

CANADA
Province of Quebec
District of Saint-François

Tribunal d'arbitrage Ad Hoc

In front :

Me Olivier Després, lawyer & approved arbitrator

In the case of :

Altex Decoration Ltd. (7912854 Canada Inc.)

Plaintiff (hereinafter referred to as "Altex");

PLAINTIFF

c.

S. P. Engineering S.R.L.

Defendant (hereinafter referred to as "SPE"),

And

Giovanni Bergamaschi

Defendant (hereinafter referred to as "GB"),

DEFENDANT

Arbitration ruling

(Art. 642 et ss C.p.c.)

Constitution and jurisdiction of the arbitration tribunal

[1]. This arbitration tribunal was constituted under the authority of an arbitration agreement (paragraphs 15.4 and 15.5; hereinafter the "Arbitration Agreement ") contained in a "Partnership Agreement" dated April 16, 2015 , filed in the arbitration file as Exhibit P-1 (hereinafter the "P-1 Contract ").

[2]. The arbitration agreement reads as follows:

15.4 If the dispute persists after the mediation of this Section 15, either Party may terminate this Agreement, at its discretion, within thirty (30) days

following the end of the mediation, by sending a written notice to this effect to the other Party and this contract will terminate upon the expiration of a period of thirty (30) days following receipt by the other Party of the notice of termination, unless one of the Parties has sent to the other Party a notice of arbitration before the expiration of the thirty (30) day period aforementioned;

15.5 In the event that a Party has sent a notice of arbitration in accordance with paragraph 15.4, the Parties agree that their dispute will be submitted to a single arbitrator, chosen by mutual agreement between the Parties (or failing that by a judge of the Superior Court of the district of Saint-François, upon summary motion to this effect) and the decision of the arbitrator thus appointed will be binding on the Parties and will be final and without appeal; The provisions of articles 940 et seq. of the Code of Civil Procedure of Quebec apply to the arbitration procedure;¹

[3]. Notice of arbitration was given by Altex, in particular to SPE and GB, as appears from the notice of arbitration dated December 14, 2022 filed in the arbitration file as exhibit P-2 (hereinafter " Notice P-2").

[4]. Concurrently with Notice P-2, Altex also served, in particular on SPE and GB, an arbitration statement dated December 14, 2022 filed in the arbitration file (hereinafter "the Statement").

[5]. Notice P-2 and the Statement were served on SPE and GB, in Italy, on March 7, 2023 as appears from the minutes of service.²

[6]. It should be noted that Notice P-2 and the Statement initially targeted other defendants but they have since been withdrawn.

[7]. It appears that SPE and GB did not respond to Notice P-2 and the Presentation so that Altex approached the Superior Court sitting in and for the district of St-François to have the appointment an arbitrator in accordance with the provisions of article 625 CCP and paragraph 15.5 of Contract P-1, in this case the undersigned.³

[8]. It appears again that SPE and GB did not follow up on the DII's nomination.

[9]. Also, by judgment rendered on November 27, 2023, the Honorable Sébastien Pierre-Roy JCS welcomes the DII in nomination and appoints the undersigned as arbitrator according to the following conclusions:

¹ Now articles 620 and ss CPC

² See the documentation to this effect filed in a bundle as Exhibit P-6 of the documents filed in support of the Request to initiate proceedings for the appointment of an arbitrator dated July 20, 2023, bearing the archive number 450-17-008825 -235 of the files of the Superior Court sitting in and for the judicial district of Saint-François (hereinafter the DII in nomination").

³ Ibid.

[10] **NOMME** Me Olivier Després pour agir comme arbitre et se saisir du différend entre les parties représenté à l'avis d'arbitrage et à l'exposé d,arbitrage de la Demanderesse;

[11] **ORDONNE** aux parties de payer, en parts égales, les frais et honoraires de Me Olivier Després, jusqu'à ce que décision soit rendue par celui-ci sur les frais d'arbitrage;

[12] **PERMET** à la demanderesse de signifier à la défenderesse et au mis-en-cause Bergamaschi le présent jugement par courriel aux adresses sp.eng@libero.it et info@sp-eng.it;

[13] **LE TOUT**, avec frais de justice contre la défenderesse et le mis-en-cause Bergamaschi.

[10]. That said, it is important to clarify that SPE and GB are domiciled in Italy. Therefore, the service on them of the P-2 Notice, the Presentation and the DII in nomination had to be carried out in accordance with the *Convention relating to the service abroad of judicial documents and extrajudicial in civil or commercial matters, made in The Hague on November 15, 1965*, as provided for in article 494 CCP

[11]. Here is how Judge Pierre-Roy expresses himself in this regard:

[4] Toutefois, sur autorisation du greffier spécial, la *Demande introductive d'instance en nomination d'un arbitre* n'a été signifiée qu'à l'adresse courriel sp.eng@libero.it. Selon les vérifications du Tribunal, cette adresse courriel était en 2012 celle du mis en cause Bergamaschi¹.

[5] Les dispositions de la Convention sont obligatoires². Lorsqu'elle s'applique, la partie expéditrice doit transmettre son acte de procédure selon un des modes qui y est prévu. Cette règle s'applique autant aux actes introductifs d'instance qu'aux autre procédures³. L'article 112 C.p.c. ne peut être utilisé pour contourner les dispositions impératives de la Convention⁴.

[6] Le Tribunal a donc suspendu son délibéré, le temps d'obtenir de la demanderesse des précisions quant au processus de signification qui a été mis en œuvre en l'espèce. En réponse, la demanderesse a fourni des preuves quant à l'utilisation par les parties des adresses courriels en cause. Elle a aussi pris la décision de signifier à nouveau ses procédures à une autre adresse utilisée par la demanderesse, soit info@sp-eng.it.

[7] L'Italie n'a pas logé d'opposition aux dispositions de l'article 10 de la Convention⁵. Ceci permet à la demanderesse d'utiliser la voie postale pour opérer signification. Or, dans certains cas, la voie postale peut inclure les technologies de l'information telles que le courrier électronique⁶. Selon les preuves soumises par la demanderesse, les adresses sp.eng@libero.it et info@sp-eng.it étaient actives au moins jusqu'au mois de mai 2022.

[8] Dans ce contexte, la demande est fondée.

[12]. This explains why we asked Altex's lawyers, and made sure to notify the procedures and communications intended among others for SPE and BG in the context of

of this arbitration file, by email, to the two addresses identified in paragraph 7 of the aforementioned judgment of the Superior Court (the "Pierre-Roy Judgment").

[13]. Thus, an amended arbitration statement dated January 24, 2024 was notified to SPE and GB dated January 26, 2024 in accordance with the above (hereinafter "the amended Statement").

[14]. In short, and as appears from its amended Statement, Altex alleges violation of its exclusive rights and unfair competition by the companies EN3, SPE, Sunprotection and by Messrs Giovanni Bergamaschi, Enrico Nardone and Stefano Nardone, all acting in concert, the while in contravention of the provisions of the Altex decoration Ltée / SP partnership contract Engineering SRL dated 04.16.2015 and the Altex decoration Ltée / SP Engineering SRL partnership contract dated 05.6.2011, filed in the arbitration file as exhibits P-1 and P-3 respectively.

