IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Alna Packaging Co. Ltd v. Frost,*
2025 BCSC 387

Date: 20250307
Docket: S241874
Registry: Vancouver

Between:

Alna Packaging Co. Ltd.

Petitioner

And

Darryll Frost, personally and as trustee of the Frost Family Trust, Hang Li also known as Elsie Li, and 1384604 B.C. Ltd.

Respondents

Before: The Honourable Justice Ahmad

Reasons for Judgment

Counsel for the Petitioner:	S. Dawson M. Ferreira
Counsel for Darryll Frost, personally and as trustee of the Frost Family Trust:	P. Hildebrand
Counsel for Hang Li also known as Elsie Li and 1384604 B.C. Ltd.:	J.K. McEwan, K.C. A. Beddoes J. Roberts W. Stransky
Place and Date of Hearing:	Vancouver, B.C. September 16, 17, and 18, 2024
Place and Date of Judgment:	Vancouver, B.C. March 7, 2025

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I. Introduction

[1] These petition proceedings commenced by Alna Packaging Co. Ltd. (“Alna”) are part of a multitude of complex proceedings among Alna and the principals of its two shareholders. Collectively, they have brought four applications for determination at this hearing alone.

[2] The primary issue to be determined at this hearing is the validity of resolutions passed at a meeting of Alna’s shareholders, including resolutions relating to the composition of Alna’s board of directors.

II. Background

Relationship between Mr. Frost and Ms. Li

[3] Darryll Frost and Elsie Li incorporated Alna in 2018 for the purpose of distributing packaging, particularly aluminum can bodies and ends, in North America.

[4] Through family trusts, Mr. Frost controls 55% and Ms. Li controls 45% of Alna’s issued and outstanding shares[1]. Prior to March 5, 2024, Mr. Frost and Ms. Li were Alna’s only directors.

[5] Commencing in 2023, Mr. Frost and Ms. Li have had various disagreements regarding the management of Alna, which have resulted in litigation against each other and involving other related persons and entities.

[6] In January 2024, Mr. Frost commenced an action against Ms. Li (and others) alleging that Ms. Li had diverted a significant amount of Alna’s funds to entities controlled by Ms. Li or her parents. He also alleged that Ms. Li was responsible for understating Alna’s income, resulting in what Mr. Frost says is significant tax

[1] Mr. Frost’s interest is held through the Frost Family Trust; Ms. Li’s interest is held though the respondent, 1384604 BC Ltd. Despite those indirect interests, for convenience, I refer to Mr. Frost and Ms. Li as the shareholders.

liability[2]. Ms. Li denies Mr. Frost's allegations. She alleges that Mr. Frost's attempts to rectify the tax situation could prejudice Alna.

[7] Mr. Frost and Ms. Li are also involved in a dispute regarding Central City Brewers & Distiller Ltd. ("CCBD"), an entity controlled by Mr. Frost and in which Alna is a significant shareholder. Ms. Li has alleged, among other things, that Mr. Frost has improperly diverted Alna's funds to CCBD.

March 5, 2024 Shareholders' Meeting

[8] In January 2024, Mr. Frost issued a requisition for a meeting of Alna's shareholders[3]. He subsequently issued a notice that the meeting would be held on March 5, 2024 (the "March 5 Meeting"), the stated purpose of which was to: (1) increase the number of Alna's directors from two to three; and (2) elect Murray Lott, Alna's solicitor, to the board of directors.

[9] Mr. Frost attended the March 5 Meeting. Also in attendance were Mr. Frost's wife, Lee Frost, who held a proxy for five of Mr. Frost's shares, and Mr. Lott, who acted as chair for the meeting.

[10] Ms. Li did not attend the March 5 Meeting, nor was she represented by proxy.

[11] Mr. Lott determined that the notice had been validly given and that a quorum was present. All of Mr. Frost's shares, being the majority of Alna's shares, were voted at the meeting in favour of increasing the size of the board of directors to three and electing Mr. Lott as Alna's third director.

