse and that Mr. Kazman has a 50% ownership in Whitehorse. Para. 6 provides that Mr. Kazman is responsible for 50% of all the costs and expenses of Whitehorse. Who is responsible for the other 50% is not stated.

1641 Mr. Kazman testified that when Whitehorse was incorporated he and his wife were not

separated. He denied that he asked Mr. Levy to go on as a signing officer because he did not trust his wife. Mr. Kazman maintained that Mr. Levy was the directing mind of Whitehorse and its bank account and that it was Mr. Levy who insisted on the Declaration of Trust because he wanted to have control over the account. Mr. Kazman testified that he was "duped" by Mr. Levy into preparing this Declaration of Trust, which was denied by Mr. Levy.

1642 Mr. Levy testified that Mr. Kazman gave him a copy of the Whitehorse Declaration of Trust because he asked for it. He wanted to make sure that everything was documented with Mr. Kazman because he never trusted him and he wanted to make sure that he had nothing to do with Mr. Kazman. Mr. Kazman asked Mr. Levy in cross-examination how this Declaration of Trust would protect him. His first response was that it didn't protect him and that even the trust agreement with respect to Mr. Kazman's home (which I will come to) did not protect him from Mr. Kazman registering second and third mortgages without his consent. Mr. Levy denied the suggestion from Mr. Kazman that he went on as a bank signatory to perpetrate his frauds.

1643 Without this Declaration of Trust, the evidence of Mr. Kazman would be consistent with his evidence about the other Disputed Construction Companies; namely, that at the request of Mr. Levy he asked his wife to incorporate a company and open a bank account for \$300 and that this corporation was really controlled by Mr. Levy. However, this Declaration of Trust is inconsistent with this position.

1644 Mr. Kazman denied he was a 50% owner of Whitehorse and insisted that Mr. Levy was the sole owner of the company. He testified that he took his wife's place but never received 50% of Whitehorse. Mr. Kazman testified that Mr. Levy had talked his wife into opening a company but she did not want to be involved anymore. Mr. Coristine pointed out that this was almost a year after the RBC lawsuit with respect to Contempo and that Mr. Kazman had now dragged his wife into this "mess". Mr. Kazman responded that she was reluctant but Mr. Levy persuaded her to open a company and he does not know how much she was paid. Mr. Kazman never became a signing officer of that company.

1645 The Whitehorse Declaration of Trust clearly only deals with 50% of the ownership of Whitehorse and makes it clear that Mr. Kazman has a 50% ownership in Whitehorse and that he was responsible for 50% of all the costs and expenses of Whitehorse. I do not accept his evidence to the contrary; the meaning of this Declaration of Trust is clear. The more difficult question is who was the other 50% owner?

1646 I note that there are Whitehorse cheques clearly prepared by Ms. Chapkina as they have her characteristic capital T. Ms. Chapkina admitted that she wrote them. If Mr. Kazman told her to write a cheque she would do so. She denied controlling the finances of the company and I accept that evidence. She was acting further to directions from her employer, Mr. Kazman. Her evidence also means that the Whitehorse cheques were being kept in Mr. Kazman's office which supports Mr. Levy's evidence that he needed Mr. Kazman's authorization to sign the cheques.

1647 The Declaration of Trust provides that Ms. Henry did not have a financial interest in the company and so it could not have been her. The only other likely candidates would have been Ms. Cohen or Mr. Levy although he testified he did not have any interest in Whitehorse and I

find that it more likely was Mr. Levy because Whitehorse was the purported contractor for World and Ms. Chapkina testified that she was dealing with both Mr. Kazman and Mr. Levy. This is consistent with the fact that originally Mr. Kazman's wife, as trustee, and Mr. Levy were both signing officers on Whitehorse's bank account. For these reasons I do not accept Mr. Kazman's evidence that he was not a 50/50 partner with Mr. Levy or Mr. Levy's evidence that he had no interest in Whitehorse.

1648 Whitehorse is the only Disputed Construction Company where Mr. Kazman did not sign any cheques. He was never a signing officer at the bank. I do not know why Whitehorse was dealt with differently than the other Disputed Construction Companies where I have found Mr. Levy had an interest even though he was not a signing officer at the bank. Mr. Kazman clearly had some control over Whitehorse and its invoices.

f) A&P

1649 Mr. Kazman admitted that he set up A&P at Mr. Levy's request. Mr. Kazman testified that Mr. Levy was the directing mind behind A&P. The incorporator and bank signatory was Alfredo Paulo who worked for Blue Glass and had construction experience, who I accept was a real person. Mr. Kazman was also a signatory at the bank.

1650 Mr. Levy said that he had no involvement with A&P although he admitted that he knew Alfredo Paulo and that he was a real person. He knew he was a driver for Mr. Kazman's water business.

1651 On one occasion Mr. Kazman testified that the day before he might have inadvertently said "I did the work". He said that he meant to say that A&P did the work and he was a signatory as was Mr. Alfredo. This is another one of those slip that I found strange given Mr. Kazman's overall position.

1652 Mr. Kazman said that Mr. Levy offered him a commission for being a signatory on the various construction company bank accounts and that he was paid a variable percentage; from 2 to 10% on all of the money that went through the bank account; it was not a constant number. He also said it could be a flat fee. He did not recall the exact amount and said there was no rhyme or reason to the amount. He was also offered a referral or finder's fee for people that he referred to Mr. Levy if they were looking for a business loan. If the loan application was successful, Mr. Levy paid him a fee (he also called it a commission) for referring the client to Mr. Levy although there was no set amount. Mr. Kazman also testified that when Mr. Levy referred a client to him, Mr. Levy sometimes kept part of the client's retainer. For Mr. Kazman it was an opportunity to gain extra money and he thought he could trust Mr. Levy. Based on this evidence, when Mr. Kazman was asked about cheques payable to him or one of his companies he often testified that the funds paid could be as a result of these commissions or finder's fees.

1653 This evidence on its own did not make sense as it was clear from Mr. Kazman's evidence that there was no clear cut formula for what he would receive as his commission. This would mean that he would have had to have had a discussion with Mr. Levy for each cheque that went through the account. Given the volume of cheques that would simply not have been possible as

it would have meant that Mr. Kazman would have had to be in constant contact with Mr. Levy to find out where to deposit funds, how to make out cheques, and where to send them and, of course, negotiate his fee.

1654 Mr. Kazman relies on the fact that as borne out by the Coort Analysis, most of the money from the 16 SBLs was paid to Mr. Levy or one of his companies and that is certainly a fact to consider.

1655 When Mr. Kazman asked Mr. Levy about this fact Mr. Levy responded that Mr. Kazman needed to answer this question as he was the one making the payments. Mr. Levy also said that if he was doing contracting work for Mr. Kazman, and in particular would take over construction jobs that Mr. Kazman started but could not complete, he would be paid. This is what I have already dealt with as the Subcontracting Defence.

1656 Mr. Kazman submits that in hindsight Mr. Levy did not need him for these companies save to shelter him from appearing to be directly involved in these companies. He suggests that it was worth it to Mr. Levy to pay out some money in order to shield him from scrutiny. That, however, does not explain why Mr. Levy did become a signing officer for Whitehorse and later started using his own construction companies.

1657 Mr. Kazman relies on the fact that Messrs. Tehrani and Ghatan testified they did not deal with him in renovating their premises and that they only dealt with Mr. Levy. However, in the case of World and Exclusive, Ms. Chapkina testified that Mr. Kazman was involved with his construction companies.

1658 Mr. Kazman argued that all of the invoices for the Disputed Construction Companies look the same and look like invoices from Mr. Levy's companies. I agree with this observation but when he put this proposition to Mr. Levy, Mr. Levy responded that they were simply copied by Mr. Kazman. Mr. Kazman did admit that he might have typed one of the invoices although he said that he later corrected this evidence. That is of no matter as clearly it would have been possible for Mr. Kazman to copy the invoices he saw from Mr. Levy's companies. I therefore did not find their similarity assisted Mr. Kazman on this point. However, the similarity of the invoices from the Disputed Construction Companies and Mr. Levy's companies, particularly in terms of their content in that they always referred to a Total Gut Job and a Total Rebuild, is significant and suggests that they were all prepared by the same person or group of persons. Furthermore, there is the fact that in the case of ELFI, LHC and Contempo, some of the Northwood invoices issued with respect to those SBLs were faxed to the banks by Mr. Levy or someone on his behalf using his HP Fax machine. I find this means that Mr. Levy had at least some control over Northwood.

1659 Mr. Levy disputed all of this evidence. Mr. Levy testified that he had no interest in any of the Disputed Construction Companies, that they were not his companies and he was not the directing mind of any of them. He said that he knew nothing about these construction companies and he denied all of Mr. Kazman's evidence with respect to them including Mr. Kazman's suggestion that he was looking for people to open contracting companies for him or that he offered Mr. Kazman a referral fee for people he referred to Mr. Levy for SBLs. As Mr. Levy

pointed out, he was never a director or officer of those companies or a signing officer at the bank of these companies, with the exception of Whitehorse, and he never signed or authorized anything about these companies.

1660 Mr. Levy also testified that he had his own construction companies and he did not need Mr. Kazman to incorporate any for him. He submitted that he did not hide. For all his companies he uses his own address for bank statements. He denied receiving bank statements for the Disputed Construction Companies.

1661 Furthermore, the fact that for the later SBLs one of Mr. Levy's companies was often the purported contractor/supplier undermines Mr. Kazman's argument. It is also relevant that Mr. Levy's construction companies were incorporated well before the alleged fraudulent scheme. However, the reason Mr. Kazman gave for why Mr. Levy would want to use different construction companies for these SBLs make sense. These were not companies like Ellis Don that would be known by reputation to a bank employee. I can understand that if the same company was always used for these renovations that the banks might notice and scrutinize the invoices more closely. This, however, does not assist me in deciding the involvement of Mr. Kazman or Mr. Levy in these companies. They may have both wanted these companies for the same purpose.

1662 During his cross-examination, Mr. Levy asked Mr. Kazman that since he was a lawyer why he had not prepared a document to protect himself. Mr. Kazman did not answer the question at first. He then said that Mr. Levy did not want to sign any documents and that he trusted Mr. Levy and Mr. Levy trusted him. He also stated that if you want to remain anonymous; a reference to Mr. Levy, your name won't appear anywhere. He later referred to this as a "smoke screen" but that this did not become apparent to him until after the criminal proceedings began.

1663 Mr. Kazman admitted to owning one construction company called Cramarossa, which began in the same way as the Disputed Construction Companies. It was incorporated by Anna Cramarossa, a former secretary of Mr. Kazman's, and she was the President, Secretary and Treasurer of that corporation from its incorporation until she resigned on February 21, 2005 and Mr. Kazman took over these positions. Mr. Kazman testified that he "thinks" the company did some of its own contracting and that it also outsourced to others. It owned a van used in construction. Cramarossa did receive proceeds from the first SBL and I find that it was a company that was used at least purportedly for construction involved in the SBLs. I have set out those findings as I reviewed each of the 16 SBLs. The relevance at this stage is that Mr. Kazman at least admits to owning one construction company.

1664 The involvement of Mr. Levy in Northwood is clear, as already stated. Furthermore, since I have not accepted his subcontracting defence there is no doubt in my mind that with respect to the 16 SBLs, with the exception of the Cohen Loans, to the extent that leasehold improvements were done and furniture, fixtures and equipment was supplied, he was the one the borrowers dealt with. He was also the one who prepared and provided the invoices to the borrowers. I accept the evidence of the other defendants that they had no dealings with Mr. Kazman. Why

Mr. Levy later started to also use one of the companies he admits are his is not clear but that has not raised a doubt in my mind about this conclusion.

1665 As for Mr. Kazman, I do not accept his evidence. In my view it is clear that he was also in control of the Disputed Construction Companies and in particular that he was in control of the initial funds received by those companies.

1666 I have rejected Mr. Kazman's evidence for a number of reasons:

- 1) The most compelling evidence was the evidence of Ms. Chapkina when she testified that for her World SBL, Mr. Kazman used his companies and Mr. Levy used his. She was in a position to give reliable evidence to this effect based on her own experience. According to Ms. Chapkina, Alfredo Paulo, the incorporator of A&P, had construction experience and did handyman work for Mr. Kazman. However she testified that he was not the controlling person of A&P and was not involved in decision making. That was all Mr. Kazman. She also mentioned other trades that Mr. Kazman employed on her jobs such as the electrician Mr. Mueller. On this issue I found her evidence to be credible.
- 2) Ms. Chapkina was often directed by Mr. Kazman on how to fill out the cheques. If Mr. Kazman received instructions from Mr. Levy, I would have expected him to complete the cheque as that would be most efficient. Otherwise he would have to make a note and then give instructions to Ms. Chapkina. Although she admitted to preparing cheques for Mr. Levy, she said she only did this if Mr. Kazman approved of this and it sounded as though that was a rare occurrence.
- 3) In each case, save for Whitehorse, the person who incorporated the company was a friend of Mr. Kazman, not Mr. Levy. In my view, if Mr. Kazman's position were the truth, given my finding that Mr. Levy did not meet with the person Mr. Kazman knew and had asked to incorporate the company, it is incredible that he would trust a stranger to not only incorporate the company but also open the bank account and become a signing officer. These were people Mr. Kazman knew, not Mr. Levy. If this was his plan, Mr. Levy had his own friends and a big family and so he could have used another family member or his own friends rather than people he did not know. The incorporators who did testify made no reference in their evidence to even meeting Mr. Levy let alone being asked by him to do this or being interviewed by him as Mr. Kazman testified to. They all testified that it was Mr. Kazman who paid them the \$300.
- 4) Mr. Kazman admitted under cross-examination that he had no proof whatsoever that Mr. Levy had been the directing mind of these contracting companies - not one email, letter, or note.
- 5) Furthermore, the evidence of Mr. Kazman does not make any sense. As he pointed out, he was not an officer or director of any of these Disputed Construction Companies; he was just a bank signing officer either from the time of incorporation or at some point later. He offered no explanation for why he would not simply have become a director and officer from the outset if he was going to become a banking signing officer. Mr. Kazman testified that Mr. Levy trusted him. Why would Mr.

Levy trust a complete stranger? All of the persons who incorporated these companies were associated with Mr. Kazman, not Mr. Levy. Mr. Kazman testified that as a lawyer it was not uncommon for him to incorporate a company and have his name associated with the company. There is no reason why he would not have done so for Mr. Levy. In my view it is more likely that it was Mr. Kazman who wanted to distance himself from these companies by having someone he knew incorporate the company for a modest fee. It makes no sense that Mr. Levy would have entrusted complete strangers for this purpose.

- 6) Mr. Kazman argues that he was not an officer or director of any of the Disputed Construction Companies and that he only went on as a signing officer at the bank but that gave him control over the funds received by and paid out by those companies.
- 7) Mr. Kazman testified that Mr. Levy trusted him with his money. I do not accept that a control freak like Mr. Levy would be dealing with his companies in this way. He would not relinquish all control over all of the money and leave it to Mr. Kazman to sign the cheques and deposit funds. The other finding that supports my conclusion is that Mr. Kazman asserted that Mr. Levy is a control freak and Mr. Levy admitted this. It is also consistent with what I observed of Mr. Levy during the course of the trial. It would be totally inconsistent with this characteristic of Mr. Levy for him to trust Mr. Kazman entirely with a company where Mr. Kazman was the sole signing officer on that company and thus essentially in full control of the funds being received by the company and paid out by the company. That said, for other reasons I will come to, I find Mr. Levy must have had some interest in these Disputed Construction Companies given the similarity in all of the invoices, the fact that it was often Mr. Levy the borrower saw as the contractor, and the funds received by Mr. Levy from the SBL as set out in the Coort Analysis.
- 8) In addition, as Mr. Coristine submitted, Mr. Levy was not shy about being a signing officer for a corporation. He was a signing officer on his own construction companies, some of which did work directly for the defendants and he was a signing officer on Whitehorse and M&M 155.
- 9) Mr. Kazman and Mr. Levy were partners in several properties at the time (1048 Eglinton, 1040 Eglinton) which supports a conclusion that Mr. Kazman and Mr. Levy were on equal ground as business partners - and co-conspirators in the scheme.
- 10) Mr. Coristine put it to Mr. Kazman that the construction companies he was signing officer of took in a total of about \$10 million in the period June 2007 to December 2010 and if he got a commission of 2 to 10% of that, it would be a lot of money. Mr. Kazman said that if the money was mortgage proceeds or purchase money then he did not get a commission. Mr. Coristine then put it to him that he would not know this since he never asked questions. Mr. Kazman responded that it was not fair to say that if sale proceeds or mortgage advances were put through that he would get a cut but he did not know if there were any. This evidence is important as it shows how incredible his evidence is on this point. Mr. Kazman said that if he saw a draft from LSC he might have to ask Mr. Levy. Clearly since there were

apparently some payments that he did not receive commissions on, and given his evidence that his commission varied, Mr. Kazman had to have inquired about the source of funds coming in and out of the bank account. They were his bank accounts.

1667 In my view, for all of these reasons, although Mr. Kazman did have control over the funds, he and Ms. Cohen and Mr. Levy were working together on most of the 16 SBLs before me. Mr. Kazman was in control of the money and Mr. Levy was in control of the SBL application process and the consequential leasehold improvements and supply of equipment, to the extent that was actually done. I find that Ms. Cohen had some control over these corporations as well because if she did not, with respect to her four SBLs, she would not have arranged for the SBL proceeds to go to one of the Disputed Construction Companies without some control over how those funds would be disbursed. I have applied the ultimate standard of proof to this question because it is a central finding of fact to an essential part of the Crown's case.

1668 This is an issue that will be material in determining whether or not the Crown has proven the allegations against Mr. Kazman or Mr. Levy, depending on the conclusion that I come to.

1669 Had I not been able to come to a conclusion on this issue I would have found that at the very least Mr. Kazman was willfully blind. It would not be the usual business of a lawyer to act as a signing officer on a corporation's bank account in exchange for a commission. Given the volume of funds that passed through these accounts, and given my finding that he did have to make some inquiry as to the source of the funds to determine if he was entitled to a commission and if so how much, I do not accept Mr. Kazman's evidence that he had no reason to question the source of the funds or where the funds were going to with respect to the cheques he was signing.

1670 Mr. Kazman is legally trained and testified that Mr. Levy told him that if the banks saw the same contractor they would scrutinize the loans more which Mr. Levy didn't want. Mr. Kazman showed no concern about what this meant -- why did Mr. Levy want to avoid scrutiny? I agree with the Crown that this put Mr. Kazman on notice that some inquiry was needed because Mr. Levy was telling him he did not want to be scrutinized and that he wanted Mr. Kazman to deal with the money because he would not scrutinize him. Money laundering has been an issue for the LSUC for some time and at the very least questions of this sort ought to have come to Mr. Kazman's mind. Mr. Coristine put to Mr. Kazman that after the RBC took the position that Contempo was a fraud he would have now been on high alert that his arrangements with Mr. Levy were not legit to which he replied that the court released the money. Mr. Coristine then put it to him that he should have at least known that he had to make inquiries about where the money was going and he should have told Mr. Levy that he was not going to do this anymore unless he knew and that to carry on as before could mean he was willfully blind. To this Mr. Kazman responded that "perhaps I should have been more diligent".

1671 Considering all of the evidence, in my view Mr. Kazman was more than willfully blind. He was a knowing participant in a fraudulent scheme. I am satisfied beyond a reasonable doubt that Mr. Kazman, Mr. Levy and Ms. Cohen were all directing minds of these corporations which they used to defraud the banks.

Findings with Respect to Whether the Purported Suppliers of Leasehold Improvements, Fixtures, Furniture and Equipment were Sham Corporations

1672 The position of the Crown is that all of the corporations that purportedly supplied leasehold improvements, fixtures, furniture and/or equipment to the companies that obtained the 16 SBLs that are covered by the indictment were sham corporations, created only for the purpose of receiving and diverting SBL proceeds. I note that Mosaic and other companies owned by Mr. Levy had not been recently incorporated but as I understand it, the Crown's position is that they were essentially sham corporations during the timeframe of the 16 SBLs.

1673 Mr. Kazman maintained that the Disputed Construction Companies were not opened just for the purpose of SBLs and were in fact construction companies. How he would know that given his evidence he did not explain.

1674 I am satisfied that the Crown's position is correct. The evidence in support of this position is as follows:

- a) For many of the Disputed Construction Companies, the address given for mailing purposes was at least initially the home address of the incorporator. Nevertheless, neither Mr. Vatch, nor Ms. Chapkina testified about receiving any business calls for any of these companies.
- b) These construction companies all had residential or office addresses and owned no construction equipment. William Sykes, an investigator for RBC, testified about his attendance at 4 Casino Court, the address for Northwood, on July 29, 2008. When Mr. Sykes called the Northwood number his call went to an answering machine with no indication it was a business.
- c) Although I accept that a contractor can operate with just a phone, when Mr. Sykes went to the residential address for Northwood at 4 Casino Court there was no signage or any vehicle or any construction material. I would have expected at least a sign given the address was on the invoices.
- d) There is no evidence that any of these corporations did any construction work for any person or entity that is not involved in this proceeding.
- e) In some cases the sequence of invoices from one of the Disputed Construction Companies jumps by a large number when it is clear from the banking records that no other work was being done by the company. For example, in the case of the Northwood invoices to ELFI, the sequence of invoice numbers, assuming they are sequential, suggests that Northwood did 190 jobs between the two invoices. Mr. Kazman submits this is a "red herring" and that the fact the invoices are not sequential does not mean that Northwood is a scam corporation. Mr. Kazman submitted that he did not use sequential invoicing for Blue Glass but that was not in evidence. Although in my view this is a small point, it is a relevant one.
- f) Although I accept the fact that a construction company can operate from an individual's home and not have salaried employees and construction equipment or

pay rent for its premises, the Coort Analysis establishes that for each of these corporations there is very little if any expenditure of what one would expect for a construction company in terms of employees or material. For example, according to the Coort Analysis, Mosaic's BOM account, from the time it was opened on September 29, 2007 to April 11, 2012 when the account was closed, received significant payments from the SBL funds obtained by CDI, Alta, Kube and Uzeem, as well as from the reported contractors and suppliers to other companies which obtained SBLs, namely ELI, LHC, LSC, Qua, Roxy, Modernito, World, Homelife, Bluerock, Kidshill, Just Little Holdings, and Leading Edge Accounting & Consulting Inc. However, in this period only about \$185,000 was paid to third party contractors or suppliers of equipment.

1675 Considering this evidence and the findings that I have made concerning whether or not the invoices from these companies represented leasehold improvements actually done or fixtures, furniture and equipment actually supplied, I am satisfied beyond a reasonable doubt that these corporations were incorporated solely for the purpose of receiving SBL proceeds and diverting those funds not used for the purposes indicated on the invoices to Mr. Kazman, Mr. Levy and Ms. Cohen and later, Mr. Tehrani.

The Applicable Law

Circumstantial Evidence

1676 The Crown's case depends to a large extent on circumstantial evidence. I have considered the recent decision of the Supreme Court of Canada; *R. v. Villaroman*, [\[2016\] S.C.J. No. 33](#) which reviewed how circumstantial evidence should be explained to a jury. The principles of law that I will apply are as follows:

- a) I must be satisfied beyond a reasonable doubt that the only reasonable inference that can be drawn from the circumstantial evidence is that a defendant is guilty;
- b) This requires me to not be too quick in "jumping to conclusions" and to consider other reasonable possibilities which are inconsistent with guilt;
- c) Other reasonable possibilities must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation;
- d) I must also assess the reliability and credibility of any underlying direct evidence as well as whether that evidence reasonably supports the circumstantial inference to be drawn from that evidence.

1677 However, as the Crown submitted, circumstantial evidence is not to be evaluated piece by piece but rather cumulatively. With circumstantial evidence based on reasoning or inference-drawing through probability (*R. v. Arp* [\(1998\), 129 C.C.C. \(3d\) 321](#) (S.C.C.), at para. 64), my application of logic, common sense and experience to the evidence engages consideration of both inherent probabilities and inherent improbabilities and, not infrequently, eliminating the unlikelihood of coincidence: *C.(R.) v. McDougall*, [\[2008\] 3 S.C.R. 41](#), at paras. 33-40, 47-8; *R. v.*

Yousif (2011), [\[2011\] A.J. No. 42](#), [92 W.C.B. \(2d\) 259](#) (Alta. C.A.), at para. 5; *In re B (Children)*, [2009] 1 A.C. 11 (H.L.), at paras. 5, 15, 70.

1678 In some cases, the trial record is without circumstantial connection of the accused to the dishonest transactions: see, for example, *R. v. Pham*, [2010 ONCA 766](#). In others, the credible circumstantial evidence amounts to an inescapable web of proof of complicity in the alleged crime.

The Elements of the Offence of Fraud s. 380(1)(a) -- Counts 1-5

1679 The *actus reus* of fraud has two elements: a dishonest act and deprivation. The dishonest act is established by proof of deceit, falsehood or "other fraudulent means" and the element of deprivation is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim; in this case the banks and Industry Canada, caused by the dishonest act; see *R. v. Th roux*, [\[1993\] 2 S.C.R. 5](#), at para. 16, McLachlin J. (as she then was), writing for the majority, who relied on *R. v. Olan*, [\[1978\] 2 S.C.R. 1175](#).

1680 "Deceit" is an untrue statement made by a person who knows that it is untrue, or has reason to believe that it is untrue, but makes it despite that risk, to induce another person to act on it, as if it were true, to that other person's detriment. "Falsehood" is a deliberate lie. "Other fraudulent means" is a term that covers more ground than either deceit or falsehood. It includes any other means, which are not deceit or falsehood, properly regarded as dishonest according to the standards of reasonable people; would the reasonable person stigmatize what was done as dishonest? The phrase "other fraudulent means" is broadly interpreted to include all means that can properly be characterized as dishonest; *Olan per Dickson J.* at p. 1175. It also includes non-disclosure of important facts; *Theroux* at para. 18. The *actus reus* is to be determined entirely on the objective facts.

1681 "Deprivation" includes, but does not require the bank to have suffered actual economic loss. It is enough if the bank was induced to act to its detriment by the defendant's conduct. The bank's economic and financial interests must be at risk, but the bank does not have to lose any money or anything of value as a result of that conduct; *Theroux, supra* at para. 17.

1682 The issue of causation is important in this case. I have set out the law that I considered on this issue in Appendix "R" and what principles of law I intend to apply to my factual findings on that issue.

1683 The *mens rea* of fraud is established by proof of subjective knowledge of the prohibited act and subjective knowledge that the act could have as a consequence deprivation of another, which may consist in knowledge that the victim's pecuniary interests are put at risk; see *Theroux, supra* at para. 27.

The Elements of "Laundering Proceeds of Crime" s. 462.31(1) - Count 6

1684 In the circumstances of this case this offence is proven if the Crown satisfies me beyond a reasonable doubt that Messrs. Kazman and Levy dealt with monies obtained from multiple SBLs

with the intent to conceal or convert those monies, knowing that all or part of those monies were derived directly or indirectly as a result of the commission of the offence of fraud over \$5,000 contrary to s. 380(1)(a) of the *Criminal Code* and that they thereby committed an offence contrary to s. 462.31(1) of the *Code*. This charge is generally described as "laundering proceeds of crime" although that term is not used of the *Code*.

1685 A person may deal with money in a number of different ways including using it, for example, by spending it to buy something or by transferring, sending or delivering any part of the money in some manner or other to another person, or to some other place.

1686 The Crown must also prove that the defendants knew or believed that the monies obtained from multiple SBLs had been obtained by fraud and intended to conceal or convert those monies.

Willful Blindness

1687 I also explained the law of willful blindness to the defendants, which is of possible application to Count 6 and with respect to the charges of fraud against the other defendants. The Crown may or may not satisfy me that Mr. Kazman and/or Mr. Levy were aware of the need to make an inquiry about the origins of the monies obtained from multiple SBLs, but deliberately failed to do so because they did not want to know the truth about it i.e. they were willfully blind. I have set out the law that I considered on this issue in Appendix "S" and the principles of law I intend to apply to the facts on this issue.

Elements of the "Criminal Organization" Offence in s. 467.12 of the Criminal Code -- Count 7

1688 All of the defendants are charged with committing the offence of fraud over \$5,000 for the benefit of, at the direction of, or in association with a "criminal organization". The term "criminal organization" is defined in s. 467.1(1) as a group, however organized, that is composed of three or more persons in or outside Canada and has as one of its main purposes or main activities the facilitation or commission of one or more serious offences (which includes fraud over \$5,000), that if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group. It does not include a group of persons that forms randomly for the immediate commission of a single offence.

1689 In order to prove this offence then the Crown must prove the three elements of the offence in addition to proving the underlying offence of fraud over \$5,000:

- a) that there is a group of three or more persons, however organized; a criminal organization;
- b) the defendant intended to commit the offence of fraud for the benefit of, at the direction of, or in association with a criminal organization; and

- c) the defendant knew or was willfully blind that the organization had as one of its main purposes or activities, the facilitation or commission of the offence of fraud.

