CITATION: Penelas v. Cruise, 2025 ONSC 3337
COURT FILE NO.: CV-24-00003878-0000
DATE: 2025-06-04

SUPERIOR COURT OF JUSTICE - ONTARIO

RE:

NELSON PENELAS, NP PROVIX HOLDCO INC., CARLISLE INVESTMENT GROUP INC., Applicants

AND:

TREVOR CRUISE, TYRELL CORP., TC PROVIX HOLDCO INC., NT&T INVESTMENT PARTNERS LTD., STANMECH TECHNOLOGIES INC., NTI PROVIX HOLDCO INC., PROVIX INC., 1442491 ONTARIO INC., Respondents

BEFORE: Kurz J.

COUNSEL: John Adair, Counsel for Applicants

Stephen Brown-Okruhlik, Counsel for Respondents

HEARD: April 23, 2024 in person

ENDORSEMENT

Introduction

[1] The Respondents move for orders:

1. Requiring the Applicants, Nelson Penelas ("Penelas") and NP Provix Holdco Inc. ("NP"), to complete the sale of NP's 42.5% share interest in Provix Inc. ("Provix") to the Respondents, Trevor Cruise ("Cruise") and TC Provix Holdco Inc. ("TC");

2. Setting the terms for the shotgun buy/sale process for NT&T Investment Partners Ltd. ("NT&T"), the holding company for Stanmech Technologies Inc. ("Stanmech");

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3. Dismissing or staying the relief sought in para. 1 (b) and (c) of the Applicant's Notice of Application, dealing with remedies for a finding of oppression against the Respondents; and

4. directing that the balance of this application proceed in the ordinary course.

[2] The issues raised in this motion are:

1. Upon what terms should Penelas and NP Provix sell their shares in Provix to Cruise and TC Provix Inc.?

2. Upon what terms should the buy/sell shotgun process for the sale of NT&T/Stanmech take place?

3. What further orders should be made and steps taken in this proceeding?

<u>Issue No. 1:</u> Upon what terms should Penelas and NP Provix sell their shares in Provix to Cruise and TC Provix Inc.?

[3] Each of Cruise and Penelas, through their respective holding companies, TC and NP, own 42.5% of the shares of Provix. The remaining 15% of the shares are owned by Haseeb Javed ("Javed") or his holding company. Javed has no legal interest in the determination of the terms of the sale of Penelas and NP's shares of Provix to Cruise and TC.

[4] At para. 26 of my November 29, 2024 endorsement, I wrote:

> Cruise says that on August 9, 2024, Penelas agreed to sell his interest in Provix to Cruise for the price that they paid for it the previous month. Penelas does not deny this but contends that the agreed upon sale of his Provix interest was conditional on a resolution of the issue of ownership of Stanmech, i.e. who would buy the other out and for how much.

[5] In my endorsement of April 14, 2025, I stated that I had refrained from making an order about Provix on November 29, 2024 because "Penelas both pleaded and represented to the court that he and Cruise had agreed that he would sell his interest in

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Provix to Cruise at the same price he (or his holding company) had recently paid when they acquired it." I further pointed out that:

> In his factum for the [October 25, 2024] injunction motion, Penelas wrote that the issue of ownership of Provix was not in dispute. He added that the "parties have agreed that Mr. Penelas would sell his interest in Provix to Mr. Cruise for the value at the time of acquisition" and that "Mr. Penelas continues to be willing to sell his interest in Provix to Mr. Cruise for the amount he paid".

[6] I dismissed Penelas' attempt to amend his pleadings to call for a shotgun process for the disposal of the parties' shares in Provix because he had already admitted that he had agreed to sell those shares to Cruise at the cost for which they were purchased. I wrote:

> In his factum for the injunction motion, Penelas wrote that the issue of ownership of Provix was not in dispute. He added that the "parties have agreed that Mr. Penelas would sell his interest in Provix to Mr. Cruise for the value at the time of acquisition" and that "Mr. Penelas continues to be willing to sell his interest in Provix to Mr. Cruise for the amount he paid". Penelas also stated in his factum for that motion that he and Cruise had agreed on a shotgun transaction for Stanmech but that Cruise had resiled from that position.
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> …
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> Cruise argues that Penelas' counsel's representations of an agreement regarding Provix when the original motion was argued amount to both a binding agreement and an admission. The agreement is for Penelas to sell his interest in Provix to Cruise at the same price he had paid for it. The admission is that there was such an agreement.
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> …
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> Cruise is correct that through a combination of his pleading and his representation to the court, Penelas admitted that there was an agreement to sell his interest in Provix to Cruise at cost. Admissions of that nature cannot be withdrawn without leave. Such leave has not been requested, let alone granted.
>
> …
>
> Here, I see no reason to allow Mr. Penelas to withdraw his admission that he had agreed to sell his interest in Provix to Cruise at cost.