March 5, 2024 Directors' Meeting

[12] On the same day he issued the notice of the March 5 Meeting, Mr. Frost also delivered a notice of directors' meeting to immediately follow the shareholders' meeting. The agenda for the directors' meeting included electing Mr. Frost as

[2] Alna was originally named as a plaintiff in that action. Ms. Li took the position that Alna was not properly authorized to do so. Alna has since discontinued its claim against Ms. Li.
[3] Ms. Li initially disputed the validity of the requisition to call the shareholders' meeting. She did not pursue that objection at the hearing of this application.

president of Alna, considering and taking steps in respect of the tax liability, and "considering how to address the multiple serious challenges that [Alna] faces including the apparent loss of many of its assets".

[13] Ms. Li did not attend the directors' meeting.

[14] Together, Mr. Frost and Mr. Lott, then a newly elected director, passed a number of resolutions including: (a) to elect Mr. Frost as Alna's president and chief executive officer; (b) to revoke Ms. Li's ability to engage in Alna's operating activities; (c) to require Mr. Frost's approval, together with Ms. Li or Alna's controller, for all banking transactions; and (d) to appoint a special committee, comprised solely of Mr. Lott, to address issues with Alna's tax filings and the commencement of proceedings against Ms. Li with respect to the "improper diversion of corporate funds and corporate opportunity".

Post-March 5, 2024 Events

Ms. Li's Oppression Action

[15] On March 6, 2024, Ms. Li commenced an oppression action (the "Oppression Action") against Mr. Frost and Alna in which she has alleged that Mr. Frost has caused Alna's affairs to be conducted in a manner that is oppressive or unfairly prejudicial to her and in violation of her reasonable expectations as a shareholder. She includes as particulars of that conduct: (a) the calling and holding of extraordinary shareholders' and directors' meetings contrary to the *Business Corporations Act,* S.B.C. 2002, c. 57 [*BCBCA*] and Alna's articles, (b) the purported expansion of the board of directors from two to three directors and the nomination of Mr. Lott as the third director to advance Mr. Frost's positions and interests, and (c) generally, the exclusion of Ms. Li from effective management and participation in the governance and management of Alna.

[16] In the Oppression Action, Ms. Li seeks, among other things, that Alna be liquidated and dissolved.

Day-to-Day Operations

[17] Citing the “on-going shareholder dispute” between Mr. Frost and Ms. Li, on March 6, 2024, Alna’s bank froze Alna’s accounts. It advised that it would permit Alna to pay operating expenses with the agreement of both shareholders.

[18] Since then, by consent order dated April 19, 2024, the parties agreed to the appointment of a monitor (the “Monitor’) who is empowered to decline to approve payment and disbursements by Alna that are, in the Monitor’s view, not in accordance with the ordinary operation of Alna’s business or are otherwise improper.

III. Summary of Issues

[19] Alna commenced these petition proceedings seeking directions regarding:

a) the validity of the March 5 Meeting and, specifically, the validity of the resolution electing Mr. Lott as a director; and

b) the validity of the subsequent election by the directors, including Mr. Lott, of Mr. Frost as Alna’s president and chief executive officer.

[20] As she did not attend the March 5 Meeting, Ms. Li argues that a quorum was not established. Accordingly, she argues that the resolutions passed at the March 5 Meeting, including Mr. Lott’s election as director, are invalid. It follows, she says, that the resolutions passed at the subsequent directors’ meeting, at which Mr. Lott voted as a director, are also invalid.

[21] Alna asserts that the quorum was properly constituted. Mr. Frost agrees. However, even if not, Alna says that Mr. Lott’s election represents the will of the majority and should be validated. Alternatively, Alna and Mr. Frost ask that the Court order an annual general meeting be held on terms that will allow Alna’s business to be conducted.

[22] Ms. Li also opposes the granting of that alternative relief. Noting the overlap between the circumstances around the March 5 Meeting, including Mr. Lott’s

election as director and Mr. Frost's election as president and the allegations raised in the Oppression Action, she says these petition proceedings should be struck or stayed and the issues should be resolved in that action.