[15]. As a result of the violation of its intellectual property and contractual rights, Altex seeks the following conclusions against Defendants SPE and GB, namely:

DECLARE that Defendant SPE and Defendant Giovanni Bergamaschi have violated the Intellectual Property rights and contractual rights of the Plaintiff;

DECLARE that Defendant SPE and Defendant Giovanni Bergamaschi have breached their confidentiality obligations and the restrictive commitments provided for in the Contracts P-1 and P-3;

DECLARE that Defendant SPE and Defendant Giovanni Bergamaschi encouraged and assisted EN3, Sunprotection, Enrico Nardone and Stefano Nardone⁴ to breach their confidentiality obligations and to compete unfairly with Alex in violation of their legal obligations;

ORDER interlocutorily for the duration of the arbitral proceedings and then permanently to Defendant SPE and Defendant Giovanni Bergamaschi, their employees, shareholders, directors, officers, agents, managers and all persons under its control not to have manufactured, installed, sold, offered for sale or directly or indirectly exploit a system having the same or similar characteristics as the *Lite Lift* or the Technological Variants as well as any New Intellectual Property rights and Current Intellectual Property rights provided for in

Contract P-1 and Contract P-3;

ORDER interlocutorily for the duration of the arbitral proceedings and then permanently to the Defendant SPE, the Defendant Giovanni Bergamaschi and their employees, shareholders, directors, officers, mandataries, agents, managers and all persons under its control to no longer reproduce nor use or permit the use by anyone of the Current Intellectual Property and proprietary

Intellectual News throughout Canada, the United States and Mexico;

ORDER Defendant SPE and Defendant Giovanni Bergamaschi to account for all sales made in violation of the Plaintiff's Intellectual Property rights in the territory of Canada, the United States and Mexico made in violation of the preservation of confidential information and restrictive commitments

⁴ Lire « Enrico Nardone and Stefano Nardone ».

provided for in Contract P-1 and Contract P-3, said reporting must include all the information required for the calculation of the profits attributable to the illicit activities set out herein;

ORDER Defendant SPE and Defendant Giovanni Bergamaschi to disgorge the profits attributable to the illicit activities set out herein, payable to the Plaintiff;

ORDER Defendant SPE and Defendant Giovanni Bergamaschi to pay interest on any sum before and after judgment.

[16]. However, like Opinion P-2 dated December 14, 2022, the Presentation also dated December 14, 2022 and the DII in nomination dated July 20, 2023, the amended Presentation dated of January 24, 2024 remained without reaction, without dispute.

[17]. Therefore, our jurisdictional competence is limited to the amended Statement.

[18]. That said, in the case of ex parte arbitral proceedings , the following should be clarified.

An ex parte arbitration procedure

As for the appointment of the undersigned

[19]. The facts related in paragraphs [7] to [11] above and, a fortiori, the Pierre-Roy Judgment *in extenso* welcoming the DII in nomination allow us to note that SPE and GB were informed of the appointment of the undersigned as referee.⁵

As for the applicable procedure and respect for the principle of contradiction

[20]. Following our appointment, the parties, including obviously SPE and GB, were summoned to a first case management conference which took place on December 13, 2023 at 9:00 a.m. (Montreal, QC time) by videoconference. This summons was notified by email to the parties, and in particular to SPE and GB via the email addresses indicated in paragraph 7 of the Pierre-Roy Judgment.⁶

[21]. Our minutes of this case management conference transmitted to all in the same manner read as follows:

Hello everyone,

I hereby confirm that a case management conference will be held this Wednesday, December 13, 2023 at 9:00 a.m.

⁵ Articles 625 and 645, paragraph 1, para 3 and 4 CCP

⁶ Our email of December 5, 2023, at 10:57 a.m.

⁷ Our email of December 13, 2023, at 9:51 a.m.

The parties were summoned by email [to the addresses indicated at the head of this email] sent on December 5, 2023 at 10:57 a.m., with a reminder by email sent on Tuesday December 12, 2023 at 3:03 p.m.

Were present at the management conference on December 13:

i. for ALTEX decoration Ltée (7912854 Canada inc.), being the plaintiff: Me Jordy P. Bernier and Me Luc R. Borduas of the Lavery firm;

ii. for SP Engineering srl and Mr. Giovanni Bergamashi⁸ , respectively defendant and respondent: no representative, agent or lawyer was present.

It should be noted that I have not received any communication of any kind from or on behalf of the defendant and the respondent.

I therefore take note of the failure of the defendant and the respondent to appear, although duly informed of the holding of this case management conference.

Messrs Borduas and Bernier presented to us the latest developments in this case, with regard to other possible parties. A meeting is scheduled for Wednesday, December 20, 2023 between Me Borduas and Me Grodinsky from the BLG firm representing these other people. Me Borduas will subsequently inform us of what will result from this meeting.

Consequently, **this management conference is continued until Wednesday January 10, 2024 at 9:00 a.m.**

A Zoom link will be communicated to everyone in due course.

This email serves as the minutes of the management conference held today.

Hoping everything is consistent,

Olivier After

[22]. The parties, including obviously SPE and GB, were summoned to a second case management conference which took place on January 10, 2024 at 9:00 a.m. (Montreal, QC time) by videoconference. This summons was notified by email to the parties⁹ , and in particular to SPE and GB via the email addresses indicated in paragraph 7 of the Pierre-Roy Judgment, and reads as follows:

Hello everyone,

This follows my email of December 13, 2023 reproduced below.

⁸ Name corrected here.

⁹ Our email of January 4, 2024, at 4:19 p.m.

I would like to remind you that the management videoconference will be held **on Wednesday January 10, 2024 at 9:00 a.m.** for which you will find the Zoom link allowing you to join the videoconference.

Also attached is a draft agenda for review and comments as needed.

Finally, I must remind you that **all parties to this proceeding are requested to participate in this case management conference, failing which we will nevertheless proceed ex parte.**

This summons is communicated to the defendant by email to the above-mentioned addresses, in light of the judgment of Hon. Sébastien Pierre-Roy JCS dated November 27, 2023, in paragraph 7 (copy attached).

You are free to communicate the Zoom link to anyone who needs to participate in the management videoconference.

Please act accordingly,

Olivier After

p.j.

[23]. Were present at the management conference on January 10, 2024, at 9:00 a.m.:

↳ for Altex: Me Jordy P. Bernier and Me Luc R. Borduas of the Lavery law firm;

↳ for SPE and BG: no representative, agent or lawyer was present.

[24]. Like the previous management conference of December 13, 2023, we have not received any communication of any kind from or for SPE and BG following the convening of the parties.¹⁰

[25]. We waited ten (10) minutes before noticing the failure of SPE and GB to appear, after which we required Altex's lawyers to file proof by affidavit, which resulted in the notification of the Amended Statement¹¹ to which were attached the sworn statements of Mr. Gaétan Alepins (owner of Altex) and Mr. Gilles Dumoulin (President and CEO of Altex) attesting to the truth of the facts of the amended Statement.