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[7] During the argument of this motion, Penelas' counsel attempted to distinguish between the price his clients had paid for the shares of Provix and their "value" at the time of purchase.

[8] I was sceptical of the notion that there was a difference between the price that Penelas and NP paid for their shares of Provix and their "value" at the time.

[9] After some discussion between counsel, I wrote the following in my endorsement of April 23, 2025:

> The parties agree that Cruise's holdco will purchase the interest of Penelas' holdco in Provix. While they have agreed that the share purchase will be made for the price or value paid, it is not clear what that price or value was. Cruise has made a proposal to bridge that gap in a manner that will allow the share purchase to take place expeditiously, with part of the amount paid immediately to Penelas (or his solicitors) and the remainder to be paid in trust or court. Mr. Adair, who heard the proposal for the first time this afternoon will confer with his client and respond by tomorrow at noon with a submission of up to one page. Mr. Brown-Okruhlik may reply in a one-page submission by April 25, 2025 at noon. Each may direct their submissions to my judicial assistant.

[10] In response, I received submissions from counsel although they did not come to my attention until just following the May 22, 2025 case conference, which I adjourned until after this decision is released.

[11] In his written submission, Cruise stated that he is seeking to have the transfer of Provix shares carried out expeditiously. He states that each party paid $5 plus a loan of $180,000 for their shares of Provix. Those figures were referred to in the draft share purchase agreement ("SPA") which Cruise's counsel sent to Penelas' counsel on December 6, 2024. The covering letter of that correspondence stated that Cruise agrees with the relief sought at para. 1(b) and (c) of the Notice of Application. Included in that correspondence was a draft consent, draft order and the draft SPA.

[12] Cruise says that he should immediately pay that $180,005 ($180,000 + $5) to Penelas on the closing of the transfer of his and NP's shares of Provix. That amount is

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not disputed as the minimum cost for the shares of Provix. In answer to my question, the Applicant's counsel stated that another $100,000 could be owing for those Provix shares. Cruise proposes that the additional $100,000 be paid into court or even in trust to Mr. Adair's firm, pending determination of whether any additional amount should be paid to Penelas/NP for their shares of Provix.

[13] Penelas' counsel has indicated that he is unwilling to transfer his and NP's shares of Provix until the parties arrive at the terms of an SPA. Cruise's counsel responds, as set out above, that he forwarded a draft SPA to Penelas' counsel on December 6, 2024 but received no response. Penelas never requested an SPA as a precondition to the sale of his and NP's Provix shares until he referred to it as a requirement in his April 17, 2025 responding factum for this motion. As far as I know (I am not necessarily privy to all correspondence between counsel), Penelas waited six months after receipt of this draft SPA to offer any comments about a potential SPA. As the purchaser of those shares, he is willing to close the transaction without an SPA. Cruise adds that any further delay prejudices him as Provix requires debt restructuring.

[14] Penelas replies that Cruise's proposal, although made in good faith, is not an appropriate way to move forward regarding the transfer of Provix shares. He offers two reasons. First, the proposal engenders too much legal uncertainty. The transfer would take place without knowing the final purchase price of the shares or other terms of the transfer. He describes that state of affairs as "a bridge too far".

[15] Second, Penelas argues that a forced sale without a SPA, over Penelas' objections would effectively pre-determine the issue of whether an SPA is required. It would offer Cruise "literally no incentive" to engage in good faith to work out the terms of the SPA.

Analysis and Order re Provix

[16] There is no reason to delay the transfer of Penelas and NP's Provix shares. There is a risk of financial harm to both Provix and Cruise/TC if the transfer does not take place in light of the need for financial restructuring.