[23] However, before turning to any of those issues, Ms. Li questions the authority by which these petition proceedings were commenced. She also questions the appropriateness of Alna (not Mr. Frost) commencing the petition and questions the legitimacy of corporate counsel acting. She seeks an order removing counsel for Alna and directing them to provide her with copies of all documents that may have been provided to Mr. Frost.

[24] However, recognizing the "chicken-and-egg" dilemma of that argument, Ms. Li does not disagree that the validity of the March 5 Meeting should be determined.

[25] Given the positions of the parties, the questions to be determined are:

a) Was the vote at the March 5 Meeting validly held;

b) If not, should the Court nonetheless validate the resolutions passed at the March 5 Meeting;

c) If no, should the Court order a meeting of the shareholders and, if so, on what terms; and

d) Should the relief sought by Ms. Li be determined?

IV. Discussion and Analysis

A. Was the vote at the March 5 Meeting validly held?

[26] As noted, Ms. Li did not attend the March 5 Meeting, leaving only Mr. Frost and his wife, who held the proxy for five of Mr. Frost's shares, to vote at the meeting. There is no dispute that by their votes, the majority of Alna's shares were voted in favour of electing Mr. Lott as a director.

[27] The question is: Given Ms. Li's absence, was a quorum properly constituted?

[28] Section 172 of the *BCBCA* sets the default quorum for a shareholders' meeting. It provides, in part:

> 172(1) The quorum for the transaction of business at a meeting of shareholders of a company is
>
> (a) the quorum established by the memorandum or articles, [or]
>
> (b) if no quorum is established by the memorandum or articles, 2 shareholders entitled to vote at the meeting whether present personally or by proxy, or
>
> ...
>
> (2) Unless the memorandum or articles provide otherwise, if a quorum is not present at the opening of a meeting of shareholders, the shareholders entitled to vote at the meeting who are present personally or by proxy at the meeting may adjourn the meeting to a set time and place but may not transact any other business.
>
> [Added emphasis.]

[29] In this case, a quorum is established under section 11.3 of the Articles . It provides:

> **11.3 Quorum**
>
> Subject to the special rights and restrictions attached to the shares of any class or series of shares, the quorum for the transaction of business at a meeting of shareholders is two persons who are, or who represent by proxy, shareholders who, in the aggregate, hold at least 5% of the issued shares entitled to be voted at the meeting.
>
> [Added emphasis.]

[30] The question is whether the “two persons” referred to in s. 11.3 can consist of a shareholder and a proxy holder representing the same shareholder.

[31] As a starting point, it is correct, as Alna argues, that article 11.3 does not prescribe a specific number of shareholders that must be represented at a meeting. However, on its face, it does expressly contemplate that the two persons required for a quorum are “shareholders”, that is, plural, whether represented by proxy or in person. In my view, the express reference to “shareholders” in article 11.3 is significant. More than one shareholder must be present.

[32] Despite the Article's clear language, Alna sets out several bases on which it says the express reference to shareholders (plural) is not determinative. In my view, none are compelling.

Application of the Interpretation Act

[33] Section 28(3) of the *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 28(3) provides:

> In an enactment words in the singular include the plural, and words in the plural include the singular.

[34] On the basis of that provision, Alna argues that "shareholders" (plural) must be read to include "shareholder" (singular). Read that way, one shareholder is sufficient to establish a quorum as long as the one shareholder: (a) is represented by "two persons" and (b) holds at least 5% of the issued shares entitled to be voted at the meeting.

[35] I do not accept that position.

[36] First, the application of the *Interpretation Act* to the Articles is not unconditional. Article 1.2 provides:

> 1.2 The definitions in the *Business Corporations Act* and the definitions and rules of construction in the *Interpretation Act*, with the necessary changes, so far as applicable, and unless the context requires otherwise, apply to these Articles as if they were an enactment…
>
> [Added emphasis.]