[26]. Exhibits P-1 to P-11 alleged to support the Amended Statement were duly notified to all by email on March 24, 2024, at 11:31 a.m.

[27]. The facts set out in paragraphs [20] to [26] above allow us to note that SPE and GB were informed of the applicable procedure and we have no reason to believe

¹⁰ Ibid.

¹¹ Paragraph 13 above.

that the principle of contradiction was not respected and that SPE and BG did not have the opportunity to present their arguments.¹²

[28]. We also point out that SPE and BG have always been in the list of recipients of the numerous emails in the arbitration file [via the email addresses sp.eng@libero.it and info@sp-eng.it] and that none of the emails were returned to us by the computer servers for any reason.

[29]. Following notification to everyone on March 24, 2024 of Exhibits P-1 to P-11 alleged in support of the Amended Statement, the date from which the arbitration file is complete, our arbitration award must now be rendered.

Documentary evidence filed in the arbitration file

[30]. We list in two (2) annexes to this arbitral award to simplify the text the various documents filed as evidence, namely:

▷ in Appendix A: the documents filed in support of the nominated DII - 450-17-008825-235; And,

▷ in Appendix B: the Documents filed in support of the Amended Arbitration Statement dated from 01/24/2024.

Altex's allegations of fact according to its Amended Statement

[31]. We reproduce in Appendix C to this arbitral award, to form an integral part of it and to lighten the text, the amended Statement which limits our arbitral jurisdiction.

The amended Statement includes eight (8) parts listed below for ease of reference:

- I. Introduction: para. 1 to 5;
- II. The parties: para. 6 to 12;
- III. The context: para. 13 to 26;
- IV. P-1 and P-3 contracts, as well as intellectual property rights: para. 27 to 35;
- IN. Technological development and intellectual property: para. 36 to 46;
- WE. The concerted acts of SPE, EN3, their shareholders and Enrico Nardone: para. 47 to 57;

- VII. The violation of Altex's rights: para. 58 to 76; And,

- VIII. The conclusions sought: para. 77-78.

¹² Articles 632 and 645, paragraph 1, para 3 and 4, CPC

Evidence supporting Altex's allegations of fact according to its Amended Statement

[32]. Altex's allegations of fact according to its Amended Statement are supported by the affidavits of Mr. Gaétan Alepins (owner of Altex) and Mr. Gilles Dumoulin (President and CEO of Altex) attesting to the truth of the facts of the Amended Statement.

[33]. The documentary evidence filed in the arbitration file supports Altex's allegations of fact.

[34]. The alleged violation of Altex's rights is indeed in contravention of Contract P-1 and Contract P-3 and the photos filed in a bundle as Exhibits P-7 and P-8 are revealing in this regard. In short, Altex's right of action is based on Contract P-1 and Contract P-3.

[35]. The testimonial evidence consisting of the sworn statements of Mr. Gaétan Alepins (owner of Altex) and Mr. Gilles Dumoulin (president and CEO of Altex) and the documentary evidence of Altex are in no way contradicted.

[36]. Consequently, Altex's request is granted and we issue the following conclusions, further specifying the solidarity between SPE and GB given the alleged facts.

Conclusions

For these reasons, the arbitration tribunal :

[37]. **Allows** in part the request of the plaintiff, Altex decoration Ltée (7912854 Canada inc.);

[38]. **Declares** that the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi violated the Intellectual Property rights and the contractual rights of the plaintiff Altex decoration Ltée (7912854 Canada inc.);

[39]. **Declares** that the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi breached their confidentiality obligations and the restrictive commitments provided for in Contract P-1 and Contract P-3;

[40]. **Declares** that the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi encouraged and assisted the companies EN3 and Sunprotection, and MM Enrico Nardone and Stefano Nardone to breach their confidentiality obligations and to compete unfairly with the plaintiff Altex decoration Ltée (7912854 Canada inc.), in violation of their legal obligations;

[41]. **Orders** the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi, directly or indirectly through any third party hereto

– either any natural person or any legal entity, without restriction – not to do

manufacture, install, sell, offer for sale or operate directly or indirectly a system having the same or similar characteristics as the *Lite Lift* or the Technological Variants as well as any New Intellectual Property rights and Intellectual Property rights
Currently provided for in Contract P-1 and Contract P-3;

[42]. **Orders** the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi, directly or indirectly through any third party hereto – either any natural person or any legal entity, without restriction – to no longer reproduce or use or permit the use by anyone of Current Intellectual Property and New Intellectual Property throughout the territory of Canada, the United States and Mexico;

[43]. **Orders** the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi to report to the plaintiff Altex decoration Ltée (7912854 Canada inc.), no later than May 20, 2024 at 9:00 a.m. [Eastern Daylight Time / EDT] , of all sales made in violation of the Intellectual Property rights of the plaintiff Altex decoration Ltée (7912854 Canada inc.) in the territory of Canada, the United States and Mexico and in violation of confidential information and restrictive commitments provided for in Contract P-1 and Contract P-3, said reporting must include all the information required to calculate the profits attributable to the illicit activities set out herein, including and without limiting the scope of the foregoing, all statements / sales reports;

[44]. **Orders** the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi, jointly, to return and pay the profits attributable to the illicit activities set out herein, to the plaintiff Altex decoration Ltée (7912854 Canada inc.), with interest at the legal rate increased by the additional compensation under article 1619 of the Civil Code of Quebec, calculated as of December 14, 2022, the date of the notice of arbitration, exhibit P-2; And,

[45]. **Orders** the defendant SP Engineering SRL and the defendant Giovanni Bergamaschi, jointly, to reimburse the plaintiff Altex decoration Ltée (7912854 Canada inc.) full costs and fees (100%) of the undersigned arbitrator under article 637 of the Code of Civil Procedure, with interest at the legal rate plus additional compensation under article 1619 of the Civil Code of Quebec, calculated as of May 15, 2024, i.e. thirty (30) days from the date of this arbitral award.

Montreal, Province of Quebec, this, April 15, 2024



Me Olivier Després, referee

Lavery De Billy s.e.n.c.r.l.
(Me Luc R. Borduas and Me Jordy P. Bernier)
Lawyers for the plaintiff Altex Decoration Ltée (7912854 Canada Inc.)

