

Citation: ☼ R. v. Wong
2019 BCPC 32

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File No: 239222-1
Registry: Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(Criminal Court)

REGINA

v.

ARTHUR TAT YUE WONG

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE N. PHILLIPS**

Counsel for the Crown:	K. Marks, K. Gallo (Articling Student)
Counsel for the Defendant:	G. Ng, G. Prat
Place of Hearing:	Vancouver, B.C.
Dates of Hearing:	Jan. 16, 18, 19, 22, 23, 24; Apr. 30; May 30; 2018; Feb. 4, 2019
Date of Judgment:	March 12, 2019

INTRODUCTION

[1] Arthur Wong is charged on Information 239222 with fraud and theft of money over \$5,000 from Phoenix Media Direct Inc. from the 1st day of January, 2010, to the 31st day of December, 2011, at or near Burnaby, BC. He is also charged with fraud and theft of money from the 13th day of April to the 31st day of May, 2012, from R.E.M.A.D.E. This is the decision of the Court following a trial held in this case.

THE EVIDENCE AT TRIAL

[2] Mr. Wong was hired as a contractor to provide management services to Phoenix Media Direct Inc. (PMD) in January 2010. On June 2, 2010, the parties entered into a General Service Contract for this purpose. The contract was between PMD, Choices Graphic Supply Ltd. (its US operation), JSC (the holding company of PMD) and 28 Solutions, a company owned and operated by Mr. Wong. In his work with PMD and Choice Graphics, Mr. Wong primarily oversaw the finances of PMD, and in that capacity had complete access to the corporate books and bank accounts. The list of duties Mr. Wong was to provide included the “use of company credit cards for stock purchase/expenses” to both the Canadian and US businesses.

[3] Mr. Wong had been with the company for about two years when Steve Carter, a PMD director, received a call from American Express (AMEX) demanding payment on account. Inquiries made by Mr. Carter and an internal audit revealed that as much as \$200,000 had been taken from the company without authorization.

[4] A complaint was made to the RCMP. A police investigation into this matter was initially handled by Cst. Linda Reinhart before Cst. Christopher Jones took over.

Cst. Jones testified at this trial that he has been with the RCMP since October 2008 and as of January 2018, he had worked as a financial investigator for five and a half years. He was in his first year of financial crime work when he started on this case.

[5] Cst. Jones said he sought information from Mr. Zuskind, a person who had conducted an audit for PMD before the police became involved. Cst. Jones testified he understood Mr. Zuskind had worked for Phoenix in the past. The officer told the Court Mr. Zuskind had last been registered professionally in Texas in the 1980s, but had not done anything since in terms of his Professional Management Accountant status. He understood Mr. Zuskind spent about twenty hours on his review of the PMD books, but the company did not have the money to do a thorough accounting investigation. He said Mr. Zuskind determined there were about \$570,000 in illegitimate expense claims. Cst. Jones said the original police assessment had flagged about \$200,000 in questionable expenses.

[6] Cst. Jones told the Court he also reviewed all of the RBC statements for PMD's business account and tracked when on-line bank payments were made to BMO Mastercard accounts for Jessie MM Wong and others. The evidence established that the Mastercard accounts in question were those of the accused and his wife. The officer testified he examined the Mastercard statements in an effort to determine which expenses might have related to the business and which were personal in nature. He referred to Mr. Zuskind's work in trying to make these assessments. Cst. Jones said he next attempted to determine what percentage of the personal charges he identified had been paid by PMD or by other sources.

[7] Cst. Jones told the Court he also examined charges made on PMD's American Express (AMEX) credit card. Cst. Jones used the company audit along with a list of vendors provided by PMD in an effort to determine which expenses were legitimately related to the business, and which were personal in nature. The officer acknowledged the vendor list he used was incomplete in that it ended at the letter "T", and said it referred to Fusion Digital, not PMD. Fusion had purchased the US operation, Choice Graphics, in late 2011. Cst. Jones said after subtracting all of the expenses he thought were for business, he considered the remaining \$62,489.31 to be unauthorized personal expenses.

[8] The officer said he knew from Mr. Wong's Service Contract that he had a monthly vehicle allowance of \$500, so every car-related expense on the AMEX account he classified as illegitimate or personal in nature. He said he made this determination because Steve and Debbie Carter, two of PMD's directors, told him Mr. Wong should have had no vehicle expenses because of the allowance and that Mr. Wong would have known the AMEX card could only be used for emergency purposes. In cross-examination, the officer agreed regardless of whether receipts were submitted for vehicle expense claims, he categorized them as illegitimate because of the car allowance.

[9] Cst. Jones said he also examined a small number of separate mileage claims submitted by Mr. Wong to PMD. He determined Mr. Wong submitted claims for \$3,518.13 to which he was not entitled given his vehicle allowance. The officer conceded the General Service Contract was silent about a vehicle allowance for the US operation and agreed the mileage claims before the Court referred to travel in the

United States. Cst. Jones acknowledged he would have had to obtain the input of directors of PMD in order to determine whether other travel expense claims were business or personal but that he had not done so in this case. He told the Court he did not see how expenses claimed by Mr. Wong for a trip to Las Vegas could be related to the business, but agreed he had not inquired with PMD as to whether it had business there.

[10] On October 31, 2011, Phoenix Media sold its US operation to R.E.M.A.D.E., dba Fusion Digital. Mr. Wong was president of R.E.M.A.D.E. at all material times. Cst. Jones said he thought Phoenix had made a mistake in permitting Mr. Wong to continue working for the Canadian company after the sale. Cst. Jones testified the PMD AMEX card was used to make purchases to the benefit of the US company after the sale without PMD's authorization. As a result, Cst. Jones added those purchases, totalling \$64,126.04, to the \$62,489.31 in improper personal expenses against the AMEX card in reaching a conclusion that the accused had stolen \$126,000 with the AMEX card. The officer said he was told Mr. Wong had made two \$15,000 payments from R.E.M.A.D.E. as a partial re-payment to Phoenix.

[11] Cst. Jones testified that as he worked through the AMEX charges attempting to determine legitimate from illegitimate expense, he deemed purchases to be questionable and unauthorized unless proven otherwise. He said unless a person in authority, such as a PMD director, had authorized an expense, he would categorize it as personal. He said receipts would be required to clear things up and confirmed the RCMP were not in possession of any source documents such as expense reports or receipts, nor did he ask for copies.

[12] Cst. Jones said he did not make inquiries with the PMD accounting department or otherwise determine what the proper procedure was for submitting employee expense claims. He did not look at the monthly bank account reconciliations for PMD or the year-end financial statements. The officer agreed the broad language in the contract about Mr. Wong's management responsibilities did not offer much guidance in terms of assessing whether a purchase was a legitimate business one or not. The officer did not speak with the external accountant for Phoenix, nor did he examine year-end business statements. Cst. Jones said his practice now, after a number of years' experience in financial investigations, is to establish things such as expense authorization and cheque signing authority when embarking upon an investigation like this one.

[13] Finally, Cst. Jones testified he examined the withdrawal of money from R.E.M.A.D.E. Inc's Bank of America account between April 13, 2012, and May 31, 2012. He determined a total of \$4,849.81 (Canadian) had been improperly withdrawn during that period.

[14] Tom Davidson testified that he is a retired businessman and one of the founding partners of Phoenix. He said the company distributed large-sized paper products to engineering firms and print shops, and sold large-format copy equipment. He said his role in the day-to-day operation of the business was to look after accounts receivable and payable. Mr. Davidson said Pattie Allenby assisted in this work and it was just the two of them in the finance department. He said Steve Carter, another partner, was the sales manager and corporate secretary.

[15] Mr. Davidson said Phoenix expanded from its inception in 1993 steadily through to 2009 and it did extremely well financially. He said in 2008, Phoenix purchased

Phoenix Media US, dba Choice Graphics, an entity which supplied the same products as the Canadian company. The US operation was based in Lakewood, Washington. He said Mr. Carter looked after much of the US operation, but he was involved somewhat on the accounting side, which was run separately, and he would occasionally travel to Lakewood for that purpose. Mr. Davidson said he had not wanted to be involved with the US company and was annoyed with the whole operation and said it was very poorly run.

[16] Mr. Davidson told the Court the Canadian business, PMD, had two bank accounts with RBC. Only he and Mr. Carter had signing authority for cheques on the RBC accounts and just one signature was required. He said Phoenix did not have a company credit card until around 2009. Mr. Davidson said sometimes a wire transfer would be made from an RBC account to the US operation, but only to get stock moving when they were in a panic. He added that the Canadian company would sometimes pay the bills for the US operation to get things cleaned up and said the financial health of the US operation was bad.

[17] Mr. Davidson told the Court he would occasionally buy things for the company with his own money. When he did so, he would fill out an expense account claim and attach receipts in order to get reimbursed by company cheque. He said he would not be reimbursed unless he had a receipt. He said his average monthly expense reimbursement would be between \$150 and \$200. He would typically pay cash and said the only time he used his credit card was when he would treat himself to buy gas and he would then be reimbursed in the same manner.

[18] Mr. Davidson said he was aware Mr. Carter would sometimes take customers out for lunch and would put things on his expense account and seek reimbursement. He said the only other persons in PMD who had expense accounts were the sales staff who would get reimbursed for gas or if they took a client out for lunch.

[19] In 2009/10, Mr. Davidson's wife became ill and he had a discussion with Mr. Carter about pulling back on his work. He said a decision was made to hire a person to carry out some of his financial duties. While he was away on vacation, Mr. Carter hired Mr. Wong as the general manager/accountant. He said Mr. Carter drew up Mr. Wong's employment contract.

[20] Mr. Davidson testified that Mr. Carter was mostly involved in showing Mr. Wong the financial side of the operation, although he was still around on a daily basis at that time. He recalled Ms. Allenby continued to work in the accounting department. Mr. Davidson said he had no concerns with Mr. Wong's work in the beginning and he seemed to be doing what he was supposed to and the two of them got along well.