1690 I have set out the law that I considered with respect to the elements of this offence in Appendix "T" and what principles of law I intend to apply to the facts on this issue.

Conclusions with respect to Marshall Kazman

Count # 1

ELFI

1691 I found that based on the evidence with respect to ELFI alone, that Mr. Kazman was not guilty of Count 1 as it relates to ELFI. However, for reasons stated, I have found that he was in control of Northwood with Mr. Levy and Ms. Cohen. Mr. Kazman denied the Crown's suggestion that TCM Property was his company although he admitted that he had a company called TCM Management Inc. Having considered the totality of the evidence I am satisfied beyond a reasonable doubt that Mr. Kazman used this incorrect version of his company name in the fraudulent lease to distance himself from the fraudulent lease. I also find that given his participation in Northwood, particularly as the signing officer and in the circulation of the SBL funds paid by the BNS to ELFI that he was aware of the fraudulent Northwood invoices and that they were being presented to the BNS as part of a fraudulent SBL in order to induce the bank to advance the SBL.

1692 For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. Kazman guilty of Count 1 as it relates to ELFI.

Qua

1693 I found that based on the evidence with respect to Qua alone, that Mr. Kazman was not guilty of Count 1 as it relates to Qua. I have considered the totality of the evidence and the concerns that I did have with respect to Qua that I have set out in my reasons.

1694 I have expressed my doubts as to whether or not all of the leasehold improvements and furniture, fixtures and equipment that Oakwood billed to Qua was actually done and supplied. There is the fact that there is no evidence of any significant money being paid to contractors for Qua, by Oakwood, a company Mr. Kazman had control over with Mr. Levy and Ms. Cohen, suggesting that the renovations and supply of equipment was not as extensive as represented to the bank. It also strange that there is no evidence that the balance outstanding of \$21,361.85 on the Oakwood invoices was ever paid by Qua to Oakwood.

1695 Considering the totality of the evidence I find however that despite my concerns that I am left in doubt about this issue, given I have no information about how 677 Queen looked before it was leased to Qua. Simply put I still have doubts as to whether or not Qua was a fraudulent SBL.

1696 For these reasons I find Mr. Kazman not guilty of Count 1 as it relates to Qua.

CDI

1697 I have found that the two invoices from Mosaic, the first dated October 14, 2008 for \$69,294.75 for the usual Total Gut Job and the first phase of the Total Rebuild and the second dated October 24, 2008 for the final phase of the Total Rebuild in the amount of \$23,782.50 were inflated and that Mr. Levy charged Mr. Salehi for a new HVAC that in fact had been installed and paid for by the landlord and for other work that was not done. These invoices must have been prepared by Mr. Levy or someone on his behalf.

1698 I have also found that the LHC invoice dated October 31, 2008 for furniture and fixtures for a total of \$50,594.62 included a new electrical panel for the new HVAC that was not done and the supply and installation of new handrails for the stairs, which Mosaic had already invoiced. Given I have found that LHC was a company on paper only, and for reasons that follow that Mr. Kazman was aware of this, I find that this invoice was either prepared by Mr. Levy or Mr. Kazman but Mr. Kazman was aware of the invoice and that he was making a payment to a company that only existed on paper so that the bank would advance the SBL proceeds.

1699 Finally, given the Icon invoice for equipment and fixtures and considering the totality of the evidence, Mr. Levy, Mr. Kazman and Ms. Cohen were involved in the preparation of this invoice given my finding that they and Ms. Cohen were all in control of that company. They knew this invoice would be relied upon by the bank for payment of the SBL proceeds.

1700 I find that although only the Mosaic invoices were fraudulent, that I am satisfied beyond a reasonable doubt, given Mr. Kazman's participation in the Cohen Loan frauds, that he was aware of these fraudulent invoices and as such that he is guilty of Count 1 in connection with CDI.

World

1701 I have found that Mr. Levy gutted the 344 Wilson and that the Crown has not proven that he did not do all of the work set out on the first Whitehorse invoice. The Crown argues that any work done at 344 Wilson had long been completed by Morningstar by the time World took over the premises and that the BNS paid the bill for leasehold improvements under false pretenses. I find that the Crown has not proven this allegation beyond a reasonable doubt. This was the first renovation to an old building Mr. Levy had purchased and he had an opportunity to do a full renovation at Ms. Chapkina's expense by using part of her World SBL.

1702 As for the invoices to World from Whitehorse and A&P, I am not satisfied beyond a reasonable doubt that they were inflated and that all of the equipment was not supplied, given the evidence of Ms. Chapkina and Mr. Mak even though Mr. Kazman and Mr. Levy unreasonably refused to provide receipts to show they had been purchased. I find it likely that many of them were "planted" as he said but on that basis alone I am not prepared to make a finding of fraud.

1703 For these reasons I find Mr. Kazman not guilty of Count 1 as it related to the World SBL.

Homelife

1704 There is no evidence that suggests that Mr. Kazman was aware of what I have found was an inflated Castlerock invoice. Castlerock was owned by Mr. Levy and his wife and Mr. Kazman had no interest in it. For these reasons the Crown has not proven beyond a reasonable doubt that Mr. Kazman is guilty of Count 1 as it relates to Homelife.

Uzeem

1705 For the reasons set out in my Summary of Findings for Uzeem, I find Mr. Kazman not guilty of Count 1 as it relates to Uzeem.

Count # 2

ELI

1706 Although I did not find Mr. Kazman guilty of Count 2 in respect of ELI based on the evidence concerning ELI alone, given my finding that he, Mr. Levy and Ms. Cohen were in control of Eastern my conclusion has changed. When Mr. Kazman incorporated ELI he became aware of the fact that ELI was associating itself with his property, namely the upstairs of 559 Eglinton and that it was not actually able to use that address for any legitimate purpose. I also find that he was aware of the fraudulent Agreement to Lease, which incorrectly named the landlord company as an incorrect version of his company 6747841 Canada Inc. I reject his evidence that Ms. Cohen and Mr. Levy did this behind his back. Like ELFI I find that he prepared this lease in this manner to try to avoid a connection to him. I also find that given his participation in Eastern, particularly as the signing officer and in the circulation of the SBL funds paid by the TD to ELI that he was aware of the fraudulent Eastern invoices and that they were being presented to the TD as part of a fraudulent SBL in order to induce the bank to advance the SBL. For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. Kazman guilty of Count 2 as it relates to ELI.

Count # 3

LHC

1707 Although I did not find Mr. Kazman guilty of Count 3 in respect of LHC, based on the evidence concerning LHC alone, given my finding that he, Mr. Levy and Ms. Cohen were in control of Northwood, my conclusion has changed. Mr. Kazman incorporated LHC and given his participation in Northwood, particularly as the signing officer and in the circulation of the SBL funds paid by the BOM to LHC I find that he was aware of the fraudulent Northwood invoices and that they were being presented to the BOM as part of a fraudulent SBL in order to induce the bank to advance the SBL. For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. Kazman guilty of Count 3 as it relates to LHC.

Modernito

1708 Although I did not find Mr. Kazman guilty of Count 3 in connection with Modernito on the evidence relevant to that SBL alone, considering the totality of the evidence and having found that the Icon invoices were inflated and that Modernito was billed for leasehold improvements that were not done and that these invoices were presented to the BOM, resulting in the BOM advancing the SBL proceeds in the amount to \$150,000 to Modernito and given my finding that Mr. Kazman along with Mr. Levy and Ms. Cohen were in control of Icon, I find that I am satisfied beyond a reasonable doubt that Mr. Kazman is guilty of Count 3 with respect to the Modernito SBL.

Count # 4LSC

1709 Although I did not find Mr. Kazman guilty of Count 4 in respect of LSC based on the evidence concerning LSC alone, given my finding that he, Mr. Levy and Ms. Cohen were in control of Northwood my conclusion has changed. Mr. Kazman incorporated LSC and given his participation in Northwood, particularly as the signing officer and in the circulation of the SBL funds paid by the RBC to LSC I find that he was aware of the fraudulent Northwood invoices and that they were being presented to the RBC as part of a fraudulent SBL in order to induce the bank to advance the SBL. For these reasons I find the Crown has proven beyond a reasonable doubt that Mr. Kazman guilty of Count 4 as it relates to LSC.

Contempo

1710 I have found that most or all of the purported leasehold improvements that Northwood billed Contempo for were not done. This means that the Northwood invoice provided to the RBC was fraudulent. I have found that Mr. Kazman along with Mr. Levy and Ms. Cohen controlled Northwood. I find that, particularly as the signing officer and in the circulation of the SBL funds paid by the RBC to Contempo, and given that Mr. Kazman claimed an interest in 1048 Eglinton at the time, that he was aware of the fraudulent Northwood invoice and that it was being presented to the RBC as part of a fraudulent SBL in order to induce the bank to advance all of the approved SBL proceeds. For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. Kazman guilty of Count 4 as it relates to the Contempo SBL.

Exclusive

1711 For the reasons set out in the Summary of my Findings, I find that the Crown has not proven beyond a reasonable doubt that Mr. Kazman is guilty of Count 4 as it relates to the Exclusive SBL.

Count # 5Roxy

1712 I have found that based on the evidence with respect to Roxy alone, that Mr. Kazman is not guilty of Count 5 as it relates to Roxy. I have considered the totality of the evidence and the concerns that I did have with respect to Roxy that I have set out in my reasons.

1713 Considering the totality of the evidence, I do have a concern about what is possibly evidence of fraud namely the fact that on the second Oakwood invoice dated June 8, 2008 for the equipment purportedly supplied to Qua, the serial numbers listed on this invoice for five pieces of equipment are identical to Oakwood's second invoice to Roxy dated April 16, 2008; namely a PC Dell Computer, a HP Pavilion 22" LCD Monitor, a Printer, Fax, Scanner Sharp Machine, a Refrigerator Honeywell and a Toshiba Laptop. Clearly the same equipment cannot be sold and supplied to different customers twice. This implicates Oakwood and given by finding that Messrs. Kazman, Levy and Ms. Cohen were in control of that company it implicates them.

1714 The problem however is that it is not possible to tell as between Mr. A. Tehrani and Mr. Salehi, who did not get what they supposedly purchased. As the Crown has pleaded the frauds by each bank, I am not be able to tell which invoice was improperly inflated; the invoice for Qua or for Roxy. In short, there is not enough evidence to find that this was a fraud on the CIBC.

1715 For these reasons I find Mr. Kazman not guilty of Count 5 as it relates to Roxy.

Alta

1716 I have found that that the billing to Alta was split between Mosaic, Mr. Levy's company and Icon and that this appears to have been the plan from the outset. I have found that Icon, one of the Disputed Construction Companies was controlled by Mr. Kazman, Mr. Levy and Ms. Cohen.

1717 I have found that no leasehold improvements were done for Alta or at the very least, if the cost for the improvements that were done were shared between CDI and Alta, that the Mosaic invoices were inflated.

1718 I have also found that the two invoices from Icon for furniture and fixtures and more equipment, computers and tools were exaggerated and that all of the equipment on the Icon invoice was not supplied to Alta.

1719 On this basis, since fraudulent invoices were presented to the CIBC, and given Mr. Kazman, Mr. Levy and Ms. Cohen controlled Icon, and given my finding that Mr. Kazman was aware of the fraudulent billing by Mosaic, and that he was aware that these invoices would be presented to the CIBC so that the full SBL proceeds would be paid to Alta, I am satisfied beyond a reasonable doubt that Mr. Kazman is guilty of Count 5 as it relates to the ALTA.

Kube

1720 I found that based on the evidence with respect to Kube alone, that Mr. Kazman is not guilty of Count 5 as it relates to Kube. However, given my finding that Mr. Kazman, Mr. Levy and

Ms. Cohen were in control of Oakwood, given Mr. Kazman knew that 677 Queen had originally been renovated by himself and Mr. Luska, given my finding that he along with Mr. Levy were in control of Oakwood, the purported contractor for Qua, and given his relationship with Mr. Levy in the other fraudulent SBLs that I have found, I am satisfied beyond a reasonable doubt that he would have known that the Mosaic invoices were inflated, that Mosaic did not perform a significant amount the work that it purported to do for Kube as represented to the bank in the invoices that were provided to the bank and that the CIBC relied upon these fraudulent invoices in disbursing the SBL proceeds. For these reasons I am satisfied beyond a reasonable doubt that Mr. Kazman is guilty of Count 5 as it relates to Kube.

Bluerock

1721 I have found that no funds from the Bluerock SBL were traced to Mr. Kazman or any of his companies and that Mr. Levy obtained this SBL behind his back.

1722 I find for this reason that the Crown has not proven Mr. Kazman guilty of Count 5 as it relates to Bluerock.

Count # 6 Laundering Proceeds of Crime

1723 As I have already stated in the circumstances of this case this offence is proven if the Crown satisfies me beyond a reasonable doubt that Messrs. Kazman and Levy dealt with monies obtained from multiple SBLs with the intent to conceal or convert those monies, knowing that all or part of those monies were derived directly or indirectly as a result of the commission of the offence of fraud over \$5,000 contrary to s. 380(1)(a) of the *Criminal Code* and that they thereby committed an offence contrary to s. 462.31(1) of the *Code*.

1724 I have reviewed the 16 SBLs including how the funds were circulated. I appreciate that I have not found that in all cases Mr. Kazman has been guilty of fraud, although I have made that finding in connection with each of the five counts related to the five different banks that provided some of the SBLs in issue.

1725 Where I have found fraud, Mr. Levy was the one who prepared the fraudulent invoices but I have found that he did so with the knowledge of Mr. Kazman who then for many of the companies was also tasked in actually making the deposits and writing the cheques.

1726 I have set out in my reasons a great deal of the tracing that Mr. Coort did following the receipt of the SBL funds and start-up capital, to the payment of the various invoices and beyond. The evidence is overwhelming that the distribution of the SBL proceeds and the circulation of those funds back and forth between companies owned by Messrs. Kazman and Levy and by Ms. Cohen was with the knowledge and intent of all three of them to conceal the fact that those monies were obtained from the banks by fraud.

1727 Although I accept that some of the payments made using funds traced back to the SBL proceeds in a case where I have found fraud, were sometimes for legitimate debts between the parties, I reject the evidence of Messrs. Kazman and Levy that they were all legitimate

payments for advancing or repaying loans or other legitimate debts. In any event the source of the funds was as a result of frauds perpetrated on the various banks.

1728 Mr. Coort traced some of the payments towards the purchase of properties. Others went toward mortgages held on property owned by Mr. Kaman or Mr. Levy and other payments were for personal expenses but again these payments were made in the fashion that they were to conceal their source.

1729 As I reviewed the loans I have pointed out some particularly good examples of what I have found to be laundering of the proceeds of the fraud. There are hundreds more mentioned in these reasons and thousands more in the Coort Analysis.

1730 For these reasons I am satisfied beyond a reasonable doubt that Mr. Kazman is guilty of Count 6.

Conclusions with respect to Gad Levy

Count # 1

ELFI

1731 For reasons stated in my summary of the ELFI SBL I find Mr. Levy guilty of Count 1 with respect to ELFI. My conclusion that he was a party to this fraud is reinforced by my consideration of the totality of the evidence and in particular my conclusion that Mr. Levy was the person who prepared the fraudulent tax documents and GICs for presentation to the BNS and that he was in control of Northwood with Mr. Kazman and Ms. Cohen.

Qua

1732 I found that based on the evidence with respect to Qua alone, that Mr. Levy was not guilty of Count 1 as it relates to Qua. I have considered the totality of the evidence and the concerns that I did have with respect to Qua that I have set out in my reasons.

1733 I have expressed my doubts as to whether or not all of the leasehold improvements and furniture, fixtures and equipment that Oakwood billed to Qua was actually done and supplied. There is the fact that there is no evidence of any significant money being paid for work done for Qua by Oalwood, a company Mr. Levy had control over with Mr. Kazman and Ms. Cohen, suggesting that the renovations and supply of equipment was not as extensive as represented to the bank. It also strange that there is no evidence that the balance outstanding of \$21,361.85 on the Oakwood invoices was ever paid by Qua to Oakwood.

1734 Considering the totality of the evidence I find however that despite my concerns that I am left in doubt about this issue, given I have no information about how 677 Queen looked before it was leased to Qua. Simply put I still have doubts as to whether or not Qua was a fraudulent SBL.

1735 For this reason I find Mr. Levy not guilty of Count 1 as it relates to Qua.

CDI

1736 For reasons stated in my summary of the CDI SBL I find Mr. Levy guilty of Count 1 with respect to CDI in that I have found that the two invoices from Mosaic to CDI, that he prepared for the usual Total Gut Job and usual Total Rebuild were inflated and that Mr. Levy charged Mr. Salehi for a new HVAC that in fact had been installed and paid for by the landlord and for other work that was not done.

1737 My conclusion in this regard is reinforced by my consideration of the totality of the evidence and in particular my conclusion that Mr. Levy was the person who prepared the fraudulent GIC for presentation to the BNS.

World

1738 I have found that Mr. Levy gutted the building and that the Crown has not proven that he did not do all of the work set out on the first Whitehorse invoice. The Crown argues that any work done at 344 Wilson had long been completed by Morningstar by the time World took over the premises and that the BNS paid the bill for leasehold improvements under false pretenses. I find that the Crown has not proven this allegation beyond a reasonable doubt. This was the first renovation to an old building Mr. Levy had purchased and he had an opportunity to do a full renovation at Ms. Chapkina's expense by using part of her World SBL.

1739 As for the invoices to World from Whitehorse and A&P, I am not satisfied beyond a reasonable doubt that they were inflated and that all of the equipment was not supplied, given the evidence of Ms. Chapkina and Mr. Mak. I find it likely that many of them were "planted" as he said but on that basis alone I am not prepared to make a finding of fraud which requires a higher onus than probability.

1740 I do find however that Mr. Levy counselled Ms. Chapkina as to how to fill in the Summary in the way that she testified, knowing that what he was telling her amounted to misrepresentations to the bank. I also find that Mr. Levy prepared the fraudulent CIBC GIC statement and that he put it in the package for Ms. Chapkina to take to the BNS. For the reasons already stated however, I am not satisfied beyond a reasonable doubt that the Crown has proven that these items were relied upon by the bank in granting the SBL for World.

1741 For these reasons I find Mr. Levy not guilty of Count 1 as it relates to the World SBL.

Homelife

1742 Given the property history of 1040 Eglinton I am satisfied beyond a reasonable doubt that that Mr. Levy took advantage of that and had Castlerock invoice Homelife for improvements that had been done before behind the drywall. I have already given my reasons for why I find in these types of cases that Mr. Levy would misrepresent the work actually done. In this case I

accept that Mr. Ghatan would not necessarily have been aware of what was on the first Castlerock invoice but had not in fact been done. He wanted a turnkey operation and he was busy getting ready to open a brokerage. I therefore find that Mr. Ghatan was not aware of the fact that the first Castlerock invoice was inflated.

1743 I am satisfied that Mr. Levy provided Homelife with inflated invoice from Castlerock that Mr. Levy knew included leasehold improvements that he had not in fact done for Homelife. He knew that the BNS would rely on this invoice in advancing the \$204,000 SBL to Homelife.

1744 For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. Levy is guilty of Count 1 with respect to the Homelife SBL.

Uzeem

1745 For the reasons set out in my Summary of Finding I find that the Crown has proven beyond a reasonable doubt that Mr. Levy is guilty of Count 1 as it relates to Uzeem.

Count # 2

ELI

1746 For reasons stated in my summary of the ELI SBL I did not find Mr. Levy guilty of Count 2 with respect to ELI when I considered the evidence related to ELI alone. However having considered the totality of the evidence I am satisfied beyond a reasonable doubt that he was a party to this fraud in that he prepared the Business Plan, the fraudulent 2005 and 2006 NOAs for Ms. Cohen that grossly exaggerated her income and were provided to the bank and Mr. Levy or someone on his behalf faxed the 2006 NOA to the bank. As such I presume he provided the 2005 NOA to the bank as well. Furthermore, given my conclusion that he along with Mr. Kazman and Ms. Cohen had control over Eastern, I find beyond a reasonable doubt that he had to be aware of the fact that the invoices provided by Eastern to the TD in order to obtain the SBL proceeds, fraudulently misrepresented work done that had not been done and furniture, fixtures and equipment supplied that had not in fact been supplied in order to deceive the bank into releasing \$153,000 in SBL funds to ELI. For these reasons I find Mr. Levy guilty of Count 2 as it relates to ELI.

Count # 3

LHC

1747 For the reasons I have set out when I dealt with the LHC SBL, I am satisfied beyond a reasonable doubt, based on the evidence with respect to LHC alone, that Mr. Levy is guilty of Count 3. My conclusion in this regard is reinforced by my consideration of the totality of the evidence and my finding as a result that Mr. Levy prepared the Business Plan for LHC and that he was in control of Northwood along with Mr. Kazman and Ms. Cohen.

Modernito

1748 For reasons stated in my summary of the Modernito SBL I find Mr. Levy guilty of Count 3 with respect to Modernito having found that the Icon invoices presented to the BOM were inflated and that Modernito was billed for leasehold improvements that were not done causing the BOM to advance the SBL proceeds in the amount to \$150,000 to Modernito. My conclusion that Mr. Levy was a party to this fraud is reinforced by my consideration of the totality of the evidence and in particular my finding that he along with Mr. Kazman and Ms. Cohen were in control of Icon. For these reasons I find that I am satisfied beyond a reasonable doubt that Mr. Levy is guilty of Count 3 with respect to the Modernito SBL.

Count # 4

LSC

1749 For reasons stated in my summary of the LSC SBL I did not find Mr. Levy guilty of Count 4 with respect to LSC. However having considered the totality of the evidence I am satisfied beyond a reasonable doubt that he was a party to this fraud in that he prepared the Business Plan, the fraudulent HSBC GIC statement and then he or someone on his behalf faxed it to the bank.

1750 Furthermore, given my conclusion that he along with Mr. Kazman and Ms. Cohen had control over Northwood, I find beyond a reasonable doubt that he had to be aware of the fact that the invoices provided by Northwood to the RBC in order to obtain the SBL proceeds, fraudulently misrepresented work done that in fact had not been done and furniture, fixtures and equipment supplied that in fact had not been supplied in order to deceive the bank into releasing \$175,000 in SBL funds to LSC. For these reasons I find Mr. Levy guilty of Count 4 as it relates to LSC.

Contempo

1751 I have found that all of the purported leasehold improvements that Northwood billed Contempo for were not done. This means that the Northwood invoice provided to the RBC was fraudulently inflated. I have found that Mr. Levy along with Mr. Kazman and Ms. Cohen controlled Northwood. I find that, particularly as Mr. Levy was the one who met with Mr. A. Tehrani and was responsible for whatever leasehold improvement that were done, and given that he owned 1048 Eglinton through another corporation at the time, that he was aware of the fraudulent Northwood invoice and that it was being presented to the RBC as part of a fraudulent SBL in order to induce the bank to advance all of the approved SBL.

1752 For these reasons I find that the Crown has proven beyond a reasonable doubt that Mr. Levy is guilty of Count 5 as it relates to Contempo.

Exclusive

1753 For the reasons set out in the Summary of my Findings, I find that the Crown has not

proven beyond a reasonable doubt that Mr. Levy is guilty of Count 1 as it relates to the Exclusive SBL.

Count # 5

Roxy

1754 I found that based on the evidence with respect to Roxy alone, that Mr. Levy is not guilty of Count 5. I have considered the totality of the evidence and the concerns that I did have with respect to Roxy that I have set out in my reasons.

1755 Considering the totality of the evidence, for reasons already stated I find that Mr. Levy prepared a Business Plan for Mr. Salehi that has been lost and that he prepared the fraudulent GIC in the amount of \$98,571.53, purportedly purchased from RBC by Mr. Salehi to mature February 8, 2009 that was found in the CIBC loan file. I am not able to determine however, given that Mr. Salehi did not testify, whether or not Mr. Levy was the one who provided this fraudulent GIC to the bank.

1756 Considering the totality of the evidence, I do have a concern about the equipment supplied to Roxy pursuant to the Oakwood invoice date June 08, 2008 as I set out with respect to Mr. Kazman, given that five pieces of equipment have identical serial numbers to Oakwood's second invoice to Roxy dated April 16, 2008. As I have said clearly the same equipment cannot be sold and supplied to different customers twice and this implicates Oakwood and given by finding that Messrs. Kazman, Levy and Ms. Cohen were in control of that company it implicates them.

1757 As I said in connection with Mr. Kazman, the problem is that it is not possible to tell as between Mr. A. Tehrani and Mr. Salehi, who did not get what they supposedly purchased. As the Crown has pleaded the frauds by bank, I would not be able to tell which invoice was improperly inflated; the invoice for Qua or for Roxy. In short, there is not enough evidence to find that this was a fraud of the CIBC.

1758 My biggest concern, considering all of the evidence is that, as the Crown submits, in the period from June 13 to 23, 2008, from the \$69,754.22 that MDC Modern Design received from Oakwood, it paid out \$35,256.29 to Comod, \$8,657.21 to Meez Corp (Re: Account for Inv. 2021) and \$8,868.25 to Trust Inc., which paid back the same amount to Comod "on account" on the same day. MDC Modern Design also paid more than \$6,000 back to Qua "on account" which Mr. Levy said was for furniture. Mosaic also paid a total of \$29,995 to Meez Corp. This was a lot in terms of payments purportedly for furniture. The Crown takes the position this was money laundering and as I have said, based on these payments alone I could not conclude that. However, if I consider the totality of the evidence, I have found that payments made by Mr. Levy to Mr. Tehrani's companies purportedly for furniture were not in fact for furniture. Given there is no suggestion that these payments were loans, the only inference to be drawn is that Mr. Tehrani was involved in money laundering as submitted by the Crown.

1759 The quandary I have however is that I am not able to find beyond a reasonable doubt that

Oakwood inflated its invoices to Roxy particularly since I was not able to find that in connection with Qua.

1760 For these reasons I find Mr. Levy not guilty of Count 5 as it relates to Roxy.

Alta

1761 As I have said in connection with Mr. Kazman, I have found that no leasehold improvements were done for Alta or at the very least, if the cost for the improvements that were done were shared between CDI and Alta, that the Mosaic invoices were inflated.

1762 I have also found that the two invoices from Icon for furniture and fixtures and more equipment, computers and tools were exaggerated and that all of the equipment on the Icon invoice was not supplied to Alta.

1763 On this basis, since fraudulent invoices were presented to the CIBC, and given Mr. Kazman, Mr. Levy and Ms. Cohen controlled Icon, and given Mr. Levy prepared the Mosaic invoices, and that he was aware that these invoices would be presented to the CIBC so that the full SBL proceeds would be paid to Alta, I am satisfied beyond a reasonable doubt that Mr. Levy is guilty of Count 5 as it relates to the CIBC.

1764 I should add that I am satisfied that Mr. Levy prepared the fraudulent TD GIC that was in the loan file, but in the circumstances it does not add materially to the fraud that he committed. I have found that the loan file contains a fraudulent TD GIC and that Mr. A. Tehrani testified that the bank somehow ended up with the statement without him being aware of it. Mr. Levy also denied knowing anything about this or providing it to the bank. I have insufficient evidence based on Alta alone to make any finding on this issue. I would also have a concern that the Crown had not proven reliance by the bank on these fraudulent documents.

Kube

1765 For reasons stated in my summary of the Kube SBL I am satisfied beyond a reasonable doubt that Mr. Levy is guilty of Count 5 with respect to Kube in that he prepared Mosaic invoices that were fraudulent in that they included a significant amount of work that Mr. Levy knew was not done for Kube and that he knew would be submitted to the CIBC in order to obtain the release of SBL funds and his company received full payment of these invoices.

1766 My conclusion in this regard is reinforced by my consideration of the totality of the evidence and in particular my conclusion that Mr. Levy was the person who prepared the fraudulent tax documents that were provided to the CIBC that inflated Mr. Tehrani's income by about five times and the fraudulent TD GIC Statement and fraudulent CIBC Flexible GIC Statement.

Bluerock

1767 Based on my finding that the Bluerock SBL was a complete fraud I find that Mr. Levy is guilty of Count 5 with respect to Bluerock.

Count # 6 Laundering Proceeds of Crime

1768 I have already given my reasons for why I find that Mr. Kazman is guilty of Count 6. All of those reasons apply equally to Mr. Levy. For those reasons I am satisfied beyond a reasonable doubt that Mr. Levy is guilty of Count 6.

Conclusions with respect to Ali Vaez Tehrani (Ali Tehrani)

Count # 1

Qua

1769 I found that based on the evidence with respect to Qua alone, that Mr. A. Tehrani was not guilty of Count 1 as it relates to Qua. I have considered the totality of the evidence and the concerns that I did have with respect to Qua that I have set out in my reasons, particularly with respect to the purported sale of inventory to Mr. A. Tehrani. As this was Mr. A. Tehrani's first SBL and given my finding that by leaving Leon's he was serious about operating his own business, I have concluded that even looking at the totality of the evidence I still have doubts as to whether or not Qua was a fraudulent SBL and as such I find Mr. A. Tehrani not guilty of Count 1 as it relates to Qua and as such I also find Mr. Tehrani not guilty of Count 1 as it relates to Qua.