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[17] I have not been advised of any authority that entitles me to require that parties to sign an SPA, let alone fix its terms. I note that the cases cited at paras. 32-33 below regarding buy/sell shotgun processes do not require that parties to enter into an SPA prior to the transaction taking place. I will not do so here.

[18] Accordingly, I order that:

1. Penelas and NP shall transfer any shares they own in Provix to Cruise and TC by 5:00 p.m., June 16, 2025.

2. At the time of closing, Cruise shall pay to Penelas or NP, as he elects in writing, $180,000.

3. Also at the time of closing, Cruise/TC shall deposit a further $100,000 to, at Penelas' election, Mr. Adair's firm's trust account or to the Accountant of the Superior Court of Justice, to be held until an agreement in writing or further order. Penelas, though counsel, shall advise of his election within seven days of the release of these reasons.

4. The parties will forthwith arrange a conference before me in order to arrange a hearing to determine the price to be paid for those shares.

5. If any issues arise in regard to the carrying out of the terms above, the parties may arrange to appear before me.

<u>Issue No 2:</u> Upon what terms should the buy/sell shotgun process for the sale of NT&T take place?

[19] The parties agree that the key sub-issue in regard to the shotgun buy/sell process is who will trigger that process. Each set of parties says that the other should be the one who acts as the trigger. Each obviously believes that there is a tactical and financial advantage to the other being the one who triggers the process. I set out below the factors which I consider in coming to the conclusion that Cruise and his holding company, Tyrell Corp. ("Tyrell"), shall be the one who triggers the buy/sell shotgun process.

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The Respondents cannot limit the shotgun process to one where Penelas is the triggering party

[20] NT&T is, as set out above, the holding company for all of Stanmech's shares. NT&T's shares are held equally by Penelas' holding company, Carlisle Investment Group Inc. ("Carlisle") and Cruise's holding company, Tyrell.

[21] The Respondents' notice of motion seeks an order "directing [Tyrell and Carlisle] to engage in a shotgun buy/sell mechanism with respect to the shares of NT&T…". It does not state who will be the trigger of the shotgun process.

[22] Later in their notice of motion, the Respondents state that "the Penelas Entities have requested in this Application that the Court order two transactions to take place". Here the Respondents refer to the request found at para. 1 (b) and (c) of the Notice of Application's prayer for relief: the sale of Provix to Cruise and TC and "[a] 'shotgun' buy/sell transaction under which the Penelas Entities or the Cruise Entities sells to the other its interest in NT&T." The Respondents continue in their notice of motion, stating that they "agree to such relief. An order should issue directing that the two transaction[s] take place."

[23] In their original factum for this motion, the Respondents request only an order regarding Stanmech "directing the Sale Transaction take place", without requiring Penelas as the triggering party.

[24] Yet, during the course of argument of this motion, counsel for the Respondents indicated that his clients only agree to a shotgun process if Penelas/NP is the triggering party. In their supplementary factum, delivered two days before this motion was argued, the Respondents assert that they are

> seeking an Order granting the Sale Transactions in the form originally requested by Mr. Penelas (i.e. Mr. Cruise buys Mr. Penelas' interest in Provix at the original cost of the investment and Mr. Penelas serve as "trigger" in a shotgun transaction for Stanmech).

[25] In taking this position, the Respondents rely on the pleading at para. 2 (bb) of the Notice of Application. That pleading states that before negotiations between the two sides broke down, “[t]hey agreed in broad strokes to achieve the corporate separation on the basis that Mr. Cruise would purchase Mr. Penelas' interest in Provix and that their interest in Stanmech would be the subject of a shotgun buy/sell arrangement, with Mr. Penelas as the ‘trigger’…".

[26] The Respondents also point to a statement at para. 38 of Penelas’ first affidavit, of September 28, 2024, that: “[t]he main thrust of our discussions was towards an arrangement whereby Mr. Cruise would purchase my interest in Provix at par value, and we would use a “shotgun” buy/sell mechanism to effect a separation of the Stanmech interests. Mr. Cruise confirmed on several occasions his agreement to that overall arrangement.”

[27] All of that being said, the narrative at para. 2(bb) of the Notice of Application and para. 38 of Penelas’ September 28, 2024 affidavit is just that, contextual narrative. It describes negotiations which took place regarding the outlines of a comprehensive settlement between Cruise and Penelas. But both of the excerpts cited above refer to negotiations which broke down, without a binding agreement, prior to the commencement of this application.

