Court of King's Bench of Alberta

Citation: Venture Leasing Corporation v Hanger 11 Corporation, 2025 ABKB 294

Date: 20250512
Docket: 2003 09474
Registry: Edmonton

Between:

Venture Leasing Corporation

Applicant

- and -

Hanger 11 Corporation, Art Breier otherwise known as Artwit Breier, Investor Co. in Trust for Bud Zeitz, Bud Zeitz, Joe Bots and Harold Family Trust Corporation

Respondents

Corrected judgment: A corrigendum was issued on May 13, 2025; the corrections have been made to the text and the corrigendum is appended to this judgment.

Memorandum of Decision
of the
Honourable Justice D.A. Yungwirth

Introduction

[1] This was a one-day civil special chambers application brought by Venture Leasing Corporation (VLC) against Hangar 11 Corporation (Hangar 11) and its shareholders. VLC is also a shareholder of Hangar 11.

[2] Dennis Lawrence is a director of VLC. Mr. Lawrence contends that, in 1999, he entered into an agreement with Joe Bots, another Hangar 11 shareholder, whereby Mr. Bots agreed to transfer his Hangar 11 shares to VLC. The actual transfer of Mr. Bots' shares appears to have been completed 3 years later in 2002.

[3] In 2013, Hangar 11 received settlement funds from the Edmonton Regional Airport Authority (ERAA), which were distributed to its shareholders via the issuance of dividends. Because Mr. Bots was no longer listed as a registered shareholder of Hangar 11, he received nothing.

[4] Mr. Bots argues that he was not aware that his Hangar 11 shares had been transferred to VLC. In fact, he alleges that the signature on the share transfer certificate is not his signature. He only discovered that his shares had been transferred to VLC in 2016 when another Hangar 11 shareholder contacted him at his residence in Hawaii. He immediately wrote to Hangar 11 to dispute the transfer and to request more information about the company's share ownership. Eventually, he retained a handwriting expert to provide an opinion regarding the validity of the signature on the share transfer certificate.

[5] The handwriting expert reached a qualified conclusion that the signature on the share transfer certificate was likely not Mr. Bots' signature. Hangar 11 relied on this opinion to justify transferring the shares from VLC back to Mr. Bots. They also directed VLC to repay the dividends it received after the ERAA settlement so that the money could be redistributed to Mr. Bots.

[6] It is VLC's position that Hangar 11 acted wrongfully by reversing the transfer of Mr. Bots' shares. VLC argues that Hangar 11's actions were oppressive, unfairly prejudicial to, or unfairly disregarded the interests of VLC as a shareholder. As a result, VLC seeks a remedy pursuant to section 242 of the *Business Corporations Act*, RSA 2000, c B-9 (*BCA*). Specifically, it requests an order:

- Restraining any further share transfers by the Respondents,
- Directing issuance of securities to VLC sufficient to compensate it for the conversion of shares by the Respondents,
- Setting aside the transfer of shares from VLC to Mr. Bots and reinstating such shares to VLC,
- Compensating VLC for damages incurred as a result of the conversion of shares, and,
- Costs.

[7] Prior to the application, VLC retained new counsel and amended its materials in order to plead the *Limitations Act*, RSA 2000, c L-12 (*LA*). Through those amendments, VLS submits that Mr. Bots is barred from asserting ownership over the shares because his claim is out of time.

[8] Counsel for Mr. Bots got off the record at the beginning of the application. As such, no oral submission were made on behalf of Mr. Bots, who must rely solely on his written materials and affidavit evidence.

[9] Mr. Bots' materials, as well as the materials and oral submissions of the remaining Respondents, maintain that VLC was not entitled to Mr. Bots' shares because the agreement between Mr. Lawrence and Mr. Bots was unenforceable. There was no mutual intention to create legal relations, there was no *consensus ad idem*, there was no certainty of terms, and it was not supported by consideration. They argue that as a result, Hangar 11 was justified in correcting the accuracy of their corporate records by reversing the transfer of the shares to VLC, thereby restoring Mr. Bots ownership of the shares.

[10] Mr. Bots asks the Court to dismiss VLC's application as against the Respondents. Further, he asks for a declaration that:

- The disputed shares were never validly transferred to VLC,
- He is the true and rightful owner of the disputed shares, and,
- Hangar 11 acted appropriately by relying on the expert evidence to reverse the share transfer.

[11] Hangar 11 and the remaining respondents take no position on the remedies sought by VLC or Mr. Bots. However, Hangar 11 seeks dismissal of VLC's claim for damages as against Hangar 11.

Background

[12] Mr. Lawrence is a businessman who has owned and operated many different companies. Mr. Lawrence and Mr. Bots had a long-standing professional relationship and Mr. Bots had invested in several of Mr. Lawrence's business ventures. When Mr. Lawrence decided to incorporate Hangar 11, he approached Mr. Bots, Arwit Breier, and Bud Zeitz for investment capital. They agreed to participate.

[13] Hangar 11 was incorporated in Alberta on January 12, 1998. Its directors upon incorporation were Joe Kabat and Mr. Breier. On March 6, 1998, they were replaced by Mr. Lawrence. He remained the sole director of Hangar 11 until February 1, 2000, at which time he was replaced by Mr. Breier. Mr. Breier remains the sole director of Hangar 11.

[14] From the date of incorporation until approximately 2015 or 2016, Mr. Lawrence was solely responsible for Hangar 11's operations. He was also completely in control of the finances, Minute Book, and other corporate documents.

[15] There are 100,000 Class A Common Voting Shares of Hangar 11:

- **March 6, 1998**: 1 share issued to Mr. Lawrence (Share Certificate 1A).
- **June 1, 1998**: 19,999 shares issued to VLC (Share Certificate 6A).
    - Also on June 1, 1998, Mr. Lawrence transferred his share to VLC (Share Certificate 1A cancelled and Share Certificate 7A issued). There is a directors' resolution in the corporate Minute Book approving this transfer. As a result, VLC owned a total of 20,000 shares.

