

Court of King's Bench of Alberta

Citation: HTE Investments Ltd v Rutledge, 2025 ABKB 256

Date: 20250425
Docket: 2401 14454
Registry: Calgary

Between:

HTE Investments Ltd. And Howard Gordon Rutledge

Plaintiffs/Respondents/
Cross-Applicants

- and -

Lynn Dianne Rutledge also known as Lynn Freeman

Defendant/Applicant/
Cross-Respondent

**Endorsement
of the
Honourable Justice Michael J. Lema**

I. Introduction

[1] Did a majority shareholder and director of an *ABCA* corporation give the minority shareholder (also a director) an effective veto over corporate changes including the removal of the latter as director?

[2] The minority shareholder points to a shareholders' resolution so providing.

[3] The majority shareholder disputes the authenticity of the resolution.

[4] I find that the resolution is not authentic and is thus not an obstacle to the majority shareholder voting to oust the other as director.

II. Background

[5] The parties agree that, circa summer 2015, Mr. Rutledge was the sole shareholder and director of HTE Investments Ltd and that, at some point that year, Ms. Freeman became a 49 per cent shareholder and director, although they disagree about when on both counts.

[6] Ms. Freeman relies on (asserted-by-her) minutes of a shareholders' meeting on August 22, 2015 and an associated resolution as the source of her veto. After a lengthy preamble, the resolution states:

Be it resolved that:

[HTE] and its Board of Directors [per Ms. Freeman, then consisting of Mr. Rutledge and herself] shall not have the authority to cause [HTE] to do any of the following **without the approval of the Board of Directors by a Super Majority Vote of 75%**:

- Changes to Corporate Structure – including, but not limited to:
 - **Addition or Removal of Director(s)**
 - Addition or Removal of Officer(s)
 - Sale or transfer of shares to another party
 - Amendments to Articles of Incorporation (currently incorporated)
 - Sale, transfer or dissolution of the business
 - Altering/changing the name of the business “Howie’s Pizza”
- Changes to corporate bank account(s)
- Changes to lease agreements
- Bankruptcy filing
- Entering into financially material negotiations on behalf of [HTE]
- Acceptance of any offer to purchase assets of the business [and]
- Disclosure of financial and material operating information to individuals/businesses who are not affiliated with [HTE].

[asserted signature of Mr. Rutledge]

[signature of Ms. Freeman]

[emphasis added]

[7] In April 2024, following the breakdown of their personal relationship and later their business relationship, Mr. Rutledge called a shareholders' meeting for May 8, 2024, at which the sole order of business (per him) was removal of Ms. Freeman as a director.

[8] Relying on his majority shareholder position (per him, unencumbered by any veto in favour of Ms. Freeman), Mr. Rutledge voted his shares in favour of, and accomplished, the removal of Ms. Freeman as a director.

[9] Per Ms. Freeman, the above-referenced resolution prevented any removal to which she objected (and she did object), leaving her as a director.

[10] The issue came before me as part of a larger bundle of issues arising from the breakup of the parties' business relationship.

[11] I decided that the question of Ms. Freeman's continued status as a director (or not) needed to be decided before many, if not all, of the other issues could be decided.

[12] Accordingly, I adjourned the balance of the application and directed a stand-alone *viva voce* hearing on the authenticity of the asserted veto agreement.

[13] The parties prepared supplementary affidavits and briefs on that issue.

[14] On March 8, 2025, each party gave direct evidence (anchored largely on their supplementary affidavits) and was cross-examined on that evidence, all focused on the authenticity issue.

[15] I reserved my decision, committing to deliver a decision by March 31.

[16] On April 1st, having completed my review of the materials and arrived at the answer (veto agreement not proved authentic on a balance of probabilities), I advised the parties of the conclusion via letter, advising that I would provide written reasons later, hence these reasons.

III. Analysis

A. Onus of proof on document authenticity

[17] Ms. Freeman relies on the veto agreement. She carries at least a *prima facie* onus of proving that the agreement is genuine.

[18] She swore in her affidavits and testified at the hearing that the agreement was made between her and Mr. Rutledge on August 22, 2015 and that both signed the written agreement that day, reflecting their agreement to the outlined terms.

