

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-05-027929-965

DATE : January 16, 2015

IN THE PRESENCE OF : THE HONOURABLE JOEL A. SILCOFF, J.S.C.

OLOMP HOLDINGS CO. LIMITED

Plaintiff

vs.

3056775 CANADA INC.

and

YESRASIE INVESTMENTS INC.

and

FAKHRY SHANSHAL

and

MOHAMMED SHANSHAL

and

YASIE SHANSHAL

Defendants

and

CANADIAN YARNS LIMITED

and

CANADIAN FIDELITY MILLS LIMITED

Mise en cause

JUDGMENT

I. INTRODUCTION

[1] By its Re-Re-Amended Declaration, Plaintiff, OLOMP Holdings Co. Limited (“**Olomp**”) seeks the following relief (the “**Olomp Proceedings**”):

CONDEMN the Defendants solidarily to pay to the Plaintiff the sum of NINE HUNDRED SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS CANADIAN (\$962,500.00 CAN) being THIRTY-FIVE THOUSAND (35,000) shares evaluated at the face value of \$ 27.50 CAN each plus legal interest from the date of the issuance of the present action and the additional indemnity as provided for by Article 1619 of the Quebec Civil Code;

SUBSIDIARILY, CONDEMN the Defendants solidarily to pay to the Plaintiff the sum of SIX HUNDRED EIGHTY-ONE THOUSAND FIVE HUNDRED DOLLARS CANADIAN (\$ 681,500.00 CAN) equivalent to FIVE HUNDRED THOUSAND DOLLARS U.S. (\$500,000.00 U.S) converted at the exchange rate of 1.3630. which is the amount paid and evaluated for at the time of their purchase plus legal interest from the date of the issuance of the present action and the additional indemnity as provided for by Article 1619 of the Quebec Civil Code;

THE WHOLE with costs, including costs of expertise, if necessary.

[2] The Olomp Proceedings were joined for hearing with a related proceeding filed in the records of this Court on behalf of Mahmud A. Al-Kishtaini (“**Al-Kishtaini**”) under number 500-05-027924-966 (the “**Al-Kishtaini Proceedings**”).

[3] Seeing the lack of identity of the parties and of the remedies sought in each of the two proceedings, separate judgments are being rendered and released concurrently (the “**Al-Kishtaini Judgment**” and the “**Olomp Judgment**”).

[4] By agreement, the evidence filed in the Al-Kishtaini Proceedings and referred to in the Al-Kishtaini Judgment is deemed to have been filed in and to form part of the Court record in the Olomp Proceedings.

[5] The findings and analysis contained in the Al-Kishtaini Judgment are adopted herein by reference and, to the extent applicable, shall be deemed to apply *mutatis mutandis* to the Olomp Proceedings. Thus, the Court will limit its analysis in this judgment solely to the issues raised for determination and the conclusions sought in the Olomp Proceedings not otherwise addressed in the Al-Kishtaini Judgment.

[6] All capitalized terms used but not otherwise defined herein, shall have the same meaning as set out in the Al-Kishtaini Proceedings.

II. THE PARTIES

[7] The parties are described at length in the Al-Kishtaini Judgment.

III. DISCUSSION

[8] The factual and juridical basis upon which Olomp bases its claim for relief are described and summarized in the conclusions of its Re-Re-Amended Declaration. Certain pertinent extracts are reproduced below:

91. THAT, as a result of its amalgamation with 3680771 Canada Inc., Canadian Yarns Limited ceased to exist making it no longer possible to implement the 1994 AGREEMENT entered into between MR. AL-KISHTAINI and the SHANSHALS regarding Canadian Yarns Limited's shares;

92. THAT, in fact, the THIRTY-ONE THOUSAND FIVE HUNDRED (31,500) shares that were delivered to OLOMP were no longer Canadian Yarns Limited's shares as they were unilaterally and without any colour of rights changed into Canadian Fidelity Mills Ltd.'s shares before completing the execution of said 1994 AGREEMENT and restoring OLOMP's share in Canadian Yarns Ltd. to THIRTY-FIVE PERCENT (35%) in accordance with the SHANSHALS' promises and undertakings as expounded in Plaintiff's Exhibits P-23 and P-24;

93. THAT, from the foregoing, it is obvious that the SHANSHALS have intentionally and illegally breached their obligations towards the Plaintiff in order to leave him, by intended actions of their own and before fulfilling their obligations, with shares completely different from what was agreed upon in the 1994 AGREEMENT between DR. AL-KISHTAINI and the SHANSHALS in type, number and percentage of share capital;

94. THAT, furthermore, as a result of the SHANSHALS' said actions, Canadian Yarns Limited has ceased to exist making it impossible for them to fulfil their obligations to give to MR. AL-KISHTAINI, through the intermediary of

OLOMP, the agreed upon THIRTY-FIVE PERCENT (35%) shares in Canadian Yarns Limited;

95. THAT, by illegally and without any color of right refusing to deliver to OLOMP the THIRTY-FIVE PERCENT (35%) shares in the shareholdings of Canadian Yarns Limited to OLOMP, as agreed upon in the 1994 AGREEMENT, the SHANSHALS caused OLOMP's shareholdings to become diluted, hence depriving it of exercising its right, as owner of THIRTY-FIVE PERCENT (35%) share in the company, to veto on December 21, 1999 against the 2000 amalgamation of Canadian Yarns Limited with 3680771 Canada Inc.;

[...]