[37] Article 11.3 refers to shareholders. Alna had two shareholders on March 5. There is nothing about the context that requires resort to or application of the *Interpretation Act*, with "necessary changes", or otherwise.

[38] Second, even if s. 28(3) of the *Interpretation Act* does apply, its application does not assist Alna's position. The court recently considered the same argument in *Yinge Investment (Canada) Ltd.* v. *CCM Investment Group Ltd.*, Vancouver, S234638 BCSC (unreported), upheld 2024 BCCA 285. In that case, the articles allowed the "directors" (plural) to call a shareholders meeting. One of the directors

challenged the validity of an annual general meeting that was called by only one director.

[39] The Court of Appeal summarized the argument made before the chambers judge, and his consideration of the argument, as follows:

> [11] …The petitioners argued that the plural "directors" in Art. 7.3 must be given effect, and that it had not been complied with when Mr. Lu, acting alone, had purported to call the general meeting. In response, CCM argued that the plural "directors" should be read to include the singular. This argument was based on s. 28(3) of the *Interpretation Act*, R.S.B.C. 1996, c. 238, which provides that "words in the singular include the plural, and words in the plural include the singular." (The *Interpretation Act* applies to the interpretation of CCM's Articles by operation of Art. 1.3.)
>
> [12] The chambers judge rejected CCM's argument and found that Art. 7.3 had not been complied with. In his analysis:
>
> > … I find that s. 28(3) of the *Interpretation Act* would have application in a context where there was only one director of the board: see s. 11.11 of the articles. In such a circumstance where there is only one director, then s. 7.3 could be read and would be read as permitting the one director to call a meeting of the shareholders. But in my view a proper interpretation of s. 7.3, having regard to the *Interpretation Act*, is that where there is more than one director, to call a meeting of shareholders, there must be a meeting of the directors, plural, where such a decision is made…
> >
> > [Emphasis in original.]

[40] That aspect of the Chambers Judge's reasons was not appealed.

[41] In my view, that reasoning applies in this case. If the circumstances were that Alna only had one shareholder, the reference to "shareholders" (plural) would not make sense, and resort could be made to the *Interpretation Act* to give meaning to the article. However, in the current context, in which there are two shareholders, there is no need to look beyond the express language of the article. No resort to the *Interpretation Act* is necessary.

Application of Articles 12.7, 12.9, and 11.5

[42] Alna also argues that the quorum requirements are informed by articles 12.7 and 12.9, which address proxies generally, and article 11.5, which addresses voting and quorum in certain circumstances. None assist Alna's position.

[43] Article 12.7 permits a shareholder to appoint one or more (but not more than five) proxy holders, to attend and act at a meeting. Alna argues that the "most obvious reason" for allowing up to five proxyholders is to address quorum. In my view, there is no basis, on the face of the Articles, by application of law, logic, or otherwise, to support that bald assertion. In fact, because a quorum only requires the presence of "two persons", the ability to appoint up to five proxies serves no intelligible purpose that can be linked to the quorum requirements. I do not accept that it is.

[44] Alna's reliance on article 12.9(c) is also misconceived. That article provides:

> **12.9 When Proxyholder Need Not Be Shareholder**
>
> …a person who is not a shareholder may be appointed as proxyholder if:
>
> …
>
> (c) the shareholders present in person or by proxy at and entitled to vote at the meeting for which the proxy holder is to be appointed, by a resolution on which the proxy holder is not entitled to vote but in respect of which the proxy holder is to be counted in the quorum, permit the proxy holder to attend and vote at the meeting.
>
> [Added emphasis.]

[45] Under that article, a proposed proxyholder is included in the quorum to allow a vote for their appointment as a proxyholder to proceed. Without that allowance, it would be impossible for a proxyholder to be appointed where the shareholder to be represented cannot attend the meeting (i.e., the very situation for which a proxyholder is required). Under article 12.9, once appointed a proxyholder is expressly permitted to "attend and vote at the meeting". Nothing in article 12.9 extends the inclusion of the proxyholder in the quorum beyond the vote on the resolution to appoint the proxyholder.