S. P. Engineering S.R.L.
Defendant

Giovanni Bergamaschi
Respondent

Annex A

Documents filed in support of the DII in nomination - 450-17-008825-235

P-1 Altex decoration Ltée / SP Engineering SRL partnership contract dated 04.16.2015;

P-2 In bundle:

REQ - Status of information 7912854 Canada inc.; And

Corporations Canada - Information concerning the company 7912854 Canada inc.;

P-3 Altex decoration Ltée / SP Engineering SRL partnership contract dated 6.05.2011;

P-4 Notice of arbitration of the plaintiff dated 14.12.2022 under art. 15.4 of Partnership contract dated 04.16.2015; including:

R-1 Professional profile and billing policy of the arbitrator, Me O. Després;

R-2 Letter from the lawyers of the defendant SP Engineering SRL dated 06/1/2021: denial of rights and remedies & invitation to negotiate a new agreement;

R-3 Letter from the lawyers of the defendants Sunprotection Group Inc., EN3 Sunprotection Inc., Mr. Enrico Nardone and Mr. Stefano Nardone dated 03.14.2022: denial of rights and remedies;

R-4 Letter from the plaintiff's lawyers dated 09/2/2022 to the lawyers of the defendant SP Engineering SRL – mediation proposal;

P-5 Arbitration statement from the plaintiff dated 14.12.2022 – art. 15.4 Contract of partnership;

P-6 In bundle:

Request for service or notification abroad of a judicial or extrajudicial document made in Montreal, Qc, Canada, on January 17, 2023, to **SP**

Engineering SRL; et,

Certificate of execution of the request on March 2, 2023, made in Bologna, Italy, on March 7, 2023; including a form entitled *Warning* and a second form entitled *Essential elements of the act*; and fee slip of 7.87 Euros;

Request for service or notification abroad of a judicial or extrajudicial document made in Montreal, Qc, Canada, on January 17, 2023, to **Giovanni**

Bergamaschi; and,

*Certificate of execution of the request on March 1 , 2023, made in Bologna, Italy, on March 7, 2023; including a form entitled *Warning* and a second form entitled *Essential elements of the act*; and fee slip of 6.50 Euros;*

Att. : *This document also includes affidavits of service (Affidavit of Service) but with regard to persons who are no longer included in the arbitration file, hence the omission that we make of them.*

P-7 COVR Customer Onboarding Verification Report issued by ESC on 06/20/2023 concerning the company EN3 Sunprotection Inc.;

P-8 COVR Customer Onboarding Verification Report issued by ESC on 06/20/2023 concerning the company Sunprotection Group Inc.;

P-9 Shareholder Agreement of Sunproject of Canada and Declaration of Sunproject Inc., dated September 11th, 2012, including:

Schedule A : Instruction Letter;

Schedule B : Unanimous Shareholders Agreement by the shareholders of Sunproject of Canada Inc.;

P-10 Email from Me O. Després to Me Bernier dated 06/21/2023, including the "Presentation Documentation" and the "Invoicing Policy" of Me O. Després' office.

P-11 Email from Antonella Fantuzzi to Gaétan Alepins dated 29.06.2021, including a letter from MG Bergamaschi to MG Alepins (in Italian) on the same date;

P-12 Exchange of emails (2) between MG Bergamaschi and Me Éric Lavallée, lawyer for Altex decoration Ltée, May 13 and 20, 2022;

Annexe B

Documents filed in support of the amended Arbitration Statement dated 01/24/2024

- P-1 Altex decoration Ltée / SP Engineering SRL partnership contract dated 04.16.2015;
- P-2 Notice of arbitration from the plaintiff dated 14.12.2022 under art. 15.4 of Partnership contract dated 04.16.2015;
- P-3 Altex decoration Ltée / SP Engineering SRL partnership contract dated 6.05.2011;
- P-4 Shareholder Agreement of Sunproject of Canada and Declaration of Sunproject Inc., dated September 11th, 2012, including:
- Schedule A : Instruction Letter;
- Schedule B : Unanimous Shareholders Agreement by the shareholders of Sunproject of Canada Inc.;
- P-5 Entente de principe (Agreement of principles) between Enrico Nardone et Altex (Enrico Nardone Agreement) dated 13.02.2013;
- P-6 Transition to Altex and employment agreement with Stefano Nardone (Stefano Nardone Agreement) dated 2.09.2013;
- P-7 Study of the mechanisms of 2 blinds produced by EN3;
- P-8 Illustrations with explanations of parts of a "Lite-Lift Blind" produced by a competitor;
- P-9 Proposal made by EN3 to BMO, Mississauga Rd & Financial Dr branch, dated from 30.07.2020;
- P-10 Notice of violation of the Partnership Agreement, dated 04.28.2021;
- P-11 Letter from the lawyers of the defendant SP Engineering SRL dated 1.06.2021: denial of rights and remedies & invitation to negotiate a new agreement;

Appendix C

Amended Claimant's Arbitration Statement

I. INTRODUCTION

- 1 - On April 16, 2015, the Claimant (hereinafter also referred to as " Altex ") and SP Engineering srl (hereinafter " SPE ") entered into a partnership contract (the " P-1 **Contract** ") according to which either party may request to resolve their dispute arising from the P-1 Contract, as it appears from articles 15.4 and 15.5 of Contract P-1:

If the dispute persists after the mediation of this Section 15, either Party may terminate this Agreement, at its discretion, within thirty (30) days after the end of the mediation, by sending a written notice to this effect to the other

Party and this contract will terminate upon the expiration of a period of thirty (30) days following receipt by the other Party of the notice of termination, unless one of the Parties has sent to the the other Party a notice of arbitration before the expiration of the aforementioned thirty (30) day period;

15.5 In the event that a Party has sent a notice of arbitration in accordance with paragraph 15.4, the Parties agree that their dispute will be submitted to a single arbitrator, chosen by mutual agreement between the Parties (or failing that by a judge of the Superior Court of the district of Saint-François, upon summary motion to this effect) and the decision of the arbitrator thus appointed will be binding on the Parties and will be final and without appeal; The provisions of articles 940 et seq. of the Code of Civil Procedure of Quebec apply to the arbitration procedure; »

- 2 - As will be demonstrated below, there is a dispute between the Applicant and the Defendant SPE, dispute in which the Defendant acted in complicity with SPE;
- 3 - The mediation provided for in paragraph 15.4 of Contract P-1 having failed to resolve the dispute, the Claimant communicated to the Defendant SPE as well as to the defendant the notice of arbitration provided for in paragraph 15.4 of Contract P- 1, as appears from the notice of arbitration and the supporting documents in **Exhibit P-2** (the "Notice of Arbitration");
- 4 - As provided for in article 17 of Contract P-1, the parties have chosen exclusively the laws of Quebec and Canada to govern their rights and obligations resulting from Contract P-1 and their dispute:

" 17 APPLICABLE LAW

This Contract, its interpretation, its execution, its application, its validity and its effects are exclusively subject to the applicable laws which are in force in the province of Quebec and in Canada, which govern in part or in whole all the provisions that it contains; »

- 5 - [Omitted intentionally]

[Intentionally omitted]