[19] She thereby provided at least *prima facie* proof of a genuine agreement.

[20] As indicated, Mr. Rutledge denies making the asserted agreement and that the signature purported to be his is in fact his signature.

[21] Some cases hold that the onus to prove an asserted forgery (which is effectively what Mr. Rutledge asserts here) falls on the person so asserting i.e. Mr. Rutledge here.

[22] In *Batt v. Hilscher*, 1994 CanLII 9240 (AB KB), Ritter J. (as he then was) wrote:

... on the basis of the evidence before me it is impossible to determine that the signature of Hans Hilscher on the commission agreement was or was not a forgery. In this aspect of this litigation **the onus is on the Defendants [i.e. those asserting forgery] to establish the signature to be a forgery on a balance of probabilities.** They are unable to do so and I therefore do not consider the

allegation of forgery to be an element of the cause to be established by the Defendants.

[23] See also *Twin Spruce Whyte Holdings Ltd v Murray*, 2014 ABQB 510 (Marceau J.) at para 76:

The evidence of Mr. Suraj Verma and Mr. Grewal about the forgeries of their names on documents required to obtain the loan from Terrapin is difficult to believe. First, the alleged forgeries were initially characterized as legitimate documents in the Answers to Undertakings.

Second, no effort seems to have been made, especially in the case of Mr. Grewal, to engage the services of an expert handwriting and document examiner to prove the forgery. Rather, **it was left to the Defendants [i.e. the parties asserting genuine documents] to disprove the allegation of forged signatures. This is a reversal of the onus of proof.** [paras 75 and 76] [emphasis added]

[24] And *Estate of Christina Georgiou Psoma*, 2025 ONSC 1476 (Leach J.):

In approaching the objectors' allegation that Christina's ostensible signature on the roofing agreement is not genuine, and essentially a forgery put forward in an effort to perpetrate a fraud, I have been mindful of **applicable principles governing burden of proof and standard of proof in relation to such matters.** In that regard:

1. In a civil case, it is well established that, **although the onus of proving the genuineness of a document generally is cast upon the party who produces and relies upon it, the onus lies on a party asserting forgery to prove it where a direct issue of forgery is raised.**

[footnote omitted] [subpara 25(f)(iii)] [emphasis added]

[25] To the same effect, see also *Hardayal v. Asrula*, 2018 ONSC 6948 (Price J.) at para 234; *Ouslis v Ouslis*, 2016 ONSC 6572 (Vallee J.) at para 72; *Vision West Development Ltd. v. McIvor Properties Ltd.*, 2013 BCSC 171 (Pearlman J.) at para 119; and *Coast Building Supplies v Mand*, 2001 BCPC 325 (Yee J.) at paras 25 and 26.

[26] Some cases place the onus in a "possible forgery" case on the party asserting a genuine document. See, for instance, *Somerville National Leasing and Rentals Ltd. v. Vassileva*, 2019 ONSC 2693 (Faieta J.):

The following legal principles apply in determining whether the defendant signed the Lease:

... [T]here is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.": *C. (R.) v. McDougall*, 2008 SCC 53, para. 40. Thus, **where it is alleged that the defendant's signature on an instrument has been forged, the plaintiff must**

prove on the balance of probabilities that the defendant signed the instrument[.] [para 11] [emphasis added]

[27] See also *Equirex Vehicle Leasing (2004) Inc. v Ingoglia*, 2015 ONSC 1011 (Dow J.):

The Court was referred to **cases where the defence was that the signature was a forgery and that the onus is on the party seeking to rely on the document to establish the signature is that of the other party.** It is open to either party to call expert evidence on whether the signature is authentic or a forgery: see *Bank of Montreal v. Karimian*, 2003 CanLII 40827 (ON SC), 2003 CanLII 40827 (Ont. S.C.) at para. 62 and *National Bank of Greece (Canada) v. Efstatheu*, 2005 CanLII 44407 (Ont. S.C.) at para. 21. [para 18] [emphasis added]

[28] It may be that, as discussed in *Clifford and Lane v Royal Bank of Canada* (1976) 15 NBR (2d) 473 (Stevenson J.), both sides carry at least a practical onus i.e. with each able to provide evidence pointing to authenticity (or not) and the issue being decided on the entirety of the evidence:

... the plaintiffs alleged forgery in their statement of claim and led evidence from Mrs. Clifford and two experts in an attempt to prove the signatures were forgeries. In these circumstances the plaintiffs clearly assumed the burden of proving the fact of forgery. This does not affect the result however as **the case was fully presented on both sides and falls to be determined on the whole of the evidence adduced** with one qualification - the Court may make its own comparison of the disputed signatures with the genuine specimens in evidence and reach its own conclusion. [para 20] [emphasis added]

[29] As I see it, where the authenticity of a document is challenged, the party wishing to rely on the document has the core onus of proving authenticity. It may be that the apparent regularity of the document will suffice i.e. if the party alleging inauthenticity provides no material supporting evidence. In other words, it is not enough for the challenger to simply call “inauthentic” i.e. the challenger has a practical onus to provide evidence pointing to inauthenticity.

[30] If the challenger provides at least some material “inauthenticity” evidence, the document’s authenticity is put in play, with each side able to provide evidence in support of its position and to challenge the other’s, with the court then deciding “authentic or not.”

[31] Whether the onus of proof should be framed as the document booster having the onus to prove authenticity or the challenger to prove inauthenticity does not really matter in the end.

[32] If on the whole of the evidence the court finds an authentic document, one could describe the booster as having discharged her or his onus to prove authenticity or, equally, the challenger has having failed to discharge his or her onus to prove inauthenticity. And vice versa.

B. Ways of proving authenticity of document

[33] The next issue is how the authenticity of a private (i.e. not “public”) document, like the veto agreement here, can be proved.

[34] Here I return to *Somerville National Leasing and Rentals Ltd* (cited above), where Faieta J. held as follows:

A signature on an unattested document may be proved by:

- The writer;
- A witness who saw the document being signed;
- An admission of the party against whom the document is tendered;
- A witness who has a general knowledge of the writing of the person whose signature or handwriting is sought to be proved;
- A comparison of the disputed document with other documents proved to the satisfaction of the judge to be genuine: *R. v. Abdi*, 1997 CanLII 4448 (ON CA), [1997] O.J. No. 2651 (C.A.), paras. 22-25; *Batt v. Hilscher*, (1994), 1994 CanLII 9240 (AB KB), 19 Alta. L.R. (3d) 144, paras. 19-20;
- Expert evidence pursuant to section 57 of the *Evidence Act*, R.S.O. 1990, chap. E.23, s. 57;
- Judicial notice of official signatures; and
- Where a purported signature is deemed by statute to be the actual signature.

See Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, Fourth Edition, LexisNexis Canada Inc., 2014, para. 18.114.

[35] In this case, Mr. Rutledge arranged for a handwriting expert to compare his purported signature on the veto agreement with a sampling of approximately 45 acknowledged signatures and to prepare an expert report on that point, which was done and which was submitted in evidence at the oral hearing.

C. Signature on veto agreement not authentic per handwriting expert

[36] The expert concluded that the asserted signature of Mr. Rutledge on the asserted veto agreement is “highly probably” not his, for the extensive reasons outlined in the expert’s report.

[37] Ms. Freeman raised various objections to the expert’s report.

[38] She argued that she was deprived of a chance to cross-examine the expert and to arrange for her own expert report.

[39] Ms. Freeman had opportunities to cross-examine the expert, even if limited. She did not do so, ask to do so, or request an adjournment to explore the possibility of doing so.

[40] She also had ample opportunity, from May 22, 2024 (if not earlier), when Mr. Rutledge advised (effectively) of his “veto-agreement-not-authentic” position, to obtain her own expert report on the authenticity of Mr. Rutledge’s signature on the asserted veto agreement. She did exercise that opportunity.

[41] She did attempt to introduce rebuttal-evidence indirectly, quoting a third-party handwriting authority in her supplementary affidavit, follow-up brief, and oral argument, which was entirely hearsay and without clearing any of the hurdles for the use of expert evidence.

[42] She assailed Mr. Rutledge's expert for lack of experience and conducting a superficial review, based on the time apparently taken (two or three business days of analysis) versus what she argued, without any admissible evidence, was a "reasonable" period (five or six business days).