- **July 28, 1998**: 14,000 shares issued to Investor Co. (in trust for Mr. Zeitz) (Share Certificate 2A), 6,000 shares issued to Mr. Zetiz (Share Certificate 3A), 20,000 shares issued to Mr. Breier (Share Certificate 4A), and 20,000 shares issued to Mr. Bots (Share Certificate 5A).
- **November 15, 2007**: 20,000 shares issued to Harold Family Trust Corp (Share Certificate 9A).

[16] Each shareholder paid $1.00 per share, except VLC and Mr. Lawrence, who paid $0.01 per share. No explanation has been offered for the different share prices. In addition, the share certificate numbers are not in sequential order. Mr. Lawrence, who was in control of the corporate records at the time, provided no explanation for this anomaly.

[17] After Hangar 11 was incorporated and its shares issued, Mr. Bots decided to end his business association with Mr. Lawrence. According to Mr. Bots' evidence, he realized that he was losing money and decided to stop investing in Mr. Lawrence's projects. He advised Mr. Lawrence of his decision in November 1999 and Mr. Lawrence drafted a written document that purported to end their business relationship. It was signed on November 27, 1999 by both Mr. Lawrence and Mr. Bots and witnessed by Mr. Breier ("the 1999 Document"). Mr. Bots acknowledges that his genuine signature appears on the 1999 Document but indicates that he has no recollection of signing it.

[18] The title of the 1999 Document indicated that it was an "agreement" between Mr. Lawrence and Mr. Bots. However, its opening statement characterizes it as a "request" being made by Mr. Lawrence. The 1999 Document is reproduced below:

> *Agreement this 27 day of November, 1999 between:*
>
> *Dennis Lawrence*
>
> *And*
>
> *Joe Bots.*
>
> *Dennis request to retain the following:*
>
> 1. *All shares outstanding to Joe Bots in Hagar 11 will be reissued to Venture Leasing Corp.*
> 2. *Joe will be responsible for any payments on any loan that was created to purchase the above shares.*
> 3. *Any and all shareholders loans due to Joe Bots from Hangar 11 Corp. at the end of the day will be payable to him as money becomes available, or thirty six months, whichever comes first.*
> 4. *Any shares that is held by Dennis Lawrence, but there is no formal documentation, will be retained by Dennis Lawrence with no further obligation to Joe Bots.*
> 5. *Lori Wood to create the necessary documents to cause complete release regarding Joe Bots, Campbell family trust, Dennis Lawrence, Venture Leasing Corp., and*

Technology Growth Corp. "All paperwork regarding Seed Company to be released."

6. *Dennis Lawrence to turn all Directorship and ownership over to Ken Campbell of all of the related Seed Companies.*
7. *All equipment purchased by Joe Bots from the Receiver will be stored on the premises of Hangar 11 Corp. at no charge for a period of Twelve months,*
8. *Items to be retained by Dennis Lawrence are:*

- *All desks except one.*
- *Mining Company water pump and accessories*
- *Role storage cabinet except 2*
- *All computers and Computer equipment:*
- *Book shelves*
- *Compressor*

9. *Forklift to be sold to Hangar 11 Corp. by January 31st, 2000. The purchase price to be $5,000.00*
10. *Joe Bots has free access to Hangar 11 Building and his equipment for his removal.*

[19] Shortly after signing the 1999 Document, two things happened. As indicated above, Mr. Lawrence resigned as sole director of Hangar 11 on February 1, 2000, and was replaced by Mr. Breier. In addition, Mr. Bots moved to Hawaii. However, Mr. Bots was still listed as a shareholder on Hangar 11's Resolutions in Lieu of Annual Meeting of Shareholders documents in both 2000 and 2001. These were dated December 15, 2000 and December 15, 2001 respectively. He also continued to sign these resolutions as a shareholder.

[20] On December 1, 2002, approximately 36 months after the 1999 Document was signed, Mr. Bots' 20,000 shares in Hangar 11 were transferred to VLC by a Transfer of Shares document dated December 1, 2002, purporting to be signed by Mr. Bots. Share Certificate 5A (Mr. Bots' certificate) was cancelled and Share Certificate 8A, representing the shares transferred from Mr. Bots, was issued to VLC. Mr. Bots denies that he signed the Transfer of Shares document.

[21] Article 3 of Hangar 11's Articles of Incorporation states that all share transfers require approval from the board of directors. In fact, the directors have absolute discretion to refuse, without justification, to approve a share transfer. However, there is no evidence that approval was either sought or provided for the December 1, 2002 transfer of shares from Mr. Bots to VLC.

[22] The 2002 transfer of Mr. Bots' shares brought VLC's total share ownership to 40,000, which was listed on all the shareholders' resolutions and meeting minutes going forward. Mr. Bots did not appear on any shareholders' resolutions or meeting minutes from 2002 until share ownership became an issue in 2016.

[23] In 2013, Hangar 11 received settlement funds from the Edmonton Regional Airport Authority. In 2014, these funds were paid out to Hangar 11's shareholders via dividends. VLC received dividends based on its 40,000 recorded shares ($50,000). Because he was no longer listed as a shareholder, Mr. Bots received nothing.

[24] In 2015, Hangar 11's corporate Minute Book went missing. Up to that point, Mr. Lawrence was solely responsible for the maintenance and safekeeping of the Minute Book. It had been kept in a Minute Book room at the building where Mr. Lawrence had been renting office space. In December 2015, Mr. Lawrence was evicted from that office for non-payment of rent. It was at this time that Hangar 11 discovered its Minute Book was missing.

[25] The Minute Book has since been reconstructed from backup and electronic copies, but it is incomplete. This incomplete version is the only Minute Book that was presented as evidence. It still contains Share Certificate 5A, the certificate representing Mr. Bots' shares, and is not marked as "cancelled" in the reconstructed Minute Book. The only copy showing the cancellation of Share Certificate 5A is the one produced by Mr. Lawrence.