[21] Mr. Davidson did not recall whether he had spoken with Mr. Wong about the company reimbursement policy, but said it involved the filling out of a claim and providing receipts. He said he remained involved in approving expense claims after Mr. Wong started work. He recalled seeing expense claims from Mr. Wong and thought they might have been submitted monthly. Dollar-wise, Mr. Wong's expense claims may have been high, but he was not concerned at the time because he had receipts to back them up. Mr. Davidson said while he did not recall seeing a claim that was not business-related, he was not totally with it at the time due to his wife's health.

[22] Mr. Davidson told the Court on October 31, 2011, PMD sold the American operation to R.E.M.A.D.E., a company operated by Mr. Wong and five other persons involved with either the US or the Canadian businesses. Mr. Davidson was asked about a Letter of Intent he had signed, setting out the proposed sale of the Canadian business to R.E.M.A.D.E. in the fall of 2011 for over \$2,000,000. Mr. Davidson denied Mr. Wong had made known early on of his intent to buy the Canadian business and said he did not remember him ever saying such a thing.

[23] Mr. Davidson said Mr. Wong had access to the RBC accounts of PMD, but said he was unaware that Mr. Wong was able to make wire transfers from the bank accounts and he did not remember giving him that authority. He said he did not know that Mr. Wong wired payments to his personal Mastercard and was never asked to authorize such a process. He recalled Mr. Wong brought on Steve Robles to do accounts payable work in PMD. Mr. Davidson said he oversaw the day-to-day accounting done by Ms. Allenby and Mr. Robles. He told the Court while Ms. Allenby did not have on-line access to the RBC accounts, he learned Mr. Robles did because when he left PMD, he provided Mr. Davidson with paperwork relating to his access.

[24] Mr. Davidson said he had not been aware that in June 2010, Phoenix had obtained an AMEX credit card and said he never saw a statement for the card. He said he first learned about the AMEX card around December 2011, when Mr. Carter told him about a call he had received from AMEX demanding a large payment on the account. Mr. Davidson said Mr. Carter told him that he and Mr. Wong had access to the card. Mr. Davidson testified that he asked Mr. Wong for copies of the AMEX statements but they were not provided to him.

[25] Mr. Davidson said Mr. Wong subsequently left the company and that he remained involved himself, albeit to a diminished extent due to his wife's illness. He said the financial well-being of PMD became poor and the company got into a predicament with its suppliers, although its customer base remained loyal. Despite a new accountant advising the partners of a plan to repair supplier relations, Mr. Davidson said they made a decision to dissolve the business. He said the company was sold in 2013, but they did not get top dollar for it. He said he did not know where the digital or paper records for PMD had gone after the company was sold.

[26] Mr. Davidson said he was concerned, after Mr. Wong's departure and the AMEX demand, when Mr. Zuskind was brought on to examine the company books. He said Mr. Zuskind had been fired from his work with Phoenix years earlier and he did not like the optics of bringing him in to look into the financial situation of the company. Mr. Davidson said he learned at the end that Mr. Carter and his daughter had been taking a salary from Phoenix. Mr. Davidson said that he was not paid for his last two years with the company and that his work relationship with Mr. Carter ended on a sour note.

[27] Debbie Carter testified about the early years of Phoenix and her role as a partner in the company. She said until 2009/10, the financial well-being of Phoenix was wonderful and the business was profitable. She recalled the company had about twenty-four employees at its height. She said suppliers were mainly paid by cheque. She recalled that around 2008/09, while she was working and studying at BCIT, she started doing payroll and HR work for Phoenix. This coincided with Mr. Davidson reducing his work due to his wife's failing health. Ms. Carter said she did not do the payroll for the US

side of the business. She recalled Mr. Davidson's assistant, Ms. Allenby, passed away about a year after the Canadian company was sold in 2013.

[28] Ms. Carter said she understood her husband and Mr. Davidson took identical draws or salaries for their work and that she received about 20 percent of her husband's amount as her compensation. Her daughter-in-law was paid for her work as a sales person in the same manner as the other sales staff. She told the Court that she was unable to say whether Mr. Davidson had been paid for his last two years with the business.

[29] Ms. Carter said a decision was made in late 2009 to hire someone to take over more of Mr. Davidson's duties and she was involved in the recruitment process that led to the selection of Mr. Wong by her husband. She said she had wanted Mr. Wong to be an employee, but her husband allowed him to work as a contractor and she said she was furious about this. She recalled shortly after Mr. Wong was hired, he brought on Mr. Robles to do accounting work. She said PMD did not pay Mr. Robles and assumed someone else did and noted he was in the office every day. Ms. Carter said Ms. Allenby was still doing the accounts payable and receivable work at this time.

[30] Ms. Carter testified that in October 2011, a group of individuals, including Mr. Wong, purchased the US operation. Her husband told her Mr. Wong had also approached him about buying the Canadian operation.

[31] Ms. Carter told the Court that in December 2011, she received a call from her husband in which he was distraught and asked her to come to his office right away. She met with him and learned he had received a phone call from AMEX demanding payment

on an overdue account of tens of thousands of dollars. She said up to this time, she had not known PMD had an AMEX card.

[32] Ms. Carter said she and her husband called Mr. Wong into the boardroom and asked him about the purchases on the card because he was the one who had access to it. Ms. Carter said that she got to the meeting late and was in and out of it as she left to gather information. She recollected that Mr. Wong deflected their questions, stating he had done the best job he could for the company and all of the purchases had been made for the company. She said he did not answer their questions about specific charges on the account.

[33] Ms. Carter testified that the financial situation of PMD had been excellent at the time Mr. Wong started working. After Mr. Wong's time, she said she feared the company would go bankrupt and she and her husband contemplated taking a mortgage against their home to help the company. She said she did not want to sell the company and thought it could survive, but a decision was made to sell.

[34] Ms. Carter agreed she did not know the details of the day-to-day operation of Phoenix, how employees were reimbursed for expenses, or who had access to the RBC account. After the AMEX demand, Mr. Wong left PMD and Ms. Carter said she started coming to the office every day trying to get to the bottom of things. She testified that she asked her husband to get all of the AMEX statements and she prepared spreadsheets relating to the charges. She said around February 2012, Joanne Morcilla-Pfeffer was hired to replace Mr. Wong and she worked with her on this task. She said expenses were classified as corporate, personal, or "uncertain". She and Ms. Morcilla-Pfeffer then

examined all of the “uncertain” charges, speaking with her husband, Mr. Davidson, and Michael Norman in an effort to categorize the items.

[35] Ms. Carter said as she worked on the AMEX spreadsheet, she classified items such as casino and Las Vegas hotel charges as “personal”. She said she and her husband would attend Las Vegas yearly for a business conference but had spoken with Mr. Wong and told him he need not attend, that it was not part of his business, and that he could not go for business. Other items she classified as personal were iTunes and restaurant charges, fees for dance classes, and optometry services. She said these obviously personal expenses totalled \$17,000. She said Phoenix made a demand to Mr. Wong for repayment, but nothing was received.

[36] Ms. Carter said she identified \$46,000 in AMEX charges for which receipts were required in order to determine whether they were business expenses or not. She said efforts were made to find receipts, but they could not. She agreed the company move from Coquitlam to Burnaby had complicated that search. She said some random receipts were eventually located, but nothing organized and not in large quantities.

[37] Ms. Carter said in April 2012, Phoenix continued to experience harsh financial difficulties and she thought there had to be more involved than the AMEX charges. As a result, she asked Ms. Morcilla-Pfeffer to provide copies of the RBC bank statements for January 2010 to the end of December 2011. She said within ten minutes of looking at the bank statements, she noticed there were electronic fund transfers and cheque payments from the PMD bank account to a Mastercard. Her husband told her the company did not have a Mastercard. She said an audit conducted later by Mr. Zuskind revealed payments had been made on five separate Mastercard numbers. She told the

Court she asked Mr. Wong if he had receipts for the Mastercard charges and that he provided some of his Mastercard statements but no receipts.

[38] Eric Ong told the Court he started working with Phoenix in 2004 as the IT manager and service coordinator. He remains employed with the successor company in a similar capacity. Mr. Ong said on occasion he would use his own money or credit card to buy items on behalf of PMD. He said for bigger items he would obtain approval in advance from Mr. Davidson or Mr. Carter. He would later fill out an expense form and submit it along with receipts to the accounting department for reimbursement by way of a cheque. He did not recall ever receiving an electronic fund transfer for an expense claim.

[39] Mr. Ong told the Court he would approach Mr. Wong to obtain money to travel to workshops in places such as Calgary. He agreed in cross-examination, that when a new sales person would join Phoenix, he would sometimes have to buy computer equipment himself for them and that Mr. Wong also bought equipment.

[40] Mr. Ong testified he was a member of the group who purchased the US operation in October 2011 and was a silent partner in the business. He said he did some work servicing the office equipment used by the US operation. He said he knew Mr. Wong was looking after the day-to-day operation of the US business and that he made trips to the US. He recalled there had also been discussions about buying the Canadian operation and this was part of the group's motivation to purchase the US operation. Mr. Ong said the prospect of purchasing the Canadian business influenced his decision to be a partner in the US deal, but said he eventually realized Mr. Carter's offer to sell PMD was not legitimate.

[41] Mr. Ong recalled that the US operation had been purchased for about \$600,000 (Canadian) to be paid over a five-year period. In retrospect, he thought the purchase price for the company seemed high. He said he only made a \$12,000 contribution in the first year and, because of what happened, he never paid more. However, he noted he was later sued by the Carters over the deal and realized that he had signed a personal guarantee relating to the sale making his wife potentially liable.

[42] Mr. Ong recalled bank accounts had been opened for the US operation and he thought all of the partners were jointly involved in the bank account and had access. He said he had not been aware that in the spring of 2012, ATM cash withdrawals in the amount of \$4,849 Canadian had been made on the US bank account, and said he had not taken this money and did not know who had.

[43] Mr. Ong recalled that Mr. Zuskind had been offered a partnership when he worked at PMD, which Mr. Ong believed was not a valid offer. He agreed when he spoke with the police in this case, he had mentioned that Mr. Carter had been dishonest at times.