Count # 4

Contempo

1770 As already stated I have found that all of the purported leasehold improvements that Northwood billed Contempo for were not done and that the Northwood invoice was fraudulently inflated and presented to the RBC as part of a fraudulent SBL in order to induce the bank to advance all of the approved SBL.

1771 I have found that it would have been impossible that Mr. A. Tehrani would not know that 1048 Eglinton had already been renovated when he first saw it. I have also found that if Mr. A. Tehrani had paid any attention to how his loan money was being spent he would have at the very least realized that he should not be paying for a new storefront.

1772 I have also found that on the evidence of Contempo alone that I am not able to find beyond a reasonable doubt that Mr. A. Tehrani was actually aware of this or willfully blind to this, particularly as there is evidence that Mr. A. Tehrani invested funds, albeit funds borrowed from his brother and there is no evidence of payments back to him suggesting he was benefiting from any fraud. The Crown does not have to establish this but the lack of motive is a factor when considering the evidence for Contempo alone.

1773 Revisiting this finding in light of all of the evidence to this point has not changed my view. Simply put I am not satisfied beyond a reasonable doubt that Mr. A. Tehrani was aware of the fact that he had been overcharged and that a fraudulently inflated Northwood invoice was being presented to the RBC.

1774 For these reasons I find Mr. A. Tehrani not guilty of Count 4 as it relates to Contempo.

Count # 5

Roxy

1775 The Crown submits that both Mr. Tehrani and Mr. A. Tehrani are implicated in the Roxy SBL because the Tehranis were knowingly using laundered Roxy proceeds to further their own interests. I have dealt with the Crown's submission that they were involved in laundering SBL proceeds and have explained my difficulty with that given I have not found that the Crown has proven that the Roxy invoices were inflated. In any event, there is no evidence of money laundering by Mr. A. Tehrani, nor any other basis to make a finding that he was a party to any fraud in connection with Roxy.

1776 For these reasons, I find Mr. A. Tehrani is not guilty of Count 5 as it relates to Roxy.

Alta

1777 For reasons stated in my summary of the Alta SBL I find Mr. A. Tehrani guilty of Count 5 with respect to Alta.

Conclusions with respect to Madjid Vaez Tehrani

Count # 1

Uzeem

1778 For the reasons set out in my Summary of Finding I find Mr. Tehrani guilty of Count 1 as it relates to Uzeem.

Count # 5

Roxy

1779 I have already dealt with the Crown's submission that both Mr. Tehrani and Mr. A. Tehrani are implicated in the Roxy SBL because of alleged money laundering, when I considered this allegation in connection with Mr. Levy. I have found that there is no evidence in connection with Roxy that Mr. A. Tehrani was involved in any money laundering. Although I do find, for the reasons expressed in connection with Roxy and Mr. Levy that Mr. Tehrani was involved in money laundering as submitted by the Crown, since I have found that the Crown has not proven

beyond a reasonable doubt that Oakwood inflated its invoices to Roxy (as opposed to Qua), I find Mr. Tehrani not guilty of Count 5 as it relates to Roxy.

Kube

1780 I found that based on the evidence with respect to Kube alone, that the Crown has not proven that Mr. Tehrani is guilty of fraud as set out in Count 5 with respect to the Kube SBL. However I did have a number of concerns about Mr. Tehrani's evidence and when I consider the totality of the evidence I am persuaded beyond a reasonable doubt that he is guilty of Count 5. My reasons are as follows.

1781 As I stated with respect to Roxy, I was concerned about the payments in the period from June 13 to 23, 2008, that MDC Modern Design paid out \$35,256.29 to Comod, \$8,657.21 to Meez Corp (Re: Account for Inv. 2021) and \$8,868.25 to Trust Inc., which paid back the same amount to Comod "on account" on the same day. MDC Modern Design also paid more than \$6,000 back to Qua "on account" which Mr. Levy said was for furniture. I found that certain payments made by Mr. Levy to Mr. Tehrani's companies purportedly for furniture were not in fact for furniture. Given there is no suggestion that these payments were loans, the only inference to be drawn is that Mr. Tehrani was involved in money laundering as submitted by the Crown.

1782 I have also found it unlikely that the payments made by Mosaic to Mr. Tehrani's companies within a space of five days totaling \$113,806.27 are likely for furniture because I have found it unlikely that Mr. Levy would have needed all of this furniture in such a short period of time and because Meez Ltd. sold residential furniture, not office furniture. I find that it did not sell the type of furniture that Mosaic would buy for companies that had obtained SBLs. Considering the totality of the evidence I find that these payments as well were for money laundering.

1783 It is not clear whether or not Mr. Tehrani was able to keep all of these payments but my findings definitely give him an incentive to participate in what is clearly a fraudulent scheme involving Mr. Kazman, Mr. Levy and Ms. Cohen.

1784 With this financial incentive in mind the portions of Mr. Tehrani's evidence that did not make sense now do and I am satisfied beyond a reasonable doubt that the unit was not totally gutted again and that as such the Mosaic invoices to Kube that were presented to the bank were fraudulent and that Mr. Tehrani knew this. I also find that Mr. Tehrani knew that the third Mosaic invoice for furniture, fixtures, equipment and tools was inflated and included items that had not been delivered to Kube and that he tried to avoid the bank learning this by showing dated assets to Mr. Mizrahi that were clearly not provided by Mosaic according to the invoices.

1785 Although I did not accept Mr. Tehrani's evidence about the yellow envelope I am not satisfied beyond a reasonable doubt that he knew Mr. Levy had included fraudulent tax documents and fraudulent GICs in his package for the bank. I do find however that he deliberately misrepresented his income when he was filling out the application form with the assistance of the banker. On this point however the Crown has not established that the CIBC relied upon his reported income in deciding to send his loan application to the underwriters.

1786 I have found that the loan file contains a fraudulent TD GIC Statement in the amount of \$45,650 and a fraudulent \$80,000 CIBC Flexible GIC Statement. I am unable to conclude as between Mr. Levy or Mr. Tehrani, who provided these to the bank.

Conclusions with respect to Ekaterina Chapkina

Count # 1

1787 For the reasons stated with respect to my summary of the World SBL, I find Ms. Chapkina not guilty of Count 1 as it related to the World SBL.

Count # 4

1788 For the stated with respect to my summary of the Exclusive SBL, I find Ms. Chapkina not guilty of Count 5 as it related to the Exclusive SBL.

Count # 7

1789 Having found Ms. Chapkina not guilty of both counts, it necessarily follows that she is also not guilty of Count 7. Although I do not need corroboration for that finding, Mr. Coort testified that he did not see any loan funds from any of the loans under investigation being distributed to Ms. Chapkina. I find that although Ms. Chapkina made a number of errors in judgment in her dealings with the banks, that overall her difficulty resulted from her misplaced trust in Mr. Kazman.

Conclusions with respect to Kamyar Ghatan

Count # 1

1790 For the reasons stated in my summary of the Homelife SBL, I find Mr. Ghatan not guilty of Count 1.

Count # 7

1791 Having found Mr. Ghatan not guilty of Count 1, it necessarily follows that he is also not guilty of Count 7.

Conclusions with respect to All Defendants -- Count # 7 -- Criminal Organization

1792 I have set out the law that I have considered with respect to the Crown's allegation that the defendants each committed fraud in association with a criminal organization.

1793 That charge now only applies to Messrs. Kazman, Levy. A. Tehrani, and Tehrani although the Crown can also point to others such as Ms. Cohen.

1794 In that regard, the Crown alleges that Ms. Cohen's father, Jack Sade, and Mr. Kazman's partner Avi Luska and other persons who obtained SBLs such as Mr. Goldberg and Mr. Kalifer are members of the alleged criminal organization.

1795 I heard sufficient evidence about the role of Ms. Cohen in the frauds I have found to consider her role in the alleged criminal organization. However that is not the case for the others, such as Jack Sade or Mr. Kalifer. They were never charged with any offence to my knowledge and although I appreciate that they fit the theory of the Crown as to how this alleged criminal organization worked I have insufficient evidence to make any adverse findings with respect to these individuals.

1796 Mr. Kazman submitted that the Crown has failed to demonstrate beyond a reasonable doubt the planning, co-ordination, co-operation, and operating capital that was necessary to support a conviction for a criminal organization and that many of the factors to support such a conviction are absent. He also argued that s. 467.1 of the *Criminal Code* was not introduced for this type of matter, but more for "Mafia, human trafficking, drug trafficking, and violent gang type organizations." On the latter point, as I explain in Appendix S, Fish J., in *Venneri* cautioned against limiting the scope of this section to the stereotypical model of organized crime (at paras. 37-38, 41).

1797 I find for the reasons that follow that the Crown has proven beyond a reasonable doubt that Messrs. Kazman and Levy and Ms. Cohen were members of a criminal organization that had as one of its main purposes the facilitation or commission of the serious crime of fraud over \$5,000 and in particular its primary goal was to obtain capital through fraudulently obtained SBLs.

1798 I accept the Crown's submission that Mr. Levy and Mr. Kazman conspired with Ms. Cohen for all four of her loans. Mr. Kazman incorporated her borrowing companies and in some cases prepared leases. Mr. Levy produced forged documents for her applications. Mr. Levy also produced other business documents such as invoices for leasehold improvements and furniture, fixtures and equipment that cause the banks to release the SBL proceeds. Messrs. Kazman, Levy and Ms. Cohen then laundered the proceeds of the SBLs and Ms. Cohen deceived the appraisers.

1799 I find that there was some structure within the group in that they each had a role to play. Ms. Cohen was the initial borrower taking advantage of what was a good credit history and as the organization grew, she began to provide loans to persons the group recruited for the purpose of applying for SBLs. Mr. Kazman avoided any contact with the borrowers, the SBL application process and the invoicing and work that followed but as the legally skilled member of the group he provided promissory notes when needed, leases and other documents. Also with the exception of Whitehorse he made the deposits and wrote all of the cheques using the proceeds received from the SBL proceeds by the Disputed Construction Companies. Mr. Levy was the man out front who dealt with the borrowers and when necessary the bank. He arranged in some cases whatever leasehold improvements were done or equipment supplies. In my view this structure meets the test.

1800 I find that Messrs. Kazman and Levy and Ms. Cohen were not an *ad hoc* group that came together for a few easy frauds. After their success with the first four Cohen loans Messrs. Kazman and Levy and Ms. Cohen began to look for other opportunities. Both Mr. Kazman and Mr. Levy began to recruit borrowers.

1801 This group also had a sophisticated plan. For the most part they were able to use their own properties that they would lease to the borrower. In many cases it was a recently purchased property, often using the proceeds of a fraudulently obtained SBL to purchase the property. This permitted them to have a borrower use their SBL to improve the value of their property. This is what happened in both of Ms. Chapkina's SBLs. Although I have not found that those SBLs were frauds, the funds received did allow the group to prosper as properties were then sold for a large profit.

1802 In other cases however the plan was to renovate a property once including a Total Gut Job and Total Rebuild and then prey upon borrowers like Mr. Ghatan, who lacked the skill and time to appreciate they were being charged for work that had already been done. Those inflated invoices would typically not raise an issue with the bank and the full SBL would be advanced.

1803 The Crown argues that every person who then became a borrower automatically became a member of the organization but I do not accept that. There was no suggestion by the Crown that Ms. Bendavid, Mr. Cheng or Mr. Richards were members of the organization.

1804 The Crown asserts that to carry out this fraudulent scheme, Mr. Levy recruited Mr. Tehrani, whom he knew from the Meez Corp. loan. Mr. Tehrani in turn recruited his brother, Mr. A. Tehrani as well as Mr. Salehi, his then-business associate. I agree that these borrowers were recruited but that does not mean that they automatically became members of the criminal organization.

1805 The Crown asserts that Mr. Tehrani began a business relationship with Mr. Kazman and Mr. Levy as early as November 2006 when he obtained a SBL from BNS for Meez Corp. As I have already stated, the evidence is that Meez Corp. was a legitimate SBL. Although Northwood did the construction for Meez Corp. I do not accept the Crown's submission that Mr. Tehrani met Mr. Kazman then or for that matter Ms. Cohen. There is no evidence of that and such a proposition is at odds with the evidence I did hear from the Tehranis, and Mr. Ghatan who all testified that they only dealt with Mr. Levy. The exception seems to be for Ms. Chapkina, presumably because she was Mr. Kazman's assistant.

1806 I also do not accept that Mr. Tehrani could have become a member of the group as early as November 2006. At that time Mr. Tehrani was operating his businesses and Meez Corp was a legitimate SBL that he fully repaid.

1807 As Ms. Barton argues there is a real question of Mr. Tehrani's knowledge of the existence of this criminal organization. There is no evidence that he ever met Ms. Cohen and he did not meet Mr. Kazman until much later. The Crown submits that Mr. Tehrani had to have known that Mr. Levy could not have been doing all of this on his own but I disagree. As Ms. Barton

submitted, the evidence suggests that Mr. Levy, the control freak, who was the front of this organization, was a SBL specialist and experienced contractor who could not only ensure the SBL was approved but then also provide a turnkey operation. There was no evidence that Ms. Cohen or Mr. Kazman were involved with the borrower, save for Ms. Chapkina.

1808 I find that the Crown has not proven beyond a reasonable doubt that Mr. Tehrani was aware of the existence of this criminal organization.

1809 I make the same finding with respect to Mr. A. Tehrani whom the Crown alleges was a short-term member of the group. I have only found Mr. A. Tehrani guilty of fraud in connection with one SBL; Alta. I do not know how the idea was arrived at but I have found that he and Mr. Salehi decided to share the large space Mr. Salehi was going to rent from Mr. Sakellariou and then with Mr. Levy's help fraudulent invoices were sent to the banks.

1810 I am not satisfied that this shared fraud put Mr. A. Tehrani on notice of the criminal organization that I have found. There is no evidence that he knew either Mr. Kazman or Ms. Cohen at that time or that they were involved in any way in the fraud that he committed. He only knew of Mr. Levy. To the extent money was loaned to Mr. A. Tehrani there is no evidence that he would have known that it came from money obtained by fraud, if that was the case.

1811 For these reasons I also find that the Crown has not proven that together, both Tehranis and Mr. Salehi and formed a faction within the criminal organization.

1812 For these reasons I find that Mr. Kazman and Mr. Levy are guilty of Count 7. I find that Mr. A. Tehrani and Mr. Tehrani are not guilty of count 7.

Disposition

1813 Mr. Kazman would you please stand. For the reasons I have given I find you guilty of Counts 1, 2, 3, 4, 5, 6 and 7.

1814 Mr. Gad Levy would you please stand. For the reasons I have given I find you guilty of Counts 1, 2, 3, 4, 5, 6 and 7.

1815 Mr. Ali Vaez Tehrani would you please stand. For the reasons I have given I find you guilty of Count 5 in connection with Alta. and I find you not guilty of Counts 1, 4 and 7.

1816 Mr. Madjid Tehrani would you please stand. For the reasons I have given I find you guilty of Count 1 in connection with Uzeem and Count 5 in connection with Kube. I find you not guilty of Count 7.

1817 Ms. Chapkina would you please stand. For the reasons I have given I find you not guilty of Counts 1, 4 and 7.

1818 Mr. Ghatan would you please stand. For the reasons I have given I find you not guilty of Counts 1 and 7.

N.J. SPIES J.

* * * * *

Appendix "A"

Ruling on What Use Can be made of the LSUC's Findings Revoking Mr. Kazman's Licence to Practice Law

[1] For reasons dated December 2, 2005, Mr. Kazman's licence was revoked by the Law Society of Upper Canada ("LSUC").¹³ The majority of the Hearing Panel found, in part, that Mr. Kazman was reckless and willfully blind as to whether certain real estate transactions were fraudulent and commissioned affidavits and declarations that were false and misleading. This decision was upheld by the Appeal Panel of the LSUC¹⁴ and the Divisional Court.¹⁵

[2] The Crown does not seek to rely on this ruling and I will not consider this evidence in considering the Crown's case against Mr. Kazman. However, the other defendants, and in particular Mr. Levy, do; I presume on the issue of propensity; namely, that Mr. Kazman is the type of person who is more likely to have committed fraud. If admissible, then it could be considered if it raises a reasonable doubt for the Crown's case against Mr. Levy or another defendant.

[3] The issue is what use if any can be made of this finding of professional misconduct given my view that it is not a conviction for an offence for the purposes of s. 12 of the *Canada Evidence Act*, [R.S.C. 1985, c. C-5](#) (CEA). I am not aware of any cases directly on point but this conclusion is based on the plain meaning of s. 12 and the observations by Dickson C.J. in *R. v. Corbett*, [\[1988\] S.C.J. No. 40](#), where he stated that "[i]t has been held that an accused may be cross-examined only as to 'convictions' strictly construed" (at para. 48).

[4] I am also not aware of an authority from the Supreme Court of Canada or from an Ontario court that has considered this question. The most relevant case comes from the Saskatchewan Court of Queen's Bench; *R. v. Stevely*, [2001 SKQB 63](#), [155 C.C.C. \(3d\) 538](#), in which Dawson J., after a comprehensive review of the jurisprudence relevant to s. 12, ruled that the Crown would not be able to cross-examine an accused on his police disciplinary record on the basis of s. 12 of the CEA. It is important to note, however, that this was a Crown application and the Crown sought to rely on s. 12.

[5] Where bad character evidence is adduced by a co-defendant, propensity evidence may be led so long as the prejudicial effect of that evidence does not clearly outweigh its probative value; see David M. Paciocco & Lee Stuesser, *The Law of Evidence*, 7th ed. (Toronto: Irwin Law Inc., 2015) at p. 99, citing *R. v. Suzack*, [141 C.C.C. \(3d\) 449](#) at para. 127.

[6] There is some authority that I have reviewed that permits a trial judge to rely on findings of professional misconduct in assessing the credibility of the defendant lawyer. This was done in *R.*

v. Poonai, [2207] O.J. No. 126 (S.C.J.) at para. 152 and the issue was considered in *obiter* in *R. v. Gillis*, [2014 NBCA 58](#), [426 N.B.R. \(2d\) 1](#) commencing at para. 117.

[7] Given that the law is unsettled and given the Crown has not asked that I consider the LSUC findings for Mr. Kazman, as already stated I will not consider the findings of the Hearing Panel in any way when considering the Crown's case and in particular Mr. Kazman's credibility.

[8] However, for these reasons, I conclude that in considering the defences raised by the defendants and in particular Mr. Levy, I may consider the findings of the Hearing Panel of the LSUC. I will bear in mind, however, that they do not make their findings on the criminal standard of proof and that the circumstances of the issues before the Hearing Panel were different from the facts before me.

* * * * *

Appendix "B"

Summary of Ownership of the Corporations

Associated to Mr. Kazman, Mr.

Levy, Mr. A. Levy and Ms. Cohen and Related Properties

Note: These findings of fact are based on the evidence of the Defendants, the Certified Corporate Profiles from the Ministry of Government Services (MGS) in the case of Ontario corporations and the Federal Corporations Data Online reports from Corporations Canada in the case of Federal corporations unless another source is stated. The information concerning the related properties comes from certified copies of the Land Titles Parcel Register Abstracts and the certified copies of various documents that were registered on title of the various properties that prove the corresponding municipal address.

The Borrowing Corporations owned by the defendants are dealt with in connection with their particular SBL(s). The Disputed Construction Companies are not included in this Appendix but are dealt with in Appendix "E".

Corporations Owned in Whole or in Part by Mr. Kazman

274 Holdings Inc.

- Incorporated on July 8, 2008 by Ms. Cohen as first director
- Registered office address is 181 Cocksfield Ave., Unit 5; Mr. Kazman's law office
- Mr. Kazman testified that he and Ms. Cohen were partners in this company which owned 274 Eglinton Avenue West, Toronto
- Mr. Kazman said that he purchased this property from the proceeds of the sale of 559-563 Eglinton Ave. West

672 Holdings Inc.

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- Incorporated on April 30, 2008
- Mr. Kazman is President and Secretary
 - Corporation purchased 672 Queen St. East, Toronto, on July 8, 2008 using, in part, proceeds from Light Source Contracting Inc. in the amount of \$28,872. Sold on March 16, 2011
 - Mr. Kazman testified that ownership of this company and the property was shared with Ms. Cohen, Jack Sade and Ronald Kalifer

677 Holdings Inc.

- Incorporated on November 6, 2007
- Avi Luska is the first director
 - Mr. Kazman and Mr. Luska are partners in this company
 - Corporation purchased 677/679 Queen St. East, Toronto, on Nov. 15, 2007
- Landlord to Qua and Kube

846 Realty Corp.

- Incorporated on March 31, 2009
 - Stephen M. Kazman (admitted to be the Defendant Mr. Kazman) is first director
 - Purchased 846 Sheppard Avenue West, Downsview on May 4, 2009 for \$380,000
- Mr. Levy was a 50% partner in the property
 - I have treated this company as one owned by Mr. Kazman as it is not clear if Mr. Levy was a 50% shareholder. If he was it would not make any material difference to my analysis.
 - Transferred to GMS Realty Inc. (Mr. Levy) on March 9, 2010 for \$839,000
 - Landlord to Exclusive and Bluerock although Mr. Kazman says the Bluerock lease is a fraud.

1040 Holdings Inc.

- Incorporated on September 7, 2007 by Mr. Kazman as first director
- Mr. Kazman is President and Secretary and Mr. Levy is co-signatory as of September 11, 2007
- Purchased 1040 Eglinton Avenue West, Toronto on September 26, 2007 for \$589,000.
- Acknowledgement and Agreement dated April 4, 2008 signed by Mr. Kazman and Mr. Levy confirms that they each have a 50% interest in the property and that they signed a Declaration of Trust on October 10, 2007 to confirm this.

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- I have treated this company as one owned by Mr. Kazman as it is not clear if Mr. Levy was a 50% shareholder. If he was it would not make any material difference to my analysis.
- Property transferred to MGM Inc. (Mr. Levy) on November 17, 2008 for \$1.165 million
- Mr. Kazman claimed he still had a 50% interest in the property thereafter, which is disputed by Mr. Levy.
- Landlord to Accessories & More, Dufferin Paralegal, and Western Leather Inc.

3042 Realty Corp.

- Incorporated on May 19, 2009 by Mr. Kazman as first director
- 3042 Keele Street, Toronto purchased on October 22, 2009 for \$600,000
- Property owned by Mr. Kazman, Ms. Cohen and her father Jack Sade.
- Landlord to Bluerock, which is disputed by Mr. Kazman who claims the lease is a fraud.

6747841 Canada Inc.

- Incorporated on April 3, 2007
- Mr. Kazman is President
- Additional signing officer is Abraham Luska
- Certificate of officers and directors for CIBC on April 12/07 signed by Mr. Kazman as President and Mr. Luska. Ms. Cohen added as a co-signatory on February 11, 2008
- Purchased 559 - 563 Eglinton Ave. West, Toronto, on May 2, 2007
- Property is sold June 5, 2008
- Corporation is dissolved on February 10, 2010 pursuant to s. 212 of the *CBCA*

Blue Deer Holdings Inc.

- Incorporated on May 31, 2004
- Dissolved August 13, 2007 pursuant to s. 212 of the *CBCA*

Blue Glass Water Company/2061914 Ontario Inc.

- Incorporated on January 4, 2005
- Business name of Blue Glass Water Company registered on November 14, 2006

Blue Glass Water Company Ltd./2141527 Ontario Inc.

- Incorporated July 5, 2007

Cramarossa Design and Renovations Inc.

- Incorporated on August 28, 2003
- CIBC documentation shows that Anna Cramarossa, a former secretary to Mr. Kazman, retired as Director and Officer on date of incorporation and Mr. Kazman appointed as President/Secretary/Treasurer on that date. This is not reflected in the Federal Corporation profile report.
- Dissolved as of November 14, 2006 pursuant to s. 212 of the *CBCA*

Dufferin Paralegal Ltd.

- Incorporated on February 2, 2006.
- Mr. Kazman is President and Secretary and only signatory
- Entered into a lease with 1040 Holdings Inc. for 1040A Eglinton Avenue West to commence March 1, 2008
- Obtained a SBL from the BOM and gave the BOM two invoices from Oakwood dated May 7 and 29, 2008 for leasehold improvements, fixtures and equipment for a total of \$182,553.50

M&M 155 Holdings Inc.

- For reasons set out above. I have found that Mr. Kazman was the beneficial owner of this company and the property it owned at 155 Sandringham Drive, Toronto

Raven's Claw Enterprises Inc.

- Incorporated on April 26, 2001

TCM Management Inc.

- Incorporated on August 28, 1988
- Mr. Kazman is the only signatory on the BOM account

Corporations Owned in Whole or in Part by Mr. Levy1040 Holdings Inc.

- As stated above, this company owned 1040 Eglinton which was held 50/50 by Mr. Kazman and Mr. Levy. The evidence is not clear whether or not Mr. Levy had a 50% ownership in the company.

1322637 Ontario Limited

- Incorporated on November 4, 1998

1421627 Ontario Ltd.

- Incorporated on June 2, 2000
- Haim G. Levy (Gad Levy) a director as of date of incorporation
- Registered office address is 617 College Street, Toronto

Bonded Contracting & Design Inc.

- Incorporated on March 25, 2010. First director was Armando Benlezrah and he was the only signatory at the bank.
- While owned by Mr. Benlezrah, Bonded was the purported contractor/supplier for the Bluerock SBL
- Benlezrah ceased to be a director on February 10, 2011 and on that date Mr. Levy became a director and President, Secretary and Treasurer

Castlerock Design Corp.

- Incorporated on April 24, 2009 by Karen M. Levy (Mr. Levy's wife) as first director
- Registered address is 23 Tresillian Road; Mr. Levy's home
- Contractor/supplier to Homelife

Fairbank Financial & Accounting Ltd.

- Incorporated on January 15, 2008
- Registered address is 1048A Eglinton Avenue West
- Mr. Levy is President

GM Realty Corp.

- Incorporated on March 10, 2008
- Address is 1040 Eglinton Avenue West
- Corporation purchases 344 Wilson Ave. North York on November 27, 2008
- Landlord to World

GMS Realty Inc.

- Incorporated on January 27, 2010
- Address 1048A Eglinton Avenue West
- Purchased 846 Sheppard Avenue West, Downsview from 846 Realty Corp. on March 9, 2010

M.D.C. Contracting & Tiles Import Inc.

- Incorporated on December 16, 2004

M.D.C. Modern Design Concept Inc.

- Incorporated on April 17, 2001
- Address of 1048A Eglinton Avenue West

MGM Inc.

- Incorporated on May 31, 2007
- Address on report dated March 15, 2010 states address as 1048A Eglinton Avenue West
- Purchased 1040 Eglinton Avenue West on November 17, 2008
- Landlord to Homelife

Mosaic Contracting & Tiles Sales Inc.

- Incorporated on September 15, 2006 with an address of 1048 Eglinton Avenue West
- Mr. Levy was the sole signing officer at Mosaic's BOM business account
- Bank statements as late as the one for the period ending May 29, 2009 has an address of 1048 Eglinton

Trust Inc.

- Incorporated on October 21, 1997
- Mr. Levy is President and Secretary

Trust Inc. Realty Corp.

- Incorporated on May 4, 2006
- Purchased 1048 Eglinton Avenue West, Toronto on June 21, 2006
- Landlord to Roxy, Contempo, Modernito and Kidshill

Corporations Owned in Whole or in Part by Mr. A. LevyBeachfront Developments Inc.

- Incorporated by Mr. A. Levy as President on April 4, 2010
- Amalgamated on January 1, 2009 with two other corporations

Beach Front Realty Inc.

- Amalgamated January 31, 2008

Blue Beach Avenue Corporation

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- Incorporated on May 8, 2006
- Owned 50/50 between Mr. A. Levy and Dov Levy
 - Signature card with RBC states both are signing officers-one can sign

Blue Beach Resorts International Ltd.

- Incorporated on February 19, 2009
- Agreement for Business Banking with BOM signed on February 26, 2009 by Mr. A. Levy, Mike Anilil and Nessim Dov Levy as signing officers-one can sign

Corporations Owned in Whole or in Part by Ms. Cohen aka Sade

274 Holdings Inc.

- As stated above this company was owned 50/50 by Ms. Cohen and Mr. Kazman

Save Energy Lighting Ltd.

- Incorporated by Dvora Sade, August 13, 1990
- Miriam Sade (Cohen) became a director, Secretary and General Manager on August 13, 2000
- Purchased 2289 Barton Street East, Hamilton on June 2, 1993
- On the evidence this company was operated by Ms. Cohen and her father Jacob Sade
- Ownership transferred to 2143519 Ontario Inc. on January 11, 2008, a corporation owned by Jacob Sade, Ms. Cohen's father

* * * * *

Appendix "C"

Reasons for Decision for Acquitting

Armand Levy of all Charges

[1] Mr. Armand Levy was charged with Counts # 1 and # 7. The Crown alleges that Mr. A. Levy received funds directly or indirectly from the proceeds of the SBLs given by the BNS to Homelife, World and Uzeem and that he was a member of the alleged criminal organization alleged in Count # 7.