[26] In 2016, Hangar 11's shareholdings were being examined as part of the Minute Book reconstruction exercise. This prompted Mr. Zeitz to contact Mr. Bots in Hawaii to inquire about the ownership status of his shares. Mr. Bots did not know that his shares had been transferred to VLC and claimed he had not signed the Transfer of Shares document dated December 1, 2002. He wrote a letter dated March 17, 2016 to Hangar 11 to dispute the transfer.

[27] On April 29, 2016, Mr. Bots' letter was discussed at a Hangar 11 shareholder meeting. The reconstructed Minute Book did not contain evidence of the transfer, so Mr. Lawrence indicated that he would provide the necessary documentation. On October 30, 2018, Mr. Lawrence produced the 1999 Document, the cancelled Share Certificate 5A and the signed Transfer of Shares document dates December 1, 2002. These documents were shown to Mr. Bots.

[28] Mr. Bots sent a proxy to the next shareholder meeting, held on November 13, 2018. Through the proxy, Mr. Bots indicated that he never viewed the 1999 Document as an agreement for the sale of his shares. Further, while he acknowledged that his name appears on the share transfer certificate, he advised that it is not his genuine signature, and he did not write it. Hangar 11 retained a handwriting expert to determine whether the signature on the Transfer of Shares document was genuine. VLC, through Mr. Lawrence, objected to this course of action.

[29] On February 22, 2019, Hangar 11 held a special meeting to discuss the results of the handwriting analysis. The report from the handwriting expert noted deficiencies in the handwriting samples that were provided. As a result, the expert was only able to express a qualified opinion that the signature on the share transfer certificate was probably not Mr. Bots' genuine signature.

[30] Based on this conclusion, the majority of Hangar 11's shareholders (excluding VLC) voted to reverse the share transfer from Mr. Bots to VLC. Mr. Bots' 20,000 shares were restored to his name and VLC was directed to return any benefit it had received from those shares (the ERAA settlement funds) to Hangar 11, and they would be redistributed to Mr. Bots.

[31] In response, VLC filed an originating application alleging that, by reversing the share transfer, Hangar 11 acted in a manner that was oppressive, unfairly prejudicial to, or unfairly disregarded the interests of VLC as a shareholder.

Issues

[32] Section 242 of the BCA is broad enough to permit the relief requested by VLC. Thus, the overarching issue is whether Hangar 11 acted oppressively towards VLC by undoing the transfer of Mr. Bots' shares. To make this decision, I must consider the following:

1. Is the 1999 Document an enforceable contract ? In particular:
    a. Did the parties intend to create legal relations?
    b. Did the parties reach *consensus ad idem*?
    c. Is the 1999 Document void due to uncertainty of terms?
    d. Was the 1999 Document supported by consideration? If so, what was the consideration?
2. Did Hangar 11 act unfairly by reversing the transfer of Mr. Bots' shares?
3. Is there a limitations issue?

Legal Principles: Contract

[33] Contract formation requires offer, acceptance, an intention to create binding legal relations, a "meeting of the minds" or *consensus ad idem*, certainty of terms, and consideration. In this application, intention, consensus, certainty and consideration are in issue.

Intention to create binding legal relations

[34] A contract can only come into existence if both parties intend to create binding legal relations. Generally, there is a rebuttable presumption that commercial parties intend for their arrangements to be legally binding. However, there may be times when the parties record their early negotiations in writing. In these situations, it must be determined whether the parties intended for this preliminary version to constitute a final and binding legal agreement (John D. McCamus, *The Law of Contracts*, 3rd ed (Toronto: Irwin Law, 2020) at 120).

[35] The parties' conduct may be examined to determine whether they intended their arrangement to have legal consequences. This is an objective exercise, meaning that the court must assess whether the parties' conduct "was such that a reasonable person would conclude that they intended to be bound." When conducting this objective exercise, the court may consider both the purported contract and the circumstances surrounding its creation: (***Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga***, 2021 SCC 22 at paras 35-37).

[36] The consideration of surrounding circumstances permits a court to assess the transaction from the point of view of the reasonable bystander. However, it cannot be used to contradict the words of the contract, nor does it allow direct evidence of the parties' intent. Further, the consideration of surrounding circumstances is restricted to the time at which the contract was made. Issues or facts that arise after the alleged agreement cannot be relied on as part of the surrounding circumstances when assessing the parties' necessary intent (***Hole v Hole***, 2016 ABCA 34 at paras 34-35).

Consensus ad idem

[37] A binding contract also requires mutuality of agreement, or a "meeting of the minds". This is the foundation of any legally enforceable contract and is referred to as the parties

reaching *consensus ad idem*. The Alberta Court of Appeal explains that parties reach *consensus ad idem* when "it is clear to the objective reasonable bystander, in light of all the material facts, that the parties intended to contract and the essential terms of that contract can be determined with a reasonable degree of certainty" (***Ron Ghitter Property Consultants Ltd v Beaver Lumber Co***, 2003 ABCA 221 at para 9 (***Beaver Lumber)***).

[38] The starting point is the alleged agreement itself. If the terms are plain and unambiguous, that is the end of the matter (***Beaver Lumber*** at para 8). However, if it is unclear what has been agreed to, then the surrounding circumstances of the agreement, the conduct of the parties during negotiations and the subsequent conduct of the parties are all admissible in order to determine whether *consensus ad idem* exists (***Beechinor v Beechinor***, 2004 ABQB 7 at para 85, aff'd by 2005 ABCA 196).

[39] With respect to how the consideration of surrounding circumstances interacts with the parol evidence rule, the Supreme Court of Canada has confirmed that "…the parol evidence rule does not apply to preclude evidence of surrounding circumstances when interpreting the words of a written contract" (***Sattva Capital Corp v Creston Moly Corp***, 2014 SCC 53 at para 61 (***Sattva***)).

Uncertainty of terms

[40] A binding contract also requires a sufficient degree of clarity on its essential terms. An agreement that suffers from uncertainty of terms is void (***Pedersen v Soyka***, 2014 ABCA 179 at para 40). The concepts of uncertainty of terms and *consensus ad idem* frequently overlap.