103. THAT, however, should the Court decide not to rescind the said 1994 AGREEMENT, OLOMP would then be entitled to claim from the Defendants compensation for the damages it has suffered as a result of the Defendants' breach of their undertakings and promises and of their illegal acts;

104. THAT, should the Court decide not to rescind the 1994 AGREEMENT (**as was sought in the Al-Kishtaini Proceedings**)¹ **the Plaintiff is therefore entitled to receive TWO HUNDRED THIRTY-SIX THOUSAND SEVENTY-FIVE DOLLARS (\$236,075.00) CANADIAN** being 3.5% of the FMV of the shares of Canadian Yarns Limited, and, subsidiarily, the fair market value of 3,500 Canadian Yarns Limited shares as valued by KPMG or as the Court may find fit, in compensation for the shareholding that the Defendants refused to deliver to the Plaintiff.

105. THAT, should the Court decide not to rescind the 1994 AGREEMENT, **the Plaintiff is also entitled to receive TWO MILLION ONE HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED SEVENTY-FIVE DOLLARS (\$2,124,675.00) CANADIAN**, being 31.5% of the FMV of the shares of Canadian Yarns limited, and, subsidiarily, the fair market value of THIRTY-ONE THOUSAND FIVE HUNDRED (31,500) Canadian Yarns Limited's shares as valued by KPMG or as the Court may find fit, in compensation for the THIRTY-ONE THOUSAND FIVE HUNDRED (31,500) shares that the Defendants had unilaterally and without any colour of rights or consent of the Plaintiff or MR. AL-KISHTAINI, forcibly withdrew from the Plaintiff and changed into shares in a company not agreed upon by the 1994 AGREEMENT or otherwise;

[...]

[Emphasis added]

¹ Insert added by the Court for ease of comprehension.

[9] Notwithstanding the quantification by Olomp of the relief sought in the amounts of \$236,075 CAN and \$2,124,675 CAN referred to above in paragraphs 104 and 105 of its *Re-Re-Amended Declaration*, for some unknown reason the revised amounts claimed in the conclusions of its re-re amended proceeding are substantially reduced. These later amounts will be retained by the Court as representing the quantification of the relief now sought by the latest amendments and the taxable costs to be awarded.

[10] Seeing the Courts analysis and conclusions expressed in the Al-Kishtaini Judgment regarding the merits of Al-Kishtaini's various claims and contentions as expressed under the follow chapters, in particular:

- a) The Project, the Evolving Capital Requirements and the Equity/Debt Components of the \$1,400,000 U.S. Al-Kishtaini Investment;
- b) The Rieter Commission Agreement;
- c) The Evolution of the Parties' Agreement Regarding Canadian Yarns and the Revelation of the Added Participation of Halgurt Holdings Inc. (Fawzi Saib) as a 10% Shareholder of Canadian Yarns;
- d) The Contributions of the Shanshals and Yesrasien to the Initial Capitalization of Canadian Yarns;
- e) The Subsequent Capitalization of \$750,000 CAN. Shareholder Advances and the Resulting Dilution of the Equity Position of Al-Kishtaini/Olomp;
- f) The Amalgamation of Canadian Yarns with 3680771 Canada Inc. to become Canadian Fidelity Mills Limited;
- g) The Bankruptcy of Canadian Fidelity; and

applying the findings therein expressed to the issues raised for determination herein, the Olomp Proceedings will necessarily be dismissed. Olomp claims to have suffered damages resulting from its investment in the Canadian Yarns venture. However, Olomp has failed to satisfactorily establish the existence of causation between the damages allegedly suffered, if any, and the fault on the part of any one or more of the defendants.

[11] The Olomp Proceedings will accordingly be dismissed with costs calculated on an action seeking a condemnation in the amount of \$962,500 CAN, being the principal conclusion sought in its Re-Re- Amended Declaration.

FOR THESE REASONS, THE COURT:

[12] **DISMISSES** Plaintiff, Olomp Holdings Co. Limited's action;

[13] **THE WHOLE** with costs on an action of \$962,500 CAN.

JOËL A. SILCOFF, J.S.C.

Me Céline Tessier
Me Ponora Ang
Ms Maude Poulin (articling student)
MCMILLAN S.E.N.C.R.L.
Attorneys for Plaintiff

Me Nick Rodrigo
DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Defendants

Dates of hearing : September 5, 8, 9, 10, 11, 15, 16, 17, 19, 22 and 23 2014.