[46] In my view, article 12.9 does nothing to inform the meaning of quorum in article 11.3.

[47] Finally, pursuant to article 11.5, certain persons who are not shareholders are entitled to attend a shareholders' meeting, however:

> …that person is not entitled to be counted in the quorum and is not entitled to vote at the meeting unless that person is a shareholder or proxy holder entitled to vote at the meeting.
>
> [Added emphasis.]

[48] I accept, as Alna argues, that article contemplates that a proxyholder is entitled to be counted in the quorum. That much is clear from the wording of article 11.3 itself. However, nothing in article 11.5 obviates the requirement in article 11.3 that the two persons (be it shareholder or proxyholder) constituting a quorum must represent "shareholders" (plural).

[49] Article 11.5 does not assist Alna's position.

Case law and secondary sources

[50] Alna refers to the Canadian textbook *Nathan & Goldfarb's Company Meetings* which provides under the heading "Counting proxyholders in quorum":

> … A proxyholder who is not a shareholder or a member is counted as a shareholder or member present.
>
> Comment: If there is a concern about lack of quorum, the better practice is for a shareholder to "split" the shares among several individuals – i.e.. give a proxy for some of his or her shares to a second person... [4]

[51] While the editors of that publication assert that the above "appears to be accepted practice in Canada", they do not distinguish among Canadian jurisdictions. There is a difference.

[52] Unlike the *BCBCA* quorum provisions, which requires the presence of two shareholders, quorum under the federal[5] and Ontario[6] *Business Corporations Acts* is established if the holders of the majority of the shares entitled to vote are present, in person or by proxy, irrespective of the number of persons actually present at the meeting. That difference in the approach to quorum means that decisions emanating

[4] Nathan, H. and Goldfarb, C., Nathan & Goldfarb's Company Meetings For Share Capital and Non-*share Capital Corporation, Twelfth Edition (Toronto, ON: LexisNexis Canada Inc., 2020),* p. 104-106
[5]*Canada Business Corporations Act*, R.S.C., 1985, c. C-44, s. 139(1)
[6]*Business Corporations* Act, R.S.O. 1990, c. B.16, s. 101(1)

from jurisdictions other than British Columbia (to the extent there are any) are not likely to be instructive of the quorum issue in this case.

[53] That difference also means that, without clarification regarding the specific jurisdiction in which it is the "accepted practice" to "split" shares, it is difficult to conclude that practice applies in British Columbia. In any event, with no specific consideration of article 11.3, the "general practice" is of no assistance in this case.

[54] The same can be said of the case law referred to by Alna and Ms. Li.

[55] Alna relies on the decision in *Ashburton Oil Ltd.* v. *Sharp*, 11 BLR (2d) 76 [*Ashburton Oil*]. In that case, a single shareholder attended a meeting, holding both his own shares and proxies for other shareholders. While the article on quorum was not excerpted in the decision, the Court noted that, similar to article 11.3, it required that:

> …there be at least two people present at the meeting. They may members of the company or proxy holders representing members.

[56] Accordingly, the presence of one person at the meeting, although holding proxies for other shareholders, was insufficient to constitute a quorum. Nonetheless, the Court went on to validate the meeting under what is now s. 229 of the *BCBCA*, noting:

> Of importance to my decision is the fact that [the single shareholder] could have given a proxy for his own shares to the solicitor who attended the meeting as secretary and, upon the call for a poll, both could have voted the proxies they had and the quorum requirement would have been satisfied.

[57] It is significant that after giving a proxy for his shares to the company secretary, the shareholder retained the proxies for <u>other</u> shareholders. In other words, the two people voting, both by proxy, represented "members" (plural). In this case, the two people who voted at the March 5 Meeting represented only one shareholder. The result in *Ashburton Oil* has no application to the circumstances of this case.