[41] The law governing uncertainty of terms was explained in ***Ko v Hillview Homes***, 2012 ABCA 245 (***Ko***) and, more recently, summarized in ***Hotchkiss v Budding Gardens Inc***, 2020 ABQB 794 at paras 64-66 (***Hotchkiss***). These cases confirm that certainty is fundamental to contract formation (***Ko*** at para 81). It is present when the essential terms of the contract communicate with a reasonable degree of certainty what the parties have agreed to (***Ko*** at para 87).

[42] Whether a term qualifies as essential depends on the type of contract (***Ko*** at para 91). However, "any term which the parties thought that they needed and included in the agreement, but which is too vague, renders the contract void" (***Ko*** at para 90). This is not restricted to terms dealing with parties, property or price. Uncertainty dealing with other important matters, besides those three "P" elements, may also render the arrangement void (***Ko*** at para 101).

[43] Unenforceability due to uncertainty is a matter of law (***Ko*** at para 121). A mere ambiguity that can be resolved by applying the normal rules of contract interpretation will not result in uncertainty (***Hotchkiss*** at para 65).

Consideration

[44] Consideration refers to the value that is exchanged between parties to create a binding contract. A contract that is not supported by consideration is unenforceable.

[45] Consideration may be minimal, which is sometimes referred to as "the peppercorn theory". This concept communicates that, even if the value exchanged is something as trivial as a peppercorn, the fact that it exists is enough to support a finding of consideration (***Mikkelsen v Truman Development Corp***, 2017 ABCA 99 at para 23). In other words, the court must only

find that consideration exists, not whether its value is adequate or sufficient (***370105 Alberta Ltd v Brazos Petroleum Corp***, 1992 CanLII 6215 (ABKB) at para 15).

Analysis on whether the 1999 Document is an enforceable contract

Did the parties intend to create binding legal relations?

[46] The 1999 Document forms the basis of the dispute between VLC and the Respondents.

[47] VLC argues that the 1999 Document represents a valid contract between Mr. Lawrence and Mr. Bots. It argues that this was a commercial transaction negotiated by experienced businessmen and they both fully understood what was being agreed to. Further, the document was signed and witnessed, which means that the parties understood that it created binding obligations and took steps to formalize them. According to VLC, this demonstrates the necessary intention to create legal relations.

[48] The Respondents contend that the 1999 Document was a proposal or "wish list". They submit that Mr. Bots' signature communicates that he was willing to continue negotiations about how to best conclude his professional association with Mr. Lawrence. Mr. Bots submits that he did not consider the 1999 Document to be a binding agreement, and he certainly did not intend to transfer his shares to VLC. In fact, when questioned on his affidavit, he specifically said Mr. Lawrence owed him money from past ventures and that he was willing to "go and just forget about it because I knew he couldn't afford to pay me anyways". He said that he did not talk about the shares.

[49] Mr. Bots' subjective intention is irrelevant. What matters is whether there is objective evidence, in either the words of the 1999 Document or the circumstances surrounding its execution, that rebut the presumption that commercial actors intend for their arrangements to be enforced.

[50] The 1999 Document was drafted by Mr. Lawrence. He is an experienced businessman, so it is not clear why he would use the word "request" in the body of the document. The words "agreement" and "request" communicate different things in the context of a business arrangement, and his choice of the word "request" supports the Respondents' characterization of the 1999 Document as a mere proposal.

[51] Mr. Bots had been a shareholder of Hangar 11 for only a short time before the 1999 Document was signed. It is not disputed that he paid $20,000.00 for his shares. Yet, the 1999 Document makes no reference to the transfer price of Mr. Bots' shares. Viewed from the perspective of a disinterested bystander, it is unreasonable to conclude that Mr. Bots would give up 20,000 shares that he had only recently purchased without specifying the sale price for the transfer.

[52] Further, both Mr. Bots and Mr. Lawrence would have known that Hangar 11 is a separate legal entity and that its approval would be required for the share transfer and certain other parts of what was being proposed in the 1999 Document (for example, the purchase of the forklift by Hangar 11). The fact that Hangar 11's authorization was neither sought nor given at the time the 1999 Document was signed would also lead a reasonable bystander to conclude that the alleged agreement was not in its final form.

[53] Ultimately, the formation of an enforceable agreement requires that both parties objectively intended to create binding legal relations. Considering the language used in the 1999 Document, the missing share price information, the lack of approval from third parties, and the other surrounding circumstances, this Court concludes that when Mr. Lawrence and Mr. Bots signed the 1999 Document, they did not both objectively intend to create a binding agreement for the transfer of Mr. Bots' shares in Hangar 11 to VLC.

Did the parties reach consensus ad idem?

[54] The 1999 Document lacks detail, some of the terminology is confusing or inconsistent, and the obligations it attempts to create are not well-defined. In other words, it is not clear on the face of the 1999 Document whether the parties reached *consensus ad idem* on the essential terms. As such, the surrounding circumstances and the parties' conduct can be considered to determine whether consensus exists (***Beechinor*** at para 85).

[55] The main objective of the 1999 Document, and the main dispute underlying this application, is the transfer of Mr. Bots' shares. However, the 1999 Document specifically characterizes the clause governing the share transfer as a "request". After signing the "request", Mr. Bots continued to receive and sign Hangar 11 shareholder resolutions for the next 2 years. Once he discovered that his shares had been transferred to VLC, he took immediate steps to dispute the transfer.

[56] These facts demonstrate that, until he learned otherwise, Mr. Bots viewed himself as a Hangar 11 shareholder even after the 1999 Document was signed. Given that the share transfer was the primary purpose of the 1999 Document, Mr. Bots' belief that he continued to own these shares for another 17 years demonstrates that the parties never reached *consensus ad idem* on the 1999 Document's essential terms.

Is the 1999 Document void due to uncertainty of terms?