[43] On that point, she assumed, without any evidence or basis for inference, that the expert would only have worked "standard hours" and only on weekdays i.e. that the expert did not work extended hours or on the weekend.

[44] In any case, she did not provide any admissible evidence to show that a certain minimum number of hours of work was necessary to complete the handwriting analysis.

[45] She also argued that, with the expert working only with a copy of the asserted veto agreement, and with original signatures being better, the expert's report was fundamentally flawed.

[46] I digress here briefly on the whereabouts of HTE's minute book, in which (per Ms. Freeman) the original veto agreement would be found.

[47] Ms. Freeman acknowledged having care of the minute book through to some months ago, when (per her) she delivered it, along with various other corporate materials ("12 full boxes"), to HTE's premises.

[48] As I understand it, Mr. Rutledge was not there at the time. He later arranged for the boxes to be moved to his new residence (i.e. different from the home he had shared previously with Ms. Freeman), where (per him) he searched in vain through the boxes, many times, for the minute book.

[49] Ms. Freeman provided no corroborating evidence that the minute book was included in those materials. She provided a photo of the boxes but nothing reflecting the contents of any of them.

[50] Given the centrality to Ms. Freeman's position of the veto agreement, I find it implausible that she would deliver the minute book (including, per her, that agreement) without any means of proving that she had actually delivered it e.g. via counsel (when she had counsel), process server, video-recorded delivery of the minute book, or otherwise.

[51] On this aspect, Ms. Freeman did not prove on a balance of probabilities that she delivered the minute book to Mr. Rutledge or, if she did, that it contained the asserted veto agreement.

[52] Returning to her expert-report comments, this (failure to prove that Mr. Rutledge received the minute book and in turn the asserted agreement) undercuts her "copies only" argument. The expert worked with what Mr. Rutledge was reasonably able to provide i.e. a copy of the asserted veto agreement provided to Mr. Rutledge by Ms. Freeman.

[53] In any case, Ms. Freeman did not explain how the absence of an original materially undercut the expert's conclusions here, which was anchored on the letter-shape differences between the contested signature, on the one hand, and central similarities in the host of acknowledged-by-Mr.-Rutledge-as-authentic signatures, on the other.

[54] Those differences are easily discernible regardless of any finer-grained differences that may have been discoverable with an original. For instance, looking at the obvious differences between the shape of the first name's middle letters in the contested signature (distinctly raised)

and in the “anchor set” (virtually flat), I cannot see what difference having an original would make.

[55] The same goes for the other noted-by-expert letter-shape differences between the purported signature and the sample set.

[56] Ms. Freeman also argued that the sample signatures, or some of them, were blurry (owing to apparent single or multiple photocopying). That appears to be the case, but not to any material extent, leaving the expert’s letter-forming comments intact and accurate.

[57] The expert’s report was exceptionally thorough and did reflect any obvious or apparent shortcomings owing to inexperience or otherwise.

[58] Ms. Freeman argued that, with the expert not providing a certainty-level (“Identification”) opinion, “it is possible that the signature on the August 22, 2015 resolution is Mr. Rutledge’s signature.”

[59] The mere possibility of authenticity is insufficient i.e. for Ms. Freeman.

[60] Ms. Freeman also questioned the expert’s training and experience, but provided no evidence, or at least no admissible evidence (i.e. setting aside hearsay observations of the third party quoted by Ms. Freeman), to cast any material shadow on her training.

[61] As for experience, even if the expert is a relative newcomer to the field of handwriting analysis, it is the quality of her analysis that matters. Every expert has to start somewhere.

[62] In any case, I see no reason to question the expert’s comprehensive, logical, and clearly explained analysis and conclusion, namely, it is highly probable that the purported signature of Mr. Rutledge on the veto agreement is not authentic.

[63] In the end, I accept and adopt the arguments made by Mr. Rutledge in paras 11-20 of his authentication-focused submissions as to the nature of the expert’s expertise (including attribution of handwriting), that subject being an appropriate subject matter for expert assistance to the Court, the sufficiency of the expert’s credentials and experience, her adherence to the requirements of Part 5 (Division 2) of the *Alberta Rules of Court* (“Experts and Expert Reports”), and the clearance of all other hurdles imposed by the law concerning the qualification of experts and acceptance of their reports to assist the Court.