[58] Ms. Li relies on the decision in *Moco Management Ltd. v. Llernam Holdings Ltd.*, [1985] B.C.J. No. 2864 (S.C.) [*Moco Management*]. While the circumstances of that case also have some similarities to this case, it too, is of limited assistance.

[59] In *Moco Management*, the relevant portion of the article regarding quorum was almost identical to article 11.3. It provided:

> …a quorum shall be two persons present and being, or representing by proxy, members holding not less than one-twentieth of the shares which may be voted at the meeting. [Added emphasis.]

[60] The articles also provided that, with limited exceptions, no business was to be transacted at any general meeting unless a quorum was present "at the commencement of the meeting, but the quorum need not be present throughout the meeting".

[61] As the determinative conclusion in that case, the court found that business could be conducted if a quorum was present at the commencement of the meeting, and the subsequent departure of a shareholder did not render the meeting inquorate. However, in *obiter dictum*, it went on to consider, and reject, an alternative argument that a quorum could have been maintained by the presence of two persons, although both were proxies for the same shareholder. It stated that "two persons, both representing by proxy only one member" could not establish quorum: *Moco Management* at para. 18.

[62] While that decision assists Ms. Li's position, it is not determinative. It appears the conclusion was based, in part, on the court's reading that the relevant article established a quorum as two members. In fact, like article 11.3 in this case, the article did not specify the specific number of members required to constitute a quorum. With no information as to how the court concluded that two members were required, and given that conclusion made in *obiter*, in my view, that decision is of limited assistance.

Conclusion on quorum

[63] Ultimately, the issue regarding the quorum requirements can be determined by reference to the express language of article 11.3 itself: quorum is two persons who are or who represent “shareholders” (plural). In the circumstances of this case, in which there were (and continue to be) two shareholders when the March 5 Meeting was held, there is no need to go beyond that express language. Those “shareholders” (plural) must be present, either in person or by proxy, to establish quorum.

[64] As Ms. Li was not present at the March 5 Meeting, a quorum was not established. It follows that:

a) The resolution to elect Mr. Lott as Alna’s director is invalid; and

b) The resolutions passed the subsequent directors’ meeting, with Mr. Lott voting as director, are also invalid.

B. Should the resolutions passed at the March 5 Meeting be nonetheless validated?

[65] Section 229 of the *BCBCA* allows the Court to correct the “consequences in law” of a “corporate mistake”. That section provides, in part:

> **Remedying corporate mistakes**
>
> **229** (1) In this section, “**corporate mistake**” means an omission, defect, error or irregularity that has occurred in the conduct of the business or affairs of a company as a result of which
>
> …
>
> (b) there has been default in compliance with the memorandum, notice of articles or articles of the company,
> (c) proceedings at or in connection with any of the following have been rendered ineffective:
>
> (i) a meeting of shareholders;
>
> (ii) a meeting of the directors or of a committee of directors;
>
> (iii) any assembly purporting to be a meeting referred to in subparagraph (i) or (ii), or
>
> …
>
> (2) Despite any other provision of this Act, the court, either on its own motion or on the application of any interested person, may make an order to correct

> or cause to be corrected, to negative or to modify or cause to be modified the consequences in law of a corporate mistake or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the corporate mistake, and may give ancillary or consequential directions it considers necessary.
>
> (3) The court must, before making an order under this section, consider the effect that the order might have on the company and on its directors, officers, creditors and shareholders and on the beneficial owners of its shares.
>
> …

[66] "Corporate mistakes" under s. 229 are not limited to "technical" omissions or errors, but also those having significant consequences to the participants: *Phaneuf* v. *0896459 B.C. Ltd.*, 2022 BCSC 1706 [*Phaneuf*] at para. 43, citing *United States Gold Corp.* v. *Atlanta Gold Corp.*, (1989) 43 B.C.L.R. (2d) 71 at 76, [1989] B.C.J. No. 2237 (C.A.).