[57] The actual details of the 1999 Document are vague. The language used is imprecise, it is unclear what specific assets, entities or items the clauses are referring to and the bulk of the performance relies on the participation and cooperation of third parties who were not involved in the discussion or execution of the 1999 Document. For example:

- Clause 1 indicates that Mr. Bots' Hangar 11 shares will be "reissued" to VLC. Shares are "issued" from the Treasury, but they are "transferred" between shareholders. The terminology is unclear and inconsistent. Further, there is no mention of whether Mr. Bots will receive compensation for his shares or how or by whom the requisite Hangar 11 directors' approval will be obtained.
- Clause 2 explains that Mr. Bots will be responsible for the payments on any loan created to purchase his Hangar 11 shares. There is no evidence that any such loan existed at the time of the 1999 Document. In fact, Mr. Bots states that he did not use a loan to finance his initial share purchase. There is no explanation for why an entire clause of the 1999 Document is dedicated to a nonexistent loan.
- Clause 3 states that any shareholder loans that Hangar 11 owed to Mr. Bots "at the end of the day" would be paid whenever money became

available, or in 36 months, whichever came first. Though Mr. Bots indicated in his Affidavit, that Hangar 11 owed him money, there is no documentary evidence as to the nature of that obligation, or that a shareholder loan existed, or that Mr. Bots was ever paid. In addition, repayment of the loan according to the identified timelines would be an obligation of Hangar 11, and that entity was not a party to the agreement. There is also strange phrasing used in this clause. For example, it is not clear what is meant by reference to "at the end of the day".

- Clause 4 refers to shares held by Mr. Lawrence for which there is no formal documentation. It is unclear what shares are being referred to here, given the past dealings between Mr. Lawrence and Mr. Bots.
- Clause 5 refers to the preparation of releases regarding Mr. Bots, Campbell Family Trust, Mr. Lawrence, VLC and Technology Growth Corp, as well as generic paperwork regarding "Seed Company". During the application, VLC attempted to provide electronic copies of several purported releases, but these were not properly in evidence. As a result, there is no information about what these releases were or the context in which they were created. There was also no evidence from Campbell Family Trust, Technology Growth Corp. or the Seed Companies about the content or significance of these releases.
- Clause 6 directs Mr. Lawrence to transfer the ownership and directorship of "all of the related Seed Companies" to Ken Campbell. No further information was provided about these companies, and Mr. Campbell did not give evidence. There is no evidence that Mr. Campbell approved this transfer of ownership and directorship to him, and he was not a party to the Document.
- Clause 7 states that Mr. Bots may store equipment on Hangar 11's premises for 1 year at no charge. The nature of the equipment requiring storage is not identified. Further, Mr. Lawrence did not personally have the authority to agree to this on behalf of Hangar 11 and there is no evidence that Hangar 11 approved of this arrangement. There is also a reference to a Receiver with no clarity as to who is being referred to and for which entity a Receiver has been appointed.
- Clause 8 identifies a list of items to be retained by Mr. Lawrence. The location of these items is not specified and the general nature of the description (e.g. all desks except one and book shelves) make it difficult to ascertain exactly what is being referred to. It is also unclear who owns these items or whether the owners of the items have agreed to let Mr. Lawrence keep them.
- Clause 9 attempts to bind Hangar 11 to purchase a forklift from Mr. Bots and sets a purchase price of $5,000.00. There is no evidence that Hangar 11 ever approved of this sale or that it was ever completed.

[58] It is unclear what obligations the 1999 Document creates. For example, are shares being issued from the Treasury to VLC, or are they being transferred to VLC from Mr. Bots? If Mr. Bots is transferring the shares to VLC, is he being paid for them? What is the price? Who is responsible for obtaining Hangar 11 directors' approval of the share transfer? Why would Mr. Bots repay a loan that did not exist? Why would Mr. Lawrence own shares for which there is no formal documentation? What Seed Companies are being referenced? Who is Ken Campbell and has he agreed to accept ownership and directorship of the related Seed Companies? Who is the Receiver? Will Hangar 11 agree to the storage of equipment on their premises for 1 year at no charge? Will Hangar 11 agree to purchase a forklift for $5,000, and who is it being purchased from? Will Hangar 11 permit Mr. Bots "free access" to Hangar 11 Building and his equipment?

[59] The 1999 Document also aims to bind third parties that were not involved in the arrangement. Neither Mr. Lawrence nor Mr. Bots (i.e., the only two signatories) had the personal authority to oblige Hangar 11. There is no indication that Mr. Lawrence or Mr. Bots had any authority to bind any other individuals or entities mentioned in the 1999 Document to fulfil the obligations referenced.

[60] Because the terms of the 1999 Document are ambiguous, the parties' subsequent conduct may also be considered (*Hotchkiss* at para 66). For example, the 1999 Document is dated November 27, 1999, but the disputed share transfer did not take place until December 1, 2002. This means that, even though Mr. Lawrence states that the 1999 Document is a binding agreement that created defined legal obligations, he did not take any action under its terms for more than 3 years after it was signed. There is also no evidence that any of the other terms were fulfilled in the interim.

[61] Further, for 2 years after the 1999 Document was signed, Mr. Bots continued to receive and sign Hangar 11 shareholder resolutions. Those resolutions were prepared by Mr. Lawrence and it was Mr. Lawrence who asked Mr. Bots to sign them. Mr. Lawrence signed those same documents on behalf of VLC and he never objected to Mr. Bots continuing to sign them as a shareholder.

[62] Mr. Lawrence waited years to take any action on his alleged share acquisition, while Mr. Bots continued to behave as a shareholder of Hangar 11. Neither Mr. Lawrence nor Mr. Bots operated in a manner consistent with someone who had just executed a well-defined contract for the transfer of an asset.

[63] There is not enough clarity in the wording of the 1999 Document itself, the circumstances surrounding its creation, or the subsequent conduct of the parties to allow a reasonable bystander to ascertain what the parties may have agreed to. Any obligations that may have been created by the 1999 Document are so uncertain that they cannot be enforced.