II. THE PARTS

- 6 - The Applicant is a company which designs, manufactures, sells, distributes and installs fabrics and window covering and solar protection systems as well as their components (" **Altex Products** ") in the residential, commercial and architectural sectors, and this since 1975;
- 7 - Altex Products use a design and technology developed solely by Altex or jointly with SPE, pursuant to Contract P-1 and Contract P-3 and are sold and distributed in Canada, the United States and Mexico;
- 8 - SPE is a limited liability company incorporated under the *Italian Civil Code*, of which the headquarters is in Bologna, Italy;
- 9 - SPE is a company which designs solar protection and window covering systems which manufactures, sells and distributes the components for such systems designed alone by SPE or jointly with Altex in accordance with Contract P-1 and the Contract P-3, primarily in the European market (the " **SPE Products** ");
- 10 - EN3 Sunprotection inc. ("EN3") operates a business in the field of sales, distribution and installation of solar protection and window covering products (the " **EN3 Products** ");
- 11 - Co-defendant Sunprotection Group Inc., (" Sunprotection ") manufactures solar protection and window covering products and is a supplier of parts and components for EN3 used in the manufacture of EN3 Products;
- 12 - EN3 has its principal place of business at 20A, Courtland Avenue in Concord, province of Ontario, and to the knowledge of Altex, sells EN3 Products mainly in Ontario, targeting the same clientele as Altex ;

III. THE CONTEXT

- 13 - Altex and SPE began their business relations around 2006 by concluding a distribution agreement for SPE Products with Altex in Canada;
- 14 - After a brief interruption in their commercial relationship, they resumed within the framework of a partnership project bringing together Altex, SPE as well as the company Sunproject of Canada inc., which operated a business in every respect similar to that operated by Altex (" Sunproject ");
- 15 - Sunproject operated its business in the field of design, manufacturing, sale and installation of window covering and solar protection products, working mainly in Ontario and Western Canada;
- 16 - As will be more fully alleged below, the SPE Respondent Giovanni Bergamaschi and Enrico F. Nardone, (shareholder of Sunprotection and father of the main shareholder of EN3, Stefano Nardone), were the founding shareholders of Sunproject;
- 17 - Altex, together with SPE and Enrico Nardone, as well as the other shareholder of Sunproject, Luca Giovanni, have entered into a partnership contract with Altex to implement

pool their resources and knowledge for the development of window covering and solar protection products as well as to develop and share the technology and intellectual property resulting from their partnership;

- 18 - Thus, on May 6, 2011, a first Partnership Contract, produced in **Exhibit P-3**, was signed by Altex and SPE (the " **P-3 Contract** "), which partnership contract already contained the same provisions as the future P-1 Contract;
- 19 - Furthermore, in September 2011, Altex subscribed to convertible debentures which were subsequently converted in September 2012 into common shares of the capital stock of Sunproject, giving Altex 68.68% of the common shares of the capital stock of Sunproject , the other shares being held by Enrico Nardone, Luca Giovanni and Giovanni Bergamaschi;
- 20 - A shareholders' agreement was concluded between the shareholders of Sunproject on September 11, 2012, which is produced here as **Exhibit P-4** (the " **Agreement Sunproject** »);
- 21 - As it appears from the Sunproject Agreement, the shares issued and in circulation of Sunproject's share capital is distributed as follows:

(The table appears on the next page)

Holder	Number and category of share	% of profit sharing	% of voting rights
Enrico	33.34 Common Shares	10.44 %	10.44%
	3.34 Class "C" preference	0%	0%
Giovanni	33.33 Common Shares	10.44%	10.44%
	13.33 Class "C" preference	0%	0%
Luca	33.33 Common Shares	10.44%	10.44%
	3.33 Class "C" preference	0 %	-0%
Ontario	20 Class "D" preference	0 %	0 %
Canada	219.33 Common Shares	68.68 %	68.68 %
	43.87 Class "C" preference	0%	0%
	43.87 Class "D" preference	0%	0%
TOTAL:	319.33 Common Shares	100 %	100 %
		0%	0%
	63.87 Class "C" Preference		
		0%	0%
	63.87 Class "D" Preference		

22 - The objective of the integration of the Sunproject company by Altex through its subsidiary company 7912854 Canada Inc., was to ensure that the partnership previously concluded with SPE and Sunproject, and mainly their shareholders, was accentuated, who had knowledge and know-how in the design, manufacturing and installation of window covering and solar protection products as well as the Ontario and Western Canadian markets;

23 - This new partnership made it possible to develop a stronger integrated company within Altex and capable of tackling the Canadian and North American market in the field of window covering and solar protection products;

24 - Moreover, paragraph M of the preamble to the Sunproject Agreement is to the effect following :

« M) The shareholders have entered into this agreement in order to pool their efforts and financial resources to promote the interests of the corporation, provide for certain terms and conditions regarding the administration and financing of the Corporation, regulate the holding of shares of the Corporation and anticipate any dispute regarding such matters; »

25 - The Sunproject Agreement also provided for specific provisions concerning conflicts of interest, in order to ensure the integrity of the partnership between Altex and Sunproject and the loyalty of their shareholders towards each other, as appears from the provisions of article 13 of the Sunproject Agreement:

« 13.1 Each of the Shareholders hereby agree to conform to the Act, the Articles of Incorporation and by-laws of the corporation or of Sunproject and any other legislation (the whole as amended from time to time) respecting conflicts of interest and contracts between the corporation or Sunproject and any Person, corporation or other legal entity in which any of the Parties is directly or indirectly interested; The Parties agree to disclose any such situation in accordance with the said Act, Articles of Incorporation and by-laws of the Corporation and applicable legislation;

***13.2** The Shareholders acknowledge and agree that Canada is part of the Altex Group who is involved in the business of manufacturing, selling and distributing window shades and shutters in the residential and light commercial market segments in Canada and as such does not constitute Canada nor its representative or the directors appointed by Canada on the Board of the Corporation of the SP Board in a conflict of interest provided that they continue to comply with all disclosure requirements; »*

26 - The conclusion of the P-3 Contract and the Sunproject Agreement in fact constitutes the grouping of Altex on the one hand, and on the other hand of a related group made up of SPE, Sunproject, Giovanni Bergamaschi, Enrico Nardone and Luca Giovanni to form a new company in the field of window covering and solar protection products serving the territory of Canada, the United States and Mexico;

IV. THE P-1 AND P-3 CONTRACTS, AS WELL AS THE RIGHTS TO THE PROPERTY INTELLECTUAL

27 - As appears from Contract P-1 and Contract P-3, Altex and SPE have agreed to a partnership to design and develop products for covering windows with the aim of marketing them ;

CONTRACT P-1

“ The Parties have agreed to establish a business partnership between themselves for the purpose of designing, developing, manufacturing, marketing and selling the Products (as defined below)”; And

CONTRACT P-3

“ The Parties have agreed to establish a business partnership between themselves for the purpose of designing, developing, manufacturing, marketing and selling the Products (as defined below)”

28 - Contract P-1 and Contract P-3 broadly defined the notion of intellectual property within the meaning of these contracts, and in particular in article 1.8 of Contract P-3 (hereinafter the “ **Intellectual Property** ”), in a manner to include in particular, and not limited to, patents and patent applications, processes, discoveries, inventions, technical and scientific information, know-how, copyright relating to any type of work, in particular software, drawings, patterns, specifications, prototypes, and results from design work, research, technical expertise, trade secrets, industrial designs, industrial information;

