

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: 0081092 B.C. Ltd. (Re),
2025 BCSC 1771

Date: 20250911
Docket: S232641
Registry: Vancouver

**In the Matter of Section 325 of the *Business Corporations Act*, S.B.C. 2002,
c. 57, as amended**

and

In the Matter of 0081092 B.C. Ltd., In Liquidation

Before: The Honourable Justice Loo

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.
August 29, 2025

Place and Date of Judgment:

Vancouver, B.C.
September 11, 2025

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Introduction

[1] This is an application for an order approving an interim distribution by MNP Ltd. in its capacity as liquidator (the “Liquidator”) from the net proceeds from the sale of the assets of 0081092 B.C. Ltd. (the “Company”) to the Company’s shareholders. The shareholders of the Company are four brothers: Edward (“Ted”), Douglas, Bruce, and Robert Callahan.

[2] Until August 29, 2025, the Company owned five contiguous parcels of land in Kelowna, at 3745 Lakeshore Road (the “Lands”). The Lands occupy approximately 18.5 acres. For many years, the Company owned and operated a mobile home park on the Lands.

[3] On November 6, 2020, the shareholders of the Company resolved to appoint a liquidator to assist in the liquidation of the Company’s assets, including the Lands. They also resolved to authorize the Company to commence a dissolution upon completion of the liquidation.

[4] In December 2024, I approved a process to market and sell the Company’s assets. The process that I approved required potential purchasers to submit, and the Court to review and assess, sealed bids.

[5] On May 5, 2025, following the completion of the sales process and the assessment of sealed bids by the Court, this Court approved the sale of the Company’s assets to a company owned or controlled by the brothers other than Ted for \$42,621,112. Ted has appealed this Court’s order approving the sale (the “May Order”) and the Court of Appeal is scheduled to hear the appeal (the “Appeal”) on October 16, 2025.

[6] The sale has completed, and the proceeds net of closing costs and broker fees (the “Proceeds”) are held by the Liquidator on behalf of the Company pending further order of this Court.

[7] Ted claims that, although the four brothers are equal shareholders of the Company, there are two agreements which entitle him to a greater share of the value of the Company—and therefore the Proceeds. These agreements are referred to in pleadings as the Differential Contract and the Incentive Contract. The action (Vancouver registry no. S235344) in which Ted makes these claims is referred to as the “Differential Action”.

[8] Ted has also been granted leave to advance an action on behalf of the Company against his brothers, for allegedly taking excessive director fees. The action (Vancouver registry no. S190277) in which these claims are advanced is referred to as the “Derivative Action”.

[9] The Differential Action and the Derivative Action are scheduled to be tried together before me commencing on October 20, 2025, for 40 days (the “October Trial”).

[10] The Liquidator seeks to pay out \$18,168,733 of the Proceeds to the shareholders, and to retain the balance pending further order of this Court.

Legal principles

[11] This application is governed by ss. 325(3)(m) and (t) of the *Business Corporations Act*, S.B.C. 2002, c. 57 [Act] which provide as follows:

325 (3) On an application made in respect of a company in liquidation, the court may, in respect of that company, make any order it considers appropriate, including any of the following orders:

...

(m) an order

(i) approving the payment, satisfaction or compromise of any or all of the liabilities of the company and the retention of assets for that purpose, or

(ii) determining the adequacy of provisions for the payment or discharge of the liabilities of the company;

...

(t) subject to the obligation of the liquidator under section 330 (m) to pay or provide for the company's liabilities and the costs, charges and expenses incurred in the liquidation, an order approving any proposed interim or final distribution in money or other assets to shareholders ...

[12] The Court's task under these subsections is reasonably clear when a company's liabilities are known. Any proposed distribution must be subject to the liquidator's obligation to pay those liabilities.

[13] However, the task is less clear when a company's liabilities are uncertain or contingent. Counsel were unable to provide me with any authority setting out the tests or criteria to be applied in such circumstances.

[14] It is clear from the permissive words at the commencement of s. 325(3) that the orders authorized by that subsection are discretionary.

[15] In my view, it cannot be that a liquidator is required to hold back funds to protect against any potential liability, no matter how fanciful or meritless. But at the same time, the Court must reasonably protect against the possibility that a company will be unable to pay its creditors because funds that otherwise would be available for that purpose have been distributed to its shareholders.