[64] I accept as accurate the expert’s conclusion that it is highly probable that the signature purported to be that of Mr. Rutledge on the asserted veto agreement is not his signature.

D. Court assessment of signature

[65] In any case, I am entitled to draw my own conclusion on the authenticity of the purported signature. Per *Batt v Hischier* (cited above):

The handwriting or signature of a party to a document may be proved in a number of ways. If the party who allegedly signed the document admits his signature then that is proof enough. The signature may be proved by a witness who saw the party sign. A witness who has general knowledge of the handwriting or signature of the party signing may provide testimony: *Thompson v. Bennett* (1872), 22 U.C.C.P. 393 (Ont. C.A.); *Foulds v. Bowler* (1908), 8 W.L.R. 189 (Man. K.B.). The handwriting may be established by expert testimony: *Alberta Evidence Act*, R.S.A. 1980, c. A-21, s. 59. **The comparison of the disputed document to**

handwriting acknowledged by the alleged author can be carried out by the judge or a jury, *R. v. Dixon* (1897), 3 C.C.C. 220 (N.S.C.A.).

Two documents were tendered in evidence with signatures that were acknowledged by Hans Hilscher to be his. I have compared the signatures on these documents with that on the disputed document. There are similarities in the signatures but also differences that are apparent to a non-expert. Finally, differences exist between the signatures that Hans Hilscher acknowledges as his own. I am simply unable to confirm the disputed signature as being the same as either of the signatures that are acknowledged.

The burden of proof is upon the Plaintiff to prove the existence of the commission agreement beyond a balance of probabilities. He is unable to meet that burden so far as the commission claim is concerned and that claim is dismissed with respect to the corporate Defendant [paras 19-21] [emphasis added]

[66] Ritter J.'s decision was followed in *HSBC Bank Canada v GDC Holdings Ltd*, 2022 ABQB 373 (AJ Mattis):

In *Batt*, the Court reviewed the signature evidence, and I conclude it is open to me to do so in this case. I have reviewed the signatures on the LOC Agreement and the Signature Card. While there are differences between the signatures, as pointed out by GDC in Questioning of Mr. Bailey, they appear to me to be minor. Indeed, it would be more troubling if the signatures were identical in every way, as that may suggest that a signature was copied and applied to the document. I am satisfied on a balance of probabilities in comparing the signature on the LOC Agreement with the one on the Signature Card, and given the other evidence I have outlined, that Mr. Bedi signed the LOC Agreement on behalf of GDC. [para 67]

[67] See also *Estate of Christina Georgiou Psoma*, 2025 ONSC 1476 (Leach J.):

It is now settled law that a trier of fact may compare disputed handwriting absence of witness testimony as to the genuineness or otherwise of the disputed writing, and draw its own inferences in that regard. [footnote 34]

Here is footnote 34:

See *R. v. Abdi*, 1997 CanLII 4448 (ON CA), [1997] O.J. No. 2651 (C.A.), at paragraphs 13-25, and at paragraph 16 in particular. In that regard, [the Ontario] Court of Appeal specifically rejected the suggestion that section 8 of the *Canada Evidence Act*, R.S.C. 1985, c.C-5, required that evidence with respect to the comparison of handwriting be given by experts or witnesses with particular knowledge of the writings of a particular individual. It instead held that **the common law rule permitting a trier to compare disputed handwriting with admitted or proved handwriting in documents properly in evidence, and to draw inferences on its own as to the genuineness or otherwise of disputed writing, even in the absence of witness testimony in that regard, had not been ousted by the legislation.** Although the Court of Appeal was

focused in that case on the possible implications of section 8 of the *Canada Evidence Act, supra*, the provisions therein are identical to those found in section 57 of the *Ontario Evidence Act, supra*. It therefore seems clear that neither section has ousted the common law rule in relation such matters.

[68] I see no reason why the same cannot be said of s 58 of the *Alberta Evidence Act*, which provides effectively the same thing:

Canada Evidence Act, s 8:

Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting those writings, may be submitted to the court and jury as proof of the genuineness or otherwise of the writing in dispute.