[44] Michael Norman told the Court he started working with PMD in November 2010 in the capacity of purchasing and production manager. He testified his work was overseen by Mr. Wong and he would report to him mostly and occasionally to Mr. Carter. Mr. Norman recalled that Mr. Wong was in charge of the finances for both the US and Canadian operations when he started.

[45] Mr. Norman told the Court that after he started with PMD, and while that company still owned the US operation, he would travel to Lakewood to learn about that part of the business. He said he would travel there at the request of either Mr. Davidson

or Mr. Carter and recalled on one occasion he had travelled there with Mr. Wong in a company vehicle, a Chrysler HHR. Mr. Norman said he did not know the ins and outs of travel other PMD staff made, but knew Mr. Wong would travel back and forth to Washington State as part of his job prior to the sale of the US company to R.E.M.A.D.E.

[46] Mr. Norman testified he had a signed contract for his work with PMD and that his salary included a small vehicle allowance. He said he was familiar with the corporate policies regarding expense claims and that he did not have to submit expense claims for the car allowance. He recalled when he travelled to Washington State, he would submit gas and meal receipts for purchases made with his own credit card, using an Excel spreadsheet given to him by Mr. Wong to complete. Mr. Norman said he would submit his claims to Mr. Wong and that Mr. Davidson would approve them and write him a cheque.

[47] Mr. Norman recalled when PMD moved to Production Way in Burnaby, Mr. Davidson and Mr. Carter said he could use his own credit card to buy supplies to furnish the new location. He said he would then complete an expense sheet and provide receipts and give them to Mr. Wong.

[48] Mr. Norman testified around May or June 2011, he and five others were approached by Mr. Carter about the prospect of purchasing the US operation. He recalled in the fall of 2011, the group met to go through the sales figures for PMD, as it was ultimately their goal to buy the Canadian operation. Mr. Norman said the group was told if they wanted to purchase the Canadian company, they would first have to buy the US business. He said Mr. Carter signed a Letter of Intent for the Canadian purchase.

He said after the US purchase was made, the plan to buy the Canadian company was taken off the table by Mr. Carter.

[49] Mr. Norman testified he had very little to do with the operation of the US business and his involvement was on the purchasing side and he was not knowledgeable about the day-to-day financial operations of Fusion. He recalled Mr. Wong did all of the financial work and was running the business. Mr. Norman said Ralph Tieger oversaw the operational side as the person located in Washington State, and that Lisa Smith was the book-keeper for the US operation. He said he never received any compensation from the US business. He knew Mr. Tieger would use his personal credit card to make purchases for Fusion and this was part of the day-to-day running of the business. He said if Mr. Wong paid for things in a similar fashion, he would not have known about it.

[50] Mr. Norman said he continued working for PMD Canada after the US purchase, but around March 2012 things started to change and he was told to work a four-day week as the Canadian business struggled. He testified Mr. Carter fired him without cause in May 2012.

[51] Mr. Norman said after he was terminated, he accessed Bank of American account statements for the US company and conducted an audit on them. Mr. Norman noted a \$15,000 cheque payable to PMD written in May or June 2012 signed by Mr. Wong, bearing the notation "pay back". He recalled there was a second \$15,000 cheque payable to PMD, signed by Mr. Wong and with the same notation. Mr. Norman said he never learned what these cheques were for. He said Mr. Wong and the bookkeeper, Ms. Smith, had authority to write cheques for the US business.

[52] Mr. Norman was asked about a series of cash withdrawals from R.E.M.A.D.E.'s Bank of America account associated with casinos and said these seemed extraordinary to him. Mr. Norman recalled he and Mr. Tieger tried to ask Mr. Wong about these withdrawals but they did not really get a response. He said he did not have any idea why someone would take out money like this from the account and that he had not been aware of it at the time and Mr. Wong had not sought his authorization to do so.

[53] Mr. Norman said near the end of 2011, Mr. Carter asked him to conduct a reconciliation of the AMEX credit card statements for PMD. He said he did this work by creating a list of vendors he understood PMD had a relationship with and classified related expenses as valid. He said where an expense related to something unknown, it was categorized as invalid. In cross-examination, Mr. Norman was directed to a number of vendor invoices which did not appear on the PMD list and he acknowledged he had not seen some of the related paperwork. He agreed the limitation of the vendor list he created was that it only related to the latter days of the US operation (Fusion) and did not cover the overlapping involvement of Choices and Phoenix US. He said Fusion's bookkeeper would have known more about the vendor list than he did.

[54] Mr. Norman told the Court that part of the written Purchase and Sale agreement R.E.M.A.D.E. had with PMD stated the US company had no debts or outstanding security claims. However, following the purchase, the buyers were alerted to the existence of a lien. He said PMD Canada had agreed to pay for that charge as part of an arrangement it had made with a supplier prior to R.E.M.A.D.E.'s purchase of the business. Mr. Norman testified he learned Mr. Carter knew about the lien when the US business was sold and that he felt betrayed and thought Mr. Carter had defrauded

them. Mr. Norman described the failed effort to litigate this matter and other court disputes and how this led to the demise of the US business. He said he came to believe Mr. Carter was trying to off-load the US operation to make PMD look more profitable for sale purposes. He also told the Court that the US operation had sometimes paid invoices for mill rolls twice and that PMD should have reimbursed R.E.M.A.D.E. but Mr. Carter refused to do so.

[55] Mr. Norman agreed Mr. Wong put money into the purchase of the US operation as part of the group who formed R.E.M.A.D.E. He knew that Mr. Wong later paid Mr. Carter \$60,000 by way of a loan secured against his home. When asked whether he knew that Mr. Wong was trying to get the \$60,000 to Fusion to keep it afloat, Mr. Norman stated the problem was that the US company was pretty much done by that time and questioned why Mr. Wong would have provided the money to Mr. Carter.

[56] Steven Carter testified at length in this trial. He said his area of responsibility in the business he built with Mr. Davidson was in sales and that he was involved in procuring supplies and finding customers to purchase those supplies. Mr. Carter said the company became very profitable and grew to the point where monthly gross sales were over \$500,000. He said at its height from 2008 to 2010, Phoenix had about twenty staff. He said the financial well-being of the company was incredible and it had a Triple A credit rating and they shared their success with the employees by treating and paying them well.

[57] Mr. Carter recalled that Mr. Davidson and Ms. Allenby were the main persons in the accounting department, but there were a couple of others who provided supplementary assistance. Mr. Carter said the company had a single bank account with

RBC. He and Mr. Davidson had access to the RBC account and signing authority, although only one person's signature was required. He said Mr. Davidson did most of the executive bank work.

[58] Mr. Carter told the Court that staff wages and supplies were the biggest expenses of Phoenix. Other expenses included rent, hydro, and other utilities. He recalled the company dealt with thirty to forty suppliers. He said when bills would come in, Mr. Davidson would have a cheque drawn and send it off to pay. He recalled Ms. Allenby assisted Mr. Davidson in this work, but he did not think she had access to the RBC account.

[59] Mr. Carter said throughout his time with Phoenix, he would have occasion to use his own funds to purchase things for the company. For example, when a specialty item was needed from a business Phoenix did not have an account with, he would purchase it on his own credit card and submit the receipt with his monthly expense claim to Mr. Davidson. Mr. Carter told the Court he had authority to approve expenses for Phoenix' sales staff and Mr. Davidson approved expense claims for the other staff.

[60] Mr. Carter said at the beginning, his own expense claims were small. However, he said later on he purchased expensive mill rolls from a supplier they did not have an account with, using his own Mastercard to collect Air Miles. Mr. Carter said it was company policy to permit sales staff to take potential customers out for lunch and the staff would be compensated. He said they were all fairly prudent and no one ever took advantage of the practice. He agreed Phoenix would sometimes buy food or other items for the staff for special occasions but this would only occur about three times a year, not monthly or weekly.

[61] Mr. Carter said when Mr. Davidson's wife became ill and he decided to retire, he and his wife, Debbie Carter, advertised for someone to fill his position and interviewed candidates. He said Mr. Wong sold himself saying that he knew what the issues were in working in the US. Mr. Carter said he and Mr. Davidson made a joint decision to hire Mr. Wong.

[62] Mr. Carter testified in June 2010, Phoenix obtained an AMEX card after Mr. Wong proposed that they do so to extend their line of credit. He said he was certain he had told Mr. Davidson about obtaining the AMEX card. He said the US operation, which PMD purchased on November 30, 2008, required the use of credit. Mr. Carter said he liked the AMEX card because the balance had to be paid off each month. He said he and Mr. Wong had AMEX cards. He recollected their AMEX purchases were higher at some point and Mr. Wong may have mentioned they were using the card more and more.

[63] Mr. Carter said the AMEX card first had a \$40,000 limit and he recalled AMEX increased the limit to \$100,000 without him being aware of it. He said he learned the limit had been increased to \$500,000 when AMEX called him in December 2011, demanding a \$64,000 payment on an overdue account and said he was mortified.

[64] Mr. Carter said the company in the US operated a huge master converting facility which milled hundreds of large paper rolls per hour compared to the thirty roll per hour output of the BC operation. He said Phoenix Canada bought the US company for the expansion potential it offered. He said the financial well-being of the US business was horrible at the beginning and that it was a bad purchase. He said they struggled for the first year to keep the US operation afloat and managed to do so. He said when they

hired Mr. Wong, he gave them a light at the end of the tunnel and they thought he could help them out with the business.

[65] Mr. Carter recalled the US operation had six to eight employees and said the financial operation of the business was completely separate from the Canadian one. He said they hired someone skilled in the requirements for the financial operation of the US business and she did the day-to-day accounting and petty cash. Mr. Carter said that person did not have access to the company's bank accounts except to make deposits. Mr. Carter told the Court he and Mr. Davidson had access to Choice Graphics' US bank account and Mr. Davidson would sign cheques required for that operation.