[67] Ms. Li argues that both Alna's failure to establish quorum at the March 5 Meeting and the inadequate corporate authority under which Mr. Lott instructed counsel to commence this petition render these proceedings a nullity, and not a "corporate mistake". She argues s. 229 provides no jurisdiction to correct a nullity. For the reasons that follow, I do not have to decide that point. For the purpose of this application, I will assume, without deciding, that s. 229 applies.

[68] Alna's argument regarding the application of s. 229 is straight-forward: given Mr. Frost's support, an order validating the March 5 Meeting would serve to facilitate the will of the majority. That outcome, it says, is consistent with longstanding jurisprudence. Although qualified, in *McDougall* v. *Gardiner* (1875) 1 Ch.D. 13 (E.W.C.A.) Lord Justice Mellish queried:

> In my opinion, if the thing is a thing which in substance the majority of the company are entitled to do.. what is the use of having litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority get their wishes? Is it not better that in the case of a thing of which the majority are the masters, the rule should be that the majority in substance shall be entitled to have their will followed?...

[69] In this case, the majority has expressed its will regarding Mr. Lott's election as director. Moreover, Alna argues that by choosing not to attend the March 5 Meeting,

Ms. Li, the minority shareholder, has used what it refers to as her “negative control tactics” to effectively prevent it from conducting its business.

[70] At first blush, there is appeal to the argument that those circumstances favour validation of the March 5 Meeting.

[71] However, the interest of the majority, or even the company, is not the only interest to be considered on an application under s. 229. Rather, I must also consider the effect that an order validating the March 5 Meeting might have on other interested parties, including its other shareholders: *BCBCA,* s. 229(3); *Phaneuf* at para. 36. Nothing in the *BCBCA* limits that consideration to majority shareholders.

[72] Indeed, long before the enactment of the *BCBCA*, Lord Justice Mellish articulated an important qualification to the general rule regarding the will of the majority:

> …Of course, if the majority are abusing their powers, and are depriving the minority of their rights, that is an entirely different thing, and there the minority are entitled to come before this court to maintain their rights; but if what is complained of is simply that something which the majority are entitled to do has been done or undone irregularly, then I think it is quite right that nobody should have that set aside…
>
> [Added emphasis].

[73] In this case, Ms. Li has made such an allegation. In the Oppression Action, she specifically includes as particulars of the alleged oppressive conduct: the manner in which Mr. Lott was elected as a director, her allegation that the election was conducted to advance Mr. Frost’s positions and interests, and her allegation that she has been excluded from effective management and participation in the governance and management of Alna. All of those allegations relate, directly or indirectly, to the resolution passed at the March 5 Meeting to elect Mr. Lott as director, Mr. Frost’s subsequent election as president and CEO, and Mr. Lott’s appointment to the special committee.

[74] Of course, none of the allegations made in the Oppression Action have been tested or proven, nor does the conclusion regarding the validity of resolutions

purportedly passed at the March 5 Meeting have any bearing on the merits of that action. On the other hand, on the evidence before me, I am also not able to conclude that there is no merit to the allegations made in the Oppression Action.

[75] I am satisfied that the overlap of the allegations in the Oppression Action with the issue of the validity of the March 5 Meeting makes it inappropriate to remedy the failure to comply with the article 11.3 quorum requirements by validating the resolutions. Important related considerations support that finding.

[76] Section 10 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*] provides:

> **Avoidance of multiplicity of proceedings**
>
> **10** In the exercise of its jurisdiction in a cause or matter before it, the court must grant, either absolutely or on reasonable conditions that to it seem just, all remedies that any of the parties may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters may be avoided.
>
> [Emphasis added.]

[77] Moreover, policy grounds underlying the doctrine of abuse of process include "…[upholding] the integrity of the legal system in order to avoid inconsistent results, and [protecting] the principle of finality so crucial to the proper administration of justice": *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 37–38.

[78] In my view, both s. 10 of the *LEA* and those policy considerations militate against granting an order to validate the March 5 Meeting under s. 229.