29 - Still according to Contract P-1 and Contract P-3, Altex and SPE have agreed to share equally all rights to the Current Property including the Intellectual Property Current and New Intellectual Property (as these terms are defined in said contracts);

PARAGRAPH H OF THE PREAMBLE

CONTRACT P-1

“The Parties have agreed to share between themselves at the rate of fifty percent (50%) each of all rights relating to the Current Intellectual Property and the New Intellectual Property relating to the Products and to share in the same proportions, all costs and fees relating thereto; »

CONTRACT P-3

“The Parties have agreed to share between themselves at the rate of fifty percent (50%) each of all rights relating to the Current Intellectual Property and the New Intellectual Property relating to the Products and to share in the same proportions, all costs and fees relating thereto; »

30 - According to paragraph 1.9 of Contract P-1 and the same paragraph of Contract P-3, the Current Intellectual Property included that of Altex and SPE existing at the time of

the signing of Contract P-1 on April 16, 2015 as well as that existing at the signing of Contract P-3 on May 6, 2011;

CONTRACT P-1

*“ 1.9 Current Intellectual Property” means any Intellectual Property designed or developed by SPE or Altex as of the date of signing hereof, to which SPE or, as the case may be, Altex holds rights as licensed owner or otherwise prior to signing hereof and which relates to the Products listed in **Appendix “B”***

CONTRACT P-3

*“ 1.9 Current Intellectual Property” means any Intellectual Property designed or developed by SPE or Altex as of the date of signing hereof, to which SPE or, as the case may be, Altex holds rights as licensed owner or otherwise prior to signing hereof and which relates to the Products listed in **Appendix “B”***

31 - Under the terms of Contract P-1 and Contract P-3, each of Altex and SPE shared equally the Current Intellectual Property and the New Intellectual Property and assigned all the rights it held for this purpose to the other part:

CONTRACT P-1

“ 2.1 The Parties agree to share equally between themselves the Current Intellectual Property and the New Intellectual Property such that each of SPE and Altex are, as of hereof, the sole undivided co-owners and beneficiaries of the Current Intellectual Property and New Intellectual Property; To this end, the Parties agree as follows:

***2.1.1** SPE assigns to Altex all rights to the Current Intellectual Property and the New Intellectual Property relating to the Products, present or future; Altex may, in its sole discretion and at its expense, file patent applications and other applications for Intellectual Property protection that it deems appropriate to protect the Intellectual Property rights in the Products for the Altex Territory;*

SPE undertakes to sign and execute any necessary or useful document including any document waiving moral rights reasonably required by Altex in order to obtain the protection measures provided for in the preceding paragraph;

***2.1.2** Altex assigns to SPE all rights to the Current Intellectual Property and the New Intellectual Property relating to the Products, present or future; SPE may, in its sole discretion and at its expense, file patent applications and other applications for Intellectual Property protection that it deems appropriate to protect the Intellectual Property rights in the Products for the SPE Territory;*

Altex undertakes to sign and execute any necessary or useful document including any document waiving moral rights reasonably required by SPE in order to obtain the protection measures provided for in the preceding paragraph; »

CONTRACT P-3

“2.1 The Parties agree to share equally between themselves the Current Intellectual Property and the New Intellectual Property such that each of SPE and Altex are, as of hereof, the sole undivided co-owners and beneficiaries of the Current Intellectual Property and New Intellectual Property; To this end, the Parties agree as follows:

2.1.1 SPE assigns to Altex all rights to the Current Intellectual Property and the New Intellectual Property relating to the Products, present or future; Altex may, in its sole discretion and at its expense, file patent applications and other applications for Intellectual Property protection that it deems appropriate to protect the Intellectual Property rights in the Products for the Altex Territory;

SPE undertakes to sign and execute any necessary or useful document including any document waiving moral rights reasonably required by Altex in order to obtain the protection measures provided for in the preceding paragraph;

2.1.2 Altex assigns to SPE all rights to the Current Intellectual Property and the New Intellectual Property relating to the Products, present or future; SPE may, in its sole discretion and at its expense, file patent applications and other applications for Intellectual Property protection that it deems appropriate to protect the Intellectual Property rights in the Products for the SPE Territory;

Altex undertakes to sign and execute any necessary or useful document including any document waiving moral rights reasonably required by SPE in order to obtain the protection measures provided for in the preceding paragraph; »

32 - The same sharing of ownership (50/50) also applies to dies, molds and present and future equipment, as appears from Contract P-1 and Contract P-3:

CONTRACT P-1

“ 3.1 The Parties acknowledge that they each hold fifty percent (50%) of the undivided ownership of the dies, present or future, for the steel parts relating to the Products, without regard to the fact that these dies are held by one or the other Party, or by one of their respective suppliers;

3.2 Without limiting the scope of paragraph 3;1 above, each party grants the other Party the right to order parts from any supplier who may be in possession of dies for the steel parts;

3.3 The Parties acknowledge that each of them will retain exclusive ownership of the dies for the extrusion of aluminum parts relating to the Products;

3.4 The Parties acknowledge that they each hold fifty percent (50%) of the undivided ownership of the dies, molds and equipment, present or future, for thermoplastic parts and other materials relating to the Products (hereinafter the “Other equipment); »

CONTRACT P-3

“ 3.1 The Parties acknowledge that they each hold fifty percent (50%) of the undivided ownership of the dies, present or future, for the steel parts relating to the Products, without regard to the fact that these dies are held by one or the other Party, or by one of their respective suppliers;

3.2 Without limiting the scope of paragraph 3;1 above, each party grants the other Party the right to order parts from any supplier who may be in possession of dies for the steel parts;

3.3 The Parties acknowledge that each of them will retain exclusive ownership of the dies for the extrusion of aluminum parts relating to the Products;

3.4 The Parties acknowledge that they each hold fifty percent (50%) of the undivided ownership of the dies, molds and equipment, present or future, for thermoplastic parts and other materials relating to the Products (hereinafter the “Other equipment”); »

33 - Consequently, each of Altex and SPE holds a good and valid property right over the Intellectual Property vesting each of Altex and SPE with all rights of use, marketing, manufacturing, sale or distribution including the rights of sublicense the Intellectual Property in their respective Exclusive Territory:

CONTRACT P-1

“2.1.4 The rights assigned to Altex under paragraph 2.1.1 as well as the rights assigned to SPE under paragraph 2.1.2 are good, valid and enforceable proprietary rights each vesting in Altex and SPE of all rights of use, marketing, manufacturing, sale or distribution including the right to sublicense the Intellectual Property, subject however to the exclusive rights granted to SPE in the SPE Territory; exclusive rights granted to Altex in the Altex Territory; »

CONTRACT P-3

“2.1.4 The rights assigned to Altex under paragraph 2.1.1 as well as the rights assigned to SPE under paragraph 2.1.2 are good, valid and enforceable proprietary rights each vesting in Altex and SPE of all rights of use, marketing, manufacturing, sale or distribution including the right to sublicense the Intellectual Property, subject however to the exclusive rights granted to SPE in the SPE Territory; exclusive rights granted to Altex in the Altex Territory; »