[66] Mr. Carter said Mr. Wong was hired to take over Mr. Davidson's duties and to work into general management of the business because he also intended to retire. He said Mr. Wong trained under Mr. Davidson, although he tried to make him fit in and helped him out with decisions. He said with expense reimbursements, other than showing Mr. Wong the procedure of having a receipt for a claim and an acknowledgment that the item had been received, it was "just common sense". He said in terms of Mr. Wong's own expense claims, he probably approved them, but said Mr. Wong also went to Mr. Davidson.

[67] Mr. Carter said Mr. Wong was to be hired as an employee and his wife created an employee agreement for him to sign. However, he said Mr. Wong came to him with a contractor's agreement and explained the benefits of it to him. Mr. Carter said on June 2, 2010, he signed the contractor's agreement with Mr. Wong, without making any changes. He recalled his wife was extremely upset with him over the matter.

[68] Mr. Carter said Mr. Wong received a \$500 monthly car allowance on top of his salary to cover gas, insurance, and repairs. He said the allowance was also to cover the US operation and noted Mr. Wong was to spend very little time in the US. Mr. Wong was not to claim mileage. Mr. Carter said he could not think of any business expenses Mr. Wong would have had in terms of his “operational duties” under the contract.

[69] Mr. Carter said after Mr. Wong started with PMD, he had complete control of the finances of Phoenix. He found the workload heavy and he contracted Mr. Robles to assist him. He said Phoenix sent cheques to Mr. Robles on direction from Mr. Wong in addition to the money paid to Mr. Wong. Mr. Carter said Mr. Robles had access to the PMD RBC account, but said he did not think he had access to the AMEX card. Mr. Robles did not have authority to approve Mr. Wong’s expenses.

[70] Mr. Carter said Mr. Wong and Mr. Norman had come to him and Mr. Davidson expressing an interest in taking over the US operation. He said the prospective purchasers were also interested in buying the Canadian operation and a Letter of Intent for the purchase of that business for \$2,400,000 was signed. Mr. Carter said he and Mr. Davidson were ready to move on and pressed R.E.M.A.D.E. to come up with the money to buy the Canadian operation but they did not do so.

[71] Mr. Carter testified that on December 13, 2011, he got a phone call from AMEX and they told him PMD was behind on its account and owed \$64,000. He told the Court he was mortified to hear this and had no idea the company owed AMEX anything. Mr. Carter said he went to the office right away where he demanded Mr. Wong show him the AMEX file, but he did not and he was told the file was not kept at the PMD office. Mr. Wong said he would bring the file the next day but that did not happen and

Mr. Carter sought copies of the statements directly from AMEX. Mr. Carter said he and his wife pulled Mr. Wong into the boardroom and asked him what was happening with the AMEX account but he could not recall his response.

[72] Mr. Carter said after R.E.M.A.D.E. took over the US operation on November 1, 2011, there continued to be charges on the PMD AMEX card for items bought on behalf of the US operation for which he had not given permission. He said the accused did not tell him this was happening until after the AMEX statements obtained in December showed it was occurring. He said when he spoke with Mr. Wong about it, Mr. Wong told him it was a terrible mistake and that Ms. Smith, the US operations person, should never have used the card and that they would pay PMD back. Mr. Carter said PMD was repaid between \$15,000 and \$30,000 by R.E.M.A.D.E.

[73] Mr. Carter said after the situation with the AMEX card came to light, the company prepared spreadsheets relating to the charges, attempting to categorize items as business or personal. He said he was shocked to see how much money was being spent on the US operation and for personal reasons. Mr. Carter said Mr. Wong could, in extreme circumstances, take someone out for a business lunch and expense it, but that Mr. Wong did not interact with customers and had no reason to take them out for lunch. Mr. Carter said it was alright if Mr. Wong purchased food for staff and got reimbursed, as long as Mr. Wong provided the names of the employees involved.

[74] Mr. Carter said Mr. Wong was permitted to travel in the Vancouver area and to Seattle for business. He said Mr. Wong told him there would be no cost for his Seattle travel because he had a cousin there with whom he could stay, and he recalled they were both happy with this arrangement. He testified Mr. Wong was specifically told

there was no need for him to travel on business to Las Vegas and that the accused told him he would travel there on his own expense and on his own time.

[75] Mr. Carter told the Court there was no travel whatsoever required by the accused for PMD and his duties were strictly in the office. He was, however, required to travel to Lakewood and Mountlake Terrace, Washington, for the US operation. Mr. Carter said Mr. Wong would have had no business reason to travel to Portland, Oregon, on his own and it would not have been authorized. He said if Mr. Wong had gone to Portland for work, it would have been with one of their sales reps in that person's vehicle. Mr. Carter said prior to the Service Contract being signed on June 2, 2010, he had discussed the \$500 monthly car allowance with Mr. Wong and that his travel expenses would be covered by the allowance.

[76] Mr. Carter told the Court he later learned that electronic fund transfers had been made from the corporate RBC account to a Mastercard belonging to Mr. Wong. He said he did not authorize the wire transfers from the corporate bank account to Mr. Wong's personal Mastercard, nor did he authorize PMD to pay for any of the personal items on that credit card. Mr. Carter said a demand was made to Mr. Wong for his Mastercard statements and Mr. Wong only begrudgingly provided the statements and what he provided was incomplete. Mr. Carter said that PMD never received any of the receipts for the Mastercard charges, which could have been used to determine if Mr. Wong was dealing with customers or buying supplies for the benefit of PMD. Mr. Carter testified he and Mr. Davidson decided to bring in David Zuskind, a CMA, to do an audit on PMD's books.

[77] Mr. Carter said before all of the inquiries into the use of the AMEX card and the bank transfers to the Mastercard were complete, PMD continued dealing with Mr. Wong and R.E.M.A.D.E., hoping if things were cleared up, the proposed purchase of the Canadian operation would go ahead. He added that it was in PMD's interest to continue working with the US operation because it was still owed money on the sale of the business.

[78] Mr. Carter was asked to review a series of emails between Mr. Wong, himself and others written between April 30th and July 31st, 2012. One of those emails referred to pending litigation, which Mr. Carter testified related to R.E.M.A.D.E. holding inventory of the Canadian company in their US warehouse and not paying PMD.

[79] Mr. Carter said on May 17th, 2012, he and his wife met with Mr. Wong. He said Mr. Wong knew they had contacted the RCMP and wanted to know where that was at and wanted Phoenix to call off the police. Mr. Carter said the gist of the discussion they had was that if PMD was paid the money owing for the purchase of the US company, and the money PMD had paid for Mr. Wong's personal benefit, the matter would go away. He recalled Mr. Wong told them he was in counselling and his counsellor had suggested he needed to make things right.

[80] An email from Mr. Wong to Mr. Carter on May 17th, 2012, states, in part, "I would like to move forward with my life and start making up for some of the wrongs in my past is a start. I am extremely grateful to be given the opportunity to make things right..." On May 22, 2012, Mr. Wong wrote to Mr. Carter saying "...I would like to put the 25% toward what is owe with the credit card stuff to just get the balance down. Thanx."

[81] Mr. Carter said after the May 22nd email, Mr. Wong provided a cheque for \$60,000. He said they agreed \$15,000 would be applied toward the outstanding amount on the credit card and \$45,000 would be transferred to Fusion. However, he said his wife and Mr. Davidson overruled this plan and decided to keep the entire amount for PMD. Mr. Carter said PMD's finances were very tight at this time and the money was used to pay bills. After this, Mr. Wong and Mr. Carter exchanged email correspondence regarding cash flow issues with Fusion, amongst other matters. On June 1st, 2012, Mr. Wong emailed Mr. Carter about not following through on the agreement they had about the \$60,000 saying "...if you breach that agreement, you are no better than I am regarding the CC [credit cards]."

[82] Mr. Carter told the Court that during this time, Fusion put PMD on credit hold and also suspended paying the \$8,000 per month owing under the contract of purchase of the US business from PMD. He said it continued to be in PMD's best interest for Fusion to survive so it would get paid for the purchase, otherwise they would have to pursue the personal guarantees given by Fusion's owners. Mr. Carter said PMD placed liens on some capital equipment in the US warehouse, but that did not stop items from being sold.

[83] On July 31, 2012, PMD was sold to Cansel as part of an asset purchase agreement. Mr. Carter said the business went at a fire sale price, but they were able to pay off the bank debt they had of about \$790,000 along with other monies owed. He recalled they netted about \$1,300,000 on the asset sale. He said the four PMD partners were still owed money from Fusion for its purchase of the US operation. Mr. Carter said the parties litigated the Fusion purchase in the US and reached an agreement in 2016.

Mr. Carter said PMD ultimately received \$45,000 US from the sale of Phoenix Media US, about 10 percent of the original sale price to Fusion.

[84] Mr. Carter said PMD ran into difficulty meeting their supplier's payment commitments in 2012. He said PMD's customer base had not declined and sales were reasonably good, but their receivables went from around \$230,000 per month to \$750,000 per month. He said it was Mr. Wong's job to do the year end by September 30, 2011, but he had not done so. He said it was also Mr. Wong's job to do the monthly bank reconciliations along with Mr. Robles.

[85] Mr. Carter was questioned in detail about purchases made with the AMEX card as to whether they had been accurately categorized by Cst. Jones as business, personal, or unknown expenses. Mr. Carter told the Court a number of suppliers identified were for the US operation and that PMD had its own suppliers in Canada with whom they had an account and would be invoiced. He said the statements showed items had been supplied for the US operation and charged to PMD's AMEX after the US sale to Fusion on October 31, 2011. Mr. Carter told the Court he did not authorize such transactions. He agreed that PMD had been credited by Fusion about \$30,000 shortly after the AMEX card problem came to light.

[86] In reviewing the audit and the police spreadsheets as he gave evidence, Mr. Carter repeatedly exercised any doubt about the nature of a transaction as being for business. However, he said where no receipts had been provided for a purchase and the nature of the purchase was unclear, it should be classified as "personal" because Mr. Wong was required to provide the receipts which would have clarified what the expense was for. Sometimes Mr. Carter told the Court "let's go personal" when it was

unclear what the expense was for, but mostly he was prepared to categorize unclear amounts as business, to the accused's benefit.