[2] Mr. A. Levy was unrepresented at trial but brought a motion for a directed verdict of acquittal at the end of the Crown's case and retained Mr. Levine to argue that motion. I dismissed that motion for reasons found at 2016 ONSC 8194 (Directed Verdict Reasons).

[3] The Crown's case at the end of the trial did not improve against Mr. A. Levy even though he elected not to testify. Mr. A. Levy asked each of the witnesses called by the Crown and the other

defendants whether or not they knew him and had had any dealings with him. With the exception of Mr. Kazman, none had save for Mr. Tehrani who acknowledged having met him once when he came to pick up some furniture although he said he did not know who Mr. A. Levy was picking up for. Mr. Kazman knew Mr. A. Levy because of his relationship with Mr. Levy, which is to be expected. Furthermore, as I will come to, Mr. Levy gave evidence about the \$5,000 Castlerock cheque that at the very least raised a reasonable doubt with respect to my principal reason in dismissing Mr. A. Levy's motion for a directed verdict.

[4] The Crown's position at the end of the trial was that it relied only on its submissions in defence of Mr. A. Levy's motion for a directed verdict. At the end of the oral submissions of all parties but Mr. A. Levy, I decided that regardless of any findings I might make with respect to the charges against the other defendants, that there would be no possibility in my mind that the Crown had proven its case against Mr. A. Levy, which amounted to no more than speculation at best. For that reason, given I had to reserve my decision on the trial for about three months (it later became five months), I decided that Mr. A. Levy was entitled to know then that he was acquitted of all charges, with my reasons to follow when my Reasons for Decision on the trial were released. As a result, I advised Mr. A. Levy of his acquittal and these are my reasons for that decision.

[5] There is no dispute that Mr. A. Levy was not directly involved in any of the companies that borrowed money from the BNS or the other banks named in the other counts. At the material time Mr. A. Levy was associated with various companies, at least as a director, including Beachfront Developments Inc., Beach Front Realty Inc., Blue Beach Avenue Corporation, and Blue Beach Resort's International Ltd. There is no evidence to suggest that these corporations were sham corporations or that they were incorporated for the purpose of funneling proceeds from the SBLs.

[6] As I set out in my Directed Verdict Reasons, it is the theory of the Crown with respect to Count # 1, that it is open to me to conclude that funds in excess of \$150,000 going back and forth gives rise to the inference that Mr. A. Levy knew he was assisting in the fraud.

[7] I set out the specific payments the Crown relies upon in support of its case against Mr. A. Levy in my Directed Verdict Reasons and I will not repeat those here, save for one that I will come to. Mr. Levy testified about most if not all of the payments the Crown relies upon and said that they were loans or repayment of loans between brothers and that they did not document these loans as they were brothers and trusted each other. I have included most of that evidence in my Reasons for Judgment and as I state there, the Crown was not able to directly challenge any of this evidence.

[8] This evidence supported the position Mr. Levine took at the end of the Crown's case that the payments back and forth between Mr. A. Levy and companies he is associated with and the other companies, which the Crown alleges are associated with Mr. Levy, are consistent with loans and repayment of loans between brothers. I determined at the end of the trial that even if I decided not to accept Mr. Levy's evidence on this point, the best that could be said is that we do not know what the purpose of the various payments was.

[9] I have now concluded that Mr. Levy is an incredible and unreliable witness. However, given his evidence on this point was not challenged or contradicted, at the very least it raises a reasonable doubt. As Mr. Levine submitted on the motion, the fact Mr. A. Levy received payments directly and through his companies from companies associated with his brother, Mr. Levy, and that those payments included SBL proceeds, and made certain payments back to those companies, is not sufficient for the Court to draw a reasonable inference that Mr. A. Levy knowingly and intentionally participated in any fraud. Furthermore, the fact Mr. A. Levy is Mr. Levy's brother is not enough to support a reasonable inference that Mr. A. Levy participated in any fraud committed by his brother. The evidence against Mr. A. Levy does not rise above the level of speculation.

[10] My principal reason in dismissing Mr. A. Levy's motion for a directed verdict was because of a \$5,000 cheque from Castlerock Design Corp. (Castlerock) signed by Karen Levy, Mr. Levy's wife to Mr. A. Levy personally in the amount of \$5,000 on July 28, 2009. The re line of that cheque states: "shareholder loan". As stated in my Directed Verdict Reasons, I found that this was some evidence that Mr. A. Levy was a shareholder of Castlerock at the material time, that Castlerock was a small family run corporation and that a reasonable inference could be drawn that Mr. A. Levy had some knowledge or ought to have some knowledge of the activities of Castlerock. I also found that there was some evidence that Castlerock was involved in defrauding the BNS, and possibly the CIBC.

[11] At the end of the trial I obviously had made no finding with respect to Castlerock and whether it had participated in a fraud but I did have the evidence of Mr. Levy with respect to the \$5,000 cheque I was concerned about. In answer to questions from Mr. A. Levy, Mr. Levy testified that Mr. A. Levy was never a shareholder of Castlerock, which was owned by him and his wife, Karen Levy, only. Mr. Levy also testified that Mr. A. Levy was not a director or officer of Castlerock and that he did not have anything to do with that company or with any other of Mr. Levy's companies. With respect to the \$5,000 cheque, Mr. Levy testified that his wife, Karen Levy took \$5,000 out of her personal account and deposited that money to Castlerock as a shareholder loan. She then gave Mr. A. Levy a cheque for \$5,000 which was marked shareholder loan; a reference to her loan to the company. This evidence was not challenged by the Crown. Again, I decided that even if I ultimately found Mr. Levy not to be a credible witness, this evidence was plausible and would certainly raise a reasonable doubt as to any possible involvement of Mr. A. Levy as a shareholder in Castlerock. It would therefore not matter what finding I made with respect to Castlerock.

[12] For these reasons I concluded at the end of the trial, that regardless of my conclusions on the charges against the other defendants that the Crown had not proven Mr. A. Levy guilty of Count #1 beyond a reasonable doubt.

[13] Having found Mr. A. Levy not guilty of Count # 1, it follows that he is not guilty of Count # 7. Furthermore, although at the conclusion of the trial I had not made any finding with respect to Count # 7, I decided that even if I were to find that a criminal organization existed, there was no evidence that Mr. A. Levy was a member of the organization or that he knew or was willfully

blind about the existence of such an organization or about any involvement in such an organization.

[14] For these reasons I find that Mr. A. Levy is not guilty of Counts # 1 and # 7.

* * * * *

Appendix "D"

Use of Handwriting Evidence

Proof that an accused authored certain writing may afford circumstantial evidence that not only was he or she acquainted with the subject matter to which the writing is connected, but also, depending on the context, that the accused was actively engaged in participating in any described transaction.

The prosecution may establish that a writing was made by an accused on the basis of an admission or agreement or, where disputed, by:

- (1) a witness acquainted with the accused's writing;
- (2) expert evidence; and/or
- (3) comparative evaluation by the trier of fact without the testimony of a witness.

These proof processes, particularly the latter two described above, inevitably involve a comparison of unknown or disputed writing to a handwriting sample authenticated at trial to be genuine in the sense of a proved exemplar of the accused's writing, whether by admission or other persuasive proof.

A trier of fact is entitled, and indeed not precluded, as a matter of common law, to undertake a comparative analysis of handwriting specimens without the intervention of witnesses interpreting or identifying the relevant writing -- a deliberative and fact-finding process which is not ousted by s. 8 of the *CEA* which provides:

Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting those writings, may be submitted to the court and jury as proof of the genuineness or otherwise of the writing in dispute.

See *R. v. Abdi* (1997), 116 C.C.C. (3d) 385 (Ont. C.A.), at paras. 13-23, 25; *R. v. Malvoisin* (2006), 36 M.V.R. (5th) 187 (Ont. C.A.), at para. 4.

It is important as an aspect of the accused knowing the case to be met, that he or she be on notice that the trier of fact may engage in comparative handwriting identification analysis: *R. v. Flynn*, 2010 ONCA 424, at para. 20; *R. v. Anderson*, 2005 BCCA 143, at paras. 11-14.

"The recognition, correct interpretation, and complete comparison of all of its qualities, elements, and characteristics, are the essential phases of a scientific handwriting examination" and "[t]he process of comparison ... is reasoning regarding similarities and differences": A.S. Osborn,

Questioned Documents (2nd ed.) (Toronto: The Carswell Company, Limited, 1929), at pp. 97, 237.

Accordingly, a trier of fact is entitled to use his or her "own eyes and ... common sense" in making "an educated and reasonable comparison" of handwriting properly tendered in evidence (*Abdi*, at paras. 26, 29). The notion of writing undoubtedly includes printing and other text: National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (The National Academics Press, 2009), at p. 164 ("handwriting includes cursive or script stroke writing, printing by hand, signatures, numerals, or other written marks or signs"); J. Levinson, *Questioned Documents: A Lawyer's Handbook* (San Diego, Academic Press, 2001), at p. 41 (query whether writer uses special signs or marks or "certain abbreviations or pictographic techniques in writing").

The trier should be encouraged to proceed by the use of objective criteria as the foundation for any opinion should one prove possible. The dependability or reliability of the trier's conclusion and the weight to be attributed to such conclusion are case-specific issues. It is expected that the trier will focus on "the distinctiveness of the writings in issue" (*Abdi*, at para. 25), for example, the manner in which particular letters are written: *Flynn*, at paras. 17-18. In some instances, the trier may be invited to look at the similarity of the misspelling of certain words and the irregular spacing of others: *R. v. G.D.C.*, [2010 ONCA 381](#), at para. 4.

Handwriting comparison, even by experts, is no easy task. As a general rule, it is recognized that there is a potential danger in making unassisted handwriting comparisons in the absence of expert or other evidence relating to the writings: *Abdi*, at paras. 27, 29; *Malvoisin*, at para. 4. This cautionary theme is hardly surprising given the scope of examination which might be undertaken by an expert as described at p. 510 of the Chayko and Gulliver text:

The characteristics which are assessed include: line quality; writing fluency and legibility; rhythm of movements; pen pressure; slope of handwriting; spacing between characters, words and lines of information; alignment of characters, words and lines of handwriting; direction of strokes; manner of connecting and disconnecting characters and words; initial and terminal movements; size of writing; character design; internal consistency of movements; proportions within characters and one of character to another; arrangement of writing; presence or absence of pen lifts, hesitations and hiatuses; and the design and positioning of punctuation marks, diacritics, accents and other symbols.

The conclusions expressed in handwriting comparisons range from certainty to probability to being inconclusive. The terminology and conclusion levels vary among laboratories.

One frequently used scale of conclusions is:

1. Definitive -- "The questioned handwriting was (or was not) executed by the writer of the specimens" or "The questioned handwriting has been identified (or eliminated) as having been executed by the writer of the specimens".
2. Strong probability -- "There is a strong probability that the questioned handwriting was (or was not) executed by the writer of the specimens" or "The similarities (or differences) found definitely indicate that the questioned handwriting was (or was not) executed by the writer of the specimen".

3. Probability -- "The similarities (or differences) found tend to indicate that the questioned handwriting was (or was not) executed by the writer of the specimens" or "The similarities (or differences) suggest that the questioned handwriting was (or was not) executed by the writer of the specimens".
4. Neutral -- "It was not possible to determine whether or not the questioned signature was executed by the writer of the specimens" or "The questioned handwriting has not been identified or eliminated as being executed by the writer of the specimens".

* * * * *

Appendix "E"

Disputed Construction Companies

Note: These findings of fact are based on the Certified Corporate Profiles from MGS unless another source is stated. Findings of fact as to who signed cheques are based on evidence of a witness who admits this and/or my analysis of the signatures on cheques as compared to a Known Signature.

2078698 Ontario Inc. cob as Northwood Contracting

- Incorporated on August 5, 2005
- Mark Vatch is first director. Officers not listed. He retired on August 15, 2006 and was replaced by Mr. Kazman
- On August 23, 2005 Northwood is registered as a business name of 2078698 Ontario Inc.
- Registered office and mailing address is 4 Casino Court, North York, a residential address owned by Mr. Kazman
- The mailing address at the bank for Northwood was originally Mr. Vatch's home address and he testified that he gave the statements to Mr. Kazman. This was subsequently changed to Mr. Kazman's office address.
- Mr. Coort analyzed Northwood's Duca bank account from when it was opened on January 19, 2006 to October 7, 2008 when closing balance was \$nil.
- All of the cheques in this period were signed by Mr. Kazman.
- Duca file contains documentation confirming Mr. Vatch retired as President, Secretary/Treasurer on August 15, 2006 and Mr. Kazman signed a resolution on behalf of all of the shareholders of corporation accepting the resignation and he was appointed President and Secretary, Treasurer and sole signing officer. This is not reflected in the Corporate Profile.
- Purported supplier of leasehold improvements, furniture and equipment paid, in part, by the SBL obtained by ELFI, LHC, LSC and Contempo

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- According to the Coort Analysis approximately \$783,000 is paid to Northwood from SBLs for ELFI, Light House, Light Source and Contempo. There is also a deposit from Mr. A. Levy of just over \$100,000 which Mr. Kazman testified was a loan. There is also a \$50,000 deposit from an unknown source. There are no other deposits that could be from other clients of the company.
- According to the Coort Analysis, other than payments to LS Carpentry totalling \$7,500, there are no significant payments by Northwood to apparent third party contractors or suppliers of equipment, furniture or fixtures nor regular, typical business expenses for rent, utilities, payroll, taxes, etc.
- Mr. Kazman paid personal expenses out of the Northwood Duca account. For example, on August 15, 2007 he signed a cheque payable to Tony D'Imperio, someone he had borrowed money from personally in the amount of \$3,300 and on August 31, 2007 he signed a cheque payable to his wife Maxine Henry for \$700.

Eastern Contracting Inc.

- Incorporated on April 24, 2007 by Ms. Chapkina and she opened a bank account at the CIBC at the request of Mr. Kazman who paid her \$300 for her efforts
- Ms. Chapkina is the first director
- Registered office and mailing address is 221 Foxfield Cres. Concord, which was Ms. Chapkina's home address
- Signatories on the CIBC bank account were Ms. Chapkina as President and Secretary
- Mr. Kazman given signing authority as of June 7, 2007
- On February 23, 2010 Ms. Chapkina went to the CIBC to take Mr. Kazman off the Eastern account after she spoke to Cpl. Thompson. She said that she did so because she learned that Cpl. Thompson was inquiring about the account and she wanted to protect herself. When asked why she didn't close it she said maybe it was a little overdrawn. She remembered it was connected to her statement somehow.
- Mr. Coort analyzed the CIBC account from when it was opened; June 7, 2007, to December 31, 2008. In that timeframe Ms. Chapkina signed only one cheque payable to the CRA in the amount of \$1,030.69. She did not recall Mr. Levy asking her to write the cheque payable to the CRA. All other cheques were signed by Mr. Kazman.
- Purported supplier for leasehold improvements, equipment, furniture and fixtures to ELI.
- Received about \$205,500 which was the only funds in the account from August 31, 2007 to February 29, 2008.
- The bank account does not show regular typical business expenses for rent, utilities, payroll, taxes, etc.

- No cheques were issued from Eastern to Ms. Chapkina nor is there evidence that she received any other funds from the company.
- I find that Ms. Chapkina took the steps she did with respect to Eastern solely because she was asked to do so by Mr. Kazman and not for any purpose associated with the alleged fraudulent scheme. Mr. Coort could not articulate any difference between her involvement in Eastern as compared to the involvement of Mr. Vatch and Mr. Bochner in Northwood and Icon respectively. I accept Mr. Chapnick's submission that Ms. Chapkina was a "nominee" for Eastern in the same way that Mr. Bochner was for Icon and Mr. Vatch for Northwood or any of the other nominees discussed during the trial. There is no evidence that Ms. Chapkina took part in managing the corporation, preparing invoices, contracting or subcontracting work, or signing anything other than one check to the CRA and that was done at the request of Mr. Kazman. There is also no evidence that Ms. Chapkina received anything more than \$300 for her involvement in the corporation. I find that her role in Eastern was exactly as she explained it—something she did at the request of her boss. Her role in Eastern was entirely innocent and its only relevance to the charges she faces is that it demonstrates her trust of Mr. Kazman. Given that she believed incorporating companies was something others did in the office as well it did not demand the level of trust in Mr. Kazman that her involvement in the Bochner Condo did.

Oakwood Construction and Renovations Ltd.

- Incorporated on October 3, 2007
- Miriam Sade (Ms. Cohen's maiden name) is a director as of date of incorporation
- No officers listed
- Registered office and mailing address is 489 Champagne Drive, Toronto, the address where Save Energy Ltd. operated at this time
- Purported supplier of leasehold improvements, furniture and equipment, paid in part by SBLs obtained by Qua and Roxy.
- RBC bank account for the company was opened October 16, 2007 and Ms. Cohen was the sole signatory. There are, however, cheques written on the account that were signed by Mr. Kazman which include cheques for very large sums payable to Mr. Levy's companies Trust Inc. Realty Corp., MDC Contracting, and Mosaic
- Mr. Kazman testified that this was Ms. Cohen's company and that he only went on as a bank signatory because Ms. Cohen needed to give up her interest in the company to get her SBL for LHC. Mr. Kazman testified that both Ms. Cohen and Mr. Levy wanted to put the company in his name. He knew her and Mr. Levy and so he agreed.
- Mr. Coort analyzed the bank account from opening to October 27, 2008 when the account was closed. According to the Coort Analysis, approximately \$415,000 is paid to Oakwood from SBLs for Qua and Roxy which represents 39.5% of the total

deposits into the company's bank account. The majority of other money received by Oakwood was Accessories & More Ltd., which obtained a SBL, and from companies associated with Ms. Cohen, Mr. Kazman, Mr. Levy and Mr. A. Tehrani. Dufferin Paralegal paid \$181,703.80 between May 22 and June 9, 200 from its SBL.

- Mr. Coort also concluded that there are no significant payments to apparent third party contractors or suppliers of equipment, furniture or fixtures nor regular, typical business expenses for rent, utilities, payroll, taxes, etc.

Icon Contracting Inc.

- Incorporated on June 10, 2008 by Jonathan Bochner as first director
- Registered office address is 1121 Steeles Ave. West, Suite 507, Toronto, the Bochner Condo
- HSBC Account Fact Sheet states customer address is 1121 Steeles Ave. West, Suite 507 and mailing address is 181 Cocksfield Ave. Unit 5, Mr. Kazman's law office and says Mr. Bochner is Operations Manager for Bluewater Co.
- The initial signatories on the HSBC account were Johnathan Bochner as President and 100% owner and Mr. Kazman.
- As of June 27, 2008, Mr. Kazman was the only signing authority because Johnathan Bochner did not meet credit requirements.
- On September 30, 2008 Jonathan Bochner and Mr. Kazman were co-signatories at the bank again.
- Purported supplier of leasehold improvements, furniture and equipment, paid, in part, by SBLs obtained by Contemporary, Alta and Modernito and Icon received about \$342,000 from these companies. Its other significant revenue came from Western City Inc. and Western Leather Inc., companies that obtained SBLs.
- Mr. Coort analyzed Icon's HSBC account from the time it opened on June 24, 2008 to December 31, 2010. He found that other than payments totaling about \$55,500 out of the total debits/withdrawals of about \$776,000 there were no other significant payments to third party contractors or suppliers of equipment, furniture or fixtures. Furthermore this bank account does not show regular typical business expenses for rent, utilities, payroll, taxes etc.

Whitehorse Contracting Inc.

- Incorporated on November 7, 2008 by Maxine Henry as first director, then the wife of Mr. Kazman.
- No officers listed
- Office and mailing address 1 Whitehorse Crescent, Suite 21, Toronto, which was a condo purchased or rented by Mr. Kazman as his paralegal office and his Blue Glass business.

- The signatories on the company's HSBC account when it was opened were Maxine Henry, described as Designer and 100% owner and Haim Gad Levy, contractor.
- Ms. Henry and Mr. Levy signed all of the cheques that Mr. Coort saw
- Mr. Coort analyzed the HSBC account for the period December 23, 2008, when the account was opened to December 31, 2010. The account was inactive after October 1, 2010.
- Purported supplier of leasehold improvements, furniture and equipment, paid, in part, by SBLs obtained by Modernito and World; total of about \$127,500. Apart from this the only other significant money received was from Expert Accounting & Consulting Corp. and Leading Edge Accounting & Consulting Inc., companies owned by Warren Goldberg and Western City Inc. and World of Accessories Ltd. owned by Ronald Kalifer, all companies that received SBLs, save for \$186,375 from an unknown source.
- Mr. Coort also found that other than a total of about \$33,000, there were no other significant payments to third party contractors and suppliers of equipment, furniture or fixtures by Whitehorse and the HSBC account does not show regular typical business expenses for rent, utilities, payroll, taxes, etc.

A&P Design Build Contracting Services Inc.

- Incorporated on April 17, 2009
- Alfredo Paulo is the first director
- Registered office address is 181 Honiton St. Toronto, which is a bungalow that was owned by Ms. Cohen between November 3, 2008 and September 7, 2011
- Purported supplier of leasehold improvements, furniture and equipment to World and Exclusive
- Corporation opened a BOM account on April 29, 2009 and Mr. Coort analyzed the account to September 2, 2010. The account was inactive after March 2010.
- BOM did not provide details as to the signatory or signatories on this bank account but there are cheques signed by what appears to be a signature for Alfredo Paulo. There are also cheques signed by Mr. Kazman.
- Mr. Coort found that A&P was paid about \$223,000 in part, from the SBLs obtained by World and Exclusive. The only other significant source of deposits to A&P was from Leading Edge Accounting & Consulting Inc. (Ronald Kalifer) which obtained a SBL that was beyond the scope of the RCMP investigation.
- In addition Mr. Coort found that other than about \$16,700 of the approximate total of \$308,000 in withdrawals and debits, there were no significant payments by A&P to third party¹⁶ contractors or suppliers of equipment, furniture or fixtures. Furthermore, the BOM account does not show regular typical business expenses such as rent, utilities, payroll and taxes, etc.

* * * * *

Appendix "F"**Ruling on Crown's Count to Count****Similar Fact Application**

[1] The Crown brought a similar fact application before the end of its case and provided all of the defendants with a lengthy factum detailing its position that certain evidence against each defendant is sufficiently similar as to render it admissible as count-to-count similar fact evidence against that defendant. The application does not affect Mr. Ghatan as he is only facing one count.

[2] When some of the defendants raised the fact that they might also want to make a similar fact application, I ruled that they could advance such an argument and that a formal application was not necessary. Some of the proposed similar fact evidence could be considered of assistance to Mr. A Tehrani, Mr. Tehrani, Ms. Chapkina and Mr. Ghatan.

[3] It was agreed that the application would be argued as part of closing submissions and that the defendants did not need to provide responding facts. Ms. Barton on behalf of Mr. Tehrani does not oppose the Crown's application but only as the evidence applies to *mens rea*. Mr. Chapnick is content that I consider all of the evidence.

[4] The other defendants did formally oppose the application but did not make many arguments in support of their position. Mr. Kazman argued that there were different contractor companies, different amounts of work being done so that similar fact did not apply. Mr. Inoue argued that the similar fact evidence has no probative value because the similarities between the transactions at the bank are equally consistent with Mr. A. Tehrani being purely a victim of Mr. Levy. He also argued that the fact some business plans don't exist so that shows an absence of commonality. He submitted that there is no probative value to the evidence and some prejudice and so I should reject the similar fact argument.

[5] Notwithstanding the position of the defendants, all but Mr. Levy in fact rely on the totality of the evidence to some extent where there are similarities in the evidence in support of their position that they lacked the requisite criminal intent on any one count. Mr. Inoue, for example, submitted that the Crown could not rely on the similar fact evidence but the defence could. He did not explain that position.

[6] There is no dispute among the parties on the law that applies to this application. Similar fact evidence is presumptively inadmissible and I must consider the evidence with respect to each count separate and apart from the others unless the Crown can show on a balance of probabilities that the probative value of the similar fact evidence outweighs the prejudicial effect, or potential for misuse. The misuse would include improper conclusions regarding either an accused's character or his/her propensity to commit the offence. An exception to this presumptive inadmissibility is justified where it is shown "that the deficit of probative value

weighed against prejudice on which the original exclusionary rule is predicated is reversed." In those situations, "[p]robative value exceeds prejudice, because the force of similar circumstances defies coincidence or other innocent explanation": see *R. v. Handy*, [2002 SCC 56](#) at paras. 47, 55. [Emphasis added]

[7] In *Handy* the Supreme Court provided a non-exhaustive list of factors for the trier of fact to consider in an application to admit similar fact evidence:

- a) proximity in time of the similar acts;
- b) extent to which the other acts are similar in detail to the charged conduct;
- c) number of occurrences of the similar acts;
- d) circumstances surrounding or relating to the similar acts;
- e) any distinctive feature(s) unifying the incidents;
- f) intervening events; or
- g) any other factor which would tend to support or rebut the underlying unity of the similar acts.

[8] I have set out the similar facts that I have found to exist in the evidence before me under the heading: Common Findings of Fact with respect to the 16 SBL's in Issue in my Reasons. They touch on virtually all of the factors in favour of the admission of the similar fact evidence.

[9] The Crown must establish a clear purpose for admitting the similar fact evidence which can include identification, mens rea, or to rebut anticipated defences.

[10] I find that the reasons of Doherty J. (as he then was) in *R. v. Sahaidak*, [\[1990\] O.J. No. 3228](#) (Ont. H.C.) at para. 150 are apposite in this case:

In most cases where a multi-count indictment is before the Court, evidence adduced on one count is not admissible for or against an accused on the other counts. Where, however, the events underlying the various counts are part of an ongoing course of dealings, and where those events are interwoven and interrelated so that as a matter of logic and common sense, the events underlying one count also enlighten and assist the trier of fact in understanding and assessing the evidence on the other counts, then evidence directly relevant to one count is admissible on the other counts as well. *R. v. McNamera et al. (No. 1)* [\(1981\), 56 C.C.C. \(2d\) 193](#) at 284 (Ont. C.A.), aff'd., without reference to this point [\[1985\] 1 S.C.R. 662](#). [Emphasis added].

[11] This passage was approved of by the Court of Appeal in *R. v. Kirk*, [\[2004\] O.J. No. 3442](#). It was also applied in *R. v. Garrick*, [2012 ONSC 7183](#); at paras. 1-3, 24-27; aff'd [2014 ONCA 757](#) where Justice McCombs accepted the Crown's submission that the evidence of each separate count demonstrated a "clear and consistent pattern of deceit, falsehood, and other fraudulent means," such that it warranted admission as count-to-count similar fact evidence. McCombs J. found that "the events underlying the various counts [were] part of an ongoing course of conduct by Walter Garrick...and as a matter of logic and common sense, the events underlying each

count assist in understanding and assessing the evidence on the other counts." Garrick was convicted on four counts of fraud over \$5,000.

[12] As I will come to another decision of assistance in this case is *R. v. Arp* (1998), 129 C.C.C. (3d) 321 where the Supreme Court of Canada held that as a general rule where a trial judge is satisfied that there is a sufficient degree of similarity between the acts that they were likely committed by the same person, similar face evidence will usually have sufficient probative value to outweigh its prejudicial effect and justify its admissions.

[13] The Crown submits that, as a matter of logic and common sense, the evidence directly relevant to each count is admissible as evidence of *mens rea* on all counts and to rebut possible defences such as lack of criminal intent and to negate similarities in setup being just a coincidence.

[14] It is argued that the evidence is probative of the each defendant's knowledge and intent when he or she entered into loan agreements with various banks. The Crown submits that the cogent similarities between the various counts also demonstrate fraudulent intent. The evidence is also probative in terms of the overall conspiracy alleged to exist between the defendants to fraudulently obtain, circulate, and conceal SBL proceeds for personal gain. Finally, the Crown submits that an analysis of individual counts without reference to the "whole picture" would be misleading and far less meaningful.

[15] The risk of prejudice in this case is of course considerably less than it would be had this been a jury trial. I am satisfied that it is so minimal as to not warrant exclusion.

[16] Furthermore I accept the Crown's submissions as to the probative value of the evidence. My finding in this regard is corroborated by the fact the certain of the defendants themselves rely on the totality of the evidence and what they assert are similar facts. The evidence in this case makes it clear that the events underlying the various counts are part of an ongoing course of dealings by Messrs. Kazman and Levy and that those events are "interwoven and interrelated". There is a temporal connection between the counts of 32 months and based on the flow of funds it is clear that all of the counts are interwoven and interrelated. As a matter of logic and common sense each of the counts assists assessing the other. All counts are a series of events and represent an ongoing conduct and overlap in time as well.

[17] As a matter of logic and common sense the events underlying one count will assist me in understanding and assessing the evidence on the other counts. In the same way, the fact that the other defendants, with the exception of Mr. Ghatan, obtained more than one SBL in a very short timeframe and looking at the evidence as a whole with respect to all of those SBLs will assist me in understanding and assessing the evidence on all of those counts. If I look at the conduct of a particular defendant and a loan involving them and then consider the other loans involving them, I may have circumstantial evidence of intent. For these reasons I agree that the evidence is relevant to *mens rea* and to rebut possible defences.