Is the 1999 Document supported by consideration? If so, what was it?

[64] The 1999 Document references all shares outstanding to Joe Bots in Hangar 11 being "reissued" to Venture Leasing Corp. These shares have value and would qualify as consideration provided by Mr. Bots. However, VLC is not a party to the arrangement and provides no reciprocal consideration to Mr. Bots. It is also unclear what consideration, if any, has been provided by Mr. Lawrence, either in his own capacity or on behalf of VLC.

[65] VLC argues that Mr. Lawrence was giving Mr. Bots a "financial divorce", which constitutes valid consideration. It also relies on ***Long v Eastwick***, 2007 ABQB 488 for the

proposition that a person's contributions to a corporation over time can constitute consideration. As indicated above, VLC attempted to introduce electronic copies of certain releases as evidence of consideration, but these were not properly in evidence and cannot be considered by the Court.

[66] The Respondents argue that Mr. Bots did not receive any value from Mr. Lawrence (or from VLC). The only benefit that may have been promised to Mr. Bots would have been provided by third parties who were not bound by the 1999 Document. In any event, the third-party benefits (such as Hangar 11's payment for the forklift) were never received.

[67] I agree with the Respondents that Mr. Lawrence has not provided any consideration to support the 1999 Document. Mr. Bots always had the freestanding ability to reject future investment requests from Mr. Lawrence. The vague concept of a "financial divorce" has no real value and is not something that Mr. Lawrence even had the capacity to give. In other words, the "financial divorce" allegedly created by the 1999 Document does not require Mr. Lawrence to provide Mr. Bots with any rights or value that he did not already independently possess (e.g., the right to say "no"). The details of any other type of consideration as part of the "financial divorce" are so ambiguous as to be incapable of being properly understood.

[68] Mr. Lawrence's contribution to the corporation over time also does not constitute consideration. At the time that the 1999 Document was drafted, Hangar 11 had not even been in existence for 2 years. This is a short amount of time by which to judge Mr. Lawrence's contributions as the basis for consideration. There is also little to no evidence about Mr. Lawrence's actual contributions to Hangar 11 for the period covering incorporation until the 1999 Document. When one considers the share transfers to VLC and Mr. Lawrence for $0.01 per share instead of the $1.00 per share that the other shareholders paid, the missing Minute Book and other allegations of mismanagement against Mr. Lawrence as set out in the affidavit of Mr. Breier, it would appear that Mr. Lawrence's contributions and the nature of those contributions are the subject of ongoing disputes between the parties. In these circumstances, it is not reasonable to suggest that Mr. Lawrence's contributions to the corporation over time amount to consideration for any share transfer requested in the 1999 Document.

[69] The only potential consideration flowing to Mr. Bots would have been provided by third parties who were not a party to the 1999 Document. There is no evidence that Mr. Lawrence personally agreed to give anything of value to Mr. Bots.

[70] Ultimately, neither party could point to anything in the 1999 Document that would qualify as consideration given by Mr. Lawrence to Mr. Bots. Since a binding contract requires consideration, it follows that the 1999 Document is unenforceable.

Conclusion on whether the 1999 Document is an enforceable contract

[71] The 1999 Document is unenforceable. Viewed objectively, it is not possible to conclude that both parties objectively intended to create binding legal relations. Further, there was no meeting of the minds, and the arrangement is not supported by consideration.

[72] In addition, the essential terms cannot be determined with any reasonable degree of certainty.

[73] Given these conclusions, I do not need to address the parties' arguments regarding the duty of good faith or whether the arrangement was unconscionable.

Legal Principles: Oppression Remedy Under BCA

BCA: General Relevant Provisions

[74] Section 1(ee) defines "security" as "a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation".

[75] Section 6(1)(c) permits a corporation's articles of incorporation to impose restrictions on the transfer of shares.

[76] Section 49(1) requires a corporation to maintain an accurate securities register.

[77] Section 47 establishes that, unless otherwise provided by the BCA or the Civil Enforcement Act, RSA 2000, c C-15, the transfer of a security is governed by the Securities Transfer Act, SA 2006, c S-4.5 (STA). Section 53(3) of the STA provides that a signature on a securities certificate is presumed genuine. But, if it is put in issue, the burden is on the party claiming under the signature to prove its authenticity.

BCA: Oppression

[78] Section 242 of the BCA sets out the elements of the oppression remedy.

[79] Under section 242, a complainant must prove that a corporation, its affiliates, or its directors have acted in a manner that is oppressive, unfairly prejudicial to, or unfairly disregards the interests of any security holder, creditor, director or officer. If proven, the court may make an order rectifying the conduct complained of (BCA, ss 242(1)-(2)). A complainant includes a registered holder or former registered holder of a security of a corporation (BCA, s 239(b)(i)).

[80] There is a two-part test when seeking an oppression remedy. First, the complainant must establish that they had reasonable expectations with respect to their treatment by the corporation, its affiliates or directors. Second, they must show that the corporation violated these expectations by engaging in conduct that was oppressive, unfairly prejudicial to, or unfairly disregarded their interests (BCE Inc v 1976 Debentureholders, 2008 SCC 69 at para 68; Gill v 1176520 Alberta Ltd, 2020 ABQB 274 at para 166 (Gill)).

[81] Under the first part of the test, the Supreme Court identified seven factors that may influence whether the complainant's expectations were reasonable (BCE at para 72). The factor that is most applicable when considering the submissions of the Applicant, is the seventh one:

> The fair resolution of conflicting interests between corporate stakeholders: Directors must act in the best interests of the corporation, "having regard to all relevant considerations, including, but not confined to, the need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen" (*BCE* at para 82).

[82] With respect to the second part of the test, oppressive conduct is burdensome or abusive and suggests bad faith (BCE at para 67). Unfair prejudice is less offensive than oppression and may suggest "a less culpable state of mind" (BCE at para 67; Gill at para 170). Case law examples of unfair prejudice include instances where minority shareholders were forced out or shareholders were paid without a formal declaration (BCE at para 93; Gill at para 170). Unfair disregard is the least serious of the three (BCE at para 94; Gill at para 170). It extends the availability of the remedy to instances where the corporation ignored "an interest as being of no importance, contrary to the stakeholders' reasonable expectations" (BCE at para 67).