[87] Mr. Carter was questioned at length by both counsel regarding many of the disputed expense claims. For example, an entry to the AMEX account on July 23, 2010, appears to charge PMD for a WestJet flight to Edmonton for Shannon Barnard, a PMD sales person. Mr. Carter said she was not involved in PMD business in Edmonton and that he would not have approved this expense. In cross-examination, Mr. Carter acknowledged correspondence showing Ms. Barnard had been flown from Edmonton to Vancouver to work on an audit for PMD and thus the airfare was for business. Similarly, airplane and rental car expenses in Las Vegas in March were conceded by Mr. Carter to have been legitimately used by Ms. Allenby to take software training there. Because he was involved in the sales' side of the business, Mr. Carter acknowledged he would not have necessarily known about training for accounting staff.

[88] Regarding the *bona fides* of expenses incurred by Mr. Wong on September 23, 2010, for the Bellagio, Sapphire Restaurant, and golf in Las Vegas, Mr. Carter said he had explicitly told Mr. Wong that he was not to go to Vegas unless he paid for it himself. Mr. Carter did not agree with the suggestion that Mr. Wong had shared a room in Vegas with Pete Gregory, a former PMD sales employee, or that the two men were meeting with vendors in Vegas. Mr. Carter accepted as legitimate a Hotels.com charge for the Sutton Hotel in Vancouver which appeared to relate to the services of Steve Griego. However, he said the cost and location did not seem right and noted Mr. Griego had stayed at the Carter house in the past to save money.

[89] In cross-examination, Mr. Carter acknowledged there were some things Mr. Wong did well and the company appreciated it. He agreed that in going through the transactions in 2018, it was difficult to be certain what some expenses were for, but said he erred on the side of caution where that was the case and categorized such expenses as legitimate. He also agreed he was not the only person with authority to approve expense claims in the company and that he did not know whether others, such as Mr. Davidson, had seen receipts related to Mr. Wong's expenses. He agreed he had been on an extended vacation when the company moved from Coquitlam to Burnaby and that he could not comment on how the move was carried out or how the accounting records were handled in the move.

[90] Mr. Carter stated in cross-examination that Mr. Davidson had "no idea the AMEX was in play". When Mr. Carter was pressed about his evidence in chief when he said the card was a joint idea of Mr. Davidson and himself when Mr. Wong proposed it, he said he had been mistaken in what he had said earlier. Mr. Carter said he did not think people other than himself and Mr. Wong had access to the AMEX account or billing details. He agreed that he assumed every entry on the spreadsheet for AMEX was for a transaction conducted by Mr. Wong. He said he was unaware that Ms. Allenby had access to the AMEX details or that she placed orders with Staples on the card from time-to-time. He conceded that Ms. Allenby also appeared to have used the AMEX card to purchase supplies from Business Depot Direct, but said her purchases would have been minimal.

[91] Mr. Carter acknowledged that Mr. Wong travelled frequently between the US and Canada to carry out his duties. Mr. Carter also conceded it had been an over-statement

on his part to say Mr. Wong was the only contractor in Phoenix, but did not change his testimony that it was Mr. Wong's idea to work as a contractor. Cheques signed by Mr. Davidson were shown to Mr. Carter and he agreed he was not the only person in Phoenix who dealt with contractor expenses and that he was not privy to all invoices.

[92] In cross-examination, Mr. Carter acknowledged that Mr. Wong was actually helping PMD by purchasing items from vendors on his personal credit card and obtaining reimbursement afterward. He also agreed sales employees would sometimes buy items on their own and sell them to customers and later be reimbursed by PMD, but said they would provide an invoice for approval when this occurred. He agreed he did not oversee the non-sales staff.

[93] Mr. Carter was asked about the sale of the company building in Coquitlam for \$2,400,000 and whether it would have been impossible for Mr. Wong to have touched the sale proceeds, but he did not agree. He said Mr. Wong presented him with two cheques drawn on the JCS Holdings account, each in the amount of approximately \$230,000, payable to cash. He said he begrudgingly signed the cheques when Mr. Wong presented them to him but did not follow through with what had happened to the money and it haunted him. In cross-examination, copies of the cheques were shown to him which were made payable to himself, Mr. Davidson, and PMD for the proceeds of sale on the Coquitlam building. Mr. Carter said if he had left the Court with the impression there was something nefarious about the matter, it was because he had not been given the opportunity to fully explain it. He denied having changed his evidence on this matter to avoid being caught in a lie.

[94] Mr. Carter said because the sale of Phoenix to Cansel had been an asset sale, PMD's documentation went to the new owner. He agreed he did not know whether Cansel had PMD's accounting records for the time period in question, but acknowledged PMD did not have the relevant expense reports. He said PMD had provided the police with as much information as it could. However, Mr. Carter acknowledged that Cst. Reinhart had asked him to provide copies of the initial AMEX credit card application and documents regarding any credit limit increases, but that he may have forgotten about it.

[95] Mr. Carter acknowledged telling the police that he only very rarely was the person issuing expense cheques to Mr. Wong and this was something done primarily by Mr. Davidson. He also acknowledged telling Cst. Reinhart that when he occasionally processed an expense claim for the accused, Mr. Wong would have all of his documentation in order.

[96] Mr. Carter agreed he was being truthful when he told Cst. Reinhart there were no alarm bells going off for him about Mr. Wong in terms of his accounting work. Mr. Carter said Mr. Wong had been extremely influential in terms of the decision to increase the amount on the line of credit and was reluctant to acknowledge that the decision-makers were himself and Mr. Davidson. While he eventually conceded this to be the case when pressed, he said the directors had not shut down the line of credit as it would have put PMD out of business had they done so.

[97] Mr. Carter said only Mr. Wong and Mr. Robles knew the code required to do on-line banking on the RBC account. He said while Ms. Allenby did on-line banking, she was unable to do so without one of them entering the code to permit her access. He

agreed that while only he and Mr. Wong had physical AMEX cards, Ms. Allenby did order on-line with the card and Ms. Smith in Lakewood also had access.

[98] Mr. Carter was pressed about his evidence that he had never seen an AMEX bill or invoice and that there was not a file for AMEX in the office. He was shown email correspondence sent to him in July 2010 from AMEX about an overdue account alert. He was also shown an email from AMEX dated July 20th, 2010, advising that account statements were now available on line which he forwarded to Mr. Wong. Mr. Carter said when he testified that he did not have access to the AMEX materials, what he meant was he did not have access that he exercised and he left those details to Mr. Wong. Mr. Carter also conceded other staff may have had access to AMEX account details even if they did not have a physical credit card.

[99] Mr. Carter acknowledged in cross-examination that PMD had vendors he was not familiar with. Although he had testified in chief that PMD would never use PayPal, when he was asked about the development of a company website and related expenses, he agreed PayPal and other charges he had earlier categorized as the personal expenses of Mr. Wong, were in fact legitimate business charges. He also agreed some invoices would have related to Phoenix's US operation and he would have entrusted this work to Mr. Wong. Similarly, in reference to incorporating a business in Calgary, Mr. Carter agreed that expenses he had previously said were Mr. Wong's personal ones, were actually related to the business. Mr. Carter acknowledged there were some disputed expenses where his determination of whether they were business or personal in nature was a guess, albeit an educated one.

[100] When asked about Cst. Jones' documentation, Mr. Carter said he assumed items the officer had not categorized as business expenses did not have receipts to support them. He also agreed he had no input on the officer's work or how he had come to determine if an expense was for business. When pressed about seemingly personal charges, such as at Costco and a t-shirt store, Mr. Carter agreed the expenses would have been approved as being for the business.

[101] In cross-examination, Mr. Carter said it was a revelation to him that not all of the purchases on the AMEX spreadsheet prepared by Cst. Jones related directly to Mr. Wong. He agreed the receipts and expense forms for all employees of PMD are no longer in his possession and were never provided to the police.

[102] Mr. Carter agreed that documentation for AMEX charges for the Aria Resort and Priceline showed that the expenses related to Ms. Allenby travelling to Las Vegas to take software training. However, despite reviewing some documentation relating to expenses incurred to attend a trade show in Vegas or to hire an employee there, Mr. Carter said he had specifically prohibited Mr. Wong from going there. Mr. Carter did not disagree that some restaurant costs might have been incurred in Vegas in the context of making business connections, but disputed that Mr. Wong had been present.

[103] Mr. Carter was asked whether Mr. Wong and Pete Gregory had travelled from the Las Vegas event to California to meet with a PMD client, Que Media. He said Mr. Gregory was not an employee of Phoenix and if the men had travelled there, they did so on their own and he had not authorized it. Mr. Carter also disputed that Mr. Wong would have needed to check in with a client in Portland, but upon review of some documentation, he agreed that due to a staff person having been terminated, Mr. Wong

and Ralph Tieger may have needed to go to Portland. He agreed a restaurant expense in Portland would have been approved by him if it was incurred for business. Later, Mr. Carter testified he had given the hotel claims in Washington State more thought and Mr. Wong's Tacoma area hotel expenses should be considered related to the business, but not the Tulalip charges.

[104] Mr. Carter recalled PMD had three lease vehicles at one point, and that the vehicle operators reported to Mr. Davidson about the cars. He agreed Mr. Wong may have had opportunity to fuel up the vehicles, but said the operators were in charge of them and it was not part of his job. While Mr. Carter conceded Mr. Wong may have dealt with vehicle issues on occasion, without seeing the related receipts, he would not concede expenses claimed by Mr. Wong were legitimate.

[105] Mr. Carter was questioned about AMEX charges for City of Vancouver parking and said he had been unaware that anyone besides Mr. Wong would charge parking on the credit card. He agreed documentation shown to him in Court indicated his daughter-in-law, a sales staff member, had access to the credit card to pay for parking and that the expenses involved had been posted and accounted for. Mr. Carter offered that parking downtown is difficult and it would have been fair to reimburse the cost and he accepted that had occurred. He further conceded that the accounting and posting of expenses was not something he would attend to on a daily basis and that Mr. Wong would approve of such claims.