[16] In my view, these subsections require the Court to reasonably balance the shareholders' entitlement to the proceeds of sale on a liquidation of a company's assets against the need to "provide for" the company's potential liabilities. The sum needed to "provide for" potential liabilities will be determined based on the quantum of the claims against the company, the apparent strength of the claims, and other factors that might mitigate the company's risk arising from the claims.

The Liquidator's proposal

[17] After broker fees and closing costs arising from the sale of the Lands, the Proceeds total \$41,961,710. From that sum, the Liquidator estimates that the Company will have to pay:

- a) \$11,122,913 in capital gains tax;
- b) fees to the Liquidator and its counsel totalling \$1,779,400; and

- c) potential cost claims against the Company arising from the October trial totalling \$1,450,624.

[18] The Liquidator proposes that a contingency sum in the amount of \$10,000,000 be held back for other potential liabilities which will be addressed below. Further, the Company expects to receive a refundable tax credit in the estimated amount of \$7,156,674 once the distribution to shareholders has been completed by way of dividend.

[19] As stated, the Liquidator proposes to pay out \$18,168,733 of the Proceeds on the basis that this is the sum left over after deducting from \$41,961,710 the amounts set out above. However, the Liquidator made an arithmetic error in its calculations: after deducting the amounts set out above from \$41,961,710, the sum remaining is \$17,608,773. I will use this amount as being the sum proposed to be distributed by the Liquidator.

The positions of the parties

[20] Ted states in his Application Response that his “first position is that a distribution should not be made until the [Appeal] is resolved”, but he did not seriously pursue this position.

[21] Ted further submits that the \$10,000,000 proposed contingency is insufficient, and that a larger contingency should be made on account of the Differential Action and the Appeal. He submits that “if a distribution is to be made now, [he] proposes an amount that is half what is currently being proposed by the Liquidator”.

[22] Doug, Bruce and Robert Callahan submit that a contingency in the amount of \$10,000,000 is unnecessary, and that the distribution should be greater than the amount proposed by the Liquidator.

Analysis and disposition**The Company's potential liability in the Differential Action**

[23] While Ted, despite requests from the Liquidator, has not quantified his claim in the Differential Action, his counsel at the hearing of this application referred to decisions of an arbitrator who, more than ten years ago in disputes between these brothers in relation to a different company, ruled that Ted was entitled to a 38% share in another company's assets despite legally owning 25% of its shares.

[24] If the costs and taxes set out above are incurred in the amounts estimated, the net sum held by the Liquidator will be \$27,608,773 (not \$28,168,773 as stated by the Liquidator, because of the arithmetic error). Assuming the refundable tax credit is received, the total amount available for distribution will be \$34,775,447 (the "Amount Available for Distribution").

[25] If \$17,618,773 were to be distributed now, the eventual balance after receipt of the tax credit will be \$17,156,674. If Ted were to succeed in establishing that he is entitled to 38% of the Amount Available for Distribution, there would be sufficient funds to pay that liability, as 38% of \$34,775,447 is \$13,214,670.

[26] Any risk that the balance held by the Liquidator after the proposed distribution might be insufficient is further mitigated because, if Ted were to succeed in the Differential Action, the Company appears unlikely to be liable for all of the damages awarded to him. Ted pleads that the Differential Agreement was entered into by the brothers, and that the Incentive Agreement was entered into by several parties including the Company. It is only if Ted succeeds solely on the Incentive agreement and is able to collect only against the Company that he would be dependent upon the Company to pay the entire sum owing.

[27] Further, ss. 325(3)(k) and (l) of the *Act* provide that this Court may make:

(k) an order that there be an examination into the conduct of any person who has taken part in the formation or promotion of the company, or of any past or present director, officer, receiver, receiver manager, liquidator, shareholder or beneficial owner of shares of the company, if it appears that that person has misapplied, retained or become liable or accountable for any property, rights

or interests of, or has been guilty of any breach of trust in relation to, the company;

(l) an order that a person referred to in paragraph (k) of this subsection do one or both of the following, whether or not the conduct complained of is conduct for which the person may be liable to prosecution:

(i) repay or restore all or any part of the property, rights and interests that the person misapplied or retained, or for which the person is liable or accountable, with interest at the rate the court considers appropriate;

(ii) contribute the sum that the court considers appropriate to the assets of the company by way of compensation for the conduct complained of;

[28] Douglas, Bruce, and Robert Callahan submit that these provisions authorize the Court to make an order requiring them to pay funds back to Ted if the Company ultimately has insufficient funds because of this distribution to carry out the Court's order following the determination of the Differential Action. In my view, this submission is persuasive, and the Court's ability to make an *in personam* order against any of the parties in the Differential Action is a factor that significantly limits the risk that Ted might otherwise incur as a result of the proposed distribution.