[18] As discussed during closing submissions I would add that the similar fact evidence is also of assistance on various identity issues including whether or not Mr. Levy prepared all of the

Business Plans, and whether or not the same person altered all of the fraudulent documents in the loan files and if so who. This is primarily the evidence that the defendants save for Mr. Levy rely upon although some also rely on similar facts in terms of how the fraudulent information got to the banks.

[19] No one suggested that there has been collusion among the defendants but given their separate and diverse interests it will be an issue that I consider when I determine what weight to give to the similar fact evidence.

[20] For these reasons I find that the Crown has shown, on a balance of probabilities, that the probative value of this evidence on the issues that I have identified outweighs any prejudicial effect. I grant the Crown's application and hold that the similar fact evidence is sufficiently similar as to render it admissible on a count-to-count basis, as evidence of *mens rea*, identity and to rebut possible defences.

[21] The Crown's theory is that Messrs. Kazman and Levy are the creators of the scheme and they brought in other people. The borrowers were aware of the scheme and complicit in executing it. How they conducted themselves in applying for loans, running their business and how they conducted themselves once the business failed is important. The Crown submits that I have a doubt with respect to the first SBL, then I should look at the borrower's conduct with respect to the second and third. The Crown submits that the similar facts also create a scheme for the fraud - the *modus operandi*.

* * * * *

Appendix "G"

Evidence of Prior Discreditable

Conduct and Reputation

[1] Although the Crown cannot rely on prior discreditable conduct and bad reputation of any of the defendants, the defendants can rely on this evidence to create a reasonable doubt in terms of the allegations against them. Some of the defendants also rely on aspects of this evidence as similar fact. A summary of this evidence is as follows:

Evidence of Edwin Cheng

[2] Mr. Kazman called Edwin Cheng, presumably to elicit prior discreditable conduct of Mr. Levy. In summary Mr. Cheng, through his company EJC Technology, was a Print Three franchisee. He was referred to Mr. Levy by someone from the Print Three head office. Mr. Cheng testified that Mr. Levy was introduced to him as a "bank broker" to assist him in obtaining two loans to purchase two Print Three franchises. He was led to believe that Mr. Levy could find out about loan approvals before the borrower could but Mr. Levy denied telling him this.

[3] Mr. Levy testified that he met Mr. Cheng perhaps twice. He testified that he met Mr. Cheng a second time only after Mr. Cheng's sister was not able to finance Mr. Cheng. Levy testified that

he loaned money to Mr. Cheng that he repaid. Mr. Cheng did not remember the interest rate he paid Mr. Levy but it was not as high as 20%.

[4] Mr. Levy admitted that he did prepare the business plan for Mr. Cheng. He testified that the franchisor does everything for the client and in this case the franchisor asked him to do the leasehold improvements. They asked him for a quote and then gave him the contracting work for two locations for Mr. Cheng's Print 3 franchises. Mr. Cheng testified that he did not know who did the contracting work for Print 3 although he recalled that Castlerock as one of Mr. Levy's companies. Mr. Levy testified that he provided two invoices to the franchisor, not Mr. Cheng and that he was paid directly by the franchisor of Print 3. However, what I understand happened was that the invoices were paid out of the adjustments on the closing of his franchise purchase so it was paid for out of his SBLs.

[5] Mr. Cheng testified that he paid Mr. Levy 10% of each loan for Mr. Levy's services; a total of \$60,000. Mr. Levy denied this and testified that the franchisor paid him \$60,000 to prepare the Business Plan and a Proposal for the franchise and that this had nothing to do with Mr. Cheng. He then said that the franchisor told Mr. Cheng to pay him directly. Mr. Levy still denied that Mr. Cheng paid him the fee but when he was pressed by Mr. Chapnick Mr. Levy said he got his fee from either one of them and that he did not care where it came from.

[6] I have considered whether this evidence supports the evidence of some of the defendants that Mr. Levy charged a fee beyond the fee for the Business Plan. Given my concerns about the reliability of Mr. Cheng's evidence and the involvement of the franchisor, I cannot conclude that this \$60,000 was such a fee.

[7] Mr. Cheng testified that his first loan was with the TD and his second with the CIBC. Mr. Levy did not give him a sealed envelope to take to the bank. He gave him the business plan, and Mr. Cheng put the other financial information together. He denied any kickback from Print Three. Mr. Cheng said that he went by himself to a bank close to him and that Mr. Levy didn't take him to the bank. It is not clear whether this was in relation to the TD or the CIBC but it does mean that he did not assert that Mr. Levy directed him to a particular bank or banker.

[8] The only relevance of Mr. Cheng's evidence as similar fact is that he was not directed to a particular bank or given a sealed envelope to take to the bank.

Evidence of David Richards

[9] Mr. Kazman also called David Richards, presumably to elicit prior discreditable conduct of Mr. Levy. Mr. Richards met Mr. Levy and his brother Dov Levy in 1982/83 and they became very good friends. As I will come to, he is now very hostile to Mr. Levy and has become supportive of Mr. Kazman which seriously affects his reliability as a witness in this matter.

[10] Mr. Richards gave a lot of evidence about how he made a lot of money from a fast-food restaurant in Wasaga Beach that was the idea of the Levys. As a result, he felt a debt was owed to them to a certain degree, and he started loaning money to the Levy brothers. He gave a lot of evidence about how he went into business with them for a restaurant called "Michelle Baguette"

and how they ruined him financially. After hearing his evidence-in-chief, I ruled that the only evidence that he could give that was relevant is general reputation evidence if he knew it and evidence concerning the procedure with respect to small business loans. As I heard that evidence it became apparent that because his loans were obtained well before the SBLs in issue, the procedure had changed making his evidence less relevant.

[11] In 1998/1999, Mr. Levy approached him with an idea to open up a newsstand and cigar store. He thought it was a good idea. He was working in the restaurant, however, and so he said that Mr. Levy would have to help him run the store. He gave Mr. Levy \$55,000.00, as he was supposed to invest his own money. This was for a store called Gateway On the Go. He rented 508 Bloor Street and they gutted the building and rebuilt the store. It opened in late 1999 with employees around the clock including Mr. Levy's then girlfriend at the time, Christina Jaordao. By June 2000, Mr. Levy told him that he was too busy to run the store and he had not yet received a dime on his investment.

[12] To deal with the fact that Mr. Levy wanted out in terms of assisting him, Mr. Richards testified that Mr. Levy told him that he could get him a loan, and he could then own the business by himself. Mr. Levy already had his financial information. A business plan dated October 1, 2001 was prepared by Mr. Levy. Mr. Richards said that Mr. Levy charged him 10 to 15 per cent of a loan amount to do the business plan. Mr. Levy told him that he knew people at the banks. He was told by Mr. Levy that two banks authorized the loan for the same location, both BNS and BMO. Mr. Levy recommended they go with BMO which he did. He testified that Mr. Levy recommended the BMO because he said he had a relationship with the banker. Mr. Richards said that Mr. Levy had said that he and the banker were "like this" and he held up his hands and had his second and third finger crossed on each hand. I'm not sure what that meant except that he believed them to be close. Mr. Richards testified that for the first loan he didn't see a manager until after the loan was approved.

[13] Mr. Richards testified that Mr. Levy's companies did the leasehold improvements and he paid \$141,000.00 was paid to Mr. Levy and his companies. According to Mr. Richards, the 10 to 15 per cent fee was creatively "wrapped up in the contract" and he testified that it was in the miscellaneous section of the invoice and hidden in the various items that were inflated. Mr. Levy denied charging Mr. Richards a percentage of the loan and testified that he only charged him \$2,500 for his Business Plan. Although I heard from some of the defendants that Mr. Levy charged a percentage of the loan and somehow hid it in the invoices, I was not able to come to any firm conclusion on this from the evidence.

[14] With respect to the second loan, Mr. Richards testified that he met with Mr. Levy and the banker after Mr. Levy told him that the loan had been approved. Mr. Levy prepared a second business plan for a second newsstand store, but he decided he didn't want to go through with it. This business plan was also prepared by Mr. Levy.

[15] Mr. Levy prepared a business plan for a business loan that Mr. Richards was going to get from the CIBC for a business called, "Emerald Catering" in 2000. A law firm acting for CIBC sent a requisition letter from the bank seeking certain documentation. Mr. Richards retained Mr.

Kazman to assist him. He only needed to provide his birth certificate, passport, citizenship card, driver's licence. In response to a leading question, he said that Mr. Levy did everything.

[16] He understood that Mr. Levy knew Robert Crivel from CIBC. Mr. Richards testified that Mr. Levy prepared the business plan and other documents and that Mr. Crivel then wanted to see him to ask him some questions. He went alone to see Mr. Crivel. Once he was told by Mr. Levy that the loan was approved, he met with the bank manager and signed the documentation. He said, however, he also met with the bank in advance of the approval. He testified that all paperwork was prepared by Mr. Levy.

[17] Mr. Richards testified that Mr. Levy's reputation in the community was "bad" in the period 2006 to 2010. Given that he clearly had a dispute with Mr. Levy over his past SBLs, I found that this evidence was not reliable.

[18] Mr. Richards admitted that he has a criminal record and went to jail four to five times for short periods of time for break and enter. He testified that Gad Levy helped him with one but got away and he has no criminal record as a result. I ignored that evidence. Mr. Richards blamed the fact that he was doing break and enters because of what he had become which he said was because of Gad Levy and his brothers who destroyed him.

[19] Mr. Richards did not think that Mr. Kazman should have been disbarred and described him as an "amazing" lawyer. He loaned money to Mr. Kazman for his s. 11(b) *Charter* application. I found that Mr. Richards is biased and did not give any evidence that was credible and reliable and would assist me in deciding this case.

Evidence of Deborah Bendavid

[20] Before Mr. Inoue called Deborah Bendavid, the fact that she obtained a SBL for Kidshill Ltd. that was once included in the indictment was discussed. The Crown agreed that it would not rely on the evidence of Ms. Bendavid against any of the defendants. It was agreed however that any of the defendants could rely on her evidence in support of his/her defence as similar fact evidence or otherwise to raise a reasonable doubt. At one point during the cross-examination of Ms. Bendavid by Mr. Kazman, at the suggestion of Mr. Chapnick, I advised her of her s. 13 *Charter* and s. 5(2) *CEA* protections which she then claimed.

[21] As I set out below, there are very serious concerns about the credibility and reliability of Ms. Bendavid as a witness. Nevertheless in many respects I found her to be an honest witness.

[22] Ms. Bendavid is a widow with three children. She knew Mr. A. Levy and was friends with his wife. He sent her to Mr. Levy for financing. When Mr. A. Levy first referred her to Mr. Levy she was looking to refinance her home for renovating her kitchen. Mr. Levy referred her to someone where she got a secured line of credit. She then renovated her kitchen. She then spoke to Mr. Levy about opening a business. She testified that she wanted to open up a kids clothing store.

[23] Ms. Bendavid incorporated Kidshill Ltd. on January 7, 2010. Mr. Levy prepared a business plan and Ms. Bendavid said she paid him \$10,000 for this. She did not remember that she was

to pay Mr. Levy a portion of the loan. Ms. Bendavid did not remember if Mr. Levy gave her the business plan in a sealed envelope or not. Ms. Bendavid believed that she read the business plan before she gave it to the bank. She said her experience was embellished "a bit" in the business plan. She wanted to make things look good as she wanted to open her own store. She does not believe however, that Mr. Levy made up things about her experience. She admitted however, that when Cpl. Thompson asked her whether Mr. Levy just made up all the experience in the business plan that she answered "I guess so".

[24] Ms. Bendavid testified that Mr. Levy did not guide her to what bank she should apply to and Mr. A. Levy did not help her with the application process. When Ms. Barton took Ms. Bendavid back to the fact that she told Cpl. Thompson that Mr. A. Levy went with her to the first bank Ms. Bendavid said she didn't remember the questions and answers but did not deny that she said that but explained that she was very angry and she blamed "them" for everything. She said she doesn't know why she said it and at the time she was nervous and angry and she said "whatever". She also denied that Mr. Levy went to the bank with her. It's her position that neither of them went to the bank with her. She did not adopt her earlier statement to Cpl. Thompson.

[25] Ms. Bendavid was declined for a loan at the CIBC and she then went to the BNS where she knew the bank manager where she was approved for a SBL in the amount of \$255,000 on January 13, 2010. Ms. Bendavid told Cpl. Thompson that Mr. A. Levy went with her to the CIBC which was not true. She said she told Cpl. Thompson this because she was mad at him and blaming everyone.

[26] Ms. Bendavid saw an empty store at a good location in Forest Hill. Mr. Levy had an office there on the top floor. She knew Mr. Levy was the landlord. She did not recall any questions about arm's length although she knows that the banker asked questions. She just didn't remember what they were. Ms. Bendavid took equity from her home for a line of credit. She selected Castlerock as a contractor but Mr. Levy didn't tell her that it was his company. She thought it belonged to his wife. Castlerock did some of the renovations and a friend of hers did some as well. Marcia Levy, Mr. Levy's wife, did some of the design work. She did have an estimate for the cost of the work when she went to the bank so she knew what to ask for. She had to show the bank that she was going to put some money in. She supervised the renovations and saw all the work going on and she was happy with the renovations and the equipment. She felt that she received quality for what she paid for. Mr. A. Levy didn't have anything to do with the renovations.

[27] With respect to the business Ms. Bendavid testified that she understood that she would be partners with Mr. A. Levy's wife, Valerie. She said this was a misunderstanding as that was something Mr. A. Levy told her he was not prepared to do.

[28] After nine months she decided she couldn't continue. When she closed she asked the bank what she could take. She was told that the inventory was hers but that everything else belonged to the bank. When she closed down, Mr. Levy said some of the stuff was his because she didn't pay rent. She testified however, that he did not seize any assets.

[29] Ms. Bendavid said that she lost between \$250,000 and \$300,000 on this business. She

testified that she didn't conspire with anyone to steal the bank's money and was never offered money by anyone.

[30] Ms. Bendavid stated that she knew Armando Benlezrah as a jeweler and that she had never heard he was into construction. She didn't do any work for Bonded Contracting. She didn't know what the cheque to her from Bonded for \$36,000 was for or who gave this cheque to her. She deposited this cheque into her personal account. Ms. Bendavid testified that she was borrowing a lot of money at the time to pay bills. She did not remember if the money from Bonded was a loan even though she admitted that the Bonded cheque was the biggest amount that she borrowed save for the SBL. Ms. Bendavid denied that Mr. Levy guaranteed that she would not lose money or that she'd be able to walk away from her guarantee or that she was promised this money from the beginning. She was not expecting anyone to bail her out.

[31] Ms. Bendavid knows Mr. Benlezrah's wife from the community. She did not know that he was a contractor but thought that his brother was.

[32] Ms. Bendavid testified that when her first store was not doing well either Mr. Levy or Mr. A. Levy suggested that she get a second loan. The idea was that a second store would help fund the first. Her response was "are you crazy?" She couldn't even pay for the first store and as she was failing with Kids Hill she thought it would be ridiculous to open up another store.

[33] I find that Ms. Bendavid's evidence does not assist in deciding any of the allegations in this case.

Evidence of Armando Benlezrah

[34] Mr. Kazman called Mr. Armando Benlezrah, I presume primarily to speak to Bonded and the Bluerock SBL. I have summarized that evidence with the evidence of Bluerock. Mr. Benlezrah also gave some reputation evidence about the Levy brothers which I will summarize here. I should say at the outset however that I found Mr. Benlezrah to be a completely incredible and unreliable witness. I will not rely on any of his evidence.

[35] Mr. Benlezrah testified that the Levy brothers are well known in the community and well respected and are big donors. He said that his incident with Dov Levy was a minor incident that was fixed quickly even though he mentioned it to Cpl. Thompson twice where he described it as a big problem. Nevertheless Mr. Benlezrah insisted it was not a big deal. This was just another example of the unreliability of his evidence.

[36] Mr. Chapnick pursued the question of what Mr. Levy's reputation is in the community. He testified that he only heard good things in the synagogue and repeated that they had donated a lot of things. When he was pressed about hearing bad things he said that he heard they were having problems with other people but it had nothing to do with him. He said the only stories he heard were about Wasaga Beach that he saw in the newspaper and the fact that they lost Wasaga Beach. He repeated how wonderful Wasaga Beach was. He stated that Mr. Levy's reputation was very good in the synagogue. About stories he heard in the community Mr.

Benlezrah said he knew something happened with the wives but he didn't recall and it's been seven years.

[37] Ms. Barton put to Mr. Benlezrah that he'd had a very significant change of heart about the Levys. He suggested that he wasn't as friendly with them as he was before. She suggested that he sounded a little afraid of offending the Levy brothers. He denied this and denied lying to Cpl. Thompson.

* * * * *

Appendix "H"

General Findings of Credibility and Reliability of the Crown

Witnesses

(a) Cpl. Thompson

[1] Only Messrs. Kazman and Levy sought to cross-examine Cpl. Thompson extensively and I made a number of rulings curtailing their cross-examinations because certain lines of questioning were clearly not going to be relevant to my determination of the issues in this case. These included questions about the course of her investigation in an effort to show that it was lacking in some respects or that the banks were on a witch hunt which I ruled was irrelevant since she did not challenge the accuracy of her evidence. I also curtailed repeated questions asking Cpl. Thompson if she had disclosed all of the documents that she received from the banks and all other information that she obtained during the course of her investigation to which she repeatedly confirmed that she had. Eventually as there was no evidence that all documents had not been disclosed I ruled that further cross-examination on that issue was not proper. As for questions about the theory of the Crown in connection with certain corporations or defendants I found those were not proper as the Crown did not have an obligation to provide that information. Furthermore the opinions of Cpl. Thompson on the issues in this proceeding are not relevant.

[2] With respect to the evidence that Cpl. Thompson did give, no defendant suggested that it was not credible or reliable. To the extent that she did give admissible evidence, as opposed to evidence about the theory of the Crown's case I found Cpl. Thompson to be a credible and reliable witness.

(b) Paul Coort

[3] I have dealt with the accuracy of the Coort Analysis in my Reasons. As for Mr. Coort as a witness I found him to be fair and balanced and as such find his evidence generally credible and reliable.

(c) Lorenzo De Franco

[4] Mr. De Franco explained the CSBFP based on his 20 years of experience. I have no reason

to doubt the reliability of any of his evidence and his credibility was not seriously challenged in cross-examination.

(d) Bank Witnesses

[5] The Crown called Myra Dacillo, Mary Jane Gallienne and Sherry O'Quinn from the TD, Kenneth Davidson and Adrian Mak from the BNS, Sandra Sgro from the CIBC, Lisa Pantaleo from HSBC, and Eva Burton and Dianna Coutts from the RBC.

[6] Mr. Chapnick pressed Mr. Mak in his evidence but I found him to be fair and have no reason to doubt his credibility. The only issue I have with the reliability of his evidence is that these events occurred a number of years ago and Ms. Chapkina was one of many clients he dealt with. Although I am satisfied that he did his best to give accurate answers, that needs to be taken into account.

[7] The main challenge to the bank witnesses was by Mr. Kazman and Mr. Levy of Ms. Coutts who they believe is the one whose wrongful actions started this case. I did not find that she was biased in any way in giving her evidence and found her to be a credible witness. Similarly, her colleague Eva Burton testified that she was never instructed by Ms. Coutts to tell the RCMP and Ms. Coutts never told her that she suspected fraud. I found her evidence credible and reliable.

(e) The Appraisers

[8] The Crown called various appraisers that I have referred to in my Reasons: Anthony Burnett, Adam Burnett, Teddy Feferman, Tom Manimankis, Siz Mizrahi, Maria-Teresa Turchetti, David Sisak and David Wells. There is no issue with the qualifications of any of these appraisers who were qualified as a CPPA (Certified Personal Property Appraiser). Furthermore, the values that they gave for assets they listed were not challenged. In some cases whether or not they took the time to see all of the assets was the issue and I have considered that where it applies. No defendant challenged the general credibility or reliability of these witnesses; save for Anthony Burnett whose evidence was challenged by Mr. Kazman and Mr. Chapnick.

[9] Mr. Kazman submitted that Mr. Burnett presented as a "petty, opinionated individual whose evidence is not credible or certainly not credible enough to support a conviction".

[10] Mr. Burnett was cross-examined at length by Mr. Kazman about the fact that he is a good friend of Perry Cohen who was the father-in-law of Miriam Cohen. Mr. Burnett attended Ms. Cohen's wedding but with respect to LHC, he testified that it did not dawn on him at the time that Ms. Cohen was the daughter-in-law of his friend Perry Cohen. Mr. Burnett further testified that although he met with Perry Cohen often, his friend only told him that his son and Ms. Cohen were splitting up. He testified that Mr. Cohen was very private and did not discuss his personal affairs with him at all. He knew at the time of his appraisals of Ms. Cohen's businesses that she and her husband were divorced. Mr. Burnett denied that he knew that they now had an extremely acrimonious relationship or that he discussed what he found out with Mr. Perry Cohen or that he asked the Lipman firm for the LHC or ELFI files once he found out Ms. Cohen was involved. Mr. Burnett denied animosity to Ms. Cohen. However, he admitted that he probably called Cpl. Thompson on March 2, 2011 and told her that Ms. Cohen's SBLs were scams.

[11] When Mr. Kazman was challenging Mr. Cohen in this way I noted that his evidence was quite believable and very even-handed in his responses. In any event, even if there was some merit to Mr. Kazman's submission, which I do not find, Mr. Burnett did not give any relevant evidence with respect to LHC as his evidence of what he was told by other tenants is hearsay and with respect to ELFI, his appraisal of the assets was not challenged and was completely in line with all of the other appraisals that I heard about.

[12] Mr. Burnett was also challenged that he had become an investigator. Mr. Burnett said that part of his attendance at the Barton property with respect to LHC included investigative work as well, as he tries to provide information to the client as to who the landlord is and any signs as to whether the business is open or closed. He said this is part of the requirement of what they do. There are many things that could happen. The landlord could lock a company out, so they try to find out what happened and pass the information on to the client. He did this without being asked and if he learns of an individual, he would normally speak to that person. Mr. Burnett testified that investigation to him is part and parcel to being an appraiser. He is usually asked to go because there is something wrong. He needs to find out if the business is operating and if not ask other tenant when did it close and did anyone see anyone removing assets. I did not see any problem with this evidence.

[13] Mr. Burnett also attempted to appraise the assets of Exclusive. Mr. Chapnick argues that Mr. Burnett told Cpl. Thompson that he had visited Ms. Chapkina's Exclusive store over the course of three weeks but under cross-examination he admitted that it was less than this. He explained this inconsistency by saying that after his initial visits he went many times to both stores on the way back to his office when he would just drive by and not charge for it or note it down. I did not see any issue with this.

[14] Mr. Burnett admitted telling Ms. Coutts from the RBC that "If we were to seize with a bailiff and pick the lock to remove the assets out of spite, and of course she is obviously in arrears I would be delighted." Mr. Burnett explained this because she had "messed me around". It is his position that he approached her in a businesslike way even to the point where she asked him to get a letter which he did and then she still refused to see him. He was upset and that was what he was referring to. Mr. Burnett never met Ms. Chapkina face to face at any point. After he submitted this report to Ms. Coutts, he had no further involvement with her. Although I agree this shows some malice towards Ms. Chapkina, the evidence of Mr. Burnett was not challenged. Ms. Chapkina admitted that she was not at the store during the March Break and the rest of Mr. Burnett's evidence as to the value of the assets was not challenged.

(f) The Landlords

(i) *Ian Pianosi*

[15] Mr. Kazman submits that Mr. Pianosi was not impartial and forthright and that he had anger issues, had suffered a traumatic injury to his head which affected his memory and he was "rude belligerent, argumentative and just plain old nasty" and that he lied about regularly attending the premises. Mr. Levy dismissed Mr. Pianosi's evidence as being "clueless".

[16] When Mr. Pianosi was cross-examined by Mr. Kazman he quickly became quite agitated and angry. At the outset of his cross-examination Mr. Kazman asked about an incident that delved into Mr. Pianosi's health issues but what seemed particularly to hit a nerve was a question about an alleged incident with his brother. Although he was never specifically asked, Mr. Pianosi also seemed to be quite upset about the fact that a false lease had been used in connection with his property. I found Mr. Pianosi's reaction to Mr. Kazman's questions to be quite reasonable and understandable. His evidence was forthright and clear and I found him to be reliable and credible. I reject Mr. Kazman's and Mr. Levy's submissions entirely.

(ii) Frank Sakellariou

[17] Mr. Sakellariou's credibility as a witness was not really challenged although Mr. Levy took the position that Mr. Sakellariou was lying about everything because Mr. Levy said that he never saw him at the property. Mr. Sakellariou however agreed that he did not see Mr. Levy at the property. I found him to be a credible and reliable witness. He was forthright and unwavering and as an independent witness he had no reason to lie or exaggerate. I found him to be a credible and reliable witness and I reject Mr. Levy's baseless submission that he was not telling the truth.

(iii) Jackson Wong

[18] Mr. Levy dismissed Mr. Wong as a liar and Mr. Tehrani dismissed Mr. Wong as "a crook." When pressed by the Crown in cross-examination, Mr. Tehrani could not explain why Mr. Wong was a crook, offering only that Mr. Wong's son had been drinking and doing drugs in the upstairs unit. Although he offered no evidence as to how he would know that, it does not reflect on Mr. Wong. I found him to be an independent and impartial witness with no motive to lie about his own property. His evidence was corroborated by photos and documentation. I found him to be a credible and reliable witness.

(g) Other Civilian Witnesses

(iv) Herman Wood

[19] When Mr. Kazman cross-examined Mr. Wood about what appeared to be a typo in the digits for Mr. Kazman's numbered company he resisted admitted that there had been a mistake. I saw that reluctance as a matter of pride in the name and the reputation of the company that he works for and not as an unwillingness to give answers that were truthful or to be evasive with Mr. Kazman. He said that he always had a good relationship with Mr. Kazman. He did concede there had been a falling out over a commission with respect to a property. There was also a property where Mr. Woods brought two offers to purchase and the deals fell through. I did not get a sense that any issues with respect to the ending of the relationship between Mr. Woods and Mr. Kazman were serious or would have caused him to be untruthful in his answers to questions.

[20] I also considered the fact that Mr. Woods turned over his documents to the RCMP voluntarily. He said that he was not aware of any privilege between him and Mr. Kazman and

that the documents he released were all public. When he was asked for something by the RCMP he wanted to cooperate. I did not think this showed any animus towards Mr. Kazman.

[21] Overall I find that Mr. Woods was a credible and reliable witness. Furthermore, his evidence was supported by documentation. I accept his evidence.

(v) Richard Meikle

[22] When Mr. Kazman began to cross-examine Mr. Meikle, it was clear that he did not like being challenged. I don't know that he has ever been a witness before. My sense was that his reaction was a matter of pride. He was not, for example, prepared to admit that he might have made a mistake without insisting on what kind of mistake Mr. Kazman was referring to. I found that he was a credible witness and his evidence to the extent it relied on his inspection reports was very reliable. Mr. Levy challenged Mr. Meikle's credentials on the basis that he is not a licensed plumber or engineer. To that Mr. Meikle advised that he studied engineering and architecture and is in fact a registered architectural technologist. He is also *bona fide* plumbing inspector and has been licensed by the province to do the inspections that he does. Given the length of time he was doing this work, I have absolutely no hesitation in finding that Mr. Meikle was qualified to give the evidence that he did, which was based on his observations at the time. Mr. Kazman does not disagree with Mr. Meikle's report which he agreed was fairly accurate. Mr. Levy said Mr. Meikle's evidence made no sense but that was typical of his baseless attacks on witnesses that challenged his position.

[23] I found Mr. Meikle to be a very credible and reliable witness. I have no reason to doubt any of his evidence.

(vi) William Sykes

[24] As I state in my reasons, the Crown does not rely on the evidence of Mr. Sykes, not because he is not a credible witness but rather because he did not open boxes, take photographs and only had sparse notes to refresh his memory. No one else challenged his evidence save to point out that he does not have construction experience.

(vii) Fred Cassidy, Bryan Cranston and Domenic Deangelis

[25] The defendants did not challenge these witnesses save that Mr. Kazman argued that Mr. Deangelis was not a disinterested witness and had a motive to give evidence that he might perceive would be harmful to Ms. Cohen and that Mr. Deangelis had a hidden agenda when he testified because he had been involved in acrimonious litigation with Mr. Sade. I agree that unlike the other former tenants, Mr. Deangelis seems to have had a bit of a history with Mr. Sade and Ms. Cohen. Mr. Deangelis admitted that he had a nasty civil proceeding with Mr. Sade and that he referred to Mr. Sade as being shady or slimy in the past but he said that it was as a result of past practices when Mr. Sade tried to increase the rent, for example, by saying that taxes had gone up when it turned out that was a lie.