[79] As noted, with no examination on its merits, I am unable to discount the possibility that Ms. Li may succeed in the Oppression Action, either generally or on basis of the alleged claims relating to the March 5 Meeting and Mr. Lott's election as director. A finding in her favour on the latter basis will be inconsistent with an order in this proceeding validating the results of the March 5 Meeting that effectively endorses Mr. Lott's election and the events that followed. In my view, as those

claims will be tested with the fullness of evidence in the Oppression Action, it would not serve the interests of justice to validate those results now.

[80] In reaching that conclusion, I have considered that declining to validate the March 5 Meeting vote leaves Alna with uncertainty regarding control of its board and its ability to conduct its business. However, I am satisfied that the appointment of the Monitor has served to ameliorate that situation such that Alna is not precluded from conducting its day-to-day business. Without limiting the recourse available to the parties, further adjustments that may be required to address issues other than day-to-day business can be addressed in that context.

[81] On the basis of the foregoing, I decline to exercise the discretionary authority conferred by s. 229(3) to validate the resolutions that were invalidly passed at the March 5 Meeting.

C. Should the Court order a meeting of the shareholders?

[82] Section 186(1) and (2) of the *BCBCA* allows the Court to order a meeting of shareholders be called, held, and conducted in a manner it considers appropriate if it is "impracticable" for the company to do so or if it fails to do so. Section 186(3) provides that in ordering the meeting, the court may order that the quorum or notice required by the articles or the *BCBCA* be varied or dispensed with.

[83] To resolve the impasse of its shareholders, Alna seeks an order under s. 186 and proposes, among other things, that the quorum for the meeting be limited to one person, not two. Mr. Frost supports that form of order. Ms. Li does not. While she appears to agree that an independent director should be elected, she does not suggest the manner by which that would happen.

[84] Given the quorum requirements, I accept that it is "impracticable" for Alna to conduct a shareholders' meeting. However, I see little, if any, difference between ordering a shareholders' meeting which requires only one shareholder for a quorum (as Alna proposes) and validating the resolutions passed at March 5 Meeting at which only one shareholder was represented (which I declined to do).

[85] For the same reasons that I declined to validate the resolutions passed at the March 5 Meeting under s. 229, I also decline to order a meeting of the shareholdings on the basis that Alna suggests.

[86] With no other proposal for the calling, holding, or conduct of a shareholders' meeting, I decline to make any order under s. 186.

D. Should the relief sought in Ms. Li's application be granted?

[87] In oral submissions, Ms. Li conceded that if the March 5 Meeting resolutions were found to be invalid, neither her application to disqualify counsel nor for production of documents needed to be resolved.

[88] Accordingly, I make no determinations in respect of either of those matters, which shall be adjourned generally.

V. Conclusion

[89] To summarize, I have concluded that a quorum was not established at the March 5 Meeting. Accordingly:

a) The resolution to elect Mr. Lott as Alna's director is invalid; and

b) The resolutions passed at the subsequent directors' meeting, with Mr. Lott voting as director, are also invalid.

VI. Costs

[90] If any of the parties wish to make submissions on costs, they may do so as follows:

a) The party wishing to make submissions may do so by filing and serving written submissions, not exceeding three pages, within 30 days of these reasons;

b) The responding party(ies) will have two weeks after receipt of the costs submissions to file a written response, also not to exceed three pages; and

c) Further written reply, not to exceed 2 pages, must be filed within a further two weeks.

[91] If more than one party intends to initiate a costs application, I encourage the parties to make appropriate adjustments to the above schedule to minimize the number of costs submissions filed.

[92] If no costs submissions are filed within 30 days, costs of the respective applications are awarded as follows:

a) to Ms. Li against Alna in respect of the petition;

b) to Ms. Li against Mr. Frost in respect of Mr. Frost's application filed on April 18, 2024, and

c) no costs are payable to any of the parties in respect of either application filed by Ms. Li.

"Ahmad J."