[28] More to the point, in their own notice of motion, the Respondents clearly state (and admitted) that they agreed to the relief set out at para. 1 (b) and (c) of the Notice of Application. Those pleadings do not request that the court order that Penelas be the party who triggers the shotgun process for NT&T/Stanmech.

[29] Thus, for the same reasons set out at paras. 83-109 of my April 14, 2025 endorsement, refusing to grant leave to the Applicants to amend their Notice of Application to request a shotgun process for Provix, I find that the Respondents are bound by their agreement to engage in a shotgun process for the shares of NT&T/Stanmech, without a prior condition requiring Penelas to be the triggering party. That is the issue left for the court to decide in this endorsement.

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Who should Trigger the Stanmech Buy/Sell Process?

[30] The Respondents say that Penelas should be the party who triggers the NT&T/Stanmech buy/sell process because:

1. My previous orders have redressed the oppression concerns which led Penelas and his co-applicants to being this application. They have received almost all of the relief they have sought. That relief redresses any informational asymmetry between the parties and the insider status of Cruise. Penelas' status regarding Stanmech is basically what he asked the court to order.

2. That means that Penelas has the same access as Cruise to Stanmech's SAP platform and real-time access to Stanmech data. Penelas recently requested to be provided with thirteen further documents. Cruise agreed to provide them without resort to the court.

3. The issue of informational asymmetry and Cruise's insider status is, in any event, a red herring. In their motion of March 10, 2025, which led to my endorsement of April 14, 2025, the Applicants requested an amendment to their pleadings so that they can seek a shotgun process for Provix, with Penelas as the triggering party. Yet Penelas has had nothing to do with the business of Provix since shortly after its purchase and the parties' rift. It has been run solely by Cruise, on the expectation that he would take it over after buying out Penelas' share.[1] The demonstrates the hypocrisy of Penelas' position regarding information asymmetry. He was willing to trigger the Provix buy/sell shotgun even though he was clearly at an informational disadvantage to Cruise.

[1] See paras. 89 and 97 – 109 of my endorsement of April 14, 2025.

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4. The equities which are relevant to the issue of who should be named the triggering party for the NT&T buy/sell are in Cruise/Tyrell's favour. The Respondents say this because:

    a. Whether or not there was a binding agreement regarding a shotgun buy/sell agreement for NT&T/Stanmech prior to the commencement of this application, Penelas had indicated his willingness to be the party who triggers the process;

    b. Penelas has misconducted himself. He has:

        1. Disseminated confidential and proprietary Stanmech information;

        2. Given a corporate opportunity to his "friend and co-conspirator, Fonseca":

        3. Moved to Spain despite his commitments to be physically present at Stanmech and Provix;

        4. Lied to the court about: the permanence of his move to Spain, "crashing" the Leister return flight just after the October 25, 2024 motion was argued, and regarding his alleged lack of access to confidential Stanmech information.

    c. There is a financial asymmetry between Cruise and Penelas. Cruise quit his job and remains in Ontario to work full-time in managing Stanmech. Further, in my previous endorsement, I reversed the employment agreement that Cruise negotiated with Stanmech, leaving him without income. On the other hand, Penelas has continued with his lucrative banking job.

    d. For Cruise, Stanmech is the business he has devoted all of his energies to while for Penelas it is a mere investment.

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e. Penelas has admitted that Stanmech is worth more in Cruise's hands than his own. He is trying to get Cruise to bid against himself to obtain a disproportionate price and one in which he is bidding for the ability to be paid for his work.

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[31] The Respondents also rely on this statement by author, Markus Koehnen (now Justice Koehnen of this court), in his text, *Oppression and Related Remedies*, 2005, Thompson Carswell, at p. 356 – 7, to say that Penelas should be the triggering party:

> The reasonable expectations of the parties, not the size of their respective shareholdings or determinations of guilt or innocence, should determine who buys-out whom. Absent some expectation to the contrary, the founder of a business who remains active in it or the party who has put more time and effort into the business will have a prima facia right to buy the other party's shares, even if the founder has behaved oppressively. On the other hand, a minority shareholder who has actively managed the business and for whom the business is a more important source of personal income may be the more appropriate purchaser. The reasonable expectations of the more passive investor are more easily satisfied by financial compensation than those of the more active manager. Where one party is the better manager, it is the preferable purchaser, even if they played a less important role in starting up the business. If the expectations of the parties are equal, the court will not allow the oppressing party to buy the shares of the complainant if doing so allows the respondent to further his oppression
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> [Citations omitted]