[26] Mr. Deangelis had no recollection of contacting Cpl. Thompson in November 2009 about the roof collapse of the premises or in March 2013 to see if Ms. Cohen had been charged or

telling her then about the problems he was having with the rent. He also had no recall of speaking to her in September 2013.

[27] Mr. Kazman introduced Cpl. Thompson's notes about her phone calls with Mr. Deangelis, on consent. They record that Mr. Deangelis called Cpl. Thompson on November 4, 2009 advising her that he remembered Ms. Cohen's ex-husband's name. I take nothing from this call save that Mr. Deangelis was providing further information relevant to his interview. Mr. Deangelis also called Cpl. Thompson on March 6, 2013 and according to her notes did ask if Ms. Cohen had been charged and told her about issues that he had been having with respect to rent. I will come back to this call. The last call was on September 24, 2013 asking Cpl. Thompson about the status of the Cohen investigation and his requirement as a witness. I take nothing from this call. It would be natural for Mr. Deangelis to wonder if he was going to be called as a witness.

[28] Although I agree that it seems that Mr. Deangelis is somewhat hostile to Ms. Cohen and her father, on the issues before me I found him to be a fair witness. He admitted for example the possible presence of the dumpster. He also clearly had a very detailed knowledge of the building and the tenants and his reasons for caring about new tenants coming in make sense. Furthermore, his evidence is corroborated by Mr. Cassidy and Mr. Cranston. For these reasons, despite any hostility I find that I can rely on his evidence as credible and reliable.

(viii) *Mark Vatch*

[29] No one challenged the credibility or reliability of the evidence of Mr. Vatch. I have no reason to find otherwise.

* * * * *

Appendix "I"

General Findings of Fact with Respect to the Credibility and Reliability of the Witnesses Called by Mr. Kazman, Mr. Levy and Mr. A. Tehrani

The Witnesses Called by Mr. Kazman

(a) The Bank Witnesses

[1] Mr. Kazman called Giuseppe Alulio for the BNS, Antonio Ruivo from the RBC, Myra Cadillo from the TD and Susan Zhou from the BOM. I found that these bank witnesses presented the same as the bank witnesses called by the Crown. For the same reasons I find them to be credible and reliable.

(b) David Bochner

[2] Mr. Kazman submitted that David Bochner was not a believable witness and he submitted that his evidence was not consistent with the title documents and abstract of title. I have dealt with Mr. Bochner's evidence when dealing with the Bochner Condo in Appendix --. As I state there, despite the evidence of Mr. Bochner, complaining of Mr. Kazman's conduct, I have found that I cannot conclude that what Mr. Kazman did was improper. Accordingly it does not matter if Mr. Bochner's view were correct or not. I have not relied upon them.

(c) Edwin Cheng

[3] Mr. Cheng, in an interview with the RCMP, indicated that he received significant funding from his now deceased sister. In cross examination it was demonstrated that what he had told the RCMP was not true. Furthermore, he did not seem very confident in the evidence that he gave. I have therefore determined that there are some concerns with the credibility and reliability of his evidence.

(d) David Richards

[4] Mr. Richards was clearly biased in favour of Mr. Kazman. He has come to court to support Mr. Kazman three times. Mr. Richards doesn't think that Mr. Kazman should have been disbarred and described him as an "amazing" lawyer. He loaned money to Mr. Kazman for his s. 11(b) *Charter* application.

[5] Mr. Richards also clearly had an animus towards Mr. Levy. Mr. Richards blamed the fact that he was doing break and enters because of Mr. Levy and his brothers who destroyed him. Mr. Richards admitted that he has a criminal record and went to jail four to five times for short periods of time for break and enter.

[6] For these reasons I have to consider Mr. Richard's evidence to be unreliable. There was really no evidence that he gave that was helpful in any event.

(e) The Contractors

[7] Mr. Kazman called five contractors; Joao Martins, Hector Obando, Nezmidin Oruci, Neil Rosen and Gaston Salonia. Although there is an issue as to what their evidence means, no one suggested that they were no credible and reliable witnesses. That is what I found as I heard their evidence.

(f) Armando Benlezrah

[8] Mr. Benlezrah was called by Mr. Kazman as a witness. Before he gave his evidence he disclosed some new information to Ms. Brun and Mr. Coristine although they asked that he not get into the details. The information they did obtain was disclosed to the other defendants in my absence and Mr. Kazman decided that he still wanted to call Mr. Benlezrah as a witness.

[9] Mr. Levy started cross-examining Mr. Benlezrah by asking about the incident at Sheppard. Early in his examination Mr. Benlezrah stated that he did do work on Keele Street and on Sheppard and then added that at the Sheppard property Mr. Kazman was there and wanted to

beat him up and that Kazman told him it was his building. At that time Mr. Benlezrah was excused so Mr. Kazman could bring an application pursuant to s. 9(1) of the *CEA*. After hearing submissions, I advised Mr. Kazman that I would like him to refresh Mr. Benlezrah's memory first with his statement to Cpl. Thompson and that I would give him some latitude. As Mr. Kazman's questioning of Mr. Benlezrah continued he was effectively able to cross-examine him, which in my view was appropriate given the significant changes in Mr. Benlezrah's evidence and his negative evidence about Mr. Kazman. Mr. Benlezrah acknowledged meeting Mr. Kazman upstairs in his office on Eglinton. He admitted that he didn't tell Cpl. Thompson about the incident he alleges with Mr. Kazman. He said he was scared and didn't want to mention it for fear it would create a lot of problems. He never thought he was going to see Mr. Kazman again. He couldn't say when the incident on Sheppard happened.

[10] According to Mr. Benlezrah Mr. Kazman said he was going to kill him and his family and that Mr. Kazman went crazy and was banging the walls. He was face to face with him and Mr. Kazman was telling him he wasn't supposed to be there and that it was his building. He was insulting Mr. Benlezrah. Mr. Benlezrah didn't know if Mr. Kazman was drunk. He didn't call police.

[11] I have ignored this evidence as I am not able to come to any reliable conclusion as to what happened. Mr. Kazman complains that Mr. Levy was doing things to properties he had no interest in. If he lost his temper with Mr. Benlezrah I find it does not reflect on Mr. Kazman and it is irrelevant to the evidence of Mr. Benlezrah and he did not give any evidence that was adverse to Mr. Kazman.

[12] Cpl. Thompson and Officer Cheng interviewed Mr. Benlezrah at his home on January 30, 2013. Apparently nine months had passed from the time Cpl. Thompson first attempted to meet with Mr. Benlezrah because he either missed or rescheduled appointments until finally agreeing to this meeting. Mr. Benlezrah admitted that the first time the interview with Cpl. Thompson was set up he missed it because he went to Florida. He did call and apologize but did not reschedule. He said that maybe the second one was cancelled because he was in Montreal. He didn't recall if Cpl. Thompson had told him that she wanted to talk to him about Mr. Levy and SBLs. He acknowledged that it was about nine months from his first contact with Cpl. Thompson to the time he gave his statement. Mr. Benlezrah was clearly reluctant to see Cpl. Thompson, given the difficulty she had in arranging to see him. Once he did meet with her he expressed concern about her taping the interview and clearly did not want to get Mr. Levy into trouble. He was clearly reluctant to see Cpl. Thompson, given the difficulty she had in arranging to see him. He expressed concern about her taping the interview and clearly did not want to get Mr. Levy into trouble.

[13] In terms of credibility I find that Mr. Benlezrah's evidence was either false or unreliable. As I heard him testify I came to the conclusion that I could not believe a word of his evidence. I came to this conclusion for a number of reasons. First of all was the significant change in his evidence from the time he spoke to Cpl. Thompson to his evidence at trial which I conclude was as a result of a desire to give evidence favourable to the Levys and in particular Mr. Levy. I do not accept his various explanations for why he did not give the information he testified to at trial to Cpl. Thompson. In particular Mr. Benlezrah testified that he was very nervous when Cpl.

Thompson and the other officer came to his house because he had small children and his wife had cancer and he didn't like having the police at his house. However in contrast to this Mr. Benlezrah said that Cpl. Thompson was nice and in fact she was an amazing lady.

[14] Mr. Benlezrah also claimed to have trouble understanding the questions as English is not his first language; French is. Mr. Benlezrah testified that he told Cpl. Thompson before giving the statement that he had issues understanding. However Mr. Benlezrah admitted that he never told Cpl. Thompson to repeat a question or that he didn't understand a question or that English is not his first language. He said that he "didn't want to get into a lot of details". He hadn't expected that the statement would be recorded and he did not remember what he told Cpl. Thompson. After reviewing his statement Mr. Benlezrah testified that some of his answers to a few questions were not correct. He reiterated that English was not his first language and that he speaks two other languages.

[15] Mr. Benlezrah's memory of the work his company Bonded supposedly did for the Bluerock SBL was vague and suggestive of his not knowing much of it or of construction generally. It was consistent with the conclusion that I have come to that Bluerock was an entire sham.

[16] Mr. Benlezrah denied speaking to either Mr. Levy or Mr. A. Levy since the trial began. Mr. Benlezrah said that he could not recall the last time he spoke to Mr. Levy because he was going through a divorce and in his mind that is not a priority. He testified that he speaks to Mr. A. Levy when he sees him and he may have seen him at the synagogue during the Jewish holidays. He stated, however, he hadn't seen Mr. Levy for a long time.

[17] Mr. Benlezrah said that almost everything he told Cpl. Thompson is correct. He met Gad Levy at the synagogue. He said Mr. Levy and the Levy family is one of the biggest donors to the Kehila Centre. He met Dov Levy and they became good friends. He worked with him in construction. He said they had a "small dispute" which his sister who was a lawyer resolved for him. He still speaks to Dov Levy.

[18] Mr. Benlezrah testified that the Levy family had a property in Wasaga Beach and they welcomed everyone from the synagogue there. He would go there with his family and they took care of him for free. He was promised that one day if they did something in Wasaga Beach he would be one of the contractors but it never happened.

[19] Mr. Chapnick put to Mr. Benlezrah that he was a bit nervous about whom Cpl. Thompson would play the tape for and that he hoped some of the things would not be repeated. He said didn't recall this but was then taken to his statement where he said that his kids' friends were their kids' friends and he didn't like the fact that Cpl. Thompson was asking questions about them.

[20] Mr. Chapnick put to Mr. Benlezrah that in his statement he said that when he started to get close to Mr. Levy all of a sudden Mr. Levy suggested an SBL. Mr. Benlezrah said this was the second time and that he and his wife had been talking about an SBL to take care of the house mortgage. He said he wanted an SBL for work and had read up on it. He asked everyone about

SBLs and really wanted to do one. He thought he could grow his business with money from the bank and pay it back slowly.

[21] Mr. Benlezhrah admitted that when he told Cpl. Thompson that Mr. Levy wanted a percentage of the loan that what he said then was true. He then started talking about interest rates being high which is clearly not what he said in the statement.

The Witnesses Called by Mr. Levy- Shelley Johnstone

[22] Ms. Johnstone was the loan manager from the BNS who dealt with Mr. Ghatan. I had no reason to doubt her credibility as a witness. I do have to consider the reliability of her evidence because she had no notes to refresh her memory.

The Witness called by Mr. A. Tehrani-Deborah Bendavid

[23] As I have said, Ms. Bendavid's evidence at trial differed materially from her statement to Cpl. Thompson. She attributed some of this to the fact that when she gave her statement to Cpl. Thompson she was getting Mr. A. Levy and Mr. Levy mixed up. When questioned by Mr. A. Levy, Ms. Bendavid said that when she spoke to Cpl. Thompson, to her, Mr. Levy and Mr. A. Levy were the "same thing". Ms. Bendavid agreed that Mr. and Mr. A. Levy do not look the same but she said that "back then" she was angry and blamed Mr. A. Levy for everything. She was still angry two years later when she gave her statement. In my view this is a feeble excuse for the fact that she did not tell the RCMP the truth in her meeting with them.

[24] Ms. Bendavid also testified that Dov Levy had called her and that they were texting and he asked her to "say good things about Dov and Gad". She told Cpl. Thompson twice about this and so as Mr. Chapnick suggested, she must have been concerned about it. It is unclear if this call impacted her evidence as well but it certainly raises a concern.

[25] Ms. Bendavid said she received no promises if she gave favourable evidence and that she received no threats that she would be hurt if she did not give favourable evidence.

[26] Given all of these facts, clearly caution must be exercised when considering the evidence of Ms. Bendavid. I decided not to reject all of her evidence and find that in some respects she was an honest witness despite her admission that she was untruthful to Cpl. Thompson.

* * * * *

Appendix "J"

**Extracts From the *Canada Small
Business Financing Regulations***

[SOR/99-141](#)

1. (1) The definitions in this subsection apply in these Regulations,

...

"borrower" means a person who carries on or is about to carry on a small business to whom a loan has been made under the Act. ...

...

"equipment" means equipment that is used or to be used in the course of carrying on a small business, and includes computer software, ... It does not include inventory of the small business except inventory that is leased by the borrower to the borrower's customers.

...

"improvement" includes construction, renovation and modernization and, with respect to equipment, installation.

...

- (2) Whether persons are at arm's length from each other must, for the purposes of these Regulations, be determined in accordance with the *Income Tax Act*.
- (3) For the purposes of these Regulations, a loan is considered to have been made on the day on which the first disbursement of funds is made by the lender.

1.1 (1) For the purposes of subsections 4(3) and 7(2) of the Act, borrowers are related when one borrower

- (a) controls, directly or indirectly in any manner, the other borrower;
- (b) is controlled, directly or indirectly in any manner, by the same person or group of persons as the other borrower;

...

- (4) Despite subsection (1), borrowers whose businesses are located at different premises are not related if either borrower derives more than 25% of their actual or projected gross revenues from the other.

Loan Registration

...

3. (1) A loan registration form must be signed by the borrower and the lender and contain the following information:
 - (a) the borrower's name and the civic address and telephone number of the small business;
 - (a.1) the names of the borrower's shareholders and the names of the guarantors or suretyships referred to in sections 19 and 20;
 - (b) the day on which the loan was made;

- (c) a statement setting out separately
 - (i) the total amount of the loan,
 - (ii) the estimated amount of the loan allocated to each class of loans referred to in paragraphs 5(1)(a) to (c), and
 - (iii) the amount of the loan allocated to the class of loan referred to in paragraph 5(1)(d);
- (d) the total estimated cost of the purchase or improvement to be financed by the loan;
- (e) [Repealed, SOR/2009-102, s. 3]
- (f) the lender's acknowledgment that the lender has not charged the borrower any fees or charges other than those authorized by the Act and these Regulations;
- (g) the borrower's consent to
 - (i) the Minister's audit of the loan approval and administration file held by the lender in respect of the loan, and
 - (ii) the release, by the Minister, of information with respect to the borrower's outstanding loans, to another lender to whom the borrower applies for a loan;
- (h) the lender's acknowledgment that, before making the loan, it verified within the branch where the loan was to be made, or if it had no branches, within itself, that the outstanding loan amount in relation to the borrower does not exceed the amount provided for in paragraph 4(2)(b) of the Act;
- (i) the borrower's acknowledgment that outstanding loan amount in relation to the borrower does not exceed the amount provided for in paragraph 4(2) (b) of the Act;
- (j) the borrower's acknowledgment that the making of the loan is not prohibited by any of subsections 5(2) to (4) or (6);
- (k) the lender's acknowledgment that, before approving the loan, the lender acted in accordance with the due diligence requirements referred to in section 8; and
- (l) the borrower's acknowledgment, for the purposes of subsection 14(6), as to whether or not the borrower is at arm's length from the landlord.

...

Fees

4. (1) The registration fee in respect of a loan referred to in any of paragraphs 5(1)(a) to (c) is 2% of the amount of the loan.

...

Loan Classes and Conditions

5. (1) A loan must fall within one of the following prescribed classes:

- (a) loans to finance the purchase or improvement of real property or immovable of which the borrower is or will become the owner, if the purchase or improvement is necessary for the operation of the borrower's small business;
- (b) loans to finance the purchase of leasehold improvements to real property or immovable of which the borrower is or will become the tenant or the improvement of such real property or immovables, if the purchase or improvement is necessary for the operation of the borrower's small business;
- (c) loans to finance the purchase or improvement of equipment necessary for the operation of the borrower's small business; or
- (d) loans to finance the payment by the borrower of registration fees payable in respect of a loan referred to in any of paragraphs (a) to (c).

...

Due Diligence Requirements

8. In making and administering a loan, the lender must apply the same procedures as those that would be applied in respect of a conventional loan in the same amount, including, before making the loan,
 - (a) obtaining credit references or conducting a credit check on the borrower and any persons who are legally or financially responsible for the borrower; and
 - (b) completing an assessment of the repayment ability of the borrower, taking into account all other financial obligations of the borrower.

Appraisal

9. (1) The borrower must, before the loan is approved, provide to the lender from, subject to subsection (2), an appraiser who is a member of any professional association that is recognized under a federal or provincial law and who is at arm's length from the borrower, and, in the case of assets described in paragraph (c), from the lender, an appraisal, made at any time within 180 days before the loan is approved, of the value of the assets if a borrower uses, or intends to use, all or part of a loan to purchase
 - (a) assets from a person who is not at arm's length from the borrower;

...

Security

Primary Security

14. (1) A lender must, when making a loan referred to in any of paragraphs 5(1)(a) to (c), take valid and enforceable first-ranking security in the assets of the small business whose purchase or improvement is to be financed by the loan.

...

- (6) If, in the case of a loan referred to in paragraph 5(1)(b), the borrower and landlord are not at arm's length, the loan must be secured by a mortgage on the real property or immovable that is the subject of the leasehold improvement.

...

19. (1) A lender, in addition to the primary security referred to in section 14, may take one or more unsecured personal guarantees or suretyships for an amount of not more than the aggregate of

...

- (a) 25% of the original amount of the loan,

...

* * * * *

Appendix "K"

Definition of "Arm's Length"

in the *Income Tax Act*, R.S.C. 1985, c. 1

(5th Supp.)

[1] The only portion of s. 251 of the *Income Tax Act* that was amended between 2006 and the present is s. 251(1). The remainder of s. 251 read in 2006 as it does now.

[2] In the years 2006 to 2010, s. 251(1) of the *Income Tax Act* read as follows:

Arm's length

251 (1) For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length;

(b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition trust in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and

(c) where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

[Emphasis added]

[3] Thus, someone looking at the statute on the books between 2006 and 2010 would have encountered the provision as reproduced above. For the purpose of the case at bar, the operative definition would be that set out in s. 251(1) (a).

[4] However, section 251(1) was amended in 2013 to read as follows (changes from the previous wording underlined):

Arm's length

251 (1) For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length;

(b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition *trust* in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and

(c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

[5] Although the provision enacting this amendment took effect on June 26, 2013, the change to s. 251(1)(c) was retroactive, and the amended s. 251(1)(c) was deemed to have come into force on December 24, 1998. This definition therefore applies to the 16 SBLs in this case.

[6] I have decided however not to apply this definition retrospectively to the case at bar. In my view what is relevant is what the definition of arm's length was at the time. No banker or borrower could have been faulted for relying on the working of the section as it stood then.

[7] Accordingly in order to determine if any of the defendants were in breach of the arm's length clause the definition of arm's length that I will apply is the wording before the 2013 amendments.

Explanation

[8] The most recent amendment to s. 251(1), other than the 2013 amendment discussed above, was brought about by s. 192 of S.C. 2001, c. 17, which came into force on assent on June 14, 2001. Thus, from 2001 until 2013 the wording of s. 251(1) remained unchanged.

[9] The 2013 amendment of s. 251(1) was brought about by s. 361 of S.C. 2013, c. 34, which reads as follows:

361. (1) Paragraph 251(1)(c) of the Act is replaced by the following:

(c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

(2) Subsection (1) is deemed to have come into force on December 24, 1998.

[10] Subsection 361(2) of the amending statute, S.C. 2013, c. 34, came into force on assent on June 26, 2013. For this reason, as of June 26, 2013, the new s. 361(1)(c) of the *Income Tax Act* is deemed to have been in force as of December 24, 1998.

[11] Stikeman's Annotated *Income Tax Act* (53rd ed., (Toronto: Thomson Reuters Canada

Limited, 2013), at p. 1771) explains that the purpose of the amendment to s. 251(1)(c) was to "clarify that [paragraph (c)] applies in any case where paragraphs (a) and (b) do not apply.

[12] In Mr. Fox's written submissions he added to this that the Canada Revenue Agency outlined the *de facto* test in their Income Tax Folio: *S1-F5-C1, Related Persons and Dealing at Arm's Length*:

1.38 The following criteria have generally been used by the courts in determining whether parties to a transaction are not dealing at **arm's length**:

- a. whether there is a common mind which directs the bargaining for both parties to a transaction;
- b. whether the parties to a transaction act in concert without separate interests; and
- c. whether there is *de facto* control.

[13] When it comes to any two corporations, the *ITA* indicates that they are related when:

Definition of *related persons*

- s. 251(2) *ITA*: For the purpose of this Act, *related persons*, or persons related to each other, are:

...

(c) any two corporations

- (i) if they are controlled by the same person or group of persons,
- (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
- (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,
- (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
- (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
- (vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

* * * * *

Appendix "L"

General Findings with Respect to 1048 Eglinton Avenue West (1048 Eglinton)

[1] 1048 Eglinton was owned by Trust Inc. Realty Corp from June 21, 2006 until April 8, 2013. Mr. Kazman testified that he had an interest in this property which was denied by Mr. Levy.

[2] The Crown called Richard Meikle who, until recently, was a long-term employee of the City of Toronto. He has been a building inspector for about 32 years. He testified about some inspections that he did in the summer of 2006 at 1048 Eglinton. He described the building with a basement, main floor and second floor, located in the area that only he was responsible for.

[3] On August 22, 2006, Mr. Meikle attended at 1048 Eglinton to deal with a complaint about construction proceeding at the property without a permit. He met with Joseph Boufadim who is Mr. Levy's brother-in-law. He noted that drywall was being removed from the ceiling in all floors to be replaced with fire rated drywall. Although he did not note that the drywall work was on all three floors, that is his recollection. Mr. Meikle discussed the proposed interior and exterior alterations, which included extending the front of the property with Mr. Boufadim, who advised him that they would apply for a permit.

[4] The building permit was applied for on October 5, 2006 for "building additions/ alterations", although the work proposed referred only to "interior alterations." The description on the application for the permit was that the work was to "make interior alterations for retail on ground floor with storage in basement and office on second floor".

[5] Mr. Meikle's inspection report sets out the dates of his inspections and his comments. On November 21, 2006, he met with the contractor and interior alterations were in progress. On December 8, 2006, he attended and they were doing some additional structural work that was not in the permit. Accordingly, Mr. Meikle asked for an engineering letter.

[6] Mr. Meikle received a site visit report from the architect dated December 15, 2006, which I note was sent to Trust Inc. as the contractor. The report stated the date of the visit was December 14, 2006 and that the demolition of the store front was complete, new storefront work was well underway with the installation of glazing and doors, which Mr. Meikle said were new, demolition in general had been done in various locations but more would be done upon receipt of the engineered structural drawings, the basement floor slab was new, including the slab for where the column would stand, and that the wall stud layout had been started on all three floors. [Emphasis added] Mr. Meikle testified that the contents of this reported accorded with his observations of the property at the time. There was an engineer's drawing attached to the report which showed the reframing of the front of the store which was an expansion and the door going into the store and the door at street level leading to the stairway to the upper floor.

[7] According to Mr. Meikle, by March 8, 2007, the framing of the partitions was substantially completed and the drywall was in progress. The work was substantially complete by May 14, 2007.

[8] Mr. Meikle also reviewed his inspection report with respect to the plumbing permit which referred to new fixtures on the ground floor of the building, namely a wash basin, one water closet and three floor drains. The rough-in was in progress on December 8, 2006 and this work

was also substantially complete by May 14, 2007. By this Mr. Meikle meant that all finishes, trims, baseboards etc. had been done. This would not have included paint or floor tiles as permits are not needed for this.

[9] Mr. Meikle also reviewed the work done pursuant to a mechanical permit for heating, ventilation and air condition (HVAC). The rough-in for this work was done on May 11, 2007 and Mr. Meikle recalled that the existing system was modified but that there was new duct work throughout which included grills, diffusers and exhaust fans. In answer to Mr. Kazman, Mr. Meikle said that there was all brand new duct work but he did not recall if the air conditioning and furnace were new.

[10] Electrical permits are done by Toronto Hydro and are not part of the City of Toronto permits and so Mr. Meikle did not testify about any electrical work.

[11] Mr. Meikle personally observed the renovations from October 2006 to May 2007 when they were finished. They were ongoing that entire time on all three floors of the building. While Mr. Meikle was at the premises, no business was in operation.

[12] Mr. Levy said that when they bought the property they took everything out including a beam and turned two levels into three levels and that is why they needed an architect's letter. At another point in his evidence, however, Mr. Levy testified that Mr. Meikle was wrong and that they were not working on all three floors of the building. I reject that evidence for the reasons already stated.

[13] Based on this evidence I find that after Trust Inc. Realty Inc. purchased 1048 Eglinton, Messrs. Levy and Kazman did extensive renovations to the basement and the upper two floors of the property which included gutting the entire premises, building a new store front, installing new duct work including grills, diffusers and exhaust fans, new plumbing which included the fixtures for one washroom and new drywall throughout.

[14] It is significant that the work that Mr. Meikle saw must have been done by Northwood for the SBL Mosaic obtained from the BOM that was approved on October 18, 2006 for \$225,000 for this location. The Crown did not ask that I make any finding that the Mosaic SBL as this SBL is not caught by the indictment. The Crown does argue however that the evidence concerning the Mosaic SBL is relevant to the history of the work done to this property and is therefore relevant to what work is alleged to have been done later. I agree that the evidence is admissible from that perspective and that it may also impact on my credibility assessment of Messrs. Levy and Kazman.

[15] As part of his SBL application Mr. Levy provided a Business Plan that referenced a three-story operation with a "warehouse facility in the lower level, a showroom and office in the main level and a tile demonstration sample office and salesmen offices in the third level." It is clear from the Business Plan that Mosaic purported to be the major operation at 1048 Eglinton.

[16] The evidence is that Northwood sent two invoices to Mosaic, the first dated November 16, 2006 in the amount of \$99,110 and the second dated November 28, 2006 for \$236,923. They

stated the job location was 1048 Eglinton. The first invoice is for the usual Total Gut Job, including removal of the existing store front and replacing with new and a Total Rebuild including new electrical panels, new plumbing and fixtures and a new heating and air-conditioning system including all of the piping for A/C units. There is no suggestion that this work was for just the second floor. I find these invoices relate to the work that Mr. Meikle saw which corroborates his evidence and confirms that the Total Rebuild including a new storefront, new electrical and plumbing and new HVAC system. I, therefore, do not accept Mr. Levy's evidence that Northwood was not doing any work for Mosaic as clearly he received invoices from Northwood for this property.

[17] Mr. Levy testified that he did not believe anything Mr. Meikle said because it did not make any sense; a typical position he took with respect to evidence he disagreed with. Mr. Coristine pointed out to him that Mr. Meikle said the renovations were of the whole building. Mr. Levy said Mr. Meikle was wrong even though as I have stated, the Business Plan for Mosaic mentioned three levels. Mr. Levy said that it was all changed to 1048A because there was going to be a second location and that the bank knew this. There is absolutely no evidence of this however and clearly the work that was being done was by one contractor on all three levels. The invoices to Mosaic from Northwood show its address at 1048 Eglinton and the same address as the Job Location Address.

[18] Mr. Coristine asked Mr. Levy why his brother-in-law was supervising a Northwood job Mr. Levy said that he put him in the middle because he knew Mr. Kazman would not do the job properly. He wanted somebody to manage the whole job and he was too busy doing other things. That begs the question of why he would have used Northwood in the first place given his position it was owned by Mr. Kazman and that Mr. Kazman did sloppy work and never got the job done.

[19] Mr. Kazman on the other hand testified that that he was not aware of this SBL and was not involved. Mr. Kazman said that Mr. Levy went behind his back and put him in harm's way. Mr. Kazman said that Mr. Levy was the controlling individual when it came to running and operating 1048 Eglinton especially since he had an office on the second floor since he, Mr. Kazman, was busy with his other businesses and properties. That does not explain however Mr. Kazman's contradictory evidence that he attended at the property and became upset that Mr. Levy had started wiring before framing and that his brother-in-law was paid for "counting screws".

[20] In late 2007, Gilles Meshaly was the recipient of an SBL for "Labels", a high-end clothing store at 1048 Eglinton. Mr. Levy would not agree that he renovated the main level of 1048 for this store without seeing an invoice but he did testify that he did the job Mr. Meshaly asked for. He said that Mr. Meshaly saw there was some major work to be done but he was not more specific. Accordingly there is no evidence of what work was done to the property then.

[21] From here I have the evidence that I have reviewed in connection with the SBLs for stores in this location namely Mr. A. Tehrani and Contempo in June 2008, and Mr. Salehi and Modernito in January 2009.