Evidence Act (Ontario), s 57:

Comparison of a disputed writing with a writing proved to the satisfaction of the court to be genuine shall be permitted to be made by a witness, and such writings and the evidence of witnesses respecting them may be submitted to the court or jury as evidence of the genuineness or otherwise of the writing in dispute.

Alberta Evidence Act, s 58

A witness shall be permitted to make comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine, and those writings and the evidence of witnesses respecting them may be submitted to the court or jury as evidence of the genuineness or otherwise of the writing in dispute.

[69] On the Court’s power to draw its own conclusions in this context, see also *ONR Limited Partnership v. The King*, 2024 TCC 156 (Sommerfeldt J.) at paras 164-180, *Woodhaven Cabinet Doors Inc. v. United Cabinets Ltd*, 1996 CanLII 2180 (BC SC) (Lander J.) at para 10, and *Clifford and Laine v RBC* (cited above) at para 20.

[70] I gauge that the asserted signature is materially different from the comparison signatures (even acknowledging that some of them feature minor variations), particularly in the “middle vowels” aspect, to the extent that any reasonable lay person would conclude that the asserted signature is a material outlier and, in fact, a non-authentic signature. And I so conclude on my own observation i.e. in addition to the technical analysis of the handwriting expert.

[71] Additional support for this conclusion comes from the implausibility of Mr. Rutledge abandoning his majority-shareholder voting position in the circumstances here, as discussed next.

E. Unsubstantiated need for “protection and security”

[72] The first circumstance is Ms. Freeman’s claimed need for protection of and security for her financial interests. She testified that she had recently left a high-paying position as an

executive assistant in the oil and gas industry and, while willing to help Mr. Rutledge (her then-new personal partner) in his pizza business, was not willing to work for free or invest any monies in the business i.e. without an agreement giving her a veto over major changes, including removal of her as director.

[73] For the sake of analysis, I will assume that Ms. Freeman in fact became a 49 per cent shareholder at some point before August 22, 2015 i.e. the date of the asserted veto agreement.

[74] Here is Ms. Freeman's more detailed explanation of the background circumstances:

... when we talked about [HTE in late July and early August 2015, having recently combined households], as things unfolded, Mr. Rutledge talked to me about the financial state of the corporation, and I had a number of red flags about that, because at that point it was clear to me that he had misrepresented the state of [HTE], and that it wasn't in the financial situation that he had been claiming all along.

So when he, when I found out that [HTE] was significantly in debt, that it wasn't making payroll, that it wasn't paying him during the summer, I started asking more questions about the finances of the corporation. He told me that he was \$25,000 in debt to one supplier And he said that that supplier had given [him] 30 days to pay off that debt; otherwise, they were going to have a talk about [not] supplying any more [product].

...

So as the discussions towards the end of July became more serious, I started contemplating my future and didn't want to go back to being an executive assistant. We were engaged now, ... we talked about opening up ... getting this restaurant up and running and opening, potentially opening a second location. And it became evident to me that this was a good opportunity for me to step in and do something a little bit different – especially since I wasn't working anyways.

However, when I offered to provide [HTE] with a shareholder loan from my severance, of \$25,000 to pay [the noted supplier], I sort of said that **I didn't feel like my interests were being protected**. So if I was to work for the corporation for free – which I was somewhat prepared to do because I had my severance, and because it was pretty obvious that the corporation had a negative cash flow – **I wasn't prepared to put my own money into the corporation, not to have at least an equal shareholding in it**. And Mr. Rutledge stood firm on the fact that I would never get more than 49 per cent of the corporation.

So there [were] significant issues and significant discussion and arguments about this, and eventually we came to an agreement that I would have an employment contract with the corporation. The period during which I would not be able to draw a salary was indeterminate – and I was fine with that at the time, because I thought ... if the corporation gets up and running, I'll pay myself a salary when it makes sense. **But I needed to protect my investment of \$25,000. I couldn't just give him money and let him kick me out of the corporation or do whatever. I needed to protect that investment.**

So we drew up this resolution. We discussed the terms and conditions. There [were] a bunch of things he didn't agree with that were not really pivotal to me, so they were deleted.