[106] Mr. Carter told the Court that upon reflection, UPS charges on the AMEX or Mr. Wong's Mastercard could have been acceptable business expenses, but due to lack of documentation now, there can be no certainty about such matters. He said UPS

charges could have been incurred when supplies were sent to PMD collect or when PMD shipped to customers or to creditors. He also agreed the US operation frequently sent packages with UPS. Upon being shown correspondence relating to pre-authorized charges to the AMEX card, Mr. Carter agreed they were another source of potential business transactions in the police documentation.

[107] In relation to iTunes charges, Mr. Carter conceded that Mr. Wong had been put in the position where he was trusted to do the right thing for the company and if there was a reason to buy an “App” for the company, he would permit it. He said he begrudgingly approved expenses incurred for the purchase of cell phone tracking software, but noted Mr. Wong’s decision to buy it was a matter of controversy. He agreed that, absent information now as to what other iTunes purchases were for, he was not in a position to say whether the expenses were legitimate or not.

[108] Mr. Carter agreed Cst. Jones had prepared spreadsheets relating to the Mastercard charges in an effort to determine what the business expenses were without any input from him. He said had he seen a July 28, 2011, Walmart receipt for \$518.59 and linked it to the office renovation, he would have approved it as a business expense. He agreed it was impossible to know with some of the transactions whether receipts had ever been submitted. He conceded the majority of the expense forms submitted would not have come across his desk.

[109] Regarding the proposal by R.E.M.A.D.E. to purchase the Canadian operation, Mr. Carter conceded he may have been part of a decision to keep the group thinking the deal could still happen even after the situation deteriorated, in order to ensure PMD got paid for the US purchase. He denied that Fusion was falsely left with this impression.

Mr. Carter maintained that until the PMD sale to Cansel was finalized, he had every intention of selling PMD to R.E.M.A.D.E. had they been able to come up with the money. Mr. Carter agreed he had blamed R.E.M.A.D.E. for nearly collapsing the deal with Cansel by sending an email from another potential buyer and copying Cansel representatives on it and that he was upset about it.

[110] Mr. Carter acknowledged in late January 2012, he was in communication with Mr. Wong about the possibility of having a sales job with Phoenix. Knowing his marriage would have been over had he re-hired Mr. Wong, Mr. Carter agreed this was a carrot he held out to Mr. Wong so that he would continue doing his year-end work.

[111] Mr. Carter said that when emails were going back and forth from May 23 to June 2, 2012, about the \$60,000 draft provided to PMD, no one in PMD told Fusion that PMD intended to keep the balance of the money and not return \$45,000 as Mr. Carter had told Mr. Wong.

[112] Mr. Carter was shown a series of documents about the relationship between PMD and the US operation, both before and after the sale to R.E.M.A.D.E., and he agreed it was a symbiotic and cooperative one. He said it had deteriorated and was very antagonistic by late January and into February 2012. He agreed his relationship with Mr. Davidson had also broken down by this time and that cash flow and other issues added up to make it an extremely stressful situation for everyone.

[113] Mr. Carter was cross-examined about a law suit in the US involving a security interest in equipment involved in the sale of the US operation to R.E.M.A.D.E. After an agreement had been reached to pay a sum of money to remedy the error, Mr. Carter agreed he had instructed Mr. Wong to not make the final payments in light of the

pending takeover by R.E.M.A.D.E. He acknowledged PMD should have made the payments and that a law suit naming both PMD and Mr. Wong ensued. Mr. Carter denied he played a role in Mr. Wong being named personally in that law suit.

[114] In cross-examination, Mr. Carter was shown an email sent to him expressing concern that he was carrying a huge debt relating to purchases he had made to the benefit of Phoenix using his personal credit card. He agreed the debt could have been incurred when the company was in a low cash flow situation, and noted that employees would take it upon themselves to buy things for the business to help out. Mr. Carter acknowledged that not every single employee credit card transaction would come across his desk and that he relied on Mr. Wong to assist with such matters. He agreed that he might not have been made aware of issues going on behind the scenes until they came to a head.

[115] Mr. Carter denied that PMD and Choices USA ever shipped supplies to Canada marked inoperable and assigned a \$1 value. However, when presented with correspondence showing that had happened, he said he could not rule out that possibility, but that he had no memory of it now.

[116] Mr. Carter was pressed on his assertion that Mr. Wong had transferred funds relating to the RBC line of credit without authorization and denied having made this assertion for the first time during the trial. He conceded Mr. Wong was not entirely responsible for the credit line and Mr. Robles, Ms. Allenby, and Mr. Davidson were also involved. He said any direction given to Mr. Wong about the credit line would have been between the accused and Mr. Davidson.

APPLICABLE LAW

[117] Theft is defined in s. 322(1) of the *Criminal Code*:

(1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it; ...

[118] Fraud is defined in s. 380(1) of the *Criminal Code*:

Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service, ...

[119] The law is clear that a reasonable doubt can arise on the absence of evidence.

Where proof must be ascertained by drawing inferences from circumstantial evidence, the Crown must put before the Court a sufficient evidentiary basis to remove competing innocent inferences that arise from the evidence or the lack of evidence. In *R. v. Vallee*, 2018 BCSC 892 (at para 315), the Court stated:

Circumstantial evidence requires certain care in assessment. The issue with respect to circumstantial evidence is the range of reasonable, not just possible, inferences that can be drawn from it (*R. v. Villaroman*, 2016 SCC 33 at paras. 32-37 and 42). In the assessment, inferences consistent with innocence do not have to arise from proven facts (para. 35). As stated by Cromwell JJ at para. 35: "If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt". Such reasonable doubt is not speculative just because it arises from a lack of evidence. Gaps in the evidence may give rise to inferences other than guilt (*Villaroman* at para. 36). But, as stated in *Villaroman* at paras. 36-37:

[36] I agree with the respondent's position that a reasonable doubt, or theory alternative to guilt, is not rendered "speculative" by the mere fact that it arises from a lack of evidence. As stated by this Court in *Lifchus*, a reasonable doubt "is a doubt based on reason and common sense which must be logically based upon the

evidence or lack of evidence": para. 30 (emphasis added). A certain gap in the evidence may result in inferences other than guilt. But those inferences must be reasonable given the evidence and the absence of evidence, assessed logically, and in light of human experience and common sense.

[37] When assessing circumstantial evidence, the trier of fact should consider "other plausible theor[ies]" and "other reasonable possibilities" which are inconsistent with guilt: *R. v. Comba*, [1938] O.R. 200 (C.A.), at pp. 205 and 211, per Middleton J.A., aff'd [1938] S.C.R. 396; *R. v. Baigent*, 2013 BCCA 28, 335 B.C.A.C. 11, at para. 20; *R. v. Mitchell*, [2008] QCA 394 (AustLII), at para. 35. I agree with the appellant that the Crown thus may need to negative these *reasonable* possibilities, but certainly does not need to "negative every possible conjecture, no matter how irrational or fanciful, which might be consistent with the innocence of the accused": *R. v. Bagshaw*, [1972] S.C.R. 2, at p. 8. "Other plausible theories" or "other reasonable possibilities" must be based on logic and experience applied to the evidence or the absence of evidence, not on speculation.

SUBMISSIONS OF COUNSEL

[120] Counsel on behalf of the Crown submitted the evidence established that Mr. Wong made unauthorized purchases on PMD's AMEX credit card, made unauthorized electronic money transfers from PMD's RBC account to Mastercard accounts of his family, and claimed unauthorized mileage expenses. It was also submitted that Mr. Wong made purchases from PMD vendors on the AMEX card between October 31 and December 14, 2011, to the benefit of R.EM.A.D.E. The Crown submitted that the evidence showed that Mr. Wong had made unauthorized cash withdrawals from R.E.M.A.D.E.'s Bank of America account and was guilty of counts 3 and 4 as well.

[121] Counsel on behalf of Mr. Wong submitted Mr. Carter's credibility and reliability had been significantly undermined and the Court should approach his evidence

cautiously. Moreover, the Court was urged to find that the lack of underlying documentation related to the myriad expense claims and credit card statements, should leave the Court with a doubt as to whether the expenses were illegitimate or whether they had been approved at the time. Given the passage of time, it was submitted the evidence fell far short of proof beyond a reasonable doubt on all counts.

ASSESSMENT OF CREDIBILITY AND FINDINGS OF FACT

[122] I found Cst. Jones to be a forthright witness who was prepared to acknowledge shortfalls in his investigation. He said that in his experience in financial crime investigations in the years following this case, he had learned to do things differently. In Mr. Wong's case, he did not obtain receipts, invoices, or other underlying documentation in an attempt to reconcile the expense claims involved. He also did not establish the business policies and procedures used by PMD to determine whether Mr. Wong followed them or not. He relied on an incomplete vendors' list and an informal audit by a person who was not at arm's length from PMD and whose professional skills may have been out of date or inadequate. For reasons which were not always clear, accounting staff from both the Canadian and US operations were not apparently interviewed or called to testify.

[123] I generally found Mr. Davidson to be a credible witness, although his involvement with the business was limited when matters came to a head in late 2011. Mr. Davidson told the Court he saw no irregularities with Mr. Wong's expenses and said he always had receipts.

[124] Mr. Davidson said Ms. Allenby would do the monthly bank account reconciliation work and the accounts had to balance each month. He recalled that the external

accounting service PMD used was always given the year-end business statements he and Ms. Allenby prepared. He said he kept his accounting records in his office and they were maintained for seven years. These records were not examined by Cst. Jones or produced at trial.

[125] Debbie Carter's involvement with the company was limited. She did not know much about how expenses were reimbursed and did not have first-hand knowledge of how the AMEX card was used.

[126] Mr. Ong gave evidence which tended to show that some expenses which were first thought to be illegitimate or personal in nature, were in fact related to the business. For example, he recalled the new PMD building had a large screen TV, a purchase which had been incorrectly categorized as personal.