34 - Finally, Contract P-1 and Contract P-3 provide restrictive non-competition commitments according to which Altex undertakes not to compete with SPE in the SPE Exclusive Territory and vice versa SPE undertakes not to compete with Altex in the Altex Exclusive Territory;

CONTRACT P-1

“ 8.1 SPE undertakes not to sell, market, distribute or grant sales, distribution or marketing use rights to anyone for the Products or substantially similar products in the Altex Territory;

8.2 SPE undertakes not to manufacture, transfer, in whole or in part, its rights, nor grant a license to a third party for the use of the Intellectual Property or for the manufacture of Products or products substantially similar to the interior of the Altex Territory; SPE also undertakes not to sell Products to third parties if, to the best of its knowledge, they intend them for resale within the Altex Territory;

8.3 Altex undertakes not to sell, market, distribute or grant sales, distribution or marketing use rights to anyone for the Products or substantially similar products in the SPE Territory;

8.4 Altex undertakes not to manufacture, transfer, in whole or in part, its rights, nor grant a license to a third party for the use of the Intellectual Property or for the manufacture of Products or products substantially similar to the interior of the SPE Territory; Altex also undertakes not to sell Products to third parties if, to the best of its knowledge, they intend them for resale within the SPE Territory;

8.5 Neither Party may grant a license to the Intellectual Property relating to the Products to a third party for the manufacture, sale, distribution, marketing of Products outside the Exclusive Territories, without the prior written consent of the other. Part; »

The provisions of Contract P-3 have the same effects as those of Contract P-1;

35 - As more fully alleged below, Defendant SPE and its main shareholder, Defendant Giovanni Bergamaschi, together with EN3, Sunprotection, Sunprotection Group, Enrico Nardone and Stefano Nardone, violated the provisions of the Contract P-1 and Contract P-3 and, as a result, causes serious harm to Altex;

IN. TECHNOLOGICAL DEVELOPMENT AND INTELLECTUAL PROPERTY

36 - Prior to the conclusion of Contract P-3, SPE developed an operating system known under the name “ Lite Lift ”;

37 - As previously alleged, Contract P-1 as well as Contract P-3, ensure that Altex holds the undivided half of the intellectual property rights of the technology « Lite Lift »;

38 - *Lite Lift* technology is the subject of Canadian patent number 2,840,366, entitled *Braking mechanism for a roller shade controller, control mechanism comprising same and control handle* and whose holder is 7912854 Canada Inc, a company related to Altex (the “ Patent *Lite Lift* »);

39 - The technology of the *Lite-Lift Patent* is mainly characterized by two critical elements: (i) a spring system which serves to compensate for the weight of the canvas when going up or down in order to reduce the lifting effort to a minimum, and (ii) a brake system to ensure that the canvas remains in a fixed position when it is stationary, since it is impossible for the spring to be exactly balanced with the canvas at all positions.

40 - Over the years, SPE and Altex have collaborated to develop different mechanisms with objectives similar to those of the *Lite Lift Patent*, some versions of which have not been patented;

41 - These different mechanisms developed as well as those described in the *Lite Lift Patent* are variants of technologies used by Altex under the Agreement, which constitute an important set of technological assets for Altex (the "Technology **Variants**");

42 - These Technological Variants were subject to the confidentiality obligations and restrictive commitments provided for in Article 11 of Contract P-1 and the corresponding articles of Contract P-3;

43 - Altex has never authorized SPE to make public or disclose to third parties these technological Variants nor to allow their use by a third party, let alone a competing company;

44 - Altex also has no intention of abandoning its rights in the *Lite Lift Patent* to Canada;

45 - Moreover, according to Contract P-1 and Contract P-3, Altex acquired the exclusive right to commercialize all intellectual property rights in the "Altex Territory" of the technology of the *Lite Lift Patent*, technological Variants and P-1 Contracts and P-3;

46 - As for Altex, it has notably developed, with the help of SPE, an "active tensioner" device aimed at securing the chain and reducing the risk of strangulation in children;

VI. THE CONCERTED ACTS OF SPE, EN3, THEIR SHAREHOLDERS AND ENRICO NARDONE

47 - Since the beginning of the business relationship between SPE, Sunproject and their shareholders Giovanni Bergamaschi and Enrico Nardone have always acted in a concerted manner resulting in a close relationship which has been evident until now. We can reasonably conclude that Giovanni Bergamaschi and Enrico Nardone have been business partners for many years and their close collaboration means that they are linked to each other in their business project;

48 - In fact, each of SPE, EN3, Sunprotection and their shareholders, Giovanni Bergamaschi, Stefano Nadone and Enrico Nardone act as if they were a linked group and came together due to their close proximity to allow Sunprotection to start its manufacturing business and for EN3 to start its sales and distribution business of EN3 products using technology as well as Intellectual Property

of which Altex is the sole holder and beneficiary in the Territories of Canada, the United States United States and Mexico;

49 - What is more, due to this proximity between the shareholders of SPE, EN3 and Sunprotection, Giovanni Bergamaschi, Stefano Nardone and Enrico Nardone, they could not ignore the clear terms of Contracts P-1 and P-3, in particular the fact that the intellectual property rights including the marketing rights belonged exclusively to Altex for the Territories of Canada, the United States and Mexico;

50 - This proximity, and the concerted actions of SPE, EN3, Sunprotection and their shareholders Giovanni Bergamaschi, Stefano Nardone and Enrico Nardone which make it a linked group is further confirmed by the following facts:

- a) Enrico Nardone and Giovanni Bergamaschi are the founders of Sun Project, based in Canada, whose activities were completely similar;
- b) Giovanni Bergamaschi is the president and shareholder of SPE;
- c) Giovanni Bergamaschi and Enrico Nardone are business associates and have worked closely together for several years;
- d) Stefano Nardone is the son of Enrico Nardone;
- e) Enrico Nardone entered into an agreement in principle with Altex dated February 13, 2013, with a view to his integration as an employee of Altex and for the purpose of promoting and selling Sunproject and Altex products and developing their architectural activities (the " Enrico **Contract** "), which contract is produced as **Exhibit P-5**;
- f) Stefano Nardone was employed by Altex until he left about 5 years ago to become a retailer by starting the company EN3, as appears from Stefano Nardone's integration employment contract within Altex entered into on September 2, 2013 (the " Stefano **Contract** ") which is produced as **Exhibit P-6**;
- g) At the start of the company, Enrico Nardone then worked with his son within EN3 and as a shareholder of Sunprotection provided for the manufacture of window covering products, solar protection and other components for profit from EN3;
- h) Stefano Nardone having been a designer at Altex, had access to all the drawings, including the drawings of the active tensioner, as well as confidential information from Altex used in a submission for a large-scale project to the Bank of Montreal according to what will be demonstrated in more detail during the investigation.