It's important to note in this resolution as well, not all of these terms served me. So one of the key points that Mr. Rutledge made was that regardless of whether we opened another location, or if we re-branded this one, or reincorporated under a different name, the name of the business would never be anything but Howie's Pizza. And he stood firm on that, and I thought, Well, that's fine too. So there was a stipulation in that resolution that suited his needs as well.

So that was executed, and I became obviously as an executive assistant to the board of directors, I knew about ... attending board meetings, I knew about drawing up corporate resolutions and all those things, so I drafted those things in conjunction with talking with Mr. Rutledge, but I drafted those documents because they would be the documents that would be required to make changes at the bank and to make changes at the [Corporate Registry].

So once the corporate resolution and my employment contract were signed, I felt that my interests were protected, and I became invested in turning around the corporation. My first priority was the preparation of a business plan that prioritized the repayment of the debt to [the supplier], as evidenced by my email to [supplier's representative], and Exhibit K. to my March 3rd affidavit. [emphasis added]

[75] As noted earlier, I am proceeding on the assumption that, at some point before August 22, 2015 (whether August 5, 2015 or not), Ms. Freeman became a shareholder.

[76] Mr. Rutledge argued that Ms. Freeman became a 49 per cent shareholder on December 3, 2015, per a Corporate Registry filing that date reflecting that change.

[77] However, event(s) reported in Corporate Registry filings are not necessarily contemporaneous with those filings i.e. the date of such filings, on its own, is not probative of the date of the reported event(s).

[78] With that as the only timing evidence from Mr. Rutledge and with no signature apparently required to effect or reflect the share transfer (at least per the securities register document), it is reasonable assumption that the share transfer occurred when asserted by Ms. Freeman.

[79] The real question is whether, assuming that Mr. Rutledge and Ms. Freeman were, respectively, 51 per cent and 49 per cent shareholders, Mr. Rutledge agreed to the asserted veto arrangement.

[80] Here I query Ms. Freeman's evidence of needing to "protect her investment" and "obtain security":

1. she did not testify that she actually paid \$25,000, or any amount, to the supplier in question (whether to be treated as a shareholder (or other type of) loan or as equity) or that she otherwise injected or invested any amount in HTE i.e. aside from (possibly) \$49 for the shares i.e. \$1 per share;

2. her evidence of taking steps to “make plans” to clear the debt to the supplier in question belies her implicit assertion that she paid the debt, or any part, or even planned to. I infer that no “plan” would be needed i.e. if the solution was simply for Ms. Freeman to clear the debt i.e. by outright payment;
3. as for “protecting her interest” in unpaid salary, she testified (inconsistently) that she was willing to work without being paid i.e. until HTE became profitable i.e. she would start drawing a salary then, with no reference to accumulation of salary arrears; and
4. more fundamentally, the employment agreement (if authentic) enabled her to terminate her employment on giving two weeks’ notice, without any minimum period of employment. Her real protection here was an ability to resign (with two weeks’ notice) at any point i.e. if she discerned that her salary or other interests were excessively at risk by continuing her employment.

[81] As well, Ms. Freeman did not detail the other facets of her claimed negotiations with Mr. Rutledge that she said he objected to and that she was willing to let go.

[82] Her characterization of the veto agreement as truly bilateral, on the basis that she conceded on the “name aspect”, is not plausible. The evidence showed that the business had been operating as “Howie’s Pizza” since at least 2002. Even if it had not been operating to maximum profitability in the pre-Ms.-Freeman period, she did not offer any evidence that a name change was among the new strategies contemplated by her.

[83] As well, nothing showed that any real prospect that the business would or should or even might be renamed or that any new location(s) would or should or even might feature a different name.

[84] And Ms. Freeman did not point to any other benefit(s) in Mr. Rutledge’s favour in the asserted veto agreement.

[85] I find it implausible that, with the veto agreement reflecting no actual financial commitment in HTE by Ms. Rutledge, whether clearing (in whole or in part) the supplier debt or direct investment in the corporation, and with her not committing to work on more than a “can resign on two weeks’ notice” basis, Mr. Rutledge would find it necessary or commercially sensible to abandon his majority position in the corporation i.e. give Ms. Freeman a veto over changes for effectively nothing in return.