[127] Mr. Norman's evidence about the types of purchases he would make on his personal credit card and be reimbursed for was significant. He testified he bought items such as timber and drywall from Home Depot for the new PMD office and he was reimbursed. Mr. Norman described how the Canadian and US businesses would work together such as when the US operation paid the freight on products for PMD. He said this practice continued after the sale of the US operation. He said PMD kept taking payments from the US operation for services provided to PMD after the sale of the US business. Documentation corroborated Mr. Norman's evidence on point and underscored the symbiotic relationship of the two companies.

[128] Mr. Carter's evidence is critical to the case for the Crown and must be carefully assessed in terms of its reliability and truthfulness. Mr. Carter testified that the decision to hire Mr. Wong was made jointly with Mr. Davidson. I do not find the evidence bears

this out. He also said the decision to obtain the AMEX card was made jointly with Mr. Davidson. However, he later said it was Mr. Wong who raised the idea; that Mr. Davidson did not know it was “in play”; and that he was unaware of the card and the AMEX invoices.

[129] Mr. Carter denied he ever received copies of the AMEX statements. However, an email to him in July 2010 states “Here is your statement” proving he had access to them. Mr. Carter said the AMEX card limit had increased to \$500,000, but the statements show it remained at \$100,000 when the demand for payment was made. He also professed shock at the \$64,000 overdue AMEX account in December 2011, but that sum was not markedly out of line with other monthly AMEX bills tendered. His evidence about the AMEX must be carefully scrutinized in light of this evidence.

[130] Mr. Carter said he did not know that Ms. Allenby had access to the AMEX card until he was presented in Court with documentation showing she used it to order items for PMD. He did not know Ms. Allenby had attended software training in Las Vegas or that the related credit card charges were for PMD business.

[131] Mr. Carter raised the prospect of having lost nearly half a million dollars of the sale proceeds of the PMD building in Coquitlam, leaving the impression something improper had occurred. He said cheques for the sale proceeds were made out “to cash” and that he did not know where the money had gone. However, the next day in Court he acknowledged the PMD accountant would have alerted the directors had there been a problem. Copies of the cheques show they were made out to the partners and to the company. It is concerning that Mr. Carter left the Court with the impression there was

something amiss with such a significant amount of money when clearly that was not the case.

[132] The evidence shows Mr. Carter misled the employee group who bought the US operation in a number of ways: he let them to think it was a viable business; he signed a Letter of Intent about the potential purchase of the Canadian operation and then sold the business to another company; he signed a contract for the US sale stating the business was free of encumbrances when it apparently was not and then sought to make the purchasers pay for the pre-sale charge; and he made the purchasers pay for some supplies provided to the Canadian operation. Mr. Carter was described by Mr. Ong as dishonest and Mr. Norman said he had been defrauded by him in the purchase of the US company. I find Mr. Carter was dishonest with his employees.

[133] Documentation relating to the \$60,000 given to Mr. Carter by Mr. Wong in the spring of 2012 recognized that the money was required for Fusion's business operations. Despite that, Mr. Carter decided to keep the money, pushing Fusion deeper into financial difficulty. This was an act of deception on Mr. Carter's part.

[134] Mr. Carter also said he and Mr. Davidson jointly decided to bring in Mr. Zuskind to conduct an audit, but Mr. Davidson said that decision was Mr. Carter's alone and he would have been against it because of Mr. Zuskind's former employee status. Where Mr. Davidson's evidence differed from that of Mr. Carter, I prefer Mr. Davidson's.

[135] Mr. Carter gave detailed evidence in chief about many of Mr. Wong's impugned transactions and said they were illegitimately claimed and they were not business expenses. However, in cross-examination, he repeatedly reclassified expenses. For example, Mr. Carter said a PayPal charge was illegitimate because PMD never used

that platform. In cross-examination, having been presented with documentation showing PMD had used PayPal, he then said the expense was legitimate.

[136] Mr. Carter testified about Mr. Wong's business travel, initially maintaining travel to Oregon was unnecessary and thus illegitimate. In cross-examination, he conceded Mr. Wong had valid reason to travel in the US, including to Oregon. The wording of the employment contract supports a finding that Mr. Wong was entitled to expenses for travel undertaken for the US operation because the vehicle allowance provision was tied to the Canadian operation. Someone in the company apparently approved such claims for Mr. Wong.

[137] The Crown submitted Mr. Carter's willingness to concede that many expense claims could have been legitimate was to be contrasted with his insistence that the \$5,151.05 for expenses incurred in Las Vegas and Tulalip Washington were not. The Crown submitted all of the witnesses gave evidence that established Mr. Wong did not travel to Vegas on business and the Court was asked to find that Mr. Wong improperly expensed these charges to the company.

[138] Mr. Carter conceded that it would have been more helpful if he had reviewed all of the impugned transactions in 2012, closer to the time they were incurred. While Mr. Carter was fairly quick to give Mr. Wong the benefit of the doubt as to the legitimacy of individual expenditures when questioned by counsel, I find I must have a doubt about them given his lack of knowledge and his recollection about items when he testified in 2018.

[139] Mr. Carter's evidence about the *bona fides* of the transactions must also be examined from the perspective of his knowledge about the expenses when they were

incurred. He oversaw sales, and Mr. Davidson and others oversaw the accounting and financial side. For Mr. Carter to testify that, in the absence of a receipt, he would categorize an expense as illegitimate, ignores the possibility that someone else in PMD reviewed a receipt and approved the transaction finding it to be legitimate at the time of submission.

[140] While I found Mr. Carter engaged in some acts of deliberate dishonesty, I find he was generally trying to be truthful in how he re-classified the impugned credit card transactions and expense claims. However, I conclude his testimony was not reliable on this point because he simply was not in a position to know in 2018 whether an item was legitimate or not. The expense claims, receipts, and related documentation were not produced, formally audited, or otherwise examined in 2012 or at any time thereafter. Without that information, I am left in doubt as to the legitimacy of all of the unknown items given the changing manner in which the expenses were categorized in the testimony the Court heard.

[141] Amongst the emails in evidence at trial, attention was drawn to certain correspondence from Mr. Wong. On May 17, 2012, he wrote Mr. Carter an email stating "...I would like to move forward with my life and start making up for some of the wrongs in my past is a start. I am extremely grateful to be giving this opportunity to make things right..." On May 22, 2012, Mr. Wong again wrote Mr. Carter saying "...I would like to put the 25% toward what is owe with the credit card stuff to just get the balance down. Thanx."

[142] On June 1, 2012, Mr. Wong apparently sent a number of emails, some of which were provided to the Court. At 3:11 pm, he wrote Mr. Carter stating "...I am surprised

with you, I always thought you are a straight up guy, I might not be a righteous guy but I would never give a deadline and not deal with the issue...” In an email sent the same day at 5:42 pm, Mr. Wong questioned Mr. Carter about whether he had breached funding arrangements they had put in place for Fusion. Mr. Wong wrote:

Steve, that is not what the funding agreement you sign off on when I gave you the funds, fusion has nothing to do with my dealing with phoenix, you were only suppose to convert the funds for fusion, if you breach that agreement, you are no better than I am regarding the CC...

[143] Crown counsel urged the Court to find the emails were an admission of guilt on Mr. Wong’s part. Counsel for Mr. Wong submitted the comment he made in the emails about correcting the wrong could refer to the mix up he made in continuing to intermingle expenses for the US and Canadian operations after the October 31, 2011, sale to R.E.M.A.D.E. The emails may be interpreted as an admission of a short-coming, failure, or mistake, but I do not think the only inference to be drawn from them is that Mr. Wong defrauded or stole from the two companies. The language in the emails is too vague and incapable of supporting such a conclusion.

The Demise of the Phoenix Media Direct

[144] Mr. Carter and Mr. Davidson built a remarkable business that operated successfully for nearly two decades. Mr. Carter’s evidence linked the decline of the business to Mr. Wong’s start with the company. On the evidence at trial, I do not think the Court should consider the demise of PMD as a factor in determining whether the alleged criminal conduct has been proven to the requisite standard. There were other things which had changed in the company around the same time. For example, Mr. Davidson was no longer around much to oversee the financial end of the business.

The company purchased and then sold the struggling US operation and the financial affairs of the two business were intermingled to some extent. PDM had also purchased a new office and incurred relocation expenses. The size of the company had grown and new staff were involved with the business. Despite the fact PDM's customer base was stable, debt increased considerably, to a degree much greater than the alleged defalcation Mr. Wong could have been responsible for.

Use of the AMEX for Mr. Wong's Personal Benefit

[145] Mr. Carter gave evidence that the AMEX card was only to be used by Mr. Wong for emergency purposes. However, the evidence established it was used regularly for the purchase of company supplies and inventory. He left the Court with the impression that Mr. Wong somehow arranged for the credit limit on the AMEX to be increased over time, topping out at \$500,000. A review of the statements shows the card limit was unchanged at \$100,000.

[146] Mr. Carter was in error when he said that only he and Mr. Wong used the AMEX card. Mr. Carter's daughter had access to the card at one point. I find the evidence was unclear as to who else in the company, on either side of the Canada/US border, was able to use the AMEX card and for what purpose.

[147] Crown counsel made very fair concessions about what the evidence established in terms of which AMEX charges should be categorized as legitimate business expenses. However, the Crown submitted that the \$5,151.05 billed for Las Vegas and Tulalip expenses, and the \$147 fee for "Dance Power Ent Dance" were undoubtedly Mr. Wong's personal expenses. The Crown submitted of the remaining \$16,325.07 in expenses of an "unknown" nature, the Court should deduct a further sum for charges

which could have related to the business, leaving \$10,694.71 in gas, retail and web charges that were arguably of a personal nature.

[148] Regarding the thirteen gas charges totalling \$377.61, the Crown submitted Mr. Wong was not entitled to have PMD reimburse him because of his monthly gas allowance and because no receipts had been located for these items. However, I find it possible that Mr. Wong could have purchased gas for a company vehicle or when he was travelling in the US. He may also have submitted expense claims for these items and someone in the accounting department may have reviewed such claims, but the Court was never provided that information. Without something more, I am unable to conclude, beyond a reasonable doubt, that \$377.61 was improperly taken from PMD.