[32] The Applicants disagree. They argue that Cruise, as the insider in Stanmech, should be the triggering party. They refer to what they describe as the "*Safarik* principle", which emerges from the British Columbia Court of Appeal decision in *Safarik v. Ocean Fisheries Ltd.*, (1996), 17 B.C.L.R. (3d) 354 (C.A.) and again in *Lee v. Lee* (2002), 3 B.C.L.R. (4th) 129 (S.C.), affd. (2003), 13 B.C.L.R. (4th) 270 (C.A.). That principle holds that where there is a deadlock between equal shareholders of a corporation and a shotgun process is necessary, and the equities are otherwise even, the insider, involved in the day-to-day operation of the corporation, should be the person who sets the price. As Southin J.A. wrote for the British Columbia Court of Appeal in *Safarik*, at para. 23:

> **23** I have concluded that the individual shareholders, because they are insiders and Mr. Gordon Safarik is not, should have the onus put upon them to fix a fair

> price. I know of no better way to have a man put a fair value on what he owns, he knowing all the facts about its worth, than to require him to say what he will sell it for.

[33] The same approach was taken in the British Columbia Supreme Court in *Whistler Service Park Ltd. v. Glacier Creek Development Corp.*, 2005 BCSC 1942, affd. 2005 BCCA 472 and Saskatchewan Court of Queens bench in *Scott v. Robb*, 2005 SKQB 242, at para. 6. In the latter case, one of two equal shareholders of a corporation was excluded by the other from its operation. The parties had agreed to a shotgun process but could not agree on who should the trigger the transaction. Relying on *Safarik* and *Lee*, Laing J. found that the insiders should "make the first offer". The *Safarik* approach was also approved by this court in *D'Antonio v. Monaco,* 2013 ONSC 5007, at para. 127, affd. 2015 ONCA 274.

[34] The Applicants also argue that the equities favour Cruise as the triggering party. They argue that:

1. In my November 29, 2024 endorsement, I found that Cruise:
    a. acted contrary to Stanmech's bylaws in ousting Penelas;
    b. acted in a conflict of interest in doing so;
    c. removed a key contributor to Stanmech's business.
2. In my April 14, 2025 endorsement, I further found that Cruise engaged in misconduct with regard to his "poison pill" employment contract; acting again in a conflict of interest.
3. Only making Cruise the trigger represents a fair and just response to his attempt to gain an unfair advantage in this corporate divorce process.

Analysis of the Shotgun Issue

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[35] In considering all of the factors set out above, I conclude that Cruise must be the party who triggers the shotgun process because:

1. His misconduct in improperly ousting Penelas caused this application to be commenced.

2. My order of November 29, 2024 was intended to address that misconduct and even the playing field between the parties. However, it did not fully succeed in that regard.

3. Penelas was reinstated to his position as director, and had some aspects of his previous role restored. But he agreed to step back from his previous day-to-day role in the management of Stanmech, in part because Cruise took the position that the two could no longer work together.

4. As my April 14, 2025 endorsement demonstrates, Cruise continued to misuse his position and act in conflict of the interests of Stanmech, even after the original injunction motion was argued on October 25, 2024. While awaiting my decision, aware of the conflict-of-interest concerns which Penelas had raised, Cruise persisted. He misused his position and acted in conflict with Stanmech's interests to award himself an employment agreement that he had to know Penelas would never approve.

5. After my November 29, 2024 endorsement was released, Cruise had Stanmech pay him a handsome stipend, including a $250,000 "retroactive" payment under the employment agreement he had negotiated with himself. He did so even though I had ordered that "[n]o non-ordinary course steps or transactions with respect to Stanmech business shall be undertaken without the express written consent of both Cruise and Penelas".

6. I have made no findings regarding Penelas' alleged misuse of confidential information. That issue was settled on October 25, 2024, without argument.