* * * * *

Appendix "M"**General Findings with Respect to
559-563 Eglinton Avenue West (559
Eglinton)**

[1] 559 Eglinton was purchased by Mr. Kazman's company 6747841 Canada Inc. on May 2, 2007 and sold on June 5, 2008. The Crown called Herman Wood, Vice-President of Harvey Kalles. He has 22 years' experience in commercial real estate. At the material time he worked at a satellite office of Harvey Kalles at 532 Eglinton Avenue West, across the street from 559 Eglinton.

[2] The building consisted of two storefronts and based on the evidence of Mr. Wood, two residential apartments upstairs. When the property was purchased by 6747841 Canada Inc. there were two stores leasing the units on the ground floor, one called Bubbles, Boxes, and Paper (Bubbles) and the other a nail salon. There was considerable confusion about the municipal addresses for each storefront and the upstairs of the building created by Mr. Kazman. In questions to Mr. Wood, Mr. Kazman's position was that 559 was for the upstairs units and the storefront then occupied by Bubbles and that the nail salon operated from the other storefront at 561 Eglinton and that there was no 563 Eglinton. That was not Mr. Wood's recollection. He testified that 559 Eglinton referred only to the upstairs apartments, and that 561 and 563 Eglinton Avenue referred to the two storefronts.

[3] There was evidence from photos taken by Cpl. Thompson that supported Mr. Wood's position and eventually Mr. Kazman conceded that he was right. Quite clearly from the photos in evidence I find that there was one number for each store; Bubbles at 561 and the nail salon 563. The door leading to the upstairs apartment was 559.

[4] In my view Mr. Kazman knew this all along and was trying to create this confusion because ELI purported to operate out of 559 Eglinton.

[5] Mr. Wood met Mr. Kazman by chance when Mr. Wood was looking for a retail property for a client to lease and he contacted Mr. Luska with respect to a property on Queen St. West. In the years from 2006 to 2009 Mr. Wood did a lot of work for Mr. Kazman; both in finding commercial properties, selling commercial properties and assisting with the leasing of properties. Mr. Wood met Ms. Cohen two to four times, always in the presence of Mr. Kazman. He also met Mr. Levy in the presence of Mr. Kazman one to two times.

[6] Mr. Wood explained his involvement with 559 Eglinton. When 559 Eglinton was listed for sale in early 2007 he drew this to Mr. Kazman's attention and he assisted Mr. Kazman in the purchase of the property at a price of \$887,500. The agreement of purchase and sale was finalized on March 6, 2007 and the deal closed April 16, 2007.

[7] Mr. Wood described the building at the time of Mr. Kazman's purchase as rundown and he

said that Mr. Kazman did extensive work to the building including stuccoing the outside of the building and installed awnings on the front. Mr. Wood followed the interior renovations being done by Mr. Luska. He testified that the floors in the two residential apartments upstairs were redone and new kitchen cabinets and granite counters were installed. He did not see work being done, if any, to the inside of the stores which were leased to the same tenants that were there at the time of the sale. Cpl. Thompson took pictures of the inside apartment which corroborates Mr. Wood's evidence. Based on Mr. Wood's evidence I find that after the purchase of the building, Mr. Kazman and Mr. Luska renovated the outside of the building and the second floor apartments municipally known as 559 Eglinton, numbers 1 and 2 for each unit.

[8] Mr. Wood was also retained by Mr. Kazman via 6747821 Canada Inc. to lease the two apartments upstairs. He produced the listing agreement for each which were dated November 19, 2007 as well as the leases he secured for Mr. Kazman. Both apartments were leased out in January 2008.

[9] Mr. Wood also acted for Mr. Kazman when he sold the property with a deal that closed June 5, 2008 for \$1.13 million. The listing agreement for the sale of the property listed the upgrades to the building which are consistent with what Mr. Kazman said he and Mr. Luska did and the evidence of Mr. Wood. Mr. Wood made it clear in his evidence that in his experience back in the years 2007 through 2009, it was not unusual if someone purchased a commercial property that was in bad shape and significantly improved the property that it would increase in value. He did not think that the price Mr. Kazman sold 559 Eglinton for was a "crazy price".

[10] The MLS listing for 559 Eglinton when it went up for sale in early 2007 states that the building has a new roof and new plumbing. The checklist that is part of the listing agreement states that the air conditioning is "partial" and that the heat is gas hot water.

[11] Mr. Kazman spent some time reviewing the documents that Mr. Wood brought with respect to 559 Eglinton. It became apparent during the course of the cross-examination that on some of the documents the typed name of the landlord was incorrect in that it was stated to be 6747821 Canada Inc. Initially Mr. Wood was unwilling to concede that he had made an error. He testified that sometimes the name of a corporation can change after purchase and that mistakes are not "what we do". Eventually, however, he conceded that there must have been an error. I note, however, that Mr. Kazman did not notice this error at the time either. He signed the documents on behalf of 6747821 Canada Inc. without making any correction. There is no dispute that the correct number for the company that took ownership of the property is 6747841 Canada Inc.

[12] Mr. Wood did not have any substantive evidence to give with respect to the Crown's case against Mr. Levy. He did meet Mr. Levy and he did tell Cpl. Thompson some unflattering things in terms of his impression of Mr. Levy. He apologized to Mr. Levy when he was questioned by him; admitting that he never did any work with Mr. Levy and did not know him well enough to come to such conclusions. I have ignored this evidence. It did not impact on my view of Mr. Wood's credibility.

[13] Through Mr. Kazman, Mr. Wood met Miriam Cohen. He believed she was a partner of Mr. Kazman's although she was fairly quiet at the meetings when she was present and did not say

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anything. Mr. Wood also recalled seeing Ekaterina Chapkina whom he thought was an administrative assistant or secretary for Mr. Kazman.

* * * * *

Appendix "N"

General Findings with Respect to **1040 Eglinton Avenue West, Toronto** **(1040 Eglinton)**

[1] 1040 Eglinton was purchased by 1040 Holdings Inc. on Sept. 26, 2007 for \$589,000. Mr. Levy had a 50% interest in the property. On November 17, 2008 the property was transferred to Mr. Levy's company, MGM Inc. for \$1.165 million. Mr. Kazman claimed that he still had an interest in the property after the sale which Mr. Levy denied. Mr. Levy told Mr. Fox that when they bought the property it was not renovated and the bank would not finance this kind of commercial property. Both he and Mr. Kazman put money down and they needed private lenders for the balance. Mr. Levy suggested his credit was strong enough to get a regular mortgage but Mr. Kazman's was not. After the renovations were done the Laurentian bank was willing to give 65% of the value. Although Mr. Levy admits that Mr. Kazman put up his share of the money when the property was bought, he testified that Mr. Kazman did not come up with more money so they could get the Laurentian mortgage. Since Mr. Kazman could not come up with more money Mr. Levy said that he took all the shares of the company and owner of MGM Inc.

[2] It is the Crown's position that Mr. Levy and Mr. Kazman were engaged in mortgage fraud, something bolstered by the testimony of David Bochner and Mr. Kazman, himself. The Crown argues that although it is fair to assume that some appreciation would ensue from past renovations, a non-arm's length flip for double the original sale price is suspicious. I have not considered this submission or the underlying evidence as the Crown cannot rely on alleged prior discreditable conduct on the part of Mr. Levy and Mr. Kazman.

[3] What is relevant however is the history of renovations to this property.

[4] In cross-examination by Mr. Kazman, Mr. Woods gave some evidence about 1040 Eglinton. He assisted Mr. Kazman in the purchase of that property. Mr. Wood testified that at the time of purchase the property was in really bad shape and described it as an "old decrepit pharmacy". Mr. Wood said that the work that he observed that was done to the building was done within three to four months of the purchase of the building and certainly before it was leased in January 2008 to MGM Inc. He believed that both the downstairs and the upstairs were renovated. The ground floor was retail/office. He couldn't remember the upstairs but did not think it was residential. When he saw the building after Mr. Kazman had renovated it, he said it was a stunning transformation.

[5] In the period from October 9 to November 25, 2008, both before and after MGM Inc.'s purchase of the property, Mr. Levy's company Mosaic paid \$20,000 to Morningstar General

Construction, which according to Mr. Levy was for stucco work to the exterior of the building. This is corroborated by the cheques that refer to 1040 Eglinton.

[6] There were a number of companies that obtained SBLs to lease and open businesses from this location thereafter.

[7] On October 29 and November 19, 2007, Accessories & More Ltd., (Accessories & More) a company registered to Sharon Dineen, a former secretary to Mr. Kazman, provided the TD with two invoices from Oakwood for leasehold improvements, furniture and fixtures for 1040 Eglinton, the first in the amount of \$59,890 for the usual Total Gut Job including removal of "store frontage" and Total Rebuild which included the supply and installation of a new HVAC and a second invoice in the amount of \$79,566.30 for equipment, furniture and fixtures. These invoices were paid in full; a total of approximately \$139,500 from Accessories & More SBL proceeds.

[8] On May 7 and May 29, 2008 Dufferin Paralegal provided the BOM with two invoices from Oakwood for 1040A Eglinton, purportedly for leasehold improvements for the second floor of the building; the first dated May 7, 2008 for \$80,062.50 for the usual Total Gut Job and Total Rebuild including the supply of central air conditioning and \$102,491 for the supply of equipment, furniture and fixtures.

[9] In the fall of 2008, Western Leather Inc. (Western Leather) a company incorporated by Ronald Kalifer, a friend and business partner of Mr. Kazman's, provided the RBC with four invoices from Icon; the first dated September 16, 2008, in the amount of \$46,882.50 was for Phase I, the usual Total Gut Job including removing the existing storefront and HVAC and Phase II being the first phase of the usual Total Rebuild. The second invoice dated October 7, 2008 in the amount of \$53,838.75 for Phase III was for the rest of the Total Rebuild. The third invoice dated November 12, 2008 was for \$84,058.98 for furniture and fixtures and the fourth dated December 10, 2008 for \$39,544.35 was for equipment and fixtures. These invoices, totaling \$224,324.58 were paid using in part SBL proceeds. The invoices refer to identical large-scale renovations as the Oakwood invoices to "Accessories and More", at the same location.

[10] Based on this evidence I find that the main level of 1040 Eglinton was supposedly gutted at least twice within the span of one year and that this included replacing all of the plumbing and electrical, the HVAC and the storefront three times.

* * * * *

Appendix "O"

Ruling on Admissibility of the Affidavits

sworn by Mr. Kazman and Mr.

Levy in the RBC v. Contempo Litigation

[1] I have already summarized the limited evidence I have with respect to the civil litigation between RBC and Contempo in my Reasons. Mr. Kazman and Mr. Levy were not parties to the action. They both voluntarily swore affidavits to get the money to pay Northwood that had been

frozen by the court released. Although I do not have the details, apparently the evidence persuaded the judge to release the funds. According to Mr. Kazman, as a result the funds were released.

[2] Mr. Kazman submits that his affidavit is not admissible as evidence in this trial because of s. 13 of the *Canadian Charter of Rights and Freedoms*, although in his written submissions he states that the affidavit is not incriminating because he testified "it was prepared at the insistence of" Mr. Levy. Mr. Levy seeks to rely on Mr. Kazman's affidavit and so he did not take issue with the admissibility of the affidavit he prepared. Given that he is self-represented I will, however, consider whether or not as a matter of law his affidavit is admissible.

[3] Although the Crown accepts that Mr. Kazman was compellable as the president of Northwood, and has not asked to rely on the substance of his affidavit, the Crown submits that s. 13 of the *Charter* does not give a witness the right to tailor their evidence as it suits them and that I should consider the fact that in that affidavit Mr. Kazman gave evidence that is inconsistent with his evidence at trial.

[4] The affidavit sworn by Mr. Kazman on August 8, 2008, is important and relevant to the issue of the Disputed Construction Companies because in the opening paragraph he swore that he is the "officer, general manager and director of 2078698 Ontario Inc. operating as Northwood Contracting and as such have knowledge of the facts and matters hereinafter deposed to" [Emphasis added]. Mr. Kazman continued to depose that Northwood was in the construction, renovation, improvement and equipment sales business, that Northwood had conducted general renovations including demolition, leasehold improvements, and had also supplied equipment and furniture to Contempo in accordance with the invoices, that the leasehold improvements and renovations set out in the invoices were performed and the equipment and furniture was also delivered, and that a new stainless steel store front was installed in addition to a new upgrade electrical panel and air conditioning unit. He also deposed that when Northwood was paid on its first invoice the funds "were paid out in due course to suppliers, subtrades and other parties in the course of its business." And that if Northwood's account was frozen it might be forced out of business and would be unable to pay sub-trades, suppliers and workers. Emphasis added]

[5] It is significant that for all of this evidence Mr. Kazman represented that it was within his personal knowledge. He did set out some evidence that he obtained from Mr. A. Tehrani that he "verily believed" to be true but he did not include in the affidavit what I would describe as the typical boiler plate statement at the opening of the affidavit that his affidavit was also based on information from others that he verily believed to be true.

[6] Mr. Kazman's evidence at trial was inconsistent with his affidavit in that he professed to have received all of this information from others. This of course was necessary since he had already testified that he had no knowledge of the operations of Northwood or where its money was going and that he only signed the cheques as directed by Mr. Levy. When this omission was pointed out to Mr. Kazman he had no explanation. Although mistakes happen, Mr. Kazman did not suggest that he was not familiar with this language that would typically appear in an affidavit, which he must have been aware of since he practiced civil litigation before he lost his licence.

[7] In Mr. Levy's affidavit, sworn on August 7, 2008, was in his capacity as the sole officer, director and shareholder of Trust Inc. Realty Corp. the owner of 1048 Eglinton. He swore that to the best of his knowledge Northwood performed the renovations and that the RBC was not defrauded. At trial Mr. Levy testified that if he did not mention subcontracting in the affidavit, which he did not do, then he did not do any subcontracting for Contempo but that he could not be certain until he saw what the cheques said. Once he saw references to invoices on the cheques he said that he "could" have done the subcontracting.

[8] In considering this issue I begin with the Supreme Court of Canada decision of *R. v. Nedelcu*, [2012 SCC 59](#), [\[2012\] 3 S.C.R. 311](#) which deals with the general principles of self-incrimination under s. 13 of the *Charter*. *Nedelcu* sets out the test that applies where testimony from a defendant's examination for discovery is sought to be used in criminal proceedings where that defendant is the accused. In *Nedelcu*, the accused was cross-examined at his criminal trial on inconsistent statements he had previously made during discovery in a tort action brought against him in relation to the same incident; a motorcycle accident. The question on appeal was whether this infringed Mr. Nedelcu's right against self-incrimination. Moldaver J., writing for the majority, and LeBel J., writing for the dissent, agreed on the issue of compulsion. They found that the existence of "a statutory route by which to compel the witness to give evidence" on examination for discovery is "what makes a witness compellable," even if that route is not actually taken. However, the majority and the dissent differed on the permitted use of compelled testimony under s. 13 of the *Charter*.

[9] The majority focused on the *quid pro quo* of s. 13 of the *Charter*. According to Moldaver J., the "*quid*" refers to "'incriminating evidence' the witness has given at a prior proceeding in which the witness could not refuse to answer," while the "*quo*" describes the way that, "to the extent the witness has provided 'incriminating evidence', the state undertakes that it will not use *that* evidence to incriminate the witness in any other proceeding, except in a prosecution for perjury or for the giving of contradictory evidence" at paras. 6-8. (emphasis in original). For the majority, the person seeking to invoke s. 13 "must first establish that he or she gave 'incriminating evidence' under compulsion at the prior proceeding." If the person cannot meet these requirements, s. 13 is not engaged."(at para. 9)

[10] Moldaver J. characterized "incriminating evidence" as "evidence given by the witness at the prior proceeding that the Crown could use at the subsequent proceeding, if it were permitted to do so, to prove guilt, i.e., to prove or assist in proving one or more of the essential elements of the offence for which the witness is being tried." He held that this should be assessed "when the Crown seeks to use [the incriminating evidence] at the subsequent hearing." (at para. 9)

[11] Moldaver J. cautioned that,

[t]he mere possibility that evidence, which is otherwise "non-incriminating", can be converted into "incriminating" evidence if the Crown were to take the added steps needed to make it so, is not enough to trigger the application of s. 13. The use of Mr. Nedelcu's discovery evidence to test his credibility, and nothing else, could not convert his discovery evidence into incriminating evidence. The discovery evidence would retain its original

characteristics and it would not become evidence from which the triers of fact could infer guilt. (at para. 22)

[12] *Nedelcu* does not address the specific situation where an accused has provided a sworn affidavit in previous civil proceedings without having been required to do so. There are several cases that deal with the application of s. 13 of the *Charter* to affidavits filed in civil proceedings. In *Ontario Psychological Assn. v. Mardonet*, [2015 ONSC 4048](#) (Div. Ct.), Molloy J. dismissed a motion for leave to appeal Perell J.'s order dismissing a defence motion that "all documents including affidavits and transcripts of examinations of or from any of them in relation to the *Mareva* injunction be treated as confidential, not filed, and be sealed from the public record."¹⁷

[13] As Molloy J. explained,

The motion judge dismissed the defence motion. He held that such an order was unnecessary because any affidavits filed or examinations conducted in the course of the action were already protected by the privilege against self-incrimination. He relied on the Supreme Court of Canada's decision, *R. v. Nedelcu*, in concluding that the defendants were 'compelled' witnesses within the meaning of the case law on self-incrimination by virtue of the fact that they were "compellable," even when they filed affidavits "voluntarily." Therefore, any evidence they provided would be protected under s. 13 of the *Charter of Rights and Freedoms*.¹⁸

[14] In the decision below -- *Ontario Psychological Assn. v. Mardonet*, [2015 ONSC 1286](#) -- (*Mardonet*) Perell J. explained (at para. 32) that, "[i]n civil proceedings, while a party rarely summonses or subpoenas his or her opponent as a witness for an interlocutory motion or at trial, the opponent is, nevertheless, a statutorily compellable witness." As Perell J. explained, at paras. 27-29:

The principle against self-incrimination is engaged notwithstanding that there is no formal court order directing the Defendants to provide evidence.

Although ... the Defendants are not under the compulsion of a court order to deliver affidavits, a witness is, nevertheless, regarded as under compulsion if the witness is statutorily compellable to give evidence. The Defendants could be compelled as parties or as witnesses to give evidence in these civil proceedings. If they testify as a witness in civil proceedings and give incriminating evidence, they are protected by the principle against self-incrimination, which may be actualized in a variety of ways.

In civil proceedings, a party's attendance at an examination for discovery is compulsory, but the case law establishes that a person examined at a civil trial or an examination for discovery or an affiant in civil proceedings is treated as a compelled witness: *Sun-Times Media Group, Inc. v. Black*, [\[2007\] O.J. No. 795](#) (S.C.J.); *R. v. Nedelcu*, [2012 SCC 59](#); *R. v. Dubois*, [\[1985\] 2 S.C.R. 350](#); *R. v. Henry*, [2005 SCC 76](#); *Ezeh v. 2317706 Ontario Inc. (c.o.b. Club Seventy-Seven)*, [\[2011\] O.J. No. 3568](#) (S.C.J.). [Emphasis added.]

[15] Perell J. concluded that both individual defendants were "compellable throughout the action, and, thus, any incriminating evidence they proffer is compelled testimony" at para. 33. While these defendants were both named personally as defendants in the civil action, so too was a corporation owned by one of the defendants. Like the case at bar there was a pending criminal

proceeding against one of the individual defendants for fraud exceeding \$5,000. Perell J. continued that the defendants' concern "that if they give voluntary evidence, they will lose their *Charter* protected right against self-incrimination" was "misconceived" for the reasons he had articulated at paras. 25-26.

[16] As a purported officer and director of Northwood, Mr. Kazman was in a similar position as the individual defendants and applying this decision he would have been compellable to give evidence in the civil RBC proceedings. He could have been cross-examined on his affidavit and be compelled to testify at trial. On the approach advocated in *Mardonet* Mr. Kazman's affidavit is to be considered compelled. The evidence contained therein is incriminating since it suggests that as a general manager Mr. Kazman was the directing mind of the corporation and the Crown alleges that Northwood was involved in fraudulent renovations. The evidence would go to prove guilt on both the *actus reus* and *mens rea* of the offence of fraud. Accordingly it is protected by s. 13.

[17] The same analysis applies to Mr. Levy. Although Mr. Levy was not an officer or director of Northwood and was not named personally in the RBC action, he could have been cross-examined on his affidavit and subpoenaed as a witness at a trial in the action to give evidence. It is not as clear that the evidence in the affidavit is incriminating but the Crown does not seek to rely on it.

[18] For these reasons I conclude that both affidavits are protected by s. 13 of the *Charter* and they are not admissible as evidence. As a result it is not necessary for me to consider if the affidavits are also protected by s. 7 of the *Charter*, which provides a residual power to protect against self-incrimination as a principle of fundamental justice.

[19] Although I have concluded that the affidavits sworn by Messrs. Kazman and Levy are not admissible as evidence, as Moldaver J. states in *Nedelcu*, (at para. 22) if the evidence is only used for the purpose of impeachment, it "would not become evidence from which the triers of fact could infer guilt." I will therefore treat these affidavits as prior sworn statements and consider any inconsistencies to the defendants' sworn evidence when assessing their credibility as witnesses.

* * * * *

Appendix "P"

The Bochner Condo

[1] What I have termed the Bochner Condo was a condo unit #508 in a high-rise at 1121 Steeles Avenue West, Toronto. How Ms. Chapkina went on title for the Bochner Condo is relevant to her applications for SBLs for World and Exclusive. As I will come to, the facts related to these transactions are also relevant to Mr. Kazman's credibility.

[2] Jonathan and Jeffrey Bochner, the sons of David Bochner, purchased the Bochner Condo on September 28, 2007 for \$237,000. The first mortgage was with Equitable Trust and the second mortgage was with Rose Simon. Mr. Kazman was friends with Jonathan and met with his father

David, who was making the mortgage payments. David Bochner wanted to refinance the property to reduce the mortgage payments but there were credit issues. Mr. Kazman's company, M&M 155 Holdings Inc. registered a charge on January 8, 2008 against this property and the Simon second mortgage was discharged.

[3] The condo was transferred to Ms. Chapkina on April 25, 2008 for \$275,000; the original purchase price plus the M&M mortgage of \$36,363. On the same day, Ms. Chapkina obtained a first mortgage from ING Canada and the charge from M&M was discharged. At that point David Bochner paid the lower monthly mortgage costs to Ms. Chapkina as well as the taxes and other expenses and she in turn paid the ING mortgage. Mr. Bochner testified that this happened because M&M wanted its money back. I found Mr. Kazman's explanation confusing on this point. Mr. Kazman also said that he didn't know if Mr. Bochner asked Ms. Chapkina if he could put the condo in her name and that Mr. Bochner agreed to pay her a few hundred dollars. Mr. Kazman said this was done as a favour and there was no other motive for this being done.

[4] This evidence of Mr. Kazman made it sound like it was David Bochner's idea to put the condo in Ms. Chapkina's name. I do not accept this. On this point I accept the evidence of David Bochner and Ms. Chapkina. Mr. Bochner testified that this was Mr. Kazman's idea and that Mr. Kazman told him that it was OK to transfer the property to Ms. Chapkina and that she would hold it in trust and he would cover all the expenses and the mortgage payments. Ms. Chapkina recalled that she was told that the Bochners had a problem and had defaulted on some mortgage payments and that Mr. Kazman asked her to put the property in her name to help the Bochners out for a few months until they got a new mortgage. Although she also said that Mr. Kazman and David Bochner asked her to take the condo in her name for a few months I find it was clearly Mr. Kazman who came up with the idea.

[5] Because Mr. Kazman had taken the position that M&M was Mr. Levy's company he testified that his recollection was that Mr. Levy was involved in the second mortgage loan to Mr. Bochner. He took the position that Mr. Levy controlled the funds because M&M was his company and he agreed to the use of the funds. I find that evidence is false. As stated in my Reasons, Mr. Kazman was the directing mind behind M&M.

[6] When Ms. Chapkina was asked why she did this she said she was promised it wouldn't be any problem and she didn't see anything wrong with it. Mr. Kazman didn't tell her that if there was an issue she would be "holding the bag". She received no written assurances. She didn't put up any money. She just did it because Mr. Kazman asked her to. As it turned out she was stuck with that mortgage for five years. Fortunately David Bochner always made his payments to her save for a couple of times when he was a little late. She asked him multiple times to get alternative financing. It was then she realized how stupid this was of her.

[7] The other issue is Mr. Levy's knowledge about this transaction. There is no dispute that his mortgage broker, Adjit Lidar, arranged the ING mortgage. Ms. Chapkina said that Mr. Levy and Mr. Kazman took care of this and she gave the necessary information to Mr. Levy or Mr. Kazman and one of them assembled the package for the mortgage. She remembers that Mr. Levy was connected to it somehow. She denied ever showing the deed for the property to Mr. Levy but he knew that Ms. Chapkina went on title of the condo to help the Bochners.

[8] Both Mr. Kazman and Ms. Chapkina agree that the idea was that she would hold the condo for a short period of time to give the Bochners a chance to get their own financing. When it was taking a long time, the condo was transferred by Ms. Chapkina to Joshua Bochner for \$280,000 on June 22, 2010. Ms. Chapkina testified that she did this because "Marshall asked me to transfer it back". She did not receive any money for this transfer. She knew the mortgage was still in her name and that money was still going through her account but she understood they were in the process of arranging a new mortgage. She told David Bochner she was not renewing the mortgage and she kept bugging Mr. Kazman about it. All she knew was that David Bochner paid the mortgage regularly and that was the only thing that calmed her down.

[9] The problem was that ING was not notified of this transfer and did not consent to this and as a result Ms. Chapkina received a letter from the solicitors for ING in February 2013, when they discovered this, demanding all amounts owing under the mortgage failing which they would commence mortgage sale proceedings. The Bochners were finally able to arrange a mortgage and so Ms. Chapkina was never sued by ING although she was liable on this mortgage until it was discharged.

[10] Ms. Chapkina testified that although she'd heard of Icon she didn't know it was registered to the address of the Bochner Condo while it was in her name. I accept this evidence.

[11] Mr. Bochner testified that Ms. Chapkina was an innocent party. She took on a responsibility that maybe she should not have, but he made the mortgage payments. He does not know if Ms. Chapkina made any money for this but he assumes she got a lump sum for the deal. He testified that he paid the exact amount owing on the mortgage to Ms. Chapkina.

[12] I find that Ms. Chapkina was innocent in this transaction and was simply doing what Mr. Kazman asked her to do. Mr. Kazman put her personal interests at risk and in my view took advantage of her position as an employee. That however, is a separate question to the question of whether or not she knowingly misrepresented the facts concerning the Bochner Condo when she applied for her SBLs for World and Exclusive.

* * * * *

Appendix "Q"

The Law with respect to Causation-Reliance

[1] It is the position of the defendants that the Crown has not proven a causal link between any misrepresentations or omissions made to the banks during the SBL application process and the loss to the bank. It is submitted that the Crown must prove through evidence that the complainant banks actually (and not theoretically), relied upon misrepresentations in deciding whether or not to grant the SBL in question.

[2] *R. v. Winning*, [1973] O.J. No. 461 (C.A.) was referred to me by Mr. Chapnick and is relied upon by the other defendants. It is considered by some to be the leading case on the relationship between deprivation and reliance. In that case the Ontario Court of Appeal held that because "the evidence clearly establishes that Eaton's did not rely upon the information

contained in the application save for the name and address," which were correctly given, Ms. Winning did not obtain credit by false presence -- notwithstanding that her application included two false statements. Although the defendant in *Winning* was not charged with fraud, this case has been applied to fraud cases.

[3] J. Douglas Ewart in *Criminal Fraud* (Toronto: Carswell, 1986) explains the importance of showing that the dishonesty caused the deprivation:

Although there need be no nexus, relationship or interaction between the fraudsman and his victim, the absence of a causal relationship between the fraudsman's dishonesty and the alleged victim's loss will vitiate a fraud charge. A criminal fraud can only exist where dishonest conduct causes deprivation. A coincidence of dishonesty and loss is not sufficient.

[4] Mr. Ewart goes on to cite *Winning* in support of this proposition and ultimately suggests that "it can be safely said that while the alleged dishonesty need not cause the victim to do or refrain from doing anything, it must be one of the factors which brought about the deprivation which the victim suffers." (at p. 106) [Emphasis added].

[5] Nightingale and Sennek in *The Law of Fraud and Related Offences* (Toronto: Carswell, 2016) (loose-leaf, revision 5), at p. 2-20.2 come to the same conclusion:

Canadian courts have also held that in circumstances where false representations are made together with representations which are true, fraud is committed if the false representations are one of the causes of the deprivation suffered by the victim. The false representations or deceit do not need to be the exclusive cause of the deprivation suffered by the victim. [Emphasis added.]