F. Bank dealings do not support Ms. Freeman’s position

[86] Ms. Freeman pointed to a meeting that she and Mr. Rutledge had with a TD Bank official in November 2015 for her to be added as a signing authority for HTE’s accounts with TD.

[87] Here she argued that she must have been appointed as a director of HTE by that point i.e. for that to occur.

[88] Mr. Rutledge acknowledged that Ms. Rutledge became a signing authority for HTE with TD at some point. He did not acknowledge any particular status for Ms. Freeman being necessary for that to occur.

[89] I did not follow Ms. Rutledge's argument here. Even assuming Ms. Freeman became a director some time before November 2015, that (assumed) status does not illuminate whether Mr. Rutledge signed the veto agreement in August 2015, or ever.

[90] She did not argue that the veto agreement was presented to, requested by, or otherwise somehow material to, TD on signing authority for HTE.

[91] Nothing in the TD materials put into evidence by her reflects any requirement that Ms. Freeman have a majority-shareholder position, in fact or in effect (e.g. via a veto agreement such as that alleged), to become a signing authority for the corporation.

[92] For whatever difference it makes, Ms. Freeman did not show that director status was necessary to become a signing authority with TD.

[93] The TD policy she pointed to said nothing about any particular shareholder, director or officer status being required, instead only that the corporation must confirm that the new "corporate signer" indeed has signing authority for the corporation.

[94] The conferral of signing-authority status on Ms. Freeman does not illuminate or otherwise inform whether she had a veto position at the time.

G. Other findings

[95] Ms. Freeman acknowledged that she did not show the asserted veto agreement to anyone i.e. after (reportedly) she prepared it, the parties signed it, and it was added to HTE's minute book i.e. until she raised it to Mr. Rutledge in response to her ouster as director.

[96] She did not give evidence of having told anyone else about the veto agreement or, in any case, did not provide evidence from any third parties of such discussions or statements.

[97] She did not point to any instances where, even in dealings with Mr. Rutledge, the asserted veto agreement was engaged or even discussed i.e. until it surfaced in response to Mr. Rutledge's steps to oust her as a director in 2024.

[98] She did not give evidence of Mr. Rutledge having ever acknowledged the existence of the agreement in any way.

[99] She did not give evidence confirming the specific proposals and counterproposals made by the parties in the claimed negotiations leading to the apparent agreement e.g. Mr. Rutledge having proposed the veto agreement or concept or something akin, or him responding in some fashion to her submissions in that vein.

IV. Conclusion

[100] Ms. Freeman did not prove any plausible commercial rationale for the asserted veto agreement. I reject her position that, even with Mr. Rutledge wanting to give her a material stake in his business as they merged their personal and business lives, he abandoned his majority position in exchange for effectively no consideration.

[101] That conclusion is buttressed by the expert report, and my own observations, that the signature on the asserted agreement is not authentic.

[102] As well as by the unhelpfulness of Ms. Freeman's banking-related arguments, which add no material weight to her position.

[103] And by the absence of any other corroborating evidence.

[104] All to say: Ms. Freeman did not prove the authenticity of the veto agreement

[105] Viewed from the other perspective, Mr. Rutledge proved, on a balance of probabilities, that “his” signature on the veto agreement is not authentic and same for the agreement overall.

[106] The “veto agreement” is accordingly not an obstacle to Mr. Rutledge exercising his rights as HTE’s majority shareholder, including removing Ms. Freeman as director.

[107] Whether he exercised those rights in congruence with the *Business Corporations Act* and any other applicable law, as well as other break-up-of-commercial-relationship issues, will be explored in a further instalment, now that this threshold (authenticity of veto agreement) point has been decided.

[108] Mr. Rutledge is entitled to costs of the authenticity application under the appropriate column of Schedule C.

Heard on March 8, 2025, with supplementary submissions received on April 8 and 11, 2025.

Dated at Calgary, Alberta on April 25, 2025.

Michael J. Lema
J.C.K.B.A.

Appearances:

Christopher D. S. Dormer and Alicia M. Martin
Dunphy Best Blocksom LLP
for Mr. Rutledge

Lynn Freeman
Self-Represented Litigant