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7. While Cruise refers to Penelas as a liar, as I stated in my April 14, 2025 endorsement, I have reasons to doubt the credibility of each of Cruise and Penelas. For example:

    a. Penelas is simply not credible about the flight he hopped to Zurich on October 25, 2024, the date that the injunction motion was argued. He claimed that it was merely coincidental that a Leister representative was onboard that flight. As I wrote at para. 25 of my April 14, 2025 endorsement, Penelas' claim of coincidence:

        > is a dubious proposition, considering that Zurich is, according to Google Maps, 1400 km northeast of his Spanish abode in Valencia. When cross-examined about his travels from Valencia to Toronto and then back again, Penelas was unable to recall his flight itinerary to Toronto and unwilling to provide his passport, itinerary or receipts for his flights.
        >
        > [Footnote omitted.]

    b. Furthermore, Penelas' claim to have moved only temporarily to Spain (for six to nine months) strains credibility with each day he has not returned to Ontario.

    c. On the other hand, Cruise's explanations regarding the motivations and timing of his employment contract with Stanmech and the timing of his $250,000 "retroactive" payout strain credibility.

    d. Further, despite my order of November 29, 2024 that "[n]either Penelas nor Cruise shall have any substantive discussions with Leister without the other participating", Cruise recently attended a Leister training programme. He did so without advising Penelas in advance or obtaining the consent of the court. His explanation was that it was merely a technical training programme. If the attendance

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were so anodyne, I wonder why, in the face of my order, he did not clarify the situation in advance.

8. In sum, I deal with the issue of credibility and forthrightness with the court as a neutral factor in the determination of the equities regarding the identity of the party who should trigger the shotgun buy/sell process.

9. While Penelas is not the mere investor described by Mr. Koehnen (as he then was) in his Oppression text, Cruise has continued to be the "insider" at Stanmech. He effectively ran it since ousting Penelas. My order succeeded in giving Penelas access to information regarding the finances of Stanmech and to have some contact with Stanmech employees. Whether it was the same information available to Cruise, as he insists, I cannot answer based on the evidence before me. But even assuming that were the case, it is Cruise who worked at Stanmech day-to-day, with employees, customers and even Leister, Stanmech's main supplier.

10. Regarding the ability to continue Stanmech's relationship with Leister, the parties have agreed to a joint email to Leister regarding its willingness to work with each of them should they gain control of Stanmech.

[36] In sum, the equities between the parties, as reflected in my endorsements of November 29, 2024 and April 14, 2025 are not equal. While I sympathize with Cruise's position that he has made Stanmech his life's work and that he solely carried the business after Penelas' ouster, and that Penelas moved to Spain on a full-time basis (which is likely true), that is not sufficient to make up for his own misconduct. Further, as a result of that misconduct he has been far more of an insider at Stanmech that Penelas, since the latter was ousted from his position.

[37] As stated above, in retrospect, my November 29, 2024 endorsement did not fully even the scales in that regard.

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[38] For all of those reasons, I find that Cruise shall be the party who triggers the shotgun process.

Issue No 3: What further orders should be made, and steps taken in this proceeding?

[39] Penelas argues that he requires the following before the execution of the shotgun process:

1. Further disclosure, which he says was ordered in *Safarik, Scott v. Robb*, and other cases in which a shotgun process was ordered;

2. The ability to share that information with financial advisors;

3. Any time limits regarding the shotgun must commence only after he receives the disclosure he is requesting;

4. The parties must enter into a share purchase agreement. Penelas points out that Cruise's counsel had earlier drafted one.

5. The parties must obtain the consents of Leister, Stanmech's lender (BDC) and its landlord.

[40] Cruise rejects the necessity of that ancillary relief. He argues:

1. The parties have had months to work out the details of a share purchase agreement, without success. In fact, this whole application is premised on the understanding that the parties are unable to negotiate a commercial agreement for the transfer of control of Stanmech. Cruise does not seek such an agreement.

2. In his Notice of Application, Cruise never sought an order requiring a share purchase agreement for Stanmech. Nor did he set out the terms he required of such an agreement.

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3. Similarly, Cruise never made the consents of third parties to a change in control of Stanmech a condition to a shotgun process.

[41] Cruise feels that these requests are made in bad faith in order to delay the shotgun process and scare off potential third parties who may otherwise consent to the change of control of Stanmech. He is willing to proceed without any of them and to do so expeditiously.