[83] A complainant need only prove that one of the three types of conduct exists in order to qualify for relief under section 242 (Seidel v Kerr, 2003 ABCA 267 at para 33 (Seidel)).

[84] The oppression remedy is very fact specific. It will be judged according to "the reasonable expectations of the stakeholders in the context and in regard to the relationships at play" (BCE at para 59). The underlying premise or "unifying theme" is whether the conduct complained of was unfair to the stakeholder (Seidel at para 33). Stakeholders are entitled to reasonably expect fair treatment from the corporation (BCE at para 64). However, "not all conduct that is harmful to a stakeholder will give rise to a remedy for oppression as against the corporation" (BCE at para 71).

[85] While the oppression remedy is provided for in legislation, it is equitable in nature (Gill at para 165; Seidel at para 26; BCE at para 58). Therefore, it is discretionary and not based on a "strict adherence to legal rights" (Gill at para 165; Seidel at para 35; BCE at para 58).

[86] If a corporation finds itself in a situation where its stakeholders have competing interests, it must exercise its "business judgment in a responsible way" (BCE at para 84). Whether the corporation demonstrated responsible business judgment will depend on the facts of the particular situation it faced.

Analysis: Oppression Remedy

[87] To satisfy the test for oppression, VLC must demonstrate that it had a reasonable expectation that was violated by Hangar 11's conduct. It must also demonstrate that Hangar 11's conduct was oppressive, unfairly prejudicial to, or unfairly disregarded VLC's interests.

[88] It is VLC's position that Hangar 11 acted unfairly towards it by reversing the transfer of Mr. Bots' shares. According to VLC, it was reasonably entitled to expect that its share ownership status, as reflected in the corporate records and supported by the 1999 Document, would be honoured by Hangar 11. VLC argues that by reversing the transfer after such a long period of time, Hangar 11 erroneously reduced VLC's ownership and incorrectly ordered it to return a substantial amount of dividend income. These actions prioritized the interests of a former shareholder over the interests of its largest, current shareholder; namely, VLC.

[89] Hangar 11 argues that the share transfer was invalid and, therefore, the reversal was justified.

[90] Essentially, VLC asserts an expectation that all shareholders would be treated fairly and that Hangar 11 would not revoke its shares without sufficient justification. Based on the factors identified by the Supreme Court of Canada, these are reasonable expectations. The question is whether Hangar 11 had sufficient justification to reverse the transfer. If it did not, then Hangar 11 displayed conduct that should be corrected under section 242.

[91] In my view, Hangar 11 had sufficient justification for correcting its corporate records by reversing the transfer from Mr. Bots to VLC. I have already concluded that the share transfer was conducted pursuant to an unenforceable agreement. However, there are still other reasons why the reversal was justified.

[92] Hangar 11's articles of incorporation preclude share transfers without the directors' approval. Thus, even if the 1999 Document was enforceable, the transfer would still need to be approved by a directors' resolution. Mr. Lawrence was the sole director of Hangar 11 at the time the 1999 Document was signed. He was also the only person responsible for the corporate

records since the time of incorporation. Yet, he did not take any steps to obtain the required directors' approval of the share transfer, even though such approval was within his complete control.

[93] In oral submissions, VLC suggested that Mr. Lawrence had ostensible authority as Hangar 11's sole director at the time that the 1999 Document was signed. VLC did not explain how Mr. Lawrence could sign the 1999 Document in both his personal capacity and as someone with the ostensible authority to bind Hangar 11, nor how Mr. Bots or anyone else would be able to determine in which capacity he was acting when referencing a specific clause or obligation in the 1999 Document.

[94] Further, in June 1998, when Mr. Lawrence transferred his incorporator's share to VLC, he completed a directors' resolution approving the transfer. Thus, he would have known that a separate resolution would be required in order to comply with article 3, even if he was personally involved in the transaction. In other words, ostensible authority does not explain why Mr. Lawrence decided that no specific resolution was required in November 1999 when he knew it was required to validate a similar transfer the year prior.

[95] In addition, VLC argued that since Mr. Bots' name did not appear on any corporate documents post-2001, and all the shareholders and directors signed or reviewed these documents, it can be inferred that they were aware the transfer had taken place. Whether that inference is supported is irrelevant because shareholder awareness does not satisfy the requirement for directors' approval.

[96] In any event, the share transfer itself did not actually occur until December 1, 2002. By that time, Mr. Breier was the sole director of Hangar 11. He also did not provide the required director's approval.

[97] Further, Hangar 11 has a duty under section 49(1) of the BCA to maintain an accurate securities register. Once it concluded that the share transfer was invalid, either because it was done pursuant to an unenforceable agreement or because it had not complied with the transfer conditions set out in the articles of incorporation, Hangar 11 was obliged to ensure that the records were amended to reflect the correct ownership status.

[98] In addition, after the issue of the validity of the Joe Bots signature was raised by Mr. Bots, VLC had the burden of proving that the Joe Bots signature on the Transfer of Shares document was valid (BCA, s 47; STA, s 53(3)). To do this, VLC relies on two pieces of evidence: Mr. Lawrence's questioning transcript, wherein he indicates that he assumes Mr. Bots signed the transfer certificate, and the questioning transcript of Michael Harold, which states that Mr. Lawrence told Mr. Harold that he had watched Mr. Bots sign the certificate. Basically, VLC relies on speculation and double hearsay. Neither piece of evidence provides sufficient proof of the signature's authenticity.

[99] The handwriting expert retained by Hangar 11 noted deficiencies with the samples provided for analysis. This meant that the expert could only reach a qualified conclusion that the signature was "probably not" that of Mr. Bots.