51 - Indeed, as it appears from Contract Stefano P-6, he was employed by the Plaintiff following the integration of Sunproject's activities within Altex:

« WHEREAS the Employee was, until the date hereof, employed by Sunproject of Canada Inc;

WHEREAS the Employee's employment with Sunproject ended effective August 30, 2013"

52 - Still under the terms of the Stefano P-6 Contract, he acted as a designer within the Claimant and had access to confidential information in particular concerning Intellectual Property and the drawings of the parts making up the Altex Products.

53 - Stefano Nardone had also recognized the confidential nature of the Claimant's information concerning its Intellectual Property and its drawings, as appears from paragraph 405.1 of the Stefano P-6 Contract:

« The Employee acknowledges that, as a result of his employment relationship with the Corporation, he has had, has and will continue to have access to information concerning the business of the Corporation, and in particular but without limitation, letters of intent, agreements, contracts, distribution lists, customer client, supplier or contractor lists, business plans or finance documents, financing agreements, financial information, marketing plans or strategies, product or technical information, personnel information, inventions, ideas, concepts, designs, improvements or other developments ("Confidential Information"); »

54 - Despite the fact that Stefano Nardone recognized the nature of confidential information owned by Altex, according to Contract Stefano P-6, he knowingly violated his legal obligations towards Altex among others, by using the same drawings to make a proposal for sale to BMO, as more fully alleged below:

55 - Without the disclosure by SPE and access to the Intellectual Property of Altex, and without the complicity of SPE, Giovanni Bergamaschi, Enrico Nardone and Stefano Nardone as well as the sales of components by SPE to EN3 and/or Sunprotection for manufacturing solar shades and other window covering products, EN3 would not have been able to operate its business as it did;

56 - Added to this is the fact that Stefano Nardone acquired knowledge and know-how, including several confidential information, while he was in the employ of Altex;

57 - The actions of EN3, SPE, Sunprotection, Giovanni Bergamaschi de Enrico Nardone and Stefano Nardone must be considered as gestures of people acting in concert, each being the alter ego of the other;

VII. VIOLATION OF ALTEX'S RIGHTS

58 - In fact, SPE, EN3, of Sunprotection and their respective shareholders, including Enrico Nardone and Stefano Nardone, acted in concert to circumvent and violate the exclusive rights of Altex to compete unfairly and illegally while they knew or were supposed to know the clear provisions of Contracts P-1 and P- 3;

59 - EN3 and Sunprotection use components purchased from SPE to assemble products in direct competition with Altex Products, as will be demonstrated during the investigation;

60 - More specifically, the products sold by EN3 include main characteristics similar to the Technological Variants which led to the *Lite Lift Patent*, namely: (i) a spring system which serves to compensate for the weight of the canvas when climbing or

descending in order to reduce the lifting effort to a minimum, and (ii) a brake system to ensure that the canvas remains in a fixed position when it is stopped, since it is impossible for the spring to be exactly swung with the canvas at all positions;

- 61 - The products sold by EN3 are in fact similar to previous versions of the Altex Products, either prototypes of one of the technological Variants which were developed within the framework of the partnership with a view to arriving at Altex Products as marketed today by Altex;
- 62 - EN3 and Sunprotection even went so far as to use the same molds as those whose Altex is the co-owner despite the exclusive use reserved for Altex in Canada in the United States. United States and Mexico pursuant to Contract P-1 and Contract P-3;
- 63 - Indeed, superficial marks on plastic parts left by the injection molds clearly demonstrate that the plastic parts used by EN3 in its products were manufactured using the same injection molds which are held in co-owned by SPE and Altex under the terms of Contract P-1 and Contract P-3, as appears from the photos in **Exhibit P-7**;
- 64 - SPE's use of these injection molds or allowing SunProtection or EN3 to use them to produce parts for EN3 causes wear on the molds and reduces their lifespan for production parts from Altex;
- 65 - Furthermore, if copies of the injection molds were made to circumvent the use of the molds co-owned by SPE and Altex, these molds would have to be manufactured in accordance with the drawings being Intellectual Property covered by the Contract P-1 and Contract P-213;
- 66 - It therefore appears that SPE sells or supplies Sunprotection and EN3 with components covered by Contract P-1 and Contract P-3 and of which Altex holds the exclusive operating rights in the " **Altex Territory** ";
- 67 - These actions on the part of SPE and Defendant Giovanni Bergamaschi constitute a serious breach of the provisions of Contracts P-1 and P-3 and illegal actions and more specifically with regard to article 8 of this Contract P-1 and the corresponding articles of Contract P-3. EN3 and Sunprotection, Stefano Nardone and Enrico Nardone knowingly participate in the violation of these provisions;
- 68 - EN3 and Sunprotection import and sell in Canada parts identical to those developed by Altex in its partnership with SPE, copies of these parts having been obtained by Altex and are produced in **Exhibit P-8**;
- 69 - In addition, EN3 and Sunprotection have reproduced and are using designs developed by Altex, in particular by using designs created by Altex for an offer made by EN3 to the Bank of Montreal, as it appears from **Exhibit P-9**;

13 We understand that P-3 should be read here, Exhibit P-2 being the Notice of Arbitration dated December 15, 2022. And this is what the conclusions sought by Altex reflect.

- 70 - What is more, these parts are in every respect similar to technological Variants developed within the framework of the Contract and this confidential information was not known to the public;
- 71 - EN3, Sunprotection, Stefano Nardone and Enrico Nardone intentionally infringed and illegally Altex Intellectual Property;
- 72 - However, on April 28, 2021, in connection with the above, Altex sends to SPE a notice of violation of the contract in accordance with its article 2.1.7, as appears from the letter dated April 28, 2021 from the undersigned lawyers and its proof of notification, in Exhibit **P-10**;
- 73 - On or around June 1 , 2021, SPE's lawyers sent a letter by which SPE attempted to renegotiate the agreement, but in no way denying the situation with EN3, copy of said letter located in **Exhibit P-11**;
- 74 - The said letter further demonstrates SPE's desire not to respect Contract P-1 and Contract P-3, for reasons external to said Contract;
- 75 - Subsequently, no action was taken by SPE on this letter of June 1 , 2021;
- 76 - SPE has therefore not provided any information to the effect that the intellectual property violations and breaches of good faith on the part of EN3 and Sunprotection, as well as the breaches of SPE's contractual obligations, have ceased;

VIII. THE RESEARCHED CONCLUSIONS 14

- 77 - EN3, Sunprotection and their shareholders Stefano Nardone and Enrico Nardone as well as SPE and its shareholder Giovanni Bergamaschi therefore collaborated in the manner described above so as to knowingly violate the Intellectual Property and contractual rights of the Claimant Altex;
- 78 - Due to the above, the Claimant Altex is well-founded to request that the Arbitration Tribunal pronounce the conclusions described below against the Defendant and the Defendant Giovanni Bergamaschi.

¹⁴ The conclusions are reproduced in paragraph 15 of this arbitration award.