[149] Regarding the \$10,206.70 in retail charges, the Court was asked to examine the seventy transactions involved with a view to determining whether they were clearly of a personal nature. Having examined the spreadsheet Crown counsel helpfully prepared for the Court for this purpose, I am unable to conclude that those expenses were undoubtedly incurred by Mr. Wong for his personal benefit. The charges were not unique enough for the Court to come to that conclusion.

[150] Lastly, regarding the \$105.94 expense relating to the web, counsel for Mr. Wong highlighted legitimate business expenses showing that PMD was in the process of developing a website when the expenses were incurred. On this evidence, I find the amount could have been legitimately related to the operation of the business.

[151] Returning to the \$5,151.05 billed for Las Vegas and Tulalip expenses, I find the evidence does not establish, beyond a reasonable doubt, that Mr. Wong was responsible for these costs for a number of reasons. Separate expenses related to

Las Vegas were reclassified from illegitimate to legitimate in the course of this trial. Other travel-related charges linked to Mr. Wong, which were originally said to be personal in nature, were later re-categorized as being incurred for the benefit of the company. While suspicious, without supporting documentation as to the nature of the expenses involved in the \$5,151.05, I do not find the only reasonable conclusion to draw is that Mr. Wong illegally deprived PMD of this money.

[152] In the result, other than the \$147 fee for “Dance Power Ent Dance”, I find the evidence does not establish, beyond a reasonable doubt, that Mr. Wong used the AMEX credit card for his personal benefit or that he committed theft or defrauded PMD by making illegitimate transactions with it.

Use of the PMD AMEX to the Benefit of R.E.M.A.D.E.

[153] It was submitted that Mr. Wong fraudulently converted \$64,614.90 of PMD’s money and committed theft of \$34,614.90 from PMD. Mr. Norman and Mr. Carter’s evidence showed that the US and Canadian businesses had a symbiotic relationship. Mr. Norman said the US location paid for items destined for PMD even after the sale of the US operation. Mr. Norman testified Mr. Carter refused to reimburse Fusion for costs it incurred on behalf of PMD. The fact that members of the group which purchased the US operation continued working for PMD is also consistent with an intermingling of affairs. Mr. Wong did not have exclusive use of the AMEX card nor was he the only person involved in the financial operation of Fusion.

[154] Mr. Carter told the Court that when he and his wife confronted Mr. Wong about the use of the AMEX card for Fusion, Mr. Wong told him it was a terrible mistake and Ms. Smith, the US operations person, should never have used the card and that they

would pay PMD right back. The evidence suggested Fusion had no revenue available to remedy the problem at the time. That Mr. Wong got a loan secured against his house to repay some of the money Fusion benefitted from is, in my view, more consistent with the mistaken use of PMD's AMEX card in the course of business rather than illegal usage. The fact Mr. Carter initially agreed to redirect \$45,000 of the \$60,000 repayment to Fusion is also more consistent with the mistaken use of the AMEX card rather than theft or fraud.

[155] The evidence also showed that Fusion made \$15,000 payments to PMD on December 22, 2011, and on January 4, 2012. Mr. Carter said the money was provided to cover purchases made by Fusion using the PMD AMEX. The Crown submitted these payments established Mr. Wong knew that using PMD's AMEX card for purchases on behalf of Fusion was unauthorized. I find the payments could also have been made because Mr. Wong realized Fusion was not entitled to the money because it had obtained credit from PMD mistakenly. I do not find the evidence establishes, beyond a reasonable doubt, that there was criminal intent involved on Mr. Wong's part.

Use of PMD Funds to Pay for Mr. Wong's Personal Mastercard Charges

[156] The evidence showed that Mr. Wong electronically transferred money from PMD's RBC account to the Mastercard accounts of himself and his wife. The Crown submitted that a review of the transactions recorded for each of the Mastercard accounts showed there were both business and personal charges. The Court was asked to find that Mr. Wong reimbursed himself more money than he had legitimately spent on business, and to find him guilty of fraud or theft of money from PMD.

[157] Defence counsel urged the Court to examine Cst. Jones' spreadsheet summarizing the electronic transfers from PMD to the Mastercard accounts. She noted that transfers were only made to the Mastercard account ending in 8194. Some purchases in issue had been recorded on two other Mastercard accounts, but no electronic transfers from PMD were made to cover them.

[158] Counsel for the Crown pointed out that a total of approximately \$250,000 was transferred from the corporate RBC account to the Mastercard account 8194, but the expenses relating to that specific card totalled \$188,000. Accordingly, the Crown submitted the Court needed to consider whether some of the money was credited to a Mastercard account which was used primarily for personal reasons and for the Court to reconcile the amounts involved. While I have carefully examined the various Mastercard records, I am unable to find the evidence clearly establishes money was moved around in that fashion.

[159] The Crown submitted the Mastercard charges were different from the other expenses claimed, in that Mr. Wong would have obtained receipts for the expenses and he could have produced them to verify the nature of the charges. However, given Mr. Davidson's evidence, I do not think the Court can conclude that Mr. Wong failed to submit these receipts at any time and they may have been in the possession of PMD at some point. Of course, Mr. Wong has no legal burden to disprove the charges against him.

[160] Regarding Mastercard 9184, the Crown submitted that there were \$2,696.21 in clearly non-business transactions involved. However, given that Mr. Davidson testified he received expense reports and that monthly bank account reconciliations occurred,

defence counsel invited the Court to find some doubt existed as to whether Mr. Wong had done anything illegal with the Mastercard. I agree.

[161] I also note that the source of the \$23,262.82 payment toward the Mastercard was unknown. This adds further uncertainty as to what occurred and I find the Crown has not shown, beyond a reasonable doubt, that Mr. Wong acted dishonestly or unscrupulously with the Mastercard and the electronic fund transfers from the PMD RBC account.

Mileage Claim

[162] The General Service Contract between PMD *et al* and Mr. Wong's business provided that, in relation to the Canadian operation, Mr. Wong would receive a monthly auto allowance of \$500. For the US company, the contract stipulated that Mr. Wong would be reimbursed for all expenses incurred during the course of his operational duties without reference to a car allowance.

[163] Mr. Carter testified there was a verbal agreement with Mr. Wong that he would not claim gas or mileage when travelling on Choice Graphic business because of the monthly car allowance. Given the concerns I have already noted about Mr. Carter's credibility, I am left with a doubt as to the existence of such a verbal agreement. I find the language of the contract would have allowed Mr. Wong to seek reimbursement for his US travel expenses.

[164] The documentary evidence shows Mr. Wong apparently submitted three mileage claims (for \$3,518.13) to the accounting department. The expense reports provided to the Court appear complete and attach receipts for out-of-pocket costs where applicable.

Two different mileage claims appear to relate to the same dates, June 2 and June 9, 2010. On June 14, 2010, Mr. Wong submitted an expense claim which included claims for mileage on June 2nd of 578 miles and for June 9th for 589 miles. On July 9, 2010, Mr. Wong submitted an expense report for mileage on June 2nd of 652 miles and on June 9th for 615 miles. The June claim is stamped “paid”, but the July one does not have this notation. While this evidence is suspicious, without evidence showing Mr. Wong was in fact paid twice for the same expense, I am not prepared to find the paperwork proves beyond a reasonable doubt that a theft or fraud on PMD was committed.

The \$4,849.81 withdrawn from R.E.M.A.D.E.

[165] Ten withdrawals were made using an ATM and a total of \$4,849.81 was obtained. Four of the withdrawals (totalling \$1,953.27) were made at casinos in Richmond and Burnaby, and the remainder at various banks in the same cities. The Crown submitted the Court could infer that Mr. Wong liked to go to casinos and gamble and that the casinos where the ATM withdrawals were made were located near Mr. Wong’s Burnaby home.

[166] Both Mr. Ong and Mr. Norman told the Court they were not responsible for the ATM withdrawals from the Fusion bank accounts. Mr. Wong was the president of R.E.M.A.D.E. and Mr. Norman told the Court Mr. Wong was in charge of the company’s finances and had access to the bank accounts and credit card. When he asked Mr. Wong what the withdrawals were for, Mr. Norman said he did not really get an answer.

[167] Defence counsel submitted that the evidence did not establish whether other owners or staff of Fusion could have withdrawn the money. The Court did not hear from Ms. Smith, the bookkeeper, who may have been in the best position to shed light on this matter, including whether the transactions were for business. The evidence does not establish how the money was spent, only that someone used a bank machine located at a casino to take money out of the bank account. I find the evidence does not establish, beyond a reasonable doubt, that Mr. Wong unlawfully deprived R.E.M.A.D.E. of the money.

CONCLUSION

[168] In summary, the Court has found significant problems relating to the impugned expenses and claims throughout the evidence. The Court has also identified reliability problems in the evidence in terms of trying to determine how credit cards and corporate funds were used when scrutinized years after the fact. Concerns about Mr. Carter's credibility impact the Court's assessment of the propriety of the expense claims and broader aspects of the allegations against Mr. Wong. The financial distress of PMD, and the various reasons for that distress at the time the allegations against Mr. Wong surfaced, require this Court to be cautious in assessing his role in these matters. The evidence also raises concerns about the motivation behind the accusations against Mr. Wong given the distrust expressed about Mr. Carter and his efforts to distance himself from any problems with PMD and to maximize profits on the sale of the businesses. All of these things leave the Court with a doubt as to what Mr. Wong's role was in relation to the allegations before the Court.

[169] In the result, I find beyond a reasonable doubt that Mr. Wong defrauded PMD of \$147.00, which the AMEX records show was paid to “Dance Power Ent Dance” on May 22, 2011, and am prepared to enter a conviction on counts 1 or 2. However, I find that the evidence at trial did not provide a sufficient and reliable basis upon which to conclude that Mr. Wong improperly deprived either company of any other money.

The Honourable Judge N. Phillips
Provincial Court of British Columbia