[100] Hangar 11, in choosing to rely on this piece of objective information provided by a neutral third party as one of the reasons for reversing the transfer, acted reasonably. Put another way, preferring objective evidence from a neutral professional over speculative hearsay did not

amount to conduct that was oppressive, unfairly prejudicial to, or unfairly disregarded the interests of VLC.

Conclusion: Oppression Remedy

[101] Hangar 11 did not act unfairly towards VLC by reversing the transfer of Mr. Bots' shares. This is not a situation where Hangar 11 ignored the best interests of the corporation and prioritized the interests of one (former) shareholder over another. Rather, Hangar 11 acted reasonably by relying on some objective evidence to reverse a share transfer that was conducted pursuant to an unenforceable agreement and that did not comply with the transfer conditions set out in its articles of incorporation. Hangar 11 has a statutory duty to ensure the accuracy of its securities register, which it discharged by restoring the shares to Mr. Bots.

[102] Hangar 11 was in a position where it had to balance the expectations of two different stakeholders. It did so by making inquiries, obtaining professional advice and exercising responsible business judgment. Just because VLC is not satisfied with the outcome does not mean that Hangar 11 acted unfairly.

[103] VLC has not shown that Hangar 11's actions were oppressive, unfairly prejudicial, or characterized by unfair disregard. As such, it is not entitled to the relief requested under section 242 of the BCA.

Legal Principles: Applicability of Limitations Act

[104] Section 3(1) of the *LA* establishes the default limitations rule in Alberta:

> Limitation periods
>
> **3(1)** Subject to subsections (1.1) and (1.2) and sections 3.1, 3.2 and 11, if a claimant does not seek a remedial order within
>
> (a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,
>
> (i) that the injury for which the claimant seeks a remedial order had occurred,
>
> (ii) that the injury was attributable to conduct of the defendant, and
>
> (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding,
>
> or
>
> (b) 10 years after the claim arose,
>
> whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

[105] Section 1 of the *LA* includes the following definitions, which are relevant to this matter:

- "Claim" means a matter giving rise to a civil proceeding in which a claimant seeks a remedial order (section 1(a)),

- "Claimant" means the person who seeks a remedial order (section 1(b)), and,
- "Remedial order" means a judgment or an order made by a court in a civil proceeding requiring a defendant to comply with a duty or to pay damages for the violation of a right, but excludes (i) a declaration of rights and duties, legal relations or personal status, (ii) the enforcement of a remedial order, (iii) judicial review of the decision, act or omission of a person, board, commission, tribunal or other body in the exercise of a power conferred by statute or regulation, or (iv) a writ of habeus corpus (section 1(i)).

Analysis: Limitations

[106] VLC argues that both limitations periods provided under section 3(1) of the *LA* have expired, so the transfer back to Mr. Bots should have been statute barred.

[107] Several dates were identified as possible dates of discoverability. However, it is VLC's position that the latest possible date of discoverability is March 17, 2016, which is the date that Mr. Zeitz contacted Mr. Bots to inquire about his Hangar 11 shares. In other words, this was the latest date that the limitations period under section 3(1)(a) would have begun to run. Mr. Bots had until March 17, 2018 to seek relief. VLC argues that because Mr. Bots did not officially dispute the authenticity of his signature until the November 2018 shareholder meeting, and the decision to transfer the shares back into his name was not made until February 2019, his claim is out of time.

[108] The respondents assert that, because Mr. Bots sought relief directly from Hangar 11, the *LA* does not apply.

[109] The *LA* does not apply on these facts. Mr. Bots is not a claimant within the meaning of the *LA*. He is not seeking a remedial order which, by definition, requires the commencement of a civil proceeding. Whether or not his claim would have been statute barred if he had begun a court action is irrelevant because he chose to seek relief directly from the corporation. The *LA* does not apply to the actions of Hangar 11.

[110] VLC has not identified any legal principle or any detail within Hangar 11's corporate structure that would prevent it from making a decision based on the approval of the majority of its shareholders.

Conclusion: Limitations

[111] The *LA* does not apply either to Mr. Bots' choice to avoid the court system by seeking relief directly from Hangar 11, or to Hangar 11's decision to reverse the transfer of Mr. Bots' shares. It follows that VLC's limitations arguments must fail.

Summary and Conclusion

[112] The 1999 Document is unenforceable and cannot be used to justify the transfer of Mr. Bots' shares to VLC. Further, the transfer was done without the requisite director's approval. Given these circumstances, Hangar 11 was justified in reversing the transfer. The disputed shares were never validly transferred to VLC, and Mr. Bots was and is the true and rightful owner of the

disputed shares. It follows that Hangar 11 did not act in a manner that was oppressive, unfairly prejudicial to, or unfairly disregarded the interests of VLC. There are no limitation issues in relation to these facts.

[113] Based on these conclusions, VLC's application for the relief sought against any and all Respondents is dismissed in its entirety. Any benefits received by the Applicant or VLC as a result of the purported ownership of Mr. Bots shares in Hangar 11 shall be paid to Mr. Bots within 30 days.

[114] Failing agreement between the parties, the costs of this application may be spoken to within 45 days.

Heard on the 6th day of December, 2024.
Dated at Edmonton, Alberta this 12th day of May, 2025.

D.A. Yungwirth
J.C.K.B.A.

Appearances:

David W. Wolanski
for the Applicant

Robert Gilespie
for the Respondents, Hanger 11 Corporation, Art Breier otherwise known as Artwit Breier, Investor Co. in trust for Bud Zeitz, Bud Zeitz and Harld Family Trust Corporation

Joshua Threinen
for the Respondent, Joe Bots

Corrigendum of the Memorandum of Decision
of
The Honourable Justice D.A. Yungwirth

Under paragraph 18 where 1999 Document is reproduced, the line *Dennis request to retain the following:* was changed to remove the number 1 before *Dennis*. It now reads: *Dennis request to retain the following:*. The numbered paragraphs immediately following have been corrected so that they are now indicating numbers 1 through 10 instead of numbers 2 through 11.