[6] There are a number of other cases on this issue that I have reviewed. *Winning* was mentioned in *R. v. Steinhubl*, [2010 ABQB 602](#), aff'd in [2012 ABCA 260](#), reconsidered in [2012 ABCA 280](#). *Steinhubl* revolved around a mortgage fraud perpetrated through the use of "straw buyers." At the insistence of the accused and his partner, the straw buyers made the following misrepresentations to the complainant lenders and mortgage insurers:

- * that part of the purchase price would be paid by way of down-payment;
- * that the straw buyers planned to move and live in the house upon which they were placing the mortgage;
- * they failed to tell the mortgage broker and mortgage lender that there was no house or no completed house on the property being purchased, where that was the case;
- * they failed to tell the mortgage broker and mortgage lender that they expected to be paid \$5,000 by CBH [the company owned by the accused and his partner] for obtaining the mortgage;
- * they failed to tell the mortgage broker and mortgage lender that they expected CBH to reimburse them for any mortgage payments taken from their accounts by the mortgage lenders; and

* they failed to tell the mortgage broker and mortgage lender that they expected to transfer the homes and responsibility for the mortgage back to CBH or its designate shortly after the mortgage proceeds were advanced.

[7] Bielby J. of the Alberta Court of Queen's Bench described reliance as the key issue in the trial. He outlined the test for reliance as "whether the complainant was induced to act to his or her detriment by transferring possession of property, including money, in circumstances in which he or she would not have done so but for the fraud." While the evidence before the court did not include any senior representatives or anyone familiar with the mortgage lender's policies or requirements, mortgage underwriters who actually approved the mortgages in question did testify.

[8] The decision in *Steinhubl* reviewed Canadian authorities where the above test has been applied and concluded at para. 129, that, "[i]n summary, to prove reliance, the Crown must prove through direct evidence or permitted inference that the accused's dishonest conduct caused deprivation, i.e., actual loss or at least risk to the victim's pecuniary interests".

[9] Bielby J. also considered more specifically how reliance can be proved and explained that, [r]eliance can be proven through direct evidence or reasonable inference drawn from proven facts. Despite earlier authorities suggesting otherwise we now know that the Crown is not limited to leading that evidence from the bank employees who actually approved the granting of a given mortgage. Reliance can be established, for example, through evidence that a mortgage was approved only upon the satisfaction of certain conditions coupled with evidence that the lender's policies and practices would have required the mortgage to have been refused had the lender learned that some or all of those conditions were not actually met prior to it being funded. [at para. 137, emphasis added].

[10] After finding the accused guilty of numerous counts of fraud and two lesser and included counts of attempted fraud, Bielby J. acquitted the accused of the balance of the counts in the indictment because he found:

[t]he Crown has failed to prove the essential element of reliance to the required standard in relation to those counts. That failure arises from the absence of direct evidence of reliance or of evidence from which an inference of reliance can safely be made. ...

Unlike in *R. v. Park*, [2010 ABCA 248](#) ("Park") no reliable evidence was led to show that the mortgage lender's policies and practices required its employees to decline to fund a mortgage if they had learned that one or more of the alleged misrepresentations had been made. It was not therefore possible to draw an inference of reliance, as was done there, from the evidence of the conditions imposed upon the approval of the mortgage and such policies and practices.

[at paras. 39-40, emphasis added.]

[11] I note that there was some evidence in *Steinhubl* from mortgage lender employees "which suggested that the mortgage might have been approved even had the misrepresentations been known." In light of this, a reasonable doubt arose with respect to some of the counts. However,

there were several other counts where "direct evidence or inferences drawn from evidence other than the policies and practices of the mortgage lender" [emphasis added] was used to prove reliance. In addition, Bielby J. clarified that reliance is not required "to secure a conviction for attempted fraud," and convicted the accused of two counts of this lesser and included offence.

[12] In *Park* the accused was charged with 41 counts of fraud stemming from the completion of numerous real estate transactions linked to a fraudulent scheme. None of the witnesses called at trial included employees of the lenders who actually approved the mortgages; "[r]ather, the Crown called senior employees of the various lenders who were able to outline internal policies but had no knowledge or involvement in the approval of any of the mortgages in question." The trial judge granted a directed verdict requested by the accused because he found the evidence of the seven representatives from the financial institutions, coupled with the mortgage commitment documents, were wholly incapable of supporting an inference of reliance, that the policies of the institutions were nothing more than guidelines, not binding rules, and that whether or not a lender decided to grant a loan was a business decision and that the lender need not follow its own internal policies or industry practice. He concluded that the general evidence of the witnesses called did not amount to satisfactory proof that the false statements were relied upon.

[13] On appeal, Berger J.A. found at paras. 23-24 that the trial judge erred with respect to reliance:

In my opinion, the trial judge erred in concluding that the documents, coupled with the testimony of the financial officers, were an insufficient basis to infer reliance. He erred by holding that the only evidence of reliance had to come from lender employees who approved mortgages and testified to relying on falsehoods. The documents in each of the lender files entered into evidence in relation to counts 3 to 43 evidence agreements in writing to provide funding for mortgages on the express fulfillment of specific conditions. Those documents, the reporting letters from the Respondent confirming that the conditions have been met, and the documents evidencing the provision of the mortgage proceeds to the Respondent are direct evidence that the financial institutions relied on the truth and accuracy of the information they were given in deciding to take the risk of funding the mortgages.

Inherent in the crafting of conditions for mortgage approval is the assumption of risk by the lender. One can safely conclude that the degree of risk is dependent on the status of the applicant and the satisfaction of the conditions precedent. The mortgage commitments were predicated on compliance with the drafted conditions which were intended to protect and limit the risk incurred by the mortgagees. It is a safe inference that the financial institutions intended, accordingly, to rely on those conditions. [Emphasis added.]

[14] Berger J.A. also endorsed the idea that, "Reliance can be demonstrated through indirect evidence, through direct evidence in the form of documents that establish the policies and practices of the lender." (at para. 25) Further, Berger J.A. held that "an absence of evidence from the individual who personally approved a mortgage cannot be equated with positive evidence of non-reliance." (at para. 25)

[15] *Park* is also significant in that Berger J.A. found (at para. 29) that the fraudulent misrepresentation need not be the sole cause of the detrimental reliance:

The Crown does not have to prove that the mortgage was approved solely through reliance on the fraudulent statements. Criminal responsibility can arise from multiple contributing causes: [citations omitted].

[16] One of the cases relied upon by Berger J.A. for this conclusion was *R. v. Drakes*, [2006] O.T.C. 24 at para. 47 (aff'd 2009 ONCA 560) where the Court held (at para. 47) that:

The defendant's conduct must have contributed to the deprivation, outside of the *de minimus* range.

[17] *Winning* was distinguished in *R. v. Rosen* (1979), 55 C.C.C. (2d) 342 (Ont. Co. Ct.), aff'd in (1985), 15 D.L.R. (4th) 317, appeal allowed in part in [1985] 1 S.C.R. 83. At trial, Locke J. determined that the facts before him were different from *Winning* in the following way:

In *Winning*, the victim's direct evidence was that it did not rely at all on the alleged written application for credit. In Mr. Rosen's case, Hugh Wylie of the bank, Levine of Pape and Godell of Heller all swore that had Mr. Rosen informed them of his intention to employ their mortgage money in his other companies, no money would have been loaned to Greater National. These people obviously relied on Mr. Rosen's representation that he would use the funds to the benefit of the Greater National company in building and completing the Oakville project. [Emphasis in original.]

[18] Earlier in the decision, Locke J. had indicated that Mr. Rosen provided the bank and its employees "with cost projections, completion times and much other evidence in order to induce these institutions to advance the money. In so doing, he very directly led them to believe that he would employ their advances for that purpose." The bank and its employees did act upon Mr. Rosen's false representations "to their proven deprivation."

[19] I note that in *Rosen* the Court relied on evidence that the loans would not have been made had the lender known about the misrepresentations rather than evidence that one of the reasons the loan was given was because of reliance on the misrepresentation which the lender assumed to be true. This was also the nature of the evidence in *R. v. Wagman* (1981), 60 C.C.C. (2d) 23 (Ont. C.A.), where the trial judge found that the loan company in question would not have made the loan had it been aware of certain misrepresentations (at paras. 19-20). Similarly, in *R. v. E. (J.)* (1997), 117 C.C.C. (3d) 275 (C.A.), leave to appeal refused in [1997] C.S.C.R. No. 335, the Court relied upon investors' testimony to find that "the appellant's clients who relied on his presumed expertise, would not have agreed to invest in the various projects if they had known or could have known that the value of the building which they were acquiring was artificially inflated and that at least one of the objectives proposed could not be achieved." (at para. 47)

I have considered whether this difference in approach makes any difference to the test since this was primarily the approach of the Crown in asking a number of the bank witnesses if the bank would have made the loan if it had known that the borrower had lied about his/her income or assets or some other piece of information provided to the bank. I think it is likely that when the test is put this way that the witness focuses on the fact there was a lie rather than the nature of

the misrepresentation and it is natural for a witness to say that had h/she known of the lie that the loan would not have been granted; focusing on the fact the borrower lied, not what the borrower lied about. In my view that begs the question of whether or not the misrepresentation was one of the factors that caused the bank to approve of the loan. I will come back to this issue, as needed when I review the individual 16 SBLs.

[20] Whatever approach is used, as articulated in *E. (J.)* "the causal link must be clear." (at para. 49) In addition to the pronouncements in *Steinhubl* and *Park*, there are other cases that describe the kind of evidence that may be used to prove reliance in fraud trials. For instance, in *R. v. Meer*, [2015 ABCA 340](#), the Court of Appeal indicated that:

While reliance is not directly in issue on this appeal, we would add that when a lending institution sets out its lending requirements and requires an applicant for a loan to complete them, it is not doing so for nothing. The only reasonable inference, in the absence of any evidence to the contrary, is that these requirements are the basis on which the lending institution is willing to advance the loan in question. To find otherwise is to deny economic and financial realities along with common sense: see *R. v. Steinhubl* ... (at para. 59, emphasis added)

[21] Similarly, in *R. v. MacMullin*, [2014 ABQB 476](#), Germain J. started his discussion of the *actus reus* and reliance by explaining (at para. 498) that, "The deceit has to be material. This is to not make criminals out of minor, white lies. Much like a person who lies about their height on a dating website by giving their height with lifting shoes or high heels, not every misstatement will lead to mortgage fraud in an application for financing" (emphasis added). Commenting on *R. v. Park*, Germain J. went on to affirm the trial judge's conclusion that inferences can be drawn from documentation in appropriate cases, rather than requiring the Crown to call *viva voce* evidence from institutions to prove that they relied on a mortgage application. Germain J. went on to find (at paras. 502-503):

If we study a mortgage application (Mr. Humeniuk's are appropriate because he made a large number of these applications for Mr. MacMullin), we observe that the application requires intimate personal detail about the assets and liabilities of the proposed borrower, intimate personal detail showing the ability to fund the down payment, the down payment source, and a careful mathematical calculation of two critical ratios: the ratio of the borrower's proposed total debt including the mortgage and all other related debts to income, and a second calculation measuring only the mortgage debt against income. These debt servicing ratios and the complexity of the application, make clear that the application is an important part of the borrowing process even though it may not be the entire process. Financial institutions can, and occasionally will, override what the application is telling them and make the loan for other discretionary reasons. In *R. v. Park*, the Alberta Court of Appeal made clear that a group of reasons including the application does not mean that the financial institution has not relied on the application. Common sense is to the contrary...

The application is not the only document submitted to the financial institution. The REPC [Real Estate Purchase Contract] is inevitably submitted. Common sense indicates that it must be relied on as it is so important to the security implicit in the property. Its reliance by a financial institution cannot be denied. It would be bizarre to believe that a single

responsible adult in a free market economy, who thought about the issue, would ever believe that a financial institution would not be relying on the REPC. The same observation can be made of the wage and employment information, or evidence of the sale of other property, to remove debt and clear the way for a new loan. Thus if the supporting information contains deceitful content of the extent and quality proven here, there is reliance on the material deceit. [Emphasis added.]

[22] I find that the following principles of law are supported by the case-law on this issue and applicable to this case:

- a) the issue of causation is a question of fact;
- b) reliance can be proven through direct evidence or reasonable inferences drawn from proven facts;
- c) the evidence may either establish that in approving the loan the misrepresentation and an assumption it was true was a factor outside of the *de minimus* range or in the alternative the loan would not have been made had the lender known about the misrepresentation;
- d) similarly, in the case of an omission the evidence could establish that the loan would not have been granted if the information not disclosed had been known.
- e) reliance can be proven through inferences drawn from the documentation used in the application process, including the documents completed by the borrower and documents that set out the policies and practices of the lender can be relied upon, and
- f) the Crown does not have to call the lender employees who actually approved the SBL to testify in this case.

[23] In this case Due Diligence Requirements set out in s. 8 of the Regulations require the lender to apply the same procedures as those that would be applied in respect of a conventional loan in the same amount, including, before making the loan; obtaining credit references or conducting a credit check on the borrower and any persons who are legally or financially responsible for the borrower; and completing an assessment of the repayment ability of the borrower, taking into account all other financial obligations of the borrower.

[24] In the case of each of the banks, I have reviewed the various documents in the loan applications as there is language in those documents that is relevant to the reliance issue. There are, for example, sections in the loan applications certifying that the information contained therein is true and complete. As Ms. Barton points out however, in some cases there is no evidence as to what is required to be filled in on the form, for example, nowhere is it stated that a GIC is required. Also she submitted that forms completed after loan approval are not relevant although that presumes the bank could not demand early repayment of the loan if a material misrepresentation were discovered.

[25] I also have the evidence of some employees from each of the banks familiar with the SBL application process at the relevant time. The defendants argue that none of them were the

underwriters who ultimately decided whether or not to approve the particular SBL. That is true but some of the bank employees who did testify said that had they known about a particular misrepresentation that they would not have forwarded the application to the underwriters. It seems to me that that evidence can be sufficient to establish causation. In addition, in some cases these witnesses were able to speak to the accuracy of information in applications and the accuracy of supporting documentation in the application process.

[26] In summary, this is the relevant law as I understand it that should be applied to the facts that I find where this issue arises.

* * * * *

Appendix "R"

The Law with respect to Willful Blindness

[1] I provided the defendants with an excerpt from Manning, Mewett & Sankoff *Criminal Law, Fourth Edition*, LexisNexis at p. 179 on the subject of willful blindness. Mr. Chapnick also provided a summary of the law on this issue, and I have included some of that summary here.

[2] Willful blindness is equated with actual knowledge and where this mental state is found to exist it renders the defendant liable for crimes where knowledge is a component of the *mens rea*. It is distinguished from recklessness where an accused is aware of a particular risk that a relevant fact may be present and nonetheless proceeds.

[3] The Supreme Court of Canada in *R. v. Sansregret*, [\[1985\] 1 S.C.R. 570](#) at p. 206 stated as follows:

Wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness, it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry.

[27] The Court went on at p. 207, to adopt a passage from Glanville Williams, the criminal law scholar, which puts this concept in careful and appropriate language:

The rule that wilful blindness is equivalent to knowledge is essential, and is found throughout the criminal law. It is, at the same time, an unstable rule, because judges are apt to forget its very limited scope. A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge. [Emphasis added]

[28] As Sopinka J. put it in *R. v. Jorgensen*, [\[1995\] 4 S.C.R. 55](#), at para. 102-3:

[102] ...mere suspicion is not enough ... there must be a "strong" suspicion, amounting to a probability so that "it can almost be said that the defendant actually knew"...

[103] ...[a] finding of wilful blindness involves an affirmative answer to the question: did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge?

* * * * *

Appendix "S"

The Law With Respect to the Criminal Organization Offence

[1] Section 467.12(1) of the *Criminal Code* provides as follows:

Every person who commits an indictable offence under this or any other Act of Parliament for the benefit of, at the direction of, or in association with, a criminal organization is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

[2] The definition of a "criminal organization" is set out in s. 467.1 of the *Criminal Code*.

[3] The leading case on the elements of the offence of committing an offence for a criminal organization is the 2012 Supreme Court decision in *R. v. Venneri*, [2012 SCC 33](#), [2012] 2 S.C.R. 219. In that case, the Court articulated a purposive framework for ascertaining the existence of a criminal organization and considered the requirement in s. 467.12 that the predicate offence be committed "in association with" a criminal organization.

[4] Mr. Venneri was found at trial to have, among other things, supplied drugs to Mr. Dauphin, who operated a "large drug-trafficking network in the Montréal area" (at paras. 7-11), and was convicted of a number of charges, including conspiracy to traffic in narcotics, trafficking in narcotics, instructing the commission offence for a criminal organization, and committing an offence for a criminal organization (at para. 14). The Court of Appeal set aside Mr. Venneri's convictions on the two "criminal organization offences," and the Crown appealed to the Supreme Court, seeking to have these convictions restored.

[5] Fish J., writing for a unanimous court, commenced his consideration of these "criminal organization offences" by considering the definition of "criminal organization" in s. 467.1(1) of the *Criminal Code* (at paras. 25-41). He rejected a "checklist" approach to identifying a criminal organization, and cautioned against "limit[ing] the scope of the provision to the stereotypical model of organized crime" (at paras. 37-38, 41). Instead, Fish J. articulated a purposive approach to the inquiry, focused on the legislation's goal of "identify[ing] and undermin[ing] groups of three or more persons that pose an elevated threat to society due to the ongoing and organized association of their members" (at para. 40).

[6] Fish J. stressed that, although the definition of a criminal organization "must be applied

'flexibly', structure and continuity are still important features that differentiate criminal organizations from other groups of offenders who sometimes act in concert" (at para. 27). He also addressed what it means to commit an offence "in association with" a criminal organization, contrary to s. 467.12, and adopted the holdings in several Ontario cases that this requires "a connection between the predicate offence and the organization" (at paras. 50-57).

[7] Fish J. noted that it was not seriously contested that Mr. Dauphin's operation was a criminal organization, but concluded that on the evidence, Mr. Venneri was merely an associate of Mr. Dauphin, not a member of the organization, but nonetheless committed the offence of trafficking in association with the organization (at paras. 42-46, 58-59).

[8] The Court of Appeal for Ontario applied the framework set out in *Venneri* in *R. v. Beauchamp*, [2015 ONCA 260](#), [333 O.A.C. 87](#), where it confirmed the trial judge's findings that a three-person business operated through a corporation that served as a front for illicit trade in devices and materials that the appellants knew were being used in large scale credit card fraud was a criminal organization (at paras. 1-2, 14-15). The fraud related to debit and credit card skimming schemes and a business operated through a corporation referred to as Canadian Barcode, of which two of the defendants were the founders and co-owners, and the third was an employee.

[9] Before the Court of Appeal, the appellants contended that the trial judge had erred in finding that Canadian Barcode was a criminal organization. The Court applied the *Venneri* framework to find that Canadian Barcode had a sufficient level of structure and continuity to constitute a criminal organization as defined in s. 467.1 of the *Criminal Code*, including because it was active for at least one and a half years and each of its three members "had their respective areas of responsibility," among other considerations (at paras. 156-167). The Court also rejected the appellants' contention that in order to be a criminal organization, the commission or facilitation of criminal offences had to be a quantitatively dominant purpose of the group, but instead, that whether an illicit purpose is a "main" purpose of the group, as required by s. 467.1, will depend on the effort invested by the group or its members in the activity (at paras. 168-184).

[10] Many of the cases that have considered *Venneri* are cases involving drug trafficking operations. As the application of the principles is fact driven I have not found these cases of much assistance save that they make it clear that one incident of the underlying offence is insufficient to make a finding of a criminal organization. A common issue however, in determining whether a criminal organization exists is distinguishing between the existence of a criminal organization from what is merely the members of a conspiracy or an "*ad hoc* group" that comes together for the commission of offences. The cases are difficult to reconcile on this issue.

[11] In *R. v. Saikaley*, [2013 ONSC 1854](#), 2013 CarswellOnt 3998, [\[2013\] O.J. No. 1572](#), the renting of an apartment as a stash location for a criminal organization was found to be culpable participation (at para. 155):

In Count 12, under s. 467.11 of the *Code*, it is alleged that Mr. Saikaley, for the purpose of enhancing the ability of a criminal organization to commit an indictable offence, contributed to the activity of a criminal organization. The Crown submitted that in this case, Mr. Saikaley contributed to the criminal activity of trafficking in cocaine. This was

done by Mr. Saikaley renting apartment Unit 210-1380 Prince of Wales Drive, Ottawa, from Elizabeth Bernard for the purpose of a stash location for cocaine and marijuana. I agree that the very fact of renting it and knowing that it would assist the organization to distribute its cocaine would be an offence under section 467.11 of the *Code* and I make that finding.

[12] After citing *Venneri* the Court went on to say:

This is a recurrent theme in criminal organization cases: has the Crown proved that the group has structure and continuity, or is it simply an *ad hoc* conspiracy of several individuals?

[13] On the other hand in *R. v. Kwok*, [2015 BCCA 34](#), drug possession/importing offences were found not to have been attached to a criminal organization so as to constitute an aggravating factor in sentencing. The Court, noting that groups of individuals that operate on an *ad hoc* basis with little or no organization do not fall within the scope of the criminal organization regime, per *Venneri*, [2012 SCC 33](#), and concluded (at paras. 93-94):

In the present case, there is no evidence of a "criminal organization" except the appellants, Mr. Lai, and Mr. Chan. In other words, there is no evidence of a "known" gang affiliation or a larger group of individuals involved in this enterprise. Therefore, the Crown would have to prove that these three to five people were a criminal organization in and of themselves, (or that Mr. Chan, Ng and Kwok were a criminal organization and Mr. Lau was associated sufficiently to bring him within the *Code* definition). The evidence suggests no more than Mr. Chan, Mr. Kwok and Mr. Ng came together for the purpose of importing ketamine into Canada, and that Mr. Lai (allegedly, as he has not been tried) and Mr. Lau assisted them when they arrived and were involved in preparing the drug for distribution.

There is no evidence that this group had any "form or structure" or "degree of continuity" beyond this one incident. Therefore, in my respectful view, the Crown did not prove beyond a reasonable doubt that they formed a criminal organization.

[14] There are generally certain characteristics of a criminal organization, which include (at para. 36):

- developing specializations and dividing labour;
- fostering trust and loyalty;
- sharing customers, financial resources, and insider knowledge;
- in some circumstances, developing a reputation for violence.

[15] Additional cases on this issue that I considered are as follows:

***R. v. Lindsay*, [\[2005\] O.J. No. 2870](#) (Ont. S.C.J.), aff'd [2009 ONCA 532](#), [97 O.R. \(3d\) 567](#), leave to appeal refused [\[2009\] S.C.C.A. No. 540](#).**

- * The two accused, members of the Hells Angels, were charged with committing extortion for the benefit of, at the direction of, or in association with a criminal organization. The Crown relied on the evidence of five witnesses, including four

experts, in prosecuting this charge. One of the experts, a professor of criminal justice who had studied outlaw motorcycle clubs, and specifically the Hells Angels, testified that he had identified the following eight common characteristics of criminal organizations: (1) the group is non-ideological, (2) it is hierarchical, (3) it has a limited or exclusive membership, (4) it perpetuates itself and exists for a significant period of time, (5) it exhibits a willingness to use illegal violence, (6) it demonstrates a specialization or division of labour, (7) it is monopolistic, and (8) it is governed by explicit rules and regulations. The expert testified that a group can be a criminal organization even though it does not possess each of these characteristics (at paras. 846-65). The trial judge concluded that the expert's construct does not constitute the definition of criminal organization under the *Criminal Code*, but is useful in understanding the operation of the Hells Angels (at para. 941). The trial judge made reference to at least some of the factors identified by the expert in concluding that the Hells Angels in Canada is a criminal organization.

- * The *mens rea* requirement of s. 467.12, requires the Crown to establish that the accused committed the predicate offence with the intent to do so for the benefit of, at the direction of, or in association with a group that the accused knew had the composition criminal organization, although the accused need not know the identities of those in the group: The phrase "in association with" requires proof that the accused committed a criminal offence in connection with the criminal organization, even though the accused may not be a formal member of the group. Whether the connection is sufficient to satisfy the "in association with" requirement will be a factual determination for the court at para. 59.
- * The trial judge's conclusion that the accused had committed extortion in association with a criminal association was upheld on appeal. The trial judge's conclusion that the Hells Angels are a criminal organization was not raised on appeal.

***R. v. Sharifi*, [\[2011\] O.J. No. 3985](#), [2011 CarswellOnt 9044](#)**

(S.C.J.), esp. at paras. 27-39

- * The Supreme Court cited this decision with approval in *Venneri*, noting the trial judge's conclusion that while the definition of criminal organization "must be applied 'flexibly', structure and continuity are still important features that differentiate criminal organizations from other groups of offenders who sometimes act in concert" (*Venneri* at para. 27).
- * The accused in this case was charged with a number of offences relating to drug trafficking, including under ss. 467.11 and 467.12 of the *Code*. The trial judge found that a number of people, including the accused, were involved in the purchase and sale of cocaine in the City of Ottawa, but that he could not conclude who knew who within the group or when the group began to deal with each other in obtaining cocaine (at para. 9). The trial judge concluded that the evidence did not establish the existence of a criminal organization, no matter how flexible that concept, including because, on the evidence, the group of individuals were trying

to obtain cocaine only during a short (three-month) timeframe; there was no structure to the group; it was not clear who knew who in the group, or how they were going to benefit each other; there was no group name or evidence that the individuals considered themselves a group; and there was no record of their activity (at para. 38).

R. v. Battista, [2011 ONSC 4771 \(CanLII\)](#), [\[2011\] O.J. No. 6637](#), at paras. 9-31

- * In *Veneri*, Fish J. cited this decision for the proposition that although the definition of criminal organization "must be applied 'flexibly', structure and continuity are still important features that differentiate criminal organizations from other groups of offenders who sometimes act in concert" (*Veneri* at para. 27, citing *Battista* at para. 16).
- * Ultimately in this case the trial judge considered the eight common characteristics of criminal organizations set out in *Lindsay* to conclude that the same group of individuals involved in drug trafficking that was discussed in *Sharifi* was not a criminal organization, but rather "an *ad hoc* group of individuals who periodically cooperated in the obtaining and selling of drugs" (at para. 31)

- 1 Gad H. Levy is also known as Haim G. Levy. To avoid confusion I will refer to Gad Levy as Mr. Levy and Armand Levy as Mr. A. Levy.
- 2 To avoid confusion I will refer to Madjid Vaez Tehrani as Mr. Tehrani and Ali Vaez Tehrani as Mr. A. Tehrani.
- 3 I understand that Ms. Cohen resolved her charges before the preliminary inquiry and Mr. Salehi did so before another judge early on in the trial. Naturally, I have no knowledge of any details concerning their resolutions. The SBLs that they obtained are, however, still relevant to various counts in the indictment.
- 4 Ms. Barton produced copies of three drafts and a cheque but only the draft payable to Meez Ltd. dated May 26, 2006 matches these payments. The others do not: a \$20,000 cheque payable to Mr. Tehrani dated August 23, 2006, a \$10,000 RBC draft payable to Mr. Tehrani dated August 24, 2006 and a CIBC draft also payable to Mr. Tehrani dated August 24, 2006 for \$29,000. Mr. Tehrani could not explain why he received \$59,000 from Mr. Salehi between August 23 and August 24, 2006 - two payments on the same day from two different banks and \$20,000 paid the day before; all to him personally. The evidence surrounding Mr. Tehrani's and Mr. Salehi's relationship as partners was confusing but I have not found it to be relevant to the issues that I have had to determine.
- 5 There was no suggestion by anyone that the documents were altered by someone insider the bank and given the similarity of the alterations with respect to the documents provided to five different banks, there would have been no basis to make such an argument.
- 6 There is no Table of Contents in some of the Business Plans entered into evidence and in some cases the bank's copy is missing page numbers, which Mr. Levy said he always included. The bank may have removed the Table of Contents but in my view would not have erased page numbers. However, I find this issue is not relevant to the question of whether some of the defendants copied Business Plans, as this is a fact even with some of the Business Plans in the bank files that Mr. Levy admitted he prepared.
- 7 I include here the Disputed Construction Companies because it is clear that Mr. Kazman and/or Mr. Levy had some control over these companies.
- 8 This loan amount includes the Registration Fee that was also financed. This is the case for all 16 SBLs where this applies.
- 9 This fact was not admitted and for some defendants was disputed. It is not necessary for me to find that the dates the banks and Industry Canada say the various SBLs went into default are accurate. I have only used these dates to introduce the appraisal evidence.

R. v. Kazman

- 10 Mr. Kazman testified that Bridgecon was the same type of company as the Disputed Construction Companies but I did not hear very much evidence about it.
- 11 In Mr. Ghatan's written submissions his evidence is incorrectly stated to be that this discussion with Mr. Levy was on July 1, 2009. That was not his evidence and in any event would not explain why these payments were in mid-June 2009.
- 12 This is the date in the "Properties" tab of the photos which sets out information with respect to them.
- 13 [\[2005\] L.S.D.D. No. 89.](#)
- 14 [2008 ONLSAP 7.](#)
- 15 [2011 ONSC 3008.](#)
- 16 By third party I mean individuals and entities not related to the individuals or companies in this case.
- 17 *Mardonet* (Div. Ct.), paras. 4-5, 15-16.
- 18 *Mardonet* (Div. Ct.), at para. 5.

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