[29] Finally, the Liquidator's counsel advises that their fee estimate for the remaining discovery steps in the Differential Action and for their attendance at the October Trial are probably overstated, as it assumes that they will attend at every day of the 40-day trial. Counsel have now advised the Court that they will attend the first day and thereafter only if necessary.

[30] In summary, the balance remaining after the proposed distribution would clearly be sufficient to pay the Company's liability in the Differential Action if Ted were to be awarded 38% of the Amount Available for Distribution. In the event that Ted were to be awarded a larger percentage, it is my view that the balance remaining after the distribution proposed by the Liquidator would be sufficient to "provide for" the Company's potential liability to Ted in the Differential Action, particularly given the risk-mitigating factors set out above.

The Company's potential liability in the Appeal

[31] Ted's position that funds should not be distributed from the Proceeds in order to protect his position with respect to the Appeal is grounded largely in a submission made by the Liquidator in response to a stay application recently advanced by Ted to the Court of Appeal. In that application, Ted sought to stay the closing of the sale of the Lands pending the Appeal. In its application response, the Liquidator stated:

There are safeguards in place to ensure the appellant can be compensated with money if one of his appeals is ultimately successful; the Liquidator will hold the sales proceeds pending a court order directing when and how those funds should be distributed.

[32] Ted submits that the Liquidator should be held to these words, and that only by limiting the distribution can the Court ensure that he may be compensated with money if the Appeal is ultimately successful.

[33] However, while Justice MacNaughton recited the submissions of the Liquidator described above in her reasons, the proposition that Ted was protected by the sales proceeds did not form part of her reasons. She concluded that Ted's position on the application was that he would suffer irreparable harm if the stay were not granted, on two primary bases:

- a) that he has a sentimental attachment to the Company's property at issue; and
- b) that the appeal will become moot, with only the dispersion of funds remaining, if the stay is not granted.

[34] Justice MacNaughton dismissed the stay application, holding that "Ted has provided no authority for the proposition that potential loss of an asset with sentimental value may constitute irreparable harm" (at para. 55), and that the decision in *Dixon v. Morgan*, 2020 BCCA 200, relied upon by Ted for the proposition that a sale of a claimant's property constitutes irreparable harm, was distinguishable from the facts of this case: para. 58.

[35] There are at least two other reasons why, in my view, the Appeal ought not to preclude the distribution proposed by the Liquidator.

[36] First, any potential damages claim against the Company arising from a successful Appeal would, in my view, be of doubtful merit. The sale of the Company's assets was approved by this Court in an order dated May 5, 2025. In that order, the Liquidator on behalf of the Company was directed to complete the sale. Ted does not explain how the Company could be liable for any damages arising from the sale, which was carried by the Liquidator by order of this Court, even assuming that the May Order were ultimately overturned.

[37] Second, Ted does not quantify the contingent liability to which the Company might be exposed as the result of a successful Appeal. In his application response, Ted refers to material before the Court that indicates that the mobile home park located on the Lands was "generating pre-tax income of approximately \$70,000 per month" but it is unclear how this amount could possibly form part of a claim resulting from a successful Appeal.

[38] Even if the Company were somehow liable for this amount for the period between the date of the May Order and the determination of a successful Appeal, any risk to Ted is adequately dealt with by the contingency proposed. As stated above, even if Ted succeeds in establishing an entitlement to a 38% share of the Amount Available for Distribution, the Liquidator will continue to hold almost \$4,000,000 after the payment out of that share to Ted.

The position taken by Ted's brothers

[39] As stated, Ted's brothers contend that the Court ought to authorize a larger distribution than that proposed by the Liquidator, and that the \$10,000,000 contingency holdback is unnecessary. However, in my view, based on the analysis above, the Differential Action presents the Company with a potential liability, albeit somewhat mitigated, for which the contingency amount reasonably provides.

[40] Further, although it is in the Court's discretion to ultimately allow or disallow any interim distribution, the Liquidator has expertise and experience in setting a reasonable interim distribution amount and its views are entitled to some deference. In my view, there is no compelling reason to order a distribution in an amount exceeding that sought by the Liquidator.

Conclusion

[41] For the reasons set out above, the distribution order sought by the Liquidator is granted in the amount of \$17,608,773.

“Loo J.”