[42] I generally agree with Cruise's arguments. Other than disclosure, the further terms which Penelas is seeking were not set out in his Notice of Application. Regarding third parties, each party is free to make their own inquiries within the limits of my previous orders in this proceeding.

[43] While the parties are free to work out their own SPA, judging by the inability of the parties to agree to very much in this litigation, I see the quest to obtain such an agreement to be merely an expensive and time-consuming exercise; one which will likely lead to no agreement. For the reasons set out above, I will not order that the parties enter into such an agreement in advance of the triggering of the buy/sell process.

[44] Regarding disclosure, Penelas has not been left blind with regard to Stanmech's finances. While his "insider" status at Stanmech is less than that of Cruise, he continues to have access to a broad array of its financial information and documentation. That includes a great deal of ongoing and on-time financial disclosure. Further, when the parties last appeared before me, they agreed that the Respondents would provide thirteen additional, updated financial documents. In addition, my November 29, 2024 order remains in full force and effect.

Conclusion

[45] In *Safarik*, Southin J.A. wisely stated that "[i]n a matter of this kind, there is no right answer. Indeed, whatever order is made, there is no victory".

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[46] Under s. 248 of the *Business Corporations Act*, R.S.O. 1990, c. B. 16 and s. 241 of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, both dealing with corporate oppression and the remedies available, the court has very broad and flexible discretion to fashion a remedy that best responds to the oppressive conduct: *Ernst & Young Inc. v. Essar Global Fund Ltd.*, 2017 ONCA 1014, at para. 239, *Catalyst Fund General Partner I Inc v Hollinger Inc.*, 79 OR (3d) 288 (Ont. C.A.), at para. 49.

[47] Here, I find that the most appropriate remedy regarding NT&T/Stanmech is the following, which I order:

1. Cruise and Tyrell shall deliver an offer to purchase Penelas and Carlisle's shares of NT&T or to sell their shares in NT&T to Penelas and Carlisle at a fixed price per share. This buy/sell offer shall be delivered within 30 days of the release of these reasons.

2. Penelas and Carlisle will respond to the buy/sell in writing within 7 days of receiving the buy/sell offer, indicating whether they intend to purchase Cruise and Tyrell's shares at the share price listed in the buy/sell, or whether they intend to sell their shares to Cruise and Tyrell at the share price listed in the buy/sell;

3. If Penelas and Carlisle fail to respond to Cruise and Tyrell's buy/sell offer within the 7 days set out above, Cruise and Tyrell shall purchase Penelas and Carlisle's share of NT&T at the price set out in the buy/sell offer.

4. Whichever parties are the purchaser as a result of the process set out above, they will close the transaction within 14 days of Penelas and Carlisle responding to the buy/sell offer (or they fail to do so within 7 days of receiving the buy/sell offer), by delivering a certified cheque for the purchase price to the seller. The purchaser will be responsible for all closing costs and legal fees incidental to completing the transaction, including,

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without limitation, the costs of any corporate documentation required to effect the share purchase;

5. The terms of my order of November 29, 2024, including Penelas' access to Stanmech information, remain in full force and effect until the acceptance period ends.

6. If the parties cannot agree on any further terms of the buy/sale process, they can arrange a conference before me to discuss any necessary steps in that regard.

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[48] Regarding the other relief sought in the Respondent's notice of motion and the Applicant's Notice of Application, I understand that there remain unresolved issues. I held a case conference with the parties' counsel on May 22, 2025, in response to a request on behalf of Mr. Cruise. He is seeking further relief, which I did not wish to consider until I released these reasons. At that time, the parties can discuss what further steps they wish to take to resolve this proceeding.

Costs

[49] I have not determined any costs of this proceeding, even of the October 25, 2024 motion. It seems to me best to determine costs of the proceeding as a whole. I strongly suggest to the parties that they attempt to determine those costs on their own.

[50] The parties may supplement the written submissions they have already provided regarding the October 25, 2024 motion, with regard to this application as a whole with a submission of up to three further pages, with costs outline and copies of any offers to settle which they wish to rely upon. The Applicants shall do so within 21 days and the Respondents shall offer responding submissions within a further 21 days. No reply costs submissions unless I request them.

Justice Marvin Kurz

Date: June